



# **Housing, Land and Property Issues and the Response to Displacement in Libya**

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## Executive Summary

One of the least well understood but most potentially destabilizing political issues in the new, democratically governed Libya is the ongoing plight of about 70,000 internally displaced persons (IDPs). Most of these IDPs were collectively targeted for expulsion from their home areas during the 2011 uprising on the basis of their imputed support for the Gaddafi regime. As such, they have been subject to ongoing harassment and human rights abuses and frequently face strong and violent resistance to their return from neighboring communities.

The situation of such 'targeted' IDPs is exacerbated by their *inability to access their homes and property*, which have often been looted, destroyed or occupied. These 'housing, land and property' (HLP) issues present a further violation of IDPs' human rights as well as a practical obstacle to the achievement of durable solutions for their displacement. Indeed, even 'non-targeted' IDPs displaced by the effects of heavy fighting in areas such as Misrata and Sirte cannot meaningfully reintegrate into society until their destroyed homes have been rebuilt or replaced.

Beyond the issue of the rights of IDPs and refugees to their homes, a second key HLP issue in Libya relates to the *current shelter needs* of those internally displaced in connection with the 2011 uprising. The Libyan authorities are responsible for meeting the humanitarian needs of IDPs, including shelter that fulfills the key criteria such as safety, habitability and tenure security. In addition, tenure security remains a critical issue for many refugees and other non-citizens in Libya, who continue to face arbitrary evictions from homes that they have often occupied for decades.

Lurking behind all of these essentially humanitarian HLP concerns is a much broader political question related to property relations in the post-Gaddafi era. Beginning in the 1970s, the Gaddafi regime imposed a sweeping redistribution of property intended to ensure that each Libyan household had access to sufficient residential and agricultural property for their own subsistence needs – but no more. The most visible symbol of this reform was Law No. 4 of 1978, which transformed tenants into the owners of their apartments without any immediate compensation to the affected class of landlords. Gaddafi's policies also played out at the level of entire communities, with favored tribes receiving land grants and preferential access to public infrastructure and utilities in exchange for their loyalty.

While the Gaddafi-era laws that allowed these confiscations have been swept away, the question of how to address their ongoing consequences will be one of the most divisive issues facing the leaders of the new Libya. Fully undoing these takings through a process of historical restitution may require the re-housing of as much as a quarter of the country's population. However, failing to act would perpetuate one of the most keenly felt injustices perpetrated by the Gaddafi regime.

For both national actors and international observers interested in transitional justice, the rule of law and equitable development in Libya, the manner in which this issue is resolved will be crucial. In particular, while it will clearly be necessary to redress the harms done to

dispossessed owners in the past, the interests of marginalized and vulnerable communities that face the loss of their homes today must also be taken in to account. Given that some of the most at-risk groups in today's Libya are IDPs and refugees, it will be crucial to include a humanitarian perspective in debates over how to address the Gaddafi property legacy and be mindful of the likely humanitarian consequences of the options discussed.

In keeping with these concerns, this report was commissioned by the UNHCR Office of the Chief of Mission in Libya in order to inform their efforts in supporting the national authorities in providing assistance and protection to refugees, returnees and internally displaced persons (IDPs). Written by Rhodri C. Williams, independent expert, the report consists of four key components:

1. A *research survey* of relevant laws and literature available describing the relevant framework for housing, land and property issues in Libya;
2. An *assessment report* of the specific housing, land and property issues affecting various categories of displaced persons countrywide;
3. Identification of *issues* and corresponding *recommendations* related to legal and humanitarian support to displaced persons; and
4. *Long-term recommendations*, including identification of legal principles or specific legislative reforms necessary to ensure respect for the housing, land and property-related rights of displaced persons and minorities.

### ***The Legal Framework***

During the four decades between the 1969 coup that brought Gaddafi to power and the 2011 uprising that deposed him, all prior property relations were overturned in a manner that provided neither stability nor legal certainty in their place. Throughout the Gaddafi era, legal norms were subordinated to ideological and political directives in a manner that was ostensibly meant to ensure the equitable distribution and productive use of societal goods, but which in fact invited arbitrariness and corruption and subverted the rule of law. The Gaddafi era disposition of housing and land as well as public services and utilities also inflamed tribal and ethnic rivalries in Libyan society now further exacerbated by conflict and mass displacement.

After seizing power in September 1969, Colonel Gaddafi identified property redistribution as a means of both pursuing social justice and consolidating his own power by weakening potential rivals. The primary legal instrument used by Gaddafi to effect these aims was Law No. 4 of 1978, which redistributed all rental property *ex lege*, transforming tenants into the owners of their homes against an obligation to pay to the government mortgage payments lower than their previous rents. Similar measures were taken with regard to agricultural lands, while private businesses were effectively nationalized. Although tribal land rights were legally repealed, tribal groups were able to ignore this except in cases in which Gaddafi relocated entire communities, granting them rights to lands claimed by others.

By the late 1990s, Colonel Gaddafi's son and presumptive heir, Saif Al-Islam Gaddafi, had become associated with a number of efforts to improve the regime's standing, both

domestically and abroad. On the domestic front, these included a massive new housing construction program as well as an attempt to assuage lingering resentment over Law No. 4 by providing compensation to dispossessed apartment owners. However, such measures were deemed insufficient even at the time, and one of the most persistent demands facing the new authorities in Libya has been the restitution of all property confiscated by Gaddafi.

Although Law No. 4 has been put out of force by the interim Constitutional Declaration adopted by the National Transitional Council of Libya (NTC), the new authorities in Libya have yet to commit themselves to a position on restitution and have discouraged private evictions of the users of claimed properties. Although such evictions have tailed off after a peak in the aftermath of the 2011 uprising, the new government of Libya will be under tremendous pressure to adopt a policy concerning Gaddafi-era confiscations.

In the meantime, very little was done by the transitional authorities to ease the plight of IDPs in Libya or pave the way for durable solutions to their displacement. The NTC rarely referenced the issue and failed to adopt any explicit policies on displacement. Although the Ministry of Social Affairs announced a plan to improve the housing conditions of IDPs by providing rental subsidies, there is little evidence that money was systematically disbursed. As a result, humanitarian response has been led by civil society and quasi-governmental organizations such as LibAid and the Libyan Red Crescent Society, and supported by UNHCR and its implementing partners. Local Councils also play a significant role in cities such as Tripoli, Benghazi and Sirte that have received large populations of IDPs.

Where humanitarian response has remained largely unregulated, transitional justice has been the subject of several pieces of NTC legislation. The first law on transitional justice, adopted in 2011, provides legal redress exclusively to victims of the Gaddafi regime, while promoting “reconciliation” in the case of conflicts between communities. This approach implies that communities targeted for attacks and expulsion from their homes as a result of their alleged loyalty to the Gaddafi regime (including the majority of current IDPs) will not be viewed as victims entitled to legal redress for crimes committed against them. Further legislation on transitional justice passed in April 2012 compounded this impression by amnestying acts committed by anti-Gaddafi revolutionaries.

Future legislation and policies on humanitarian response to displacement, property relations and transitional justice will need to reflect the extensive array of global and regional human rights treaties ratified by the Gaddafi regime and binding on the current authorities. Some of the human rights violated in the case of communities targeted for attacks and displacement include the right to freedom of movement and choice of residence, the right to privacy in the home, the right to adequate housing, and the right to property. Where such violations have occurred moreover, victims are entitled to a legal remedy in the form of both access to an impartial adjudicator and reparations for the harms they have suffered (typically in the form of restitution of lost property and compensation for other harms).

In applying such human rights in favor of the internally displaced, the Libyan authorities should take note of the *Guiding Principles on Internal Displacement*, one of the most broadly accepted and widely applied best practice standards adopted by the UN. Another means of

ensuring that domestic response complied with Libya's international obligations would be ratification of the new African Union *Kampala Convention* on internal displacement. In any case, however, the Libyan authorities bear the responsibility for ensuring that all IDPs are afforded protection and assistance as long as they remain displaced, including through the provision of shelter that meets basic standards of adequacy, habitability and tenure security. In addition, given that Libya is bound to secure the human rights of all persons on its territory, refugees and other non-citizens must also be protected from forced evictions.

### *Categories of displaced persons*

The report distinguishes between three key categories of displaced persons in Libya. The first and most important is comprised of "targeted" internally displaced persons (IDPs) unable to return to their homes due to resistance from neighboring communities. The second is "non-targeted" IDPs who remain unthreatened but uprooted within their area of 2011 residence pending reconstruction of war-damaged homes. A third group comprises refugees and other non-citizens that have been evicted or face the risk of eviction from their homes.

Targeted IDP communities constitute the largest of the three groups and present the greatest challenges. In light of the ongoing possibility of violent resistance to their return, many can be said to be in a situation of 'protracted' displacement, in which the lack of near term possibilities for reintegration into society increases both their vulnerability and their dependence on aid. The housing, land and property rights of targeted IDPs are doubly compromised, as they not only cannot access their pre-conflict homes and lands but also enjoy few guarantees for security of tenure in their current places of shelter.

As a general matter, the past association of such groups with the Gaddafi regime will inevitably present a disincentive to the national authorities in prioritizing responses to their plight. In some cases, the claims of targeted IDPs to recover their former homes and lands are also complicated by the fact that they originally acquired them in connection with Gaddafi-era legal acts. Meanwhile, although many local communities have shown considerable generosity in allowing targeted IDPs to remain provisionally sheltered among them, few appear to have considered the possibility that a significant proportion of these IDPs may have no choice but permanent local integration over the longer term.

The most numerous and vulnerable group of targeted IDPs are those from the town of Tawergha, which was attacked and destroyed in August 2011 by anti-Gaddafi brigades from Misrata. The return of the Tawerghans has been complicated by culturally explosive charges of rape leveled against them during the siege of Misrata by Gaddafi forces operating out of Tawergha. Some 30,000 Tawerghans remain internally displaced in sites scattered throughout the country. At present, ongoing attacks and threats alone are enough to prevent any meaningful efforts at return. However, the property rights of the Tawerghans stem to some degree from Gaddafi-era legal acts and therefore may be subject to challenge even in the case that security conditions permitting return are achieved in the future.

In the meantime, most Tawerghans have been provided with shelter on a temporary basis only, and enjoy neither meaningful tenure security, nor any guarantees that their local

integration as a community would be permitted in the case that return remains out of reach. In addition, non-Tawerghan individuals and families that fled the fighting in Misrata to seek shelter with relatives elsewhere in the country have been prevented from returning by both attacks and threats and the practice of allowing others to occupy their homes. In about 700 cases, Misratan IDPs' homes have been formally allocated to other 'non-targeted' IDPs in Misrata (see below) who are awaiting reconstruction of their own homes. In other cases, homes have simply been occupied or looted by others without any legal basis and in a climate of impunity.

Three further targeted IDP communities have been displaced from homes in the western Nafusa Mountains region south of Tripoli. The second largest population of targeted IDPs in Libya is the Mashashya, a tribal group granted large tracts of disputed land by the Gaddafi regime in the 1970s. Some 17,000 members of this group were displaced to Tripoli during the summer of 2011, and those that remained behind in the Nafusa Mountains have been subject to periodic attacks. Disputed land rights have been a central obstacle to return for the Mashashya, who enjoy little tenure of security in displacement. Two smaller targeted IDP populations from the Nafusa Mountains, the Gualish and the Siaan, have made greater progress toward negotiating their return despite some unresolved land and property issues.

A significant number of IDPs in Libya are referred to as "non-targeted" because they remain in and are supported by their local communities, and are only displaced as a result of war damage to their homes. The largest non-targeted IDP communities are in the two towns most damaged during the fighting in 2011: Misrata, (700 households) and Sirte (2000 households). Both communities enjoy basic tenure security, with those in Misrata allocated the homes of other IDPs who fled the city, and those in Sirte allowed to occupy partly constructed apartment complexes. In both cases, obstacles to return are primarily technical, providing the new government with an opportunity to demonstrate both effectiveness and even-handedness in organizing reconstruction efforts.

A third group of concern are refugees and other non-citizens, who were generally required in the past to rent homes from the state on the basis of work contracts. Since the 2011 uprising, residents of such housing have been at high risk of evictions, not only because of their tenuous legal rights to their homes, but also due to lack of local networks and the fact that such properties were frequently available for rental by the state because they had been confiscated in accordance with Law No. 4. An immediate priority should be to ensure that this group is not targeted for arbitrary evictions, and their inclusion in future housing assistance programs on a non-discriminatory basis should be given consideration.

### ***Recommendations for Humanitarian Response***

In setting out immediate term recommendations regarding how the humanitarian plight and tenure insecurity of displaced persons can be addressed, the report begins by stressing the need to emphasize rights-based approaches wherever possible. By focusing on an objective set of standards as well as the prestige involved in fulfilling the country's international obligations under challenging circumstances (and perhaps even setting a new standard for



the troubled region), this approach may help overcome both the technical complexities and political sensitivities related to displacement and dispossession.

An emphasis on human rights can also complement existing motivations such as charity, compassion and the desire for reconciliation, which have driven humanitarian response to date. It may also dampen tribal tensions by stressing unambiguously that targeted IDP communities are composed of individuals, some of whom must be prosecuted for their crimes, but many more of whom are not only innocent but extremely vulnerable and in need of assistance to meet their basic needs and reintegrate into society. Specific recommendations for implementing a rights-based approach include the following:

1. Apply the UN Guiding Principles on Internal Displacement: The UN Guiding Principles are a well-established, field-tested standard on how to apply human rights rules in humanitarian response to displacement. The Guiding Principles have numerous advantages including their broad acceptance in the region (as most recently reflected by the African Union's 2009 adoption of the 'Kampala Convention' on IDPs based on the Principles), and the fact that they cover all stages of displacement, providing advice on prevention, response during displacement, and measures to bring about durable solutions.

Advocates of the Guiding Principles have also developed more detailed guidance on responding to specific issues raised by internal displacement (such as property claims and tenure security issues) and frequently provide direct support to national efforts through advisory missions by the UN Special Rapporteur on internal displacement as well as capacity building and training adapted to specific country contexts. Specific measures that could be taken to apply the Guiding Principles in Libya include the following:

- Awareness building, including trainings for IDP representatives, humanitarian actors, civil society organizations and government officials;
- Bottom-up advocacy, through dissemination of the Guiding Principles to IDPs and reference to them in discussing particular issues of concern to them;
- Reference to the Guiding Principles as a benchmark for reporting, analysis and advocacy in UNHCR and implementing partner activities; and
- Top-down advocacy, by urging the new government in Libya to adopt the Guiding Principles as a basis for humanitarian response and facilitating measures such as an invitation to the UN Special Rapporteur on IDPs or consideration of ratification of the new African Union 'Kampala Convention' on IDPs.

2. Promote a consistent national policy response to displacement: Given the scope of internal displacement in Libya and the challenges to reintegrating those affected, effective responses will need to be based on a sound regulatory framework. A Libyan policy may take a variety of forms but should ideally address the following issues:

- Acknowledgment of the primary responsibility of the government for preventing displacement, protecting and assisting IDPs, and creating the conditions for voluntary durable solutions to displacement;
- Identification of the current protection needs of IDPs in Libya (including those related to security of tenure) and the measures required to address them, based on consultation with IDPs;
- Identification of necessary steps to facilitate voluntary durable solutions (including remedies for loss of property), based on consultations with IDPs and other displacement affected communities at the place of origin and the place of current displacement;
- Identification of any legislative measures such as the amendment of existing laws (or the passage of a specific law on IDPs) that may be necessary to safeguard IDPs' rights;
- Allocation of roles between actors at various levels and identification of necessary coordination mechanisms, with guarantees that the focal point on IDP issues should enjoy sufficiently direct access to the highest levels of government to ensure a consistent and effective response; and
- Strengthening of the role of civil society actors, including religious leaders and organizations, in developing, implementing and monitoring national policies related to durable solutions.

3. Support a joint advocacy platform to promote official application of international standards through the formation of a broad coalition of national (and possibly international) humanitarian actors and civil society organizations. By developing common policies and practices on rights-based responses and advocating them consistently with local and national authorities, such a platform could raise awareness of both their importance (as a matter of respect for Libya's obligations in regard to human rights) and their basic nature (in terms of practical steps that need to be taken).

4. Promote legal security of tenure for IDPs in their current shelter: Providing shelter to IDPs is generally seen as both a humanitarian obligation in times of crisis and a matter of respect for the human rights of the displaced. Human rights standards help both to emphasize the urgency of providing shelter (which can mean the difference between life and death in emergency settings) and to provide criteria by which humanitarian shelter can be deemed to be "adequate" in the sense of human rights standards on housing. One of the most important criteria for "adequacy" of housing is security of tenure, or protection from arbitrary evictions. Tenure security for IDPs in Libya can be promoted by the following means:

- Attribution of specific government responsibility for managing collective IDP settlements at the national and local levels, and development of a policy on shelter, either on its own or as part of a broader IDP policy;
- Ensuring that there is at least an interim legal basis for all current collective shelter solutions adopted by IDPs in Libya. Where IDPs are located on construction sites or

public facilities, for instance, the status of the sites must be ascertained and procedures developed to ensure that the rights of owners and interested parties are respected;

- Longer term use of collective shelter sites should be based on agreements with the owners and other interested parties setting out terms of use, including payment of rent, liability for any resulting damage and procedures for terminating use as IDP camps that ensure sufficiently long notice periods for the authorities to seek realistic alternative shelter solutions and consult with IDPs on their preferences;
- Where it is not possible to reach such agreements, or where tenure security cannot otherwise be guaranteed, IDPs should be supported in finding other shelter solutions that correspond to their needs while providing tenure security (whether through the identification of other collective sites or support for private shelter solutions). Planning for shelter strategies should be undertaken based on an understanding that some IDPs are likely to opt for local integration, and therefore that temporary shelter solutions may in some cases translate into permanent housing;
- Assessments of the needs of IDPs accommodated in private shelter (e.g., private rental or sharing space with relatives) and development of appropriate support. Such IDPs generally have less access to aid and information about humanitarian programming. They may also be required to use their own limited resources to pay rent or contribute to household costs, risking impoverishment and medium term tenure insecurity.

5. Lay the ground for property remedies and durable solutions for targeted IDPs: In light of ongoing security problems and human rights violations in Libya, safe return and repossession of properties left behind by IDPs are not yet feasible in most cases. Under current circumstances, therefore, IDPs should be encouraged to be creative and persistent in developing ways to document their property claims and collectively consider how these relate to their preferences in terms of long-term durable solutions. However, until an appropriate mechanism exists for IDPs to effectively assert their claims, they should not needlessly engage in activities that may risk prejudicing their chances of receiving effective property remedies or being able to sustainably return. Pending the creation of such a mechanism, however, other steps can be taken such as the following:

- Prevention of further displacement and dispossession through measures to restore security and a clear statement from the highest political levels that the resolution of local conflicts through violence and displacement is not only a crime but also unacceptable in a democratic state founded on the rule of law
- Collection and safeguarding of evidence of individual and community property claims can be pursued along multiple tracks. IDP communities should compile and keep safe all formal documentation of their property rights, as well as less formal evidence such as utilities bills, local phone books or notarized witness statements. Official documentation in public archives should also be made available to IDPs where possible and kept free from tampering in all cases.

- Mapping and dispute resolution: In cases where entire targeted communities are compiling land and property claims, another means of facilitating the process is to map their claims out on satellite photos or media such as Google Earth. In some cases, this may require resolving any pending boundary or inheritance disputes within the community through mediation or other means in order to be able to present a united community claim when the possibility arises.
- Awareness-raising and consultation within IDP communities: Wherever possible, networks should be set up to allow the rapid dissemination and discussion of information related to the status of property left behind and measures that may allow it to be reclaimed. IDPs should be encouraged to engage in an ongoing discussion about their preferences in terms of durable solutions. Such discussions should be guided by international standards on return and restitution as well as a realistic assessment of the political context. Ultimately, this should help to shape informed approaches to durable solutions that will allow the communities concerned to put pressure on government authorities rather than passively waiting to be consulted and ensure that solutions based on either return or local integration are undertaken more sustainably.

6. Prioritize rapid and even-handed reconstruction assistance for non-targeted IDPs who remain resident in their own cities pending reconstruction of their war-damaged homes. Humanitarian actors should advocate for reconstruction programs that are both quick, effective and consciously evenhanded as between cities that suffered for opposing the Gaddafi regime (such as Misrata and Zawiya) and those that suffered for being seen as regime strongholds (such as Sirte and Bani Walid). Reconstruction in this instance can promote reconciliation by recognizing that there were victims on both sides of the recent conflict whose needs must now be attended to in order to move forward.

7. Support security of tenure for refugees and other vulnerable non-citizens facing evictions from their homes in Libya. Although such evictions appear to be slowing down since the immediate post-uprising period, many refugees in Libya remain at risk. Meanwhile, those already evicted have little recourse in light of the current inactivity of the courts. Steps that should be taken include the following:

- Ensure the inclusion of evicted and destitute non-nationals in humanitarian programming meant to address the needs of those rendered most vulnerable by events since February 2011;
- Ensure that current international law understandings barring discrimination against non-nationals are taken into account in longer-term policy making. In particular, seek the inclusion of tenure insecure non-nationals (including those already evicted and others whose homes may be subject to lawful claims by pre-Gaddafi owners) in social housing assistance programs, particularly where they are refugees or long-term legal residents with significant ties to Libya. In drafting post-Gaddafi laws and policies on housing, property ownership and tenancy, seek the elimination of restrictions arbitrarily targeting non-nationals; and

- Seek broad dissemination and enforcement of the Attorney General interim decisions forbidding all private evictions as well as any court-ordered evictions in cases in which residents possess Gaddafi-era documentation of their rights.

### *Recommendations for Legal Reform*

In addressing property claims related to Gaddafi-era confiscations, appropriate sensitivity to the needs of IDPs, refugees and other vulnerable groups in society will be crucial to ensuring an equitable and sustainable outcome. The new leadership of Libya is currently in the process of breaking with Gaddafi-era laws and policies governing land and property, and most notably Law No. 4 of 1978, which converted all apartments into the property of their tenants. However, the treatment of this question should not be oversimplified into a zero-sum, binary equation in which Gaddafi-era transactions are either uniformly repealed or uniformly allowed to remain in effect.

Instead, the rules that are crafted for addressing this historical legacy should facilitate a balanced approach that takes into account not only the historical rights of owners but also the interests of the broad swathe of Libyan society that may now be dependent on the long-established results of Gaddafi-era acts in order to meet their most basic needs. The recommendations for longer-term legal reform in this section recognize the relevance of these issues not only to humanitarian responses to displacement but also to the establishment of rule of law, transitional justice and equitable development in the new Libya. They include the following:

1. Support effective property remedies for the displaced: Any proposed solution for the displacement of targeted communities in Libya must respect two principles in order to be compliant with relevant international standards.

First, in addressing the question of durable solutions, the choice of destination must be left to displaced individuals, households and communities. Those IDPs who wish to go back to their homes must be supported in overcoming obstacles to return and those who wish to remain where they are displaced or resettle in a different part of the country will also require support until they have integrated with local communities. International standards only permit discretion to governments to encourage certain durable solutions over others when there are pressing and objective reasons for doing so. However, they also forbid the prohibition of return in cases where displacement resulted from serious violations of human rights, including ethnic cleansing.

Second, effective legal remedies must be provided in cases where IDPs have been dispossessed of their homes, lands and property in all cases, e.g. regardless of whether or not displaced owners choose to return or not. In crafting such remedies in the Libyan context, many of the following considerations will be salient:

- Property remedies can consist of either physical restitution of lost property to IDPs or compensation through either cash or alternative property with comparable characteristics and value. In principle, compensation should not be preferred over restitution unless IDPs freely choose it or restitution is not possible. However, the rules

on what type of remedy to provide in any setting must take into account contextual factors and the interests of all involved parties.

- In cases in which IDPs' lost property was initially acquired in connection with Gaddafi-era legal acts, restitution to IDPs (rather than historical owners) cannot automatically be ruled out. Attacks on targeted IDPs and expulsions from their homes are at least as serious human rights violations as Gaddafi-era confiscations and require an effective legal remedy. IDPs' claims are strongest with regard to property they had not only acquired enforceable rights to but also exclusively and continuously used as homes or to meet other fundamental needs (such as economic livelihoods).
- Restitution and compensation are not always mutually exclusive alternatives. In cases in which IDPs' property has been damaged or destroyed, physical restitution should be accompanied by compensation proportional to the damage incurred, allowing reconstruction.

2. Ensure that IDPs' property remedies are anchored politically as well as legally. In implementing international standards on durable solutions for IDPs, the new government should engage with the concerns of local authorities and communities that remain opposed to property remedies and return. Such remedies are likely to be more effective (and return more sustainable) if they are at least tolerated by or at best agreed with the local authorities and communities at the IDPs' place of origin. While such strategies must proceed from the shared recognition that permanently exiling targeted communities would be a gross breach of Libya's human rights obligations, they should also appeal to enlightened self-interest wherever possible:

- Reconstruction projects to benefit returning IDPs should be designed so as to benefit the larger community at the place of origin. Given the Gaddafi-era legacy of politically motivated granting and withholding of public investment, it is of crucial importance that infrastructure reconstruction and development projects, in particular, be designed and implemented in an even-handed way.
- Wherever possible, the government should provide active support to the negotiated resolution of land disputes that divide communities. Specifically, the government should ensure the compatibility of such local agreements with Libya's international obligations and guarantee their enforcement subject to the requirement that they be sufficiently detailed to allow them to be consistently interpreted and applied.
- The government must also establish basic security throughout the country along with a functioning judicial system and rule of law. While the former is likely to be a precondition to sustainable return, the latter can help to prevent future conflict and displacement and would represent a genuine departure from the past.

3. Prepare to support local integration of IDPs. Significant numbers of IDPs may ultimately opt not to return or to have their properties restored. Moreover, as long as there is no credible government policy on durable solutions and no prospect for IDPs to be able to safely return on their own, IDPs must be provided shelter and can be expected to seek

greater local integration where they are displaced. Here again, the government bears the primary responsibility for implementing the right of IDPs to choose where they want to live within Libya. In both local integration and return cases, local communities affected by IDPs decisions will need to be sensitized to the rights of IDPs, and government programming to ensure the reintegration of IDPs into society should provide tangible benefits to surrounding communities as well.

In protracted displacement settings, guarantees of tenure security become a crucial precondition for integration. Tenure security may be achieved by granting greater rights to shelter that was initially provided only on a temporary basis, subject to measures to ensure that title to the relevant properties is not disputed. In other cases, IDPs may be supported in seeking to house themselves.

4. Ensure that land and property issues are included in the transitional justice debate. Long-term respect for the housing, land and property-related rights of displaced persons and minorities is, first and foremost, a question of transitional justice and national reconciliation. Displacement and property confiscation is not merely a product of the happenstance of war in Libya but also a violent accounting with the past with enormous implications for the country's current transition and its future. Meaningful national reconciliation will not only require coming to terms with Gaddafi's crimes, but also addressing the de facto collective punishment suffered by targeted communities deemed to have been complicit in such crimes. This punishment has taken the form, first and foremost, of forced displacement and property dispossession.

Many of the groups punished for their associations with the Gaddafi regime have recognized their own responsibility for atrocities, and expressed a willingness to forgive the disproportionate retaliation that has often been taken against them. The current concept of negotiated reconciliation appears to denote a give and take in which targeted communities would be expected to countenance a portion of the harm that had been done to them as the cost of being rehabilitated into the Libyan political community (and of being allowed to return, in cases where they are currently displaced). This represents a significant challenge to the human rights-based view that arbitrary displacement is a violation and that IDPs should be entitled to remedies including restitution, full stop.

The UN Support Mission in Libya (UNSMIL) recently proposed reviewing earlier approaches to transitional justice in Libya in order to allow the post-election authorities to preside over a process that would not only be based on broad consultation but also capable of addressing historical root causes through a recognition of injustices committed by both sides in connection with the 2011 conflict. Such a process could be a crucial step in the rehabilitation of targeted communities, creating the political conditions to end their displacement. However, in order to effectively address property issues in Libya and discourage disgruntled parties from engaging in destabilizing self-help measures, it would need to commence quickly and be linked to a commitment to provide credible mechanisms for implementing a just resolution of both contemporary and historical property disputes.

5. Develop a joint advocacy platform in favor of nuanced approaches to transitional property issues. The resolution of the property issues of IDPs is closely linked with the broader question of how Gaddafi-era property confiscations should be addressed. For instance, many targeted IDP communities were granted rights to significant parts of their land by acts of the Gaddafi regime. However, the implications of any decision taken by Libya's new constituent assembly on how to resolve the legacy property issue go far beyond these humanitarian concerns. How the property issue is resolved will be a political watershed, a key indicator for adherence to rule of law principles, a central factor in the economic development of the country and perhaps even a determinant of its stability.

The early signs have been unsettling, with many political actors in Libya appearing to assume that the issue will be addressed in an effectively zero-sum manner. Either all Gaddafi-era property transactions should be rolled back completely or nothing should be done at all. Libyan IDPs would be best-served by an alternative approach that would allow the transitional property issue to be resolved in a manner that both redressed the worst injustices from the Gaddafi era and avoided causing serious social instability. Specifically, the property issue *should be resolved according to rules of decision that take into account both the rights of dispossessed claimants and the interests of subsequent users of claimed properties.*

This approach will be controversial but is strongly supported by international law precedents. Rather than entirely scrapping or entirely preserving Gaddafi's legal acts, the new constituent assembly should seek to strike a balance that recognizes the levels of attachment to and dependence on confiscated properties that may have developed on the part of current occupants without denying the right of dispossessed owners. The determination of these rules should be based on evidence rather than conjecture. Prior to debates over how to proceed with revoking Law No. 4, it should be possible to review cases pending from a pre-2011 compensation process in order to develop a much more detailed sense of the categories of claimants and current users whose rights are at stake. Even a statistical sampling of such cases would provide the constituent assembly with a much sounder empirical basis on which to proceed in legislating on such a significant issue.



## Background

This report was commissioned by the UNHCR Office of the Chief of Mission in Libya in order to inform its efforts in supporting the national authorities in Libya in providing assistance and protection to refugees, returnees and internally displaced persons (IDPs). Written by Rhodri C. Williams, independent expert, the report consists of four key components:

1. A *research survey* of relevant laws and literature available describing the relevant framework for housing, land and property issues in Libya;
2. An *assessment report* of the specific housing, land and property issues affecting various categories of displaced persons countrywide;
3. Identification of *issues* and corresponding *recommendations* related to legal and humanitarian support to displaced persons; and
4. *Long-term recommendations*, including identification of legal principles or specific legislative reforms necessary to ensure respect for the housing, land and property-related rights of displaced persons and minorities.

The components of this report may best be read in relation to each other. However, they are also meant to be capable of being read as stand-alone texts. A fifth component, comprising *methodological tools* for assessing and planning responses to housing, land and property issues related to displacement in other settings, is appended as an Annex.

The report is based on extensive desk research as well as three missions undertaken to Libya by the consultant in March, April and June 2012 (see Annex A for a list of interviews and meetings undertaken during these trips). Given the ongoing political sensitivity of many of the issues raised in this report, sources interviewed are identified in this report in general terms only as a matter of prudence. Their names are known to the author and to UNHCR.

As a departure point for its analysis and recommendations, this report identifies two broad scenarios in which issues related to housing, land and property (HLP) play a decisive role in addressing displacement. First, HLP issues set a crucial parameter for assistance and protection *during* displacement, particularly with regard to the provision of shelter. Second, HLP issues are crucial to – and perhaps most commonly associated with – the achievement of *durable solutions* to displacement.

The analysis in this report accordingly seeks to address both sets of problems by identifying the effects of the Libyan domestic legal framework (including administrative practices) on various categories of displaced people and suggesting ways forward that reflect international good practice and comply with Libya's international obligations. Given that many of the root causes of displacement and conflict in Libya relate to Gaddafi-era policies related to land and property, these issues will also be viewed wherever possible in a transitional justice and national reconciliation frame.

## **Section 1: Research Survey of relevant laws and literature available describing the relevant framework for housing, land and property issues in Libya**

This section begins by discussing the legal framework that prevailed prior to the February 17, 2011 uprising against the Gaddafi regime, with a particular emphasis on the extent to which this framework gave rise to root causes and triggering factors for the subsequent armed conflict. The second part of this section describes the post-Gaddafi legal framework for housing, land and property issues, focusing on the policies of the National Transitional Council (NTC) as well as practice at the national and local level. Finally, the third part describes Libya's relevant international law undertakings and the relevant human rights rules related to HLP issues in the post-conflict context.

### **1.A *Domestic Law Framework Prior to the 2011 Uprising***

In discussing the relevant laws defining the relevant framework for housing, land and property issues in Libya, it is important to begin by acknowledging that the Gaddafi era – the four decades prior to the 2011 uprising – were characterized by a set of legal property relations that overturned the pre-Gaddafi status quo without providing stability or legal certainty in their place. During this period, legal norms tended to be subordinated to ideological and political directives in a manner that was ostensibly meant to ensure the equitable distribution and productive use of societal goods, but which in fact invited arbitrariness and corruption, and (in all likelihood, intentionally) inflamed political and ethnic rivalries in Libyan society.

Throughout this period, while political participation was ostensibly encouraged via direct democracy forums, dissent and critical thinking were frequently subject to severe punishment, meaning that very little detailed, critical (or even objective) scholarly analysis of Gaddafi-era property legal relations can be found. Equally problematic, the Gaddafi regime tended to cultivate the proliferation of multiple norms and institutions with an unclear hierarchy or relationship to one another. On the normative side, for instance, the Gaddafi regime was quick to annul the Constitution of the monarchy it overthrew in a 1969 coup, but never made good on its promise to formally adopt a new basic law. Instead, the regime relied on quasi-legal texts such as an important policy speech made by Colonel Gaddafi in Zuwara in April 1973 or the policy prescriptions later set out in his rambling, three-volume Green Book.<sup>1</sup>

The regime also encouraged the proliferation of multiple ministries and quasi-official consultative bodies and political organizations at various levels, without clearly establishing

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<sup>1</sup> International Legal Assistance Consortium (ILAC), “Pre-Assessment Mission, Libya: 16-23 November 2011” (2011), 6.

lines of authority or coordination between them.<sup>2</sup> This institutional proliferation not only fostered conflict and deadlock but also effaced basic governance principles such as separation of powers or the independence of the judiciary. Indeed, although the judiciary was retained and reformed under the Gaddafi regime, its role was also supplanted by various ad hoc People's Courts and revolutionary tribunals set up to try political offenses or promote measures of economic redistribution.<sup>3</sup> In some cases, the political institutions created by the Gaddafi regime were able to resist measures proposed by Gaddafi himself and his ruling circle, particularly where such measures were incompatible with strongly held cultural norms.<sup>4</sup> However, the regime was quick to undermine any political or social institution – ranging from the regular army, bar associations and labor unions to tribal authorities, the religious establishment and even popular soccer teams – that were perceived as presenting an alternative power base or undermining the regime's prestige or authority. In the end, no meaningful power was delegated beyond the narrow elite surrounding Colonel Gaddafi, which constituted a 'deep state' capable of overruling and ignoring formal governmental rules and institutions with near complete impunity when it chose to.<sup>5</sup> In the words of a contemporary observer:

There was a method to this madness. Throughout all the chaos, the only fixed point for the Libyan people to take a bearing from was the unchanging axis of Qaddafi himself. And on a certain level this anti-system made sense. Qaddafi hailed from the remote desert town of Sirte in central Libya. He had no connection to the country's western economic elites in Tripoli or the prominent families in the east that made up the court of the Libyan monarchy that he overthrew. His own tribe, the Qadadfa, is small and holds little sway. Since Qaddafi had no natural allies among the Libya's elite networks, he set out to unmake and unmoor them.<sup>6</sup>

Against this background, this section will not attempt to provide a comprehensive discussion of each successive Gaddafi-era land and property regulation. Instead, its objective is to identify the stated and apparent policy objectives, as well as the legal and practical consequences, of two key generations, or 'phases' of land and property-related legal initiatives during the Gaddafi period and describe their concrete legacy in relation to the conflict and ensuing displacement in Libya. Readers should also be aware that the nature of the Gaddafi regime, with multiple poles of formal authority, and legal acts effectively constituted in a variety of written and unwritten forms (statements, decrees, laws, Green

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<sup>2</sup> Helen Chapin Metz (ed.), *A Country Study: Libya* (Library of Congress, 1987), 201. Available at: <http://lcweb2.loc.gov/frd/cs/lytoc.html>.

<sup>3</sup> ILAC, 9.

<sup>4</sup> Chapin Metz, 202.

<sup>5</sup> ILAC, 7-8.

<sup>6</sup> Sean Kane, "The Libya Rohrschach", *Foreign Policy* (12 June 2012).

Book) complicates any effort to provide an authoritative and fully documented accounting. Where necessary, therefore, this report relies on anecdotes provided in interviews to supplement primary and secondary sources. It is very much to be hoped that some of the author's Libyan interlocutors in this research, with access to original Arabic language documents and profound insights into the Gaddafi-era legal regime will write far more comprehensive accountings of these issues in the near future.

A central, and worrying, set of conclusions relates to the enduring effect of Gaddafi era property regulations. While these acts were clearly undertaken in an unjust and arbitrary manner, a balance must ultimately be struck between undoing the effects of clear past injustice and respecting those settled legal expectations from the Gaddafi era that do not pose a threat to the public interest. An important starting point in this analysis is the need to avoid exacerbating the precarious situation of those groups that are currently most vulnerable in a free Libya, and particularly displaced persons and those at imminent risk of displacement.

### **1.A.i Phase one: Confiscations and redistribution**

Prior to Muammar Gaddafi's 1969 coup, Libya had been a relatively peripheral part of the Ottoman Empire for about 350 years before becoming an Italian colony in 1911. Dating back to the Ottoman period, rights to agricultural land and built areas along the coast were regulated in a 'dual' sharia and civil code-based legal system that effectively permitted private ownership. For nomadic groups such as those in the Nafusa Mountains near Tripoli, as well as further south, collective rights to traditional grazing areas were recognized by the state in exchange for the receipt of tax. These property relations largely continued to prevail when Libya achieved independence as a kingdom in 1951. By this time, the use of rental apartments had become increasingly prevalent in urban areas alongside family homes in traditional quarters. Meanwhile, large farms confiscated from the Italians were often taken over by persons close to the ruling Sanussi dynasty (particularly in their home areas in Eastern Libya), perpetuating an inequitable pattern of land relations. As traditional pastoral subsistence patterns went into decline by the mid-20<sup>th</sup> century, tribal groups came into conflict over watered areas suitable for year round cultivation.

Upon seizing power in September 1969, Colonel Gaddafi appears to have identified property redistribution early on as a potential means of both achieving social justice and consolidating his own power by weakening potential rivals. An initial Constitutional Proclamation of December 11, 1969 by the new ruling junta set out to forbid any form of exploitation and end disparities between social classes. Although public ownership was "proclaimed the basis for social development", non-exploitative private property ownership was to be permitted.<sup>7</sup> The Proclamation also foresaw the continuation of all laws and decrees from the prior regime that did not conflict with the new dispensation. While pledging to honor international obligations undertaken during the monarchy period, the new regime was quick to expel

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<sup>7</sup> Chapin Metz, 186.

remaining Italian colonists as well as the remnants of the Jewish community and confiscate their property.<sup>8</sup>

Beginning in 1973, the Gaddafi regime undertook a series of measures meant to revitalize the 1969 “revolution” that brought it to power (more accurately described as a military coup that initially enjoyed broad popular support). These steps were in line with the philosophy espoused in the December 1969 Constitutional Proclamation, but involved radical and far-reaching societal change. Some of the most important in relation to housing, land and property issues include the following.

- In April 1973, Gaddafi proclaimed a ‘cultural revolution’ in a pivotal speech in Zuwara. Among the key tenets of this revolution were the annulment of all laws promulgated during the prior monarchy period, their replacement with laws compatible with Sharia, a purge of regime opponents, initiation of administrative reform to end excessive or corrupt bureaucracy, and the delegation of many of the functions of government to a system of direct democracy based on ‘people’s committees’ established nationwide.<sup>9</sup> (In fact, the annulment of all prior laws never appears to have been fully effected and many monarchy-era laws remained effectively in force).<sup>10</sup>
- In late 1975, Gaddafi’s first Green Book was published, outlining his critique of indirect democracy as a game of achieving narrow majorities rather than seeking the ideal of representing “the total national interest” through consultative direct democracy.<sup>11</sup>
- In 1977, the Gaddafi regime restricted tribal ownership of land and commercial farming by legislating that each individual family was entitled only to enough land to meet its own needs, and that ownership would follow actual use of land.<sup>12</sup> These rules reinforced a 1971 decision rendering uncultivated land state property. While tribal groups tended to ignore these rules in practice and continue managing their land according to customary rules, agricultural land along the coast was further fragmented as a result, leading to over-irrigation and falling water tables. These rules were based on Gaddafi’s view that land, in particular, could not be privately owned but was rather the “collective property of all people”.<sup>13</sup>
- In early 1978, the Green Book, Part II was published, setting out Gaddafi’s economic theories. The central argument was that any wage labor or rental relationship involved unacceptable inequality. Rather than serving the profit of others, all workers were meant

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<sup>8</sup> Chapin Metz, 64.

<sup>9</sup> Chapin Metz, 221.

<sup>10</sup> Interview, Libyan lawyer, Tripoli, 18 April 2012.

<sup>11</sup> Chapin Metz, 223.

<sup>12</sup> Chapin Metz, 156-7.

<sup>13</sup> Chapin Metz, 226; see also, International Green Charter, Article 12.

to become equal partners in the production process, based on an inherent right of every person to the resources necessary to meet their own material needs.<sup>14</sup> In practice, this entailed entitlement to an income as well as ownership of a house and a car. Rental housing was forbidden in this sense, in that it both allowed landlords more property than required for their own needs and denied tenants control over the satisfaction of one of their primary needs.

- Shortly afterwards, in May 1978, 'Law No. 4' was passed giving effect to the Green Book, Part II. The law effectively redistributed all rental property *ex lege*, transforming tenants into the owners of their homes against an obligation to pay to the government a monthly mortgage far lower than their previous rents.<sup>15</sup> Although these payments were meant to finance eventual compensation to expropriated owners, the failure to take any meaningful steps to implement this commitment meant that Law No. 4 was received at the time as an uncompensated mass confiscation of private property.<sup>16</sup> It is hard to overstate the significance of this law in a context in which as much as one-third of the population may have been tenants in 1978 and landlords had represented a powerful and well-connected elite.<sup>17</sup> In combination with a simultaneous new law encouraging 'people's committees' to take over private businesses, 'Law No. 4' contributed to the mass emigration of educated Libyans and resulted in economic chaos that might have led to serious instability were it not for the regime's adroit policies of maximizing oil revenues.<sup>18</sup> The crippling effects of these measures on domestic private enterprises also explains the extent to which the regime relied on foreign firms during successive waves of housing and infrastructure construction.<sup>19</sup>

During this period, a number of ambitious housing, land and property related programs were undertaken. Most notably, the regime initiated a program of building large-scale apartment complexes to replace the slum housing that had emerged at the edge of Libya's larger cities.<sup>20</sup> This program was seen as an important success for the regime, in light of the fact that rapid population growth and urbanization had resulted in a persistent urban housing shortfall. In a precedent for later housing efforts, the regime relied on numerous

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<sup>14</sup> Chapin Metz, 225.

<sup>15</sup> Chapin Metz, 139.

<sup>16</sup> Interview, UNSMiL Political Department, 18 April 2012.

<sup>17</sup> Chapin Metz, 163.

<sup>18</sup> Hilsum, 48-9.

<sup>19</sup> Dr. Ali S. Ngab, "Libya: The Construction Industry - an Overview", *Electronic Proceedings - International Workshop, Cement Based Materials and Civil Infrastructure (CMB-CI) (2007)*, available at [http://enpub.fulton.asu.edu/cement/CBM\\_CI/TOPICS.HTM](http://enpub.fulton.asu.edu/cement/CBM_CI/TOPICS.HTM)

<sup>20</sup> Chapin Metz, 126.

foreign construction firms to meet its ambitious targets but many projects nevertheless languished unfinished due to corruption and bureaucratic delay.<sup>21</sup>

Meanwhile, a special set of rules was set up for housing foreigners living in Libya, including refugees. Throughout the Gaddafi era, high numbers of foreign workers have remained vital for the functioning of the economy. According to UNHCR interviews with those facing eviction threats, by the late 1970s, foreign nationals holding working contracts with the Ministry of Labor began receiving subsidized rental contracts to occupy housing confiscated in accordance with Law No. 4. Such homes were also commonly allocated to Palestinian refugees in Libya whether or not they had working contracts.

By the late 1970s, frustration on the part of the Gaddafi regime with the slow pace of societal transformation led to an increasing number of repressive measures. In 1977, the same year that Gaddafi affirmed his direct democracy system through the establishment of Libya as a 'Jamahiriya' (or 'state of the masses'), the regime also sanctioned the creation of 'revolutionary committees' meant to supervise the exercise of popular sovereignty.<sup>22</sup> These committees consisted of "zealous, mostly youthful individuals with modest education" and quickly took on a repressive and intimidating nature, closing what little space remained for meaningful political expression.<sup>23</sup> The committees frequently set up 'revolutionary courts', to carry out show-trials for alleged political crimes. In 1988, a 'peoples' court' was set up along similarly informal lines to systematically check property documentation and compliance with Law No. 4.<sup>24</sup> In cases where unoccupied properties were found, invasions by squatters quickly followed in reliance on the Gaddafi principle that 'he who occupies a home owns it'.

Further laws and decrees passed in the 1980s confirmed the basic tenets of Gaddafi's property regime and sought to give them force through drastic measures such as the public burning of all old property records in 1986. Two years later, a new 'Socialist Real Estate Register' was set up with the goal of formalizing the results of earlier measures by forcing all citizens to declare their real estate ownership within a set time period.<sup>25</sup> Because of widespread non-compliance, the deadline was continually extended and only about half of all properties nationwide had been registered by the late-2000s. Anecdotally, many households and communities with property rights dating to the pre-1969 period appear to have retained copies of their documentation, meaning that it may be possible to significantly reconstruct earlier property relations despite the Gaddafi regime's efforts to destroy public records.

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<sup>21</sup> Lindsey Hilsum, *Sandstorm: Libya in the Time of Revolution* (London: Faber and Faber, 2012), 51.

<sup>22</sup> Chapin Metz, 66.

<sup>23</sup> Chapin Metz, 197.

<sup>24</sup> Interview, Libyan lawyer, Tripoli, 01 April 2012.

<sup>25</sup> Interview, Swedmap, Stockholm, 20 January 2012.

During the 1970s and 80s, the Libyan government also departed from an earlier policy of seeking to suppress tribal identity generally in order to foster Libyan Arab nationalism to a more cynical tactic of playing tribes off against each other in order to maintain power.<sup>26</sup> This was accomplished in part through the provision or denial of public investment in infrastructure such as housing, schools, hospitals, and agricultural projects. The Gaddafi appeared to view such investments as an act of grace rather than a duty of government, neglecting those areas deemed disloyal to the regime and supporting client tribes such as the Tawergha (Libyans of sub-Saharan African origin who had settled in coastal areas of western Libya around the city of Misrata).<sup>27</sup> By the 1970s, the Tawergha were provided with a new town of their own (called 'Tawergha'), as well as investment in the development of some of Libya's most fertile agricultural land, and privileged access to public sector jobs.<sup>28</sup>

This approach would later become an official article of policy in 1997 with the adoption of a 'Code of Honor' allowing for the collective punishment of families, as well as entire towns and communities for the alleged crimes of individuals in their midst, including by means such as "the denial of government services, including utilities, water and infrastructure projects."<sup>29</sup> In some cases, the regime appears to have not only encouraged tribal rivalries but even instigated them through either resettling tribes or reinforcing their presence in areas contested by neighboring communities. These issues were particularly sensitive in the Nafusa mountains south of Tripoli, where the decline of pastoral subsistence patterns based on transhumance between summer and winter pastures had led to new competition over land where access had previously been shared among multiple tribes, but which were now becoming attractive sites for permanent settlement based on sedentary agriculture (see below, Section 2.A.ii).<sup>30</sup>

One of the most divisive cases involved a grant of land in the Nafusa mountains to some 2,000 members of the Arab Mashashya tribe in 1972.<sup>31</sup> Members of this tribe had settled down at both ends of their traditional transhumance route, which stretched from the Nafusa Mountains in the north to the Fezzan region in the south. When fighting broke out in the south between the Mashashya and a neighboring tribe, the regime responded by forcibly resettling many of the former onto land claimed by other local communities around Al Awiniya. Heavy public investment quickly allowed for more modern infrastructure in Al Awiniya than in surrounding towns. Similar tensions arose due to preferential land grants,

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<sup>26</sup> Chapin Metz, 64. The author notes that one of the earliest steps taken after the Gaddafi coup was the dismissal of tribal leadership and redrawing of administrative boundaries to split tribal territories.

<sup>27</sup> Hilsum, 29. The author also describes the effects of systematic lack of investment in the rebellious East of the country. *Ibid.*, 10.

<sup>28</sup> Interview, Libyan Association for National Reconciliation, 11 September 2012.

<sup>29</sup> ILAC, 8; ICG 2011, 12.

<sup>30</sup> Interview, displaced tribal leaders, Tripoli, 14 June 2012.

<sup>31</sup> Interview, former member of Zintan Shura Council, 14 October 2012.



infrastructure development and public investment during the 1970s in favor of both the Gualish sub-tribe (vis-à-vis the rest of the broader Arab Kikla tribe), and the Arab Siaan tribe (vis-à-vis the Berber, or 'Amazigh' tribes in the Nafusa towns of Nalut and Jadu).<sup>32</sup>

### **1.A.ii. Phase two: Compensation and liberalization**

During the late 1980s, a sustained worldwide oil glut drove down prices, placing serious strains on Libya's finances.<sup>33</sup> Although measures such as depletion of the country's foreign reserves were undertaken in order to maintain high spending on both defense and domestic social programs, serious cuts eventually had to be made. One example has been Libya's ambitious housing construction program, which suffered from a declining budget from 1984, causing the cancellation or suspension of many construction contracts with foreign firms.<sup>34</sup> These cutbacks almost immediately led to a redoubled urban housing crisis in light of the country's rapid population growth and urbanization.<sup>35</sup>

After the 1988 Lockerbie bombing, Libya was subjected to punishing sanctions and became an international pariah state. This deepened the country's political and economic malaise, and was compounded by a sense of growing resistance to the regime's revolutionary prescriptions. Although the old order had been eradicated, along with most traditional political power bases beyond the new ruling elite, the domestic response to the Gaddafi's Jamahiriya system continued to take the form of general apathy as well as increasingly violent resistance led by exile groups.<sup>36</sup> During the early 1980s, the most serious efforts to overthrow the regime were largely directed by the exiled secular elite.<sup>37</sup> However, by the early 1990s, resistance shifted to Islamist forces.

As early as 1978, the Libyan *ulama* (religious authorities) had broken with Gaddafi regime over its intervention into private property rights with Law No. 4.<sup>38</sup> Although this became an occasion for Gaddafi to purge the *ulama*, religious grievances persisted and Libyan veterans of the Afghanistan war later formed an armed Islamist resistance movement in the East that carried out a low intensity war against the government during the 1990s.<sup>39</sup> Popular anger over the June 1996 massacre of 1,300 political prisoners - most of them Islamic fighters

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<sup>32</sup> Interview, Kikla Local Council, 14 October 2012.

<sup>33</sup> Chapin Metz, 169.

<sup>34</sup> Chapin Metz, 126. One of the major programs spared spending cuts in the 1980s was the 'Great Man-Made River' irrigation project, which was built in successive stages beginning in 1984. Ibid., 157.

<sup>35</sup> Ngab, 205.

<sup>36</sup> Chapin Metz, 105-6.

<sup>37</sup> Hilsum, 74.

<sup>38</sup> Chapin Metz, 212.

<sup>39</sup> Hilsum, 87-8.

captured in the East – at Abu Salim prison in Tripoli would eventually prove to be one of the primary factors behind the February 17, 2011 uprising against the Gaddafi regime.

Throughout this period, the Gaddafi regime maintained an active foreign policy and continued in its efforts to not only implement the Jamahiriya model at home but also to promote it abroad as a 'Third Universal Theory' transcending both capitalism and communism.<sup>40</sup> One part of this effort involved the articulation of an authentically Libyan socialist set of human rights standards. The resulting 'Great Green Charter of Human Rights of the Jamahiriyan Era', adopted in 1988, served to confirm some of the key tenets of Gaddafi's political philosophy related to housing, land and property rights:

12. We are liberated from any feudalism. The land is nobody's property. Each person has the right to exploit it and to benefit from it by labour, agriculture or animal-keeping, throughout one's life, that of one's heirs, and within the limits of personal effort and the satisfaction of needs.

13. We are free from any rent. A house belongs to the person who lives in it. It enjoys a sacred immunity in respect of rights of neighbourhood: "your close neighbours or distant neighbours". The residence cannot be used to harm society.<sup>41</sup>

By the late 1990s, Colonel Gaddafi's son and presumptive heir, Saif Al-Islam Gaddafi, had become associated with a number of efforts to improve the regime's standing, both domestically and abroad. Many of these reforms involved political liberalization and economic measures designed to encourage greater foreign investment. However, such measures did little to address past atrocities such as the Abu Salim massacre or the Lockerbie bombing. In light of the regime's unwillingness to admit any fault and its continued control over oil revenues, a pattern emerged whereby financial compensation was offered to the victims of past crimes without any formal apology, disclosure of information that could shed light on the events, or concession of responsibility.<sup>42</sup>

By the early 2000s, these twin approaches had come to influence the regime's approach to housing, land and property issues. One of the most important domestic elements of Saif al Islam's reform policies involved a new push to build apartment complexes at the edge of Libya's cities and towns.<sup>43</sup> In order to meet the highly ambitious targets, large plots of peri-urban land were allocated and numerous foreign construction firms were brought in to carry out the work. Although there was strong demand for such housing, significant delays in

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<sup>40</sup> Chapin Metz, 218.

<sup>41</sup> The Great Green Charter of Human Rights of the Jamahiriyan Era (1998), Articles 12 and 13. The Charter is available at: <http://www.greencharter.com/files/igc.htm>.

<sup>42</sup> As discussed by Hilsum, this approach was taken both to victims of the Lockerbie bombing (119) and the survivors of the Abu Salim massacre (107).

<sup>43</sup> As of 2007, some 500,000 housing units were slated to be built over a decade. Ngab, 208.

construction (often allegedly related to corruption and demands for bribes) meant that most new estates remained only partly finished at the time that the February 17, 2011 uprising broke out. For instance, while China had contracts in Libya worth some 20 billion dollars and was building more than 100,000 housing units by 2011, many of them remained only “10 to 80 per cent completed”.<sup>44</sup> Foreign workers fled at the outbreak of the conflict, leaving behind their own temporary housing which was often better suited as shelter for internally displaced persons (IDPs) than the homes they had been building.

The current situation is further complicated by the fact that at least some of the Gaddafi regime’s half-finished housing estates were intended not only to meet future needs but to fulfill past obligations. According to a number of sources interviewed for this report, popular discontent over the injustice of confiscations undertaken under Law No. 4, the resulting legal insecurity, and the failure of these measures to resolve Libya’s perennial housing crisis remained a source of concern during this period.<sup>45</sup> Beginning a decade after Law No. 4, a series of measures were undertaken to undo some of the worst effects of earlier confiscations. For instance, a 1988 program was meant to allow those who had lost apartments to build new houses for rental or sale through subsidized loans.<sup>46</sup> Reportedly, some confiscated business properties were returned to their prior owners and a practice emerged by the early 2000s of condoning rental activities as well as the proliferation of informal property markets.<sup>47</sup>

However, confiscated apartments apparently continued to present a difficult issue. Restitution was complicated by the fact that such apartments had been redistributed to tenants who now considered themselves owners, and had in some cases, sold them on to others. The basic property tenets of the Gaddafi regime also weighed strongly against evicting any Libyan from their actual home. As a result, the government initiated a program of belatedly paying the compensation to all dispossessed owners that had been implicit in the conversion of tenants’ rental payments to ‘mortgage’ payments to the state set out in Law No. 4 nearly thirty years previously. In 2006, Decision 108 was passed creating a ‘High Committee for the Compensation of Properties’ (often referred to as the ‘2007 Committee’), along with District Committees in Libya’s cities.

Claimants were required to submit all documentation on their properties to these Commissions, which were empowered to award remedies. These remedies most often took the form of financial compensation, ostensibly at market level, but in reality rarely seen as corresponding to the real value of lost apartments. In other cases, they took the form of

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<sup>44</sup> Xinhua News Agency, “A Chinese Commerce Ministry delegation held talks Monday [6 February] with Libyan officials on bilateral cooperation and resumption of Chinese businesses in post-war Libya” (07 February 2012).

<sup>45</sup> Interview, Libyan lawyer, Tripoli, 01 April 2012.

<sup>46</sup> Interview, UNDP, Tripoli, 17 April 2012.

<sup>47</sup> Interview, Libyan lawyer, Tripoli, 28 March 2012.

promises to newly constructed apartments being built during the 2000s construction program.<sup>48</sup> Actual restitution of confiscated apartments was only conceivable in exceptional cases, such as where the current occupant was a foreigner or a Libyan without any formal documentation establishing their right to reside in the claimed apartment. As reported in the *New York Times*, even the former head of the Commission disowned its work after the uprising.

About six years ago, the Qaddafi government started a program to compensate some of the original owners, under the sponsorship of Seif al-Islam el-Qaddafi, the dictator's son and onetime heir apparent. But the program yielded few results, according to most property owners and the judge who oversaw it, Yussef Hanesh. In the relatively few cases where people were offered compensation, it was a fraction of the current value, and most people refused to take it, Judge Hanesh said.<sup>49</sup>

In all cases where the 2007 Committee issued decisions, claimants were required to seek their enforcement through the judicial system. This requirement, along with other bureaucratic obstacles and pervasive corruption, is thought to have slowed the process down to the extent that many, if not most claims to the 2007 Commission are now likely to remain pending either before the now-dormant Commission, or on appeal before the Courts, which have largely ceased to function since the 2011 uprising.<sup>50</sup> According to most interlocutors, compensation payments for apartments had barely started prior to the 2011 uprising, were likely to drag on for years to come, and were proposed at levels thought to be well below fair value. However, further research will be necessary to establish with any finality the extent to which Gaddafi-era compensation programming succeeded in providing at least partial compensation for takings under Law No. 4. The 2007 Commission was the last in a long but confused series of efforts at redress and a full reckoning of the results is, by all accounts, yet to be undertaken.

Property-related reforms undertaken during the 2000s cut both ways for non-citizens. On one hand, one of the goals of the reforms was to facilitate purchases of land by foreigners, at least to the extent necessary to encourage greater foreign direct investment. On the other hand, the reforms complicated the situation for foreigners already present in Libya on the basis of work contracts. In cases where foreigners occupied apartments claimed via the 2007 Commission, for instance, owners could seek the eviction of the occupants and repossession of the apartment, rather than financial compensation.<sup>51</sup> By this time, all Palestinians with working contracts had been expelled from Libya in an expression of the Gaddafi regime's

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<sup>48</sup> Interview, UNSMiL Political Department, 18 April 2012.

<sup>49</sup> Robert F. Worth, "Thousands of Libyans Struggle With Recovery of Property Confiscated by Qaddafi", *The New York Times* (13 May 2012).

<sup>50</sup> Interview, UNSMiL Political Department, Tripoli, 18 April 2012.

<sup>51</sup> Interview, Libyan lawyer, Tripoli, 28 March 2012.

rejection of the 1994 Oslo Accord between the Palestine Liberation Organization (PLO) and Israel. However, according to UNHCR interviews, many Palestinians without working contracts had been permitted to move into subsidized rental housing and were largely permitted to remain. This latter group, along with other refugees who had managed to gain a foothold in Libyan society, was now placed at greater risk of losing their homes.

Many of the interlocutors relied upon in the research for this report confirmed that the Gaddafi regime's arbitrary policies related to property rights and investment in public infrastructure were root causes of the discontent that exploded into protests and an armed uprising that would ultimately overthrow the regime in February 2011. Less well known is the fact that housing, land and property issues also constituted one of the actual triggers for the uprising. The most important and well-known episode behind the protests was the arrest of a lawyer working on behalf of the relatives of those killed in the 1996 Abu Salim prison massacre.<sup>52</sup> However, the regime had been showing signs of nervousness at the popular uprisings taking place in neighboring Tunisia and Egypt for some time prior to these events. In a little reported speech in mid-January 2011, Gaddafi appears to have sought to appease popular discontent over the housing crisis by encouraging ordinary Libyans to occupy the unfinished apartments then still being built throughout Libya.<sup>53</sup> When this led to the full-scale invasion of these apartments, according to families interviewed by UNHCR, Gaddafi retracted his statement and sent the police to forcibly evict occupants, further stoking dissatisfaction with the regime.

## **1.B Domestic Law Framework Since the 2011 Uprising**

During the course of the 2011 conflict in Libya, the National Transitional Council (NTC) that represented forces opposed to Gaddafi began to be recognized as the country's legitimate government. In August 2011, the NTC adopted an interim "Constitutional Declaration" for the transitional stage.<sup>54</sup> The Constitutional Declaration confirmed the NTC as the legitimate authority of the country and set out steps to be taken upon the final overthrow of the regime, including the appointment of a transitional government, elections, and the adoption of a permanent constitution. In an extensive section on human rights, the Declaration stops short of clearly stating the continuing nature of Libya's human rights obligations undertaken by the prior regime (see Section 1.C, below), but evinces an implicit commitment to be bound by them:

Human rights and his basic freedoms shall be respected by the State. The state shall commit itself to join the international and regional declarations and

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<sup>52</sup> Hilsum, 6.

<sup>53</sup> See, e.g., Gus Lubin, "How Colonel Qaddafi Accidentally Sent A Mob To Beat Up Korean Construction Workers", Business Insider (25 January 2011), available at: [http://articles.businessinsider.com/2011-01-25/news/30068507\\_1\\_libyans-food-crisis-riot#ixzz1zeHewo9q](http://articles.businessinsider.com/2011-01-25/news/30068507_1_libyans-food-crisis-riot#ixzz1zeHewo9q).

<sup>54</sup> National Transitional Council (NTC) of Libya, "Draft Constitutional Charter For the Transitional Stage: The Constitutional Declaration" (Benghazi, 03 August 2011).

charters which protect such rights and freedoms. The State shall endeavor to promulgate new charters which shall honor the human being as being God's successor on Earth.<sup>55</sup>

A number of specific human rights provisions set out in the Declaration serve to protect HLP rights, at least prospectively. These include Article 11, which states that dwellings and homes “shall have their sanctity and they may not be entered or inspected except in cases prescribed by the law and according to the manner set forth therein” as well as Article 16, which states that “Property shall be inviolable. No owner may be prevented from disposing of his property except within the limits of the law.” Judicial guarantees in Article 33 also promise access to courts and the speedy resolution of civil disputes, as well as establishing guarantees for judicial control of administrative acts. Finally, the transitional provisions declare the repeal of all “constitutional documents and laws” in force prior to the Declaration, while allowing for the continued application of ordinary laws “in so far as they are not inconsistent with the provisions [of the Declaration] until they are amended or repealed” (Articles 34 and 35).

The Constitutional Declaration convincingly set out to replace a regime characterized by the absolute lack of the rule of law with a new state committed to legal certainty and respect for rights. However, after taking power in late 2011, the NTC did not prove entirely successful in overcoming the practical obstacles constituted by the prior regime’s systematic hollowing out of both the integrity of institutions and respect for norms. Many of the members of the interim government were inexperienced and were not always effective or transparent in their approach. Persistent political jockeying, as well as uncertainty relating to the limited mandate of the interim authorities pending their replacement through national elections led to a significant vacuum of central power. As a result, extensive executive and military control continued to be exerted at the local level, through municipal councils and local revolutionary brigades. While proposals to legally devolve power to regions such as Cyrenaica in the East remain divisive, cities such as Benghazi and Misrata have exhibited significant de facto autonomy, including through the conduct of their own local elections.

### **1.B.i. Dealing with the Gaddafi property legacy**

In the wake of the 2011 uprising, many administrative authorities relevant to the exercise of HLP rights, such as the registry offices at the national and local levels, have simply suspended their work. Others are functioning again, such as the Urban Planning Agency (UPA), which plans utilities, infrastructure and housing, and is now considering its potential role in the reconstruction of areas destroyed in the 2011 fighting.<sup>56</sup> The judicial system is thought to have been significantly compromised and has largely ceased to function pending systemic reform to come after the elections.<sup>57</sup> In the meantime, many interlocutors speculated

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<sup>55</sup> NTC, Constitutional Declaration, Article 7.

<sup>56</sup> Interview, UN-HABITAT, Tripoli, 19 April 2012.

<sup>57</sup> ILAC, 12.

that Libyan notaries – legal practitioners licensed to write contracts and facilitate property transactions, but not to represent clients before courts – have in all likelihood continued their work and become a default repository of information on post-uprising property transactions in Libya in the absence of a functioning registry system.<sup>58</sup>

Similar ambiguity prevails with regard to the issue of applicable law. Despite the Gaddafi regime’s ostensible repeal of all earlier laws, much of the basic legislation in force in the country still dates from the pre-Gaddafi period, often with only minor amendments.<sup>59</sup> However, in some areas such as property rights, the Gaddafi regime made major legislative interventions. As a result, the overarching housing, land and property issues in the new Libya relate to the legacy of these Gaddafi-era laws and policies. What can be said with certainty is that Law No. 4 and much subsequent land and property legislation is viewed as incompatible with the NTC Constitutional Declaration and therefore no longer in force. This understanding is supported by the fact that rights to both the home and property, as defined in the NTC Declaration, deviate significantly from how these rights were framed in Law No. 4 and Gaddafi’s Green Human Rights Charter. Most notably, property rights are no longer limited to those necessary to meet an individual’s own needs, tenancy is no longer banned, and interferences in both the privacy of the home and property rights are permissible where conducted in accordance with law. The demise of Law No. 4 has significant prospective legal effects. For instance, one of the practical consequences of Law No. 4 was the prohibition of evictions of Libyan citizens from their homes. As a result of the de-activation of Law No. 4, the Attorney General of Libya has now re-assumed the formal authority to enforce court-ordered evictions, in line with his broader mandate.<sup>60</sup>

However, the fact that Law No. 4 is no longer in force going into the future does not answer the question of how to address the past effects of this law, along with subsequent legislation and decrees. On one hand, there is pressure on the NTC to disregard Gaddafi-era compensation efforts and undo Law No. 4 completely, handing back all confiscated property to its 1978 owners. Pre-Gaddafi urban upper and middle class interests, including both those who were driven into exile and are now returning, as well as those that remained, have forcefully promoted such measures. Their arguments are buttressed by the widespread perception that Law No. 4 was used primarily to enrich the cronies of the regime at the expense of its enemies, rather than serving a genuine redistributive purpose. Parts of the NTC and the interim government were clearly sympathetic, and even proposed passing a restitution law in advance of the elections. Indeed, according to reports in February 2012, such a restitution law was at one point thought to be only weeks away:

“Phase one will return unused lands, empty shops, buildings and villas taken by Qaddafi’s regime and then by the rebels to the rightful owners,” said Fawzy

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<sup>58</sup> Interviews, UNDP, Tripoli, 17 April 2012, and UNSMiL Political Department, Tripoli, 18 April 2012.

<sup>59</sup> Interview, Libyan Lawyers’ Organization, Tripoli, 18 April 2012.

<sup>60</sup> Interview, Libyan lawyer, Tripoli, 01 April 2012. The Attorney-General is mandated to represent the state in criminal cases and is responsible for the enforcement of administrative decisions.

Sheibany, legal representative for the committee, in an interview in the capital, Tripoli. "This will mean millions of dinars can be invested in construction projects and provide employment." Phase two of the new law involves rehousing families residing in buildings on expropriated land and could take several years to implement fully, he said. The Ministry of Justice will deal with individual cases through a civil court.<sup>61</sup>

However, such legislation never emerged, and the consensus among interlocutors interviewed for this report was that disposition of these legacy issues related to property was to be left until after the elections. This decision appears to have been motivated in part by the desire to defer to a democratically elected legislator in crafting rules of decision on how to manage what has clearly become a core constitutional issue for the new Libya. However, it also reflects a degree of policy paralysis on the part of the interim authorities in the face of the unforeseeable but potentially sweeping consequences of attempting a full rollback of Gaddafi-era property transfers. According to one lawyer interviewed, the full restitution alone in Tripoli – where nearly half of the population of Libya currently resides – could result in the need to evict and rehouse as many as three-quarters of the city's 2.2 million residents.<sup>62</sup> Although it is important not to underestimate the emotional bonds that still connect many owners with their confiscated properties (and the fact that many occupants might be permitted to remain as tenants by reinstated owners), the assumption by some claimants that the central government would be able to manage the potentially destabilizing effects of full restitution by quickly building new cities for former occupants appears unrealistic at best.

In the meantime, limited legal steps have been taken to curb a wave of private reclamations of property after the 2011 uprising, including many involving extralegal evictions of those who were in occupation at the time. Some of the worst affected by this practice are foreigners, including both foreign workers and refugees (and particularly Palestinian refugees without working contracts who remained after the 1994 Oslo Accords, see part 1.A.ii., above). While many foreign workers still hold Gaddafi-era documentation establishing legal residence, the weaker legal situation of non-citizens in Libya has left them particularly exposed to threats and evictions from the historical owners of their homes.<sup>63</sup> In other cases, local communities have jointly supported the eviction of occupants of claimed properties based on allegations that they acquired such properties through corruption or political connections and were collaborators with the regime. As reports of conflicting claims to properties emerged into the international media, elements of the NTC appear to have

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<sup>61</sup> Brigitte Scheffer, "Libya Plans Law To Return Qaddafi Land, Buildings To Owners", Bloomberg (27 February 2012), available at: <http://www.bloomberg.com/news/2012-02-27/libya-plans-law-to-return-qaddafi-land-buildings-to-owners.html>

<sup>62</sup> Interview, Libyan lawyer, Tripoli, 28 March 2012.

<sup>63</sup> However, in some cases, foreigners have been forced to leave simply because the economic collapse that accompanied the 2011 uprising have left them without incomes and therefore unable to pay the rent for homes that they lease. Ibid.



recognized the destabilizing potential of so many people taking the law into their own hands.<sup>64</sup> In the aftermath of the Gaddafi regime's collapse in late 2011, the Attorney General of Libya apparently issued two decisions regulating such cases.<sup>65</sup>

1. Claimants to property were forbidden from privately evicting occupants and required to address their claims to the competent court; in cases where private evictions had gone forward, evicted individuals and families had the right to move back in pending legal procedures.
2. In all cases where claims had already been submitted to Courts and the Court had found in upheld the claimants' ownership rights, enforcement is to be suspended in cases in which the occupant can provide documentation showing that they had a valid Gaddafi-era legal basis for their occupation and use of the property.

Both of these decisions are largely symbolic in the sense that Libyan courts remain largely inactive in the wake of the 2011 uprising. In addition, most historical claims for property are likely to have already been submitted to Gaddafi's '2007 Committee' for compensation and are probably still pending either before the defunct Committee or the courts on appeal (see Part 1.A.ii). However, the Attorney General decisions appear to reflect a political commitment to systematically resolving old property claims through new legislation after the elections, as well as a stand against extra-legal evictions in the meantime. Unfortunately, the direct impact of these decisions may have been blunted by another relic of the Gaddafi era - rather than being published in order to have a deterrent effect, Attorney General decisions of this nature are apparently kept confidential and only transferred to the relevant police station once an extralegal eviction is actually reported as having occurred.

Nevertheless, several interlocutors interviewed for this report indicated that it was now generally known that private evictions were illegal and that claims were instead to be made to the courts. The rates of extra-legal evictions also appear to have dropped considerably from a peak in the immediate aftermath of the uprising. However, the failure of the NTC to clearly state its policies both on how the legacy of Gaddafi-era confiscations are to be resolved and how occupants of claimed properties are to be treated in the meantime has clearly destabilized the legal expectations of all parties and the security of tenure of those currently occupying claimed homes. This tenure insecurity remains particularly pronounced for non-citizens, including refugees. For internally displaced persons (IDPs), such legal considerations remain secondary to the basic physical insecurity many continue to face. However, as discussed in Section 2, below, several categories of 'targeted' IDPs have grounds to fear that selective rejection of Gaddafi-era property rights may become a pretext for preventing their eventual return.

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<sup>64</sup> See Ian Black, "Libyans try to get back property seized by Gaddafi" *The Guardian* (04 November 2011), available at: <http://www.guardian.co.uk/world/2011/nov/04/libya-gaddafi-property-restitution-demands>.

<sup>65</sup> Interview, Libyan lawyer, Tripoli, 01 April 2012.

Legal uncertainty related to the validity of Gaddafi-era property allocations also has implications related to the housing rights of IDPs where they find themselves displaced. In very many cases, IDPs have found shelter in containers and other temporary housing abandoned in 2011 by foreign workers on large-scale housing and industrial construction sites. Persistent instability in Libya appears to have discouraged the return of foreign firms to date, providing some relief to IDPs with nowhere else to go. However, the Libyan government is reported to be encouraging the prompt return of foreign firms upon the completion of a review of Gaddafi-era construction contracts with no apparent mechanism for assessing the current use of construction sites or the humanitarian needs of IDPs living in them:

Referring to projects interrupted by the country's civil war, Libyan Deputy Minister of Housing Facilities Ali Abdul Hafiz said the new government respected all contracts signed with foreign companies and had formed a special committee to review them and solve remaining problems in order to protect foreign investors' rights. But he said priority would be given to contracts according to their importance to the needs of the Libyan people, with subordinate consideration given to the projects' time limits and the nation's equity in them.<sup>66</sup>

More recently, the post-election Ministry of Housing announced that the construction of 50,000 new housing units would commence “over the next six to 18 months”.<sup>67</sup> No further details have been available, making it difficult to predict the location and nature of this construction, and particularly whether it would involve the resumption of unfinished projects.

In sum, while the effects of Gaddafi-era property confiscations may affect IDPs and refugees disproportionately, they are ultimately a transitional problem with tremendous implications for Libyan society at large. For this reason, the long-term recommendations in Section 4 of this report suggest that humanitarian actors concerned with displacement should work together with experts on rule of law, transitional justice and development issues in seeking to advocate a just and effective resolution of the legacy property issues Libya currently faces.

### **I.B.ii. Humanitarian issues and displacement**

The number of internally displaced persons (IDPs) in Libya has more than halved since the end of the conflict, to an estimated 70,000 persons countrywide as of June 2012.<sup>68</sup> However,

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<sup>66</sup> Xinhua News Agency, “A Chinese Commerce Ministry delegation held talks Monday [6 February] with Libyan officials on bilateral cooperation and resumption of Chinese businesses in post-war Libya” (07 February 2012).

<sup>67</sup> Brigitte Scheffer, “Libya to Resume Construction 50,000 Houses, Government Says”, *Bloomberg News* (August 02, 2012), available at: <http://www.businessweek.com/news/2012-08-02/libya-to-resume-construction-50-000-houses-government-says>

<sup>68</sup> IRIN, “Scores of displaced Libyans afraid to go back home” (09 May 2012).

this progress cannot be said to have resulted from leadership exercised, let alone policies adopted, by the interim authorities. Moreover, as discussed below in Part 2, below, many of the remaining IDPs must now be regarded as being in ‘protracted displacement’, with little prospect of being able to take voluntary decisions regarding return in the near future and a serious risk of becoming dependent on host communities that may, in some cases, resent their presence. Unless urgent steps are taken, the past failure of the transitional authorities to regulate the humanitarian and human rights consequences of displacement will be transformed into a politically sensitive and potentially destabilizing problem for their post-election successors. The housing, land and property issues of IDPs – and to a lesser extent refugees – form an integral part of the problem that will become increasingly important as some of the persistent questions related to basic security and freedom of movement are resolved.

The transitional authorities in Libya tended to avoid discussing the issues of displacement and dispossession in overtly humanitarian and human rights-based terms, let alone regulating them on this basis. In interviews, the communities that have suffered displacement tend to be described as often in political terms (as ‘regime loyalists’, opportunists or squatting newcomers) that hardly discourage an apparent pattern of collective punishment, as in humanitarian terms (as ‘IDPs’) that would facilitate a focus on addressing needs and respecting rights. Central level responses to Libya’s displacement crisis have been belated and inconsistent, leaving the main burden on local authorities and civil society, supported in many instances by international humanitarian actors. The NTC neglected to adopt a policy, or even a policy statement on internal displacement. Neither did they applied or even referenced the leading international standard on this issue, the *Guiding Principles on Internal Displacement* (see Part I.C.i., below). Moreover, even in practice the Libyan authorities have yet to establish clear lines of local and national responsibility for resolving the crisis or coordinating humanitarian aid.

The failure of the highest levels of the transitional government to come to terms with the residual humanitarian issues remaining from the 2011 conflict is exemplified by the fact that the UNHCR Office of the Chief of Mission in Libya is still forced to operate without a memorandum of understanding with the government nearly a year after reestablishing its presence in the country and despite multiple rounds of negotiation with the Ministry of Foreign Affairs. On the ground, the main national humanitarian actors are the Libyan Red Crescent Society, which has played a mainly operational role, and Libaid, a Benghazi based quasi-governmental organization that took over the legal personality of a Gaddafi-era international aid organization of the same name.<sup>69</sup> Together with UNHCR and its international NGO implementing partners (Mercy Corps and ACTED), Libaid has played a key role in registering IDPs and distributing food and non-food items (meanwhile, national

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<sup>69</sup> Interview, Libaid, Tripoli, 27 March 2012. See also: <http://www.libaid.net/eng/>. While LibAid effectively began as a civil society organization, observers described it as having taken on a quasi-governmental role during the transitional period. In the wake of the elections, greater scope exists to establish exactly how spontaneously created organizations like LibAid will relate to the government of Libya.

civil society organizations such as Al Wafa have acted as implementing partners for UNHCR in seeking to meet the humanitarian needs of foreign refugees in Libya). However, Libaid has yet to be accorded an official role or recognition as a national actor or focal point on humanitarian aid. Libaid works from a needs-based perspective, and has not to date taken up the human rights of IDPs or sought to leverage international standards such as the *Guiding Principles* in its work.<sup>70</sup>

Within the transitional government, the sole Ministry that has taken on a clear role with regard to humanitarian aid to IDPs has been the Ministry of Social Affairs (MSA). In Tripoli, for instance, the Local Council reported that the MSA has helped to pay for rental and other costs at some IDP sites.<sup>71</sup> Although MSA funding for IDP shelter was meant to become systematized during the Spring of 2012, implementation appears to have been inconsistent and problematic to date. In Benghazi, for instance, the MSA announced that 24 million Libyan dinars would be made available to the local government for assistance to IDPs. Although details regarding this program were never released, it was understood that the aim was primarily to ease IDPs out of collective settlements by providing 3 months of rent per household at a level of 400 Libyan dinars per month.<sup>72</sup> However, payment was said to be contingent on the presentation of a lease agreement by beneficiary households. This may have presented a serious obstacle; while private landlords do not appear to be unwilling to rent to IDPs, they tend to refuse to provide formal leases in order to avoid taxes.

There is some evidence that the use of MSA funding might be more flexible than initially reported. For instance, in Benghazi, such funding was discussed with UNHCR as a possible means of securing and refurbishing a new camp to replace a facility housing Tawerghan IDPs that was slated to be restored to its original use. However, it is unclear whether any of the promised MSA funding was actually disbursed prior to the elections in any case, there is no evidence of increased spending on IDPs or any tangible change in their shelter conditions. Meanwhile, both the local authorities in Misrata, which was extensively damaged in a siege by Gaddafi's forces, and the local authorities in Sirte, which was subsequently destroyed by Misratan brigades in the aftermath of Gaddafi's capture and death there in October 2011, had heard about the MSA support program but not yet received tangible assistance as of the period before the elections.<sup>73</sup>

In practice, much of the responsibility for coordinating the humanitarian response to internal displacement is left by default to the Local Councils that make up the NTC, which have

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<sup>70</sup> Libaid's strategic targets refer to humanitarian principles, the Libyan national interest, public-private partnership and documentation and reporting, but do not reference human rights or international standards. See [http://www.libaid.net/eng/index.php?option=com\\_content&view=article&id=46&Itemid=2](http://www.libaid.net/eng/index.php?option=com_content&view=article&id=46&Itemid=2).

<sup>71</sup> Interview, Tripoli Local Council, Tripoli, 28 March 2012.

<sup>72</sup> Interview, Mercy Corps Libya, Tripoli, 31 March 2012.

<sup>73</sup> Interviews, Misrata officials, Misrata, 02 April 2012; Sirte Department of Social Affairs, Sirte, 23 April 2012.

taken on a broad administrative responsibility for their cities and districts.<sup>74</sup> This role has been both positive and negative; as discussed below in Part 2, for instance, some municipalities have adopted explicit practices and policies limiting the return of IDPs or the free restoration of their property. However, many local councils have made conscientious efforts to receive IDPs from elsewhere in the country and provide them with a minimum degree of shelter.

For instance, the Tripoli Local Council, which has received the highest number of IDPs nationwide, has taken a constructive and pragmatic but hardly proactive approach, referring IDPs to unoccupied construction sites and vacation resorts, allowing them to remain there and at times providing them with food.<sup>75</sup> However, the Local Council also understands itself to be responsible for evicting IDPs should the owner of the sites they occupy lodge a request, and an official interviewed expressed deep skepticism that any IDPs would be allowed to remain permanently as Tripoli allegedly had insufficient housing for its pre-2011 population. Questions regarding maintenance and improvements to IDP camps were referred to the transitional government, but with an admission that the Tripoli Council was not aware of any designated interlocutor or focal point there on IDP and humanitarian issues.

Representatives of the Sirte Local Council and Department for Social Affairs claimed to have actively sought contact with and support from the Ministry of Social Affairs, but without success.<sup>76</sup> After having been promised rental assistance and prefabricated homes by Housing Ministry officials in December 2011, the Sirte Council had sent in a list of persons displaced due to wartime destruction, but have yet to receive a response. In the meantime, the local Department of Social Affairs has struggled to register IDPs in Sirte and respond where possible to their humanitarian needs. Pending reconstruction of their homes, many IDPs within Sirte have been forced to move into unfinished apartment buildings, often without basic services. Meanwhile, officials for the Misrata Local Council noted that they had had minimal contact with the Ministry of Social Affairs as of April 2012, but were less concerned given that their 'non-targeted' IDP caseload was relatively small and consisted almost exclusively of local residents displaced within Sirte, who were housed provisionally until their destroyed homes could be reconstructed.<sup>77</sup>

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<sup>74</sup> As described in a recent report by the International Crisis Group, humanitarian policy is only one of many issues requiring a central government response but effectively delegated to Local Councils during Libya's pre-election period. ICG 2012, 31.

<sup>75</sup> Interview, Tripoli Local Council, Tripoli, 28 March 2012.

<sup>76</sup> Interviews, Sirte Local Council and Department for Social Affairs, Sirte, 23 April 2012.

<sup>77</sup> Interview, Misrata officials, Misrata, 02 April 2012.

### **I.B.iii. Transitional justice and reparations**

Some of the earliest legislation adopted by the NTC related to the issue of “national reconciliation and transitional justice”.<sup>78</sup> While the transitional justice law is seen as a significant step for the consolidation of the new Libya, it has been criticized for its apparently exclusive focus on the crimes of the Gaddafi regime. For instance the definition of transitional justice at the beginning of the law involves redress for “the violations of human rights and basic freedoms *committed by the Libyan former regime*” as well as “attempts to achieve reconciliation in cordial means between some community groups.”<sup>79</sup> In light of the current balance of political and military power in Libya, this approach would appear to guarantee full measures of redress and reparation exclusively to victims of the Gaddafi regime while leaving victims of anti-Gaddafi revolutionaries with only such redress as they are able to argue for in mediated negotiations in which they are likely to find themselves in a distinctly disadvantaged position.<sup>80</sup>

This criticism has sharpened as evidence has emerged of significant violations committed by revolutionary forces, including the mass displacement and dispossession of ‘targeted’ communities deemed to have aided the Gaddafi regime during the conflict (see Section 2.A., below). Most notably, a UN Commission of Inquiry reported in March 2012 that both sides in the conflict had committed apparent human rights violations and war crimes, and that acts including torture, murder, property destruction, and forced displacement by revolutionary brigades that had occurred after the end of the uprising were not only clear human rights violations but could in some cases constitute crimes against humanity.<sup>81</sup> More recently, the UN Support Mission in Libya (UNSMIL) noted that excesses were committed by all sides and called for a review of the NTC’s transitional justice approach in order to facilitate a

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<sup>78</sup> National Transitional Council of Libya, Law no. 4 for the year 2011 Concerning National Reconciliation and Transitional Justice (2011), available in English translation at: <http://www.scribd.com/doc/83976561/Transitional-Justice-Law-of-Libya>.

<sup>79</sup> *Ibid.*, Article 1 (emphasis added).

<sup>80</sup> Although the spontaneous efforts of traditional leaders and local notables to broker ceasefires in communal conflicts in Libya have produced some remarkable successes, they have generally only smoothed over tensions rather than producing clear and enforceable commitments related to the root causes of conflict. ICG 2012, 28-30. Groups tainted by imputed sympathies for the Gaddafi regime may face particular obstacles receiving equitable treatment in the conduct of such negotiations and have more to lose when the resulting agreements are not respected.

<sup>81</sup> Human Rights Council, Report of the International Commission of Inquiry on Libya, UN Doc A/HRC/19/68 (02 March 2012). Other observers have questioned whether the Commission could have had grounds to go even further in its findings of crimes by anti-Gaddafi revolutionaries. See Kevin Jon Heller, “Did the Thuwar Persecute and Commit Genocide Against the Tawerghans?”, *Opinio Juris* (13 August 2012), available at: <http://opiniojuris.org/2012/08/13/did-the-misratan-thuwar-persecute-and-commit-genocide-against-the-tawerghans/>.

“comprehensive approach to addressing the past” based on “tackling historical root causes and injustices based on the recognition of rights.”<sup>82</sup>

Whether or not in the context of a transitional justice process, crimes involving displacement and dispossession by revolutionary forces invoke a responsibility on the part of the current government to provide a remedy (see Part 1.C, below) – most obviously in the form of facilitated durable solutions, including voluntary return, for the displaced and the restitution and reconstruction of property wherever necessary. In a July 5 report setting out concerns regarding ongoing human rights violations by militias in Libya, for instance, Amnesty International recommended that the Libyan authorities:

Take immediate action to ensure that all those who have been forcibly displaced are allowed to promptly return to their homes and that their safety is guaranteed and that they receive redress, including compensation and assistance to rebuild their homes and their lives.<sup>83</sup>

The policy and legislative response of the Libyan authorities at all levels to these calls – as well as broader demands for human rights respect and accountability – have been discouraging to date. For instance, in an April 2012 letter to the authorities of the city of Misrata, Human Rights Watch raised concerns related to numerous alleged rights violations including the expulsion of the residents of the nearby town of Tawergha, which has proven to be the single largest internal displacement event connected with the 2011 uprising (see also Part 2.A.i, below):

Another serious matter is the crimes we have documented by Misratan militias against the people of Tawergha, including killings, torture, looting, home destruction and the ongoing forced displacement of some 30,000 people. Some officials from Misrata have publicly said that the people of Tawergha should never return because of the crimes they committed against the people of Misrata.

Human Rights Watch is aware of the crimes committed in Misrata during the war by Gaddafi forces, having documented many of them ourselves. We call for the perpetrators of these crimes to be held accountable. However, it is unlawful collective punishment to prevent a whole community from returning to their homes because of the actions of some individuals. If the reason for preventing the Tawerghans from returning is based on fears for their security, it is the responsibility of local and national officials to provide them with the security they need to return to their homes and to hold those making threats

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<sup>82</sup> UN Support Mission in Libya (UNSMIL), “Transitional Justice – Foundation for a New Libya” (17 September 2012).

<sup>83</sup> Amnesty International, “Libya: Rule of Law or Rule of Militias” (July 2012), 66.

against them accountable. It is also for individual Tawerghans to decide if they wish to return to their homes, having considered the security risks.<sup>84</sup>

The Misratan authorities responded with a letter that denied responsibility for the human rights violations alleged by Human Rights Watch and which, without threatening to directly block the return of Tawerghan IDPs, confirmed their position that return was impossible:

As coexistence between the two areas is impossible at the current time, we believe it is necessary to search for alternative solutions that will be appropriate and acceptable to the people of Tawergha. This is an appeal to the government and all citizens to solve this problem on the national level.<sup>85</sup>

The Misratan authorities concluded by confirming their “goal of protecting human rights” and appealing to the Libyan national authorities “to swiftly activate the law on transitional justice and provide all means of achieving this.” Whether or not in response to this exchange, the NTC passed a controversial law ‘on certain matters relating to transitional justice’ just three weeks later that purported to amnesty the acts of anti-Gaddafi revolutionaries. As described by a Libyan civil society organization, the law essentially represented a throwback to the type of impunity that had characterized the Gaddafi era:

Law 38 of 2012 on certain matters relating to transitional justice includes a complete amnesty for any “acts made necessary by the 17 February revolution” for its “success or protection”, whether such acts are of a military, security or civil nature. This law represents a serious impediment to the establishment of the rule of law in Libya. .... The vague terms used in this law could lead to abuses in its implementation, including arbitrary detention. The NTC is enshrining the culture of impunity. Impunity for violations of human rights and war crimes resulting from a sense of revolutionary legitimacy is dangerous and perpetuates the culture that existed under the Gaddafi regime, where all was justified in the name of the 1969 Revolution.<sup>86</sup>

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<sup>84</sup> Human Rights Watch, Libya: Letter to Misrata Councils (08 April 2012), available at: <http://www.hrw.org/news/2012/04/08/libya-letter-misrata-councils>.

<sup>85</sup> Human Rights Watch, Misrata Local Council Responds to Human Rights Watch (11 April 2012), available at: <http://www.hrw.org/news/2012/04/11/misrata-local-council-response-human-rights-watch>.

<sup>86</sup> Lawyers for Justice in Libya (LJIL), “LFJL strongly condemns new laws breaching human rights and undermining the rule of law” (Press release, 07 May 2012), available at: <http://www.libyanjustice.org/news/news/post/23-lfjl-strongly-condemns-new-laws-breaching-human-rights-and-undermining-the-rule-of-law/>. Although the Libyan Supreme Court later struck down another controversial law barring the ‘glorification’ of the Gaddafi regime, the amnesty law has yet to be challenged before the Court and remains in force. See, LJIL, “LFJL Applauds the Supreme Court of Libya’s Decision on Law 37” (Press release, 27 June 2012), available at: <http://www.libyanjustice.org/news/news/post/28-lfjl-applauds-the-supreme-court-of-libya%E2%80%99s-decision-on-law-37/>.



Taken together with controversies over other recent NTC laws and the debate over whether Libya is capable of providing a fair trial to high-level Gaddafi regime figures accused of international crimes, these events give rise to serious concerns about the ability of the Libyan authorities to live up to the human rights commitments set out in their Constitutional Declaration.<sup>87</sup> With regard to the situation of displaced persons in particular, they feed an inference that entire communities deemed to have been loyal to Gaddafi have been attributed collective guilt, and that the protracted displacement and dispossession imposed on such communities may currently be viewed by many in Libya as a legitimate form of collective punishment. While such a conclusion would raise serious issues in light of Libya's international law obligations (see Part 1.C, immediately below), it is hard to draw any other conclusion from the failure of the NTC to adopt even the outlines of a policy on internal displacement and the tendency of its 'transitional justice' laws to write out IDPs' victimhood.

### **1.C *Libya's International Obligations related to HLP Rights***

Prior to the 2011 uprising, the Ghaddafi regime had ratified a broad range of global and regional human rights conventions. These were enumerated in a June 2011 report by the UN Office of the High Commissioner on Human Rights (OHCHR):

Libya is a party to the core international human rights treaties, including the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Right (ICESCR), the Convention on the Elimination of all forms of Racial Discrimination (CERD), the Convention on the Elimination of Discrimination Against Women (CEDAW), the Convention Against Torture and other Cruel, Inhuman or Degrading Treatment and Punishment (CAT), the Convention on the Rights of Child (CRC), and the International Convention on the Protection of the Rights of all Migrant Workers and Members of their Families (ICRMW). It has also ratified the first Optional Protocol to the ICCPR, as well as the Optional Protocol to the CRC on the involvement of children in armed conflict (OP-CRC-AC). Libya is also a party to the Convention on the Non-Application of Statutory Limits to War Crimes and Crimes against Humanity. Libya is a party to the African Charter on Human and Peoples' Rights. In terms of international humanitarian law, Libya is also a State party to the 1949 Geneva Conventions and both of the two Additional Protocols.<sup>88</sup>

The most important rules applicable to housing, land and property rights in displacement are derived from two global UN human rights treaties, both of which were ratified by Libya

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<sup>87</sup> See Sarah Leah Whitson, "Libya's human rights problem", *Foreign Policy* (15 May 2012).

<sup>88</sup> UN Human Rights Commission, Report of the High Commissioner under Human Rights Council resolution S-15/1, UN Doc. A/HRC/17/45 (), paragraph 18 (citations - referring to ratification dates of the respective instruments in Libya - omitted).

in 1970. These treaties are the International Covenant on Civil and Political Rights (ICCPR)<sup>89</sup> and the International Covenant on Economic, Social and Cultural Rights (ICESCR).<sup>90</sup> Both treaties are overseen by UN Committees – the Human Rights Committee (HRC) and the UN Committee on Economic, Social and Cultural Rights (UNCESCR), respectively – that are mandated to provide authoritative “General Comments” interpreting the rules contained in each.<sup>91</sup> These rules are affirmed with particular strength for groups that have suffered from discrimination in treaties such as the CEDAW and the CERD. Finally, the African Charter on Human and Peoples’ Rights (ACHPR) reinforces many of these norms at the regional level.

### **1.C.i. Human rights norms related to housing, land and property**

A number of categories of human rights rules relate specifically to housing, land and property, as well as to displacement. These include the following:

The Right to Freedom of Movement and Choice of Residence: The right to freely move within one’s own country and to choose one’s place of residence set out in Article 12 of the ICCPR<sup>92</sup> has been interpreted by the UN Human Rights Committee to include “protection against all forms of forced internal displacement.”<sup>93</sup> The right to freedom of movement is linked with the right to return. However, in international human rights law, this right is paired with the right of individuals to leave their countries and pertains only to countries of origin not homes of origin.<sup>94</sup> However, post-Cold War understandings of the right to return have extended its application to cover return within one’s own country to one’s place of origin.<sup>95</sup> This interpretation is a clear necessity in order that internally displaced persons (IDPs) should be able to meaningfully exercise the right to choose their residence in the wake

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<sup>89</sup> International Covenant on Civil and Political Rights (ICCPR), G.A. res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, entered into force Mar. 23, 1976.

<sup>90</sup> International Covenant on Economic, Social and Cultural Rights (ICESCR), G.A. res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 49, U.N. Doc. A/6316 (1966), 993 U.N.T.S. 3, entered into force Jan. 3, 1976.

<sup>91</sup> The General Comments of the HRC are at <http://www2.ohchr.org/english/bodies/hrc/comments.htm>, while those of the UNCESCR are available at <http://www2.ohchr.org/english/law/cescr.htm>. Although the split between civil and political rights and more social and economic rights reflects ideological disputes during the Cold War, both treaties are now widely ratified and seen as complementary.

<sup>92</sup> Article 12 (1) of the ICCPR states that: “Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence.” See also, ACHPR, Article 12.

<sup>93</sup> UN Human Rights Committee, General Comment No. 27 (1999), paragraph 7.

<sup>94</sup> ICCPR, Article 12(4) (guaranteeing that “[n]o one shall be arbitrarily deprived of the right to enter his own country”). See also, ACHPR, Article 12(2).

<sup>95</sup> See Guiding Principles on Internal Displacement, Principle 28; Pinheiro Principles, Section IV.

of displacement. However, giving effect to this right usually requires measures to restore the land and property IDPs left behind.

The Right to Privacy: Article 17 of the ICCPR protects all persons from unlawful or arbitrary interference with their personal and family life, including their home.<sup>96</sup> The UN Human Rights Committee has defined the concept of “home” broadly to mean “the place where a person resides or carries out his usual occupation.”<sup>97</sup> In other words, even where individuals do not have legal rights to own their homes and workplaces, their possession and use of such property may not be curtailed in an unlawful or arbitrary manner.

The Right to Adequate Housing: The right to an adequate standard of living in Article 11 of the ICESCR includes a right to housing.<sup>98</sup> In 1991, the UN CESCR identified seven criteria for evaluating the “adequacy” of housing available to ordinary people, one of the most important being security of tenure, or legal protection against forced evictions.<sup>99</sup> Six years later, the Committee defined forced evictions as “the permanent and temporary removal against their wills of individuals, families, and/or communities from the homes and/or land which they occupy, without the provision of, and access to, appropriate forms of legal and other protection.”<sup>100</sup> The right to be free from forced evictions applies even to residents of informal settlements or unauthorized occupiers of public property. The resulting focus on protecting domestic life (rather than property interests per se) links this right so closely with the right to privacy in the home under the ICCPR that the UN CESCR has declared that the same set of principles should be used to guide the application of both rights.<sup>101</sup> The application of this right in both ordinary and displacement settings is described in more detail in Part 1.C.iii, below.

The Right to Property: The right to property was listed in early statements of human rights by the UN, but was not included in either the ICCPR or the ICESCR as such.<sup>102</sup> However, the

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<sup>96</sup> Article 17 (1) of the ICCPR states that: “No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation.”

<sup>97</sup> UN Human Rights Committee, General Comment No. 16 (1988), paragraph 5.

<sup>98</sup> Article 11 (1) of the ICESCR states that: “The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international co-operation based on free consent.”

<sup>99</sup> UN CESCR, General Comment No. 4 (1991), paragraph 8(a).

<sup>100</sup> UN CESCR, General Comment No. 7 (1997), paragraph 3.

<sup>101</sup> Ibid, paragraph 14.

<sup>102</sup> The right to property was included in the non-binding 1948 Universal Declaration of Human Rights (UDHR), Article 17: “(1) Everyone has the right to own property alone as well as in association with others. (2) No one shall be arbitrarily deprived of his property.”

CEDAW protects the equal rights of women to own and dispose over property (Articles 16 and 23), while the CERD asserts a right to own property without discrimination on the basis of race (Article 5 (d) (v)). Perhaps most important in the Libyan context, the ACHPR includes a strong affirmation of property rights in its Article 14: “The right to property shall be guaranteed. It may only be encroached upon in the interest of public need or in the general interest of the community and in accordance with the provisions of appropriate laws.”

The Right to a Remedy: Displacement frequently gives rise to violations of many of the rights listed above, both at the place of origin (through confiscations of homes and lands) and at the place of displacement (through failure to provide adequate shelter conditions). One of the most important human rights, the right to an effective remedy, is triggered when other rights are violated. The classic right to a remedy, set out in the ICCPR, involves access to justice, in the form of domestic processes that allow individuals to claim that their rights have been violated.<sup>103</sup> The ICESCR has also been interpreted as giving rise to such a right.<sup>104</sup> The right to a remedy is also included in regional human rights treaties, including the ACHPR (Article 25). International standards and practice are increasingly tending to recognize a right to reparations – substantive remedies such as property restitution and financial compensation – in cases where violations are found to have occurred.<sup>105</sup> Accordingly, the 2005 “Pinheiro

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<sup>103</sup> International Covenant on Civil and Political Rights (ICCPR), Article 2 (3): “Each State Party to the present Covenant undertakes: (a) To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity; (b) To ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy; (c) To ensure that the competent authorities shall enforce such remedies when granted.”

<sup>104</sup> International Covenant on Economic, Social and Cultural Rights (ICESCR), Article 2 (1): “Each State Party to the present Covenant undertakes to take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures. The UN Committee on Economic, Social and Cultural Rights (CESCR) has repeatedly found that the obligation to realize economic and social rights “by all appropriate means” entails the domestic provision of “judicial or other effective remedies.” CESCR, General Comment 3, (Fifth Session, 1990), ¶ 5. *See also*, CESCR, General Comment 9 (Nineteenth Session, 1998).

<sup>105</sup> The UN Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law (U.N. Doc. E/CN.4/2005/ L.10/Add.11 (19 April 2005)) represent the most authoritative statement on this point to date. Paragraph 18 of these Principles (also known as the Van Boven-Bassiouni Principles) states as follows: “In accordance with domestic law and international law, and taking account of individual circumstances, victims of gross violations of international human rights law and serious violations of international humanitarian law should, as appropriate and proportional to the gravity of the violation and the circumstances of each case, be provided with full and effective reparation, ... which include the following forms: restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition.”

Principles” on Housing and Property Restitution for Refugees and Displaced Persons stated that states must “demonstrably prioritize the right to restitution as the preferred remedy for displacement” (Principle 2.2).

Although the application of international humanitarian law goes beyond the scope of this Report, it is also worth noting that many of the alleged human rights violations that have given rise to displacement and property dispossession in Libya may also qualify as war crimes and crimes against humanity. For instance, in discussing attacks on ‘targeted populations’ in Libya, the recent UN Commission of Inquiry report noted that apparent breaches included persecution, forcible transfer of civilian populations, pillaging of civilian property and collective punishments.<sup>106</sup>

### **I.C.ii Application to internally displaced persons and refugees**

Although the Libyan authorities have no prior experience dealing with the issue of internal displacement, they are required to do so in a manner that complies with their international legal obligations, including the human rights standards listed above. Although Libya has yet to ratify the regional African Union *Convention for the Protection and Assistance of Internally Displaced Persons (IDPs) in Africa* (and no such global convention has been adopted), guidance on how to effect a rights-based response to internal displacement exists.<sup>107</sup> The 1998 UN *Guiding Principles on Internal Displacement* are a set of non-binding standards that have been widely adopted by states, regional organizations and UN bodies and agencies. They proceed from the most widely accepted rules of human rights and humanitarian law and attempt to apply them to the unfamiliar issues raised by internal displacement, particularly in states that have not experienced it before.

#### **The Guiding Principles on Internal Displacement**

The Guiding Principles on Internal Displacement is a short document outlining what steps are required by international law in preventing and mitigating the effects of internal displacement, as well as in ending it through durable solutions for IDPs. The Guiding Principles can be accessed in numerous languages including Arabic and English at the following web page:

<http://www.brookings.edu/about/projects/idp/gp-page>

The assumption underlying the Guiding Principles is that people who are involuntarily forced out of their homes share common vulnerabilities (such as the loss of shelter, privacy, security, and livelihoods) as well as common obstacles to the enjoyment of their rights (such

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<sup>106</sup> UN Commission of Inquiry, paragraphs 384-8.

<sup>107</sup> African Union, *Convention for the Protection and Assistance of Internally Displaced Persons (IDPs) in Africa (Kampala Convention)* (2009), available at: <http://www.internal-displacement.org/kampala-convention>.

as problems accessing their property, registering to vote or obtaining education for their children). In cases where they cross borders and become refugees, other states may provide international protection in accordance with international refugee law. However, as long as they remain within their own states, national authorities retain the primary responsibility to *avoid discriminating* against IDPs on the basis of their displacement by *ensuring that they are able to exercise their rights* on a basis of equality with non-displaced fellow citizens.<sup>108</sup> Because of the obstacles IDPs face in exercising their rights, this requires the state to take special measures (affirmative action) to help IDPs, both during their displacement and in the course of seeking durable solutions.

An example of how the Guiding Principles link general rules of international law to specific measures to address displacement is provided by Guiding Principle 18, begins by restating the economic and social rights guarantee of an adequate standard of living (which includes the right to adequate housing, discussed above in Part 1.C.i.) and goes on to recommend that states implement this right in internal displacement settings by unconditionally guaranteeing the provision of basic humanitarian aid (including shelter) to IDPs:

1. *All internally displaced persons have the right to an adequate standard of living.*
2. *At the minimum, regardless of the circumstances, and without discrimination, competent authorities shall provide internally displaced persons with and ensure safe access to:*
  - (a) *Essential food and potable water;*
  - (b) *Basic shelter and housing;*
  - (c) *Appropriate clothing; and*
  - (d) *Essential medical services and sanitation.*
3. *Special efforts should be made to ensure the full participation of women in the planning and distribution of these basic supplies.*

Along with Guiding Principle 18, which applies to housing conditions and tenure security in the locations where IDPs find themselves displaced, a number of Principles are meant to protect the property rights of IDPs. First, Principle 9 focuses on the need to prevent displacement in situations in which it would affect groups particularly vulnerable to the loss of their land:

*States are under a particular obligation to protect against the displacement of indigenous peoples, minorities, peasants, pastoralists and other groups with a special dependency on and attachment to their lands.*

Second, Guiding Principle 21 proceeds from the human right to property (see above, Part 1.C.i.) in describing the measures authorities must take in order to protect the property left behind by IDPs during their displacement:

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<sup>108</sup> Guiding Principles on Internal Displacement, Principles 1.1 and 3.1.

1. *No one shall be arbitrarily deprived of property and possessions.*
2. *The property and possessions of internally displaced persons shall in all circumstances be protected, in particular, against the following acts:*
  - (a) *Pillage;*
  - (b) *Direct or indiscriminate attacks or other acts of violence;*
  - (c) *Being used to shield military operations or objectives;*
  - (d) *Being made the object of reprisal; and*
  - (e) *Being destroyed or appropriated as a form of collective punishment.*
3. *Property and possessions left behind by internally displaced persons should be protected against destruction and arbitrary and illegal appropriation, occupation or use.*

Finally, Guiding Principle 29.2 implicitly proceeds from the substantive right to a remedy, in the form of reparations (see above, Part 1.C.i.), in requiring restitution or compensation for IDPs in relation to the property they left behind as part of the broader process of achieving durable solutions:

*Competent authorities have the duty and responsibility to assist returned and/or resettled internally displaced persons to recover, to the extent possible, their property and possessions which they left behind or were dispossessed of upon their displacement. When recovery of such property and possessions is not possible, competent authorities shall provide or assist these persons in obtaining appropriate compensation or another form of just reparation*

A number of other Guiding Principles have a special relevance for the situation in Libya. These include the following:

- Guiding Principle 1.2, which states that the Principles are to be applied “without prejudice to individual criminal responsibility under international law, in particular relating to genocide, crimes against humanity and war crimes”; in other words, they do not preclude legitimate investigation and prosecution of criminal suspects who happen to be internally displaced.
- Guiding Principle 2.1, which states that the Principles should be “observed by all authorities, groups and persons irrespective of their legal status and applied without any adverse distinction”, e.g., even local councils and revolutionary brigades should protect and assist IDPs in situations in which they have effective control over them.
- Guiding Principle 3.1 locates the “primary duty and responsibility to provide protection and humanitarian assistance to internally displaced persons within their jurisdiction” firmly with the national authorities.
- Guiding Principle 6 on prevention clarifies that displacement is always ‘arbitrary’ or prohibited under international law “when it is used as a collective punishment” and

that in all cases, displacement should last “no longer than required by the circumstances.”

Finally Principle 28 on ‘durable solutions’ to displacement is based on the equal right of IDPs to enjoy freedom of movement and choice of residence (see Part 1.C.i., above). This Principle underscores the right of IDPs to informed and voluntary choice between return to their places of origin or ‘resettlement’ else where (now generally understood to mean either ‘local integration’ where they find themselves displaced or ‘resettlement’ to a third place within or even outside the country):

*1. Competent authorities have the primary duty and responsibility to establish conditions, as well as provide the means, which allow internally displaced persons to return voluntarily, in safety and with dignity, to their homes or places of habitual residence, or to resettle voluntarily in another part of the country. Such authorities shall endeavour to facilitate the reintegration of returned or resettled internally displaced persons.*

*2. Special efforts should be made to ensure the full participation of internally displaced persons in the planning and management of their return or resettlement and reintegration.*

**Practical tools to help with implementation of the *Guiding Principles on Internal Displacement***

A number of practical tools have been created to assist state authorities and civil society actors in giving effect to the human rights of IDPs by implementing the Guiding Principles on Internal Displacement. Some of the most useful include the following:

The Framework for National Responsibility (2005) – This is a relatively short booklet with a list of 12 practical steps that national authorities should take when confronted with situations of internal displacement. The Framework was drafted by the Brookings Project on Internal Displacement, a think tank that supports the UN Special Rapporteur on IDPs, and is available in both Arabic and English at the following webpage: <http://www.brookings.edu/research/reports/2005/04/national-responsibility-framework>.

Manual for National Law and Policy Makers (2008) – This longer manual provides a more comprehensive approach to implementing some of the technically complex aspects of the Guiding Principles, ranging from humanitarian aid provision to property restitution and ensuring the right to vote. It builds on the experience of numerous countries that had adopted and implemented their own national laws and policies on internal displacement in the late 1990s and early 2000s. The Manual can be accessed in English here: <http://www.brookings.edu/research/papers/2008/10/16-internal-displacement>

Collection of National Laws and Policies on Internal Displacement – The Brookings Institution also maintains a collection of national laws and policies adopted by 22 countries facing displacement as well as the policies adopted by several regional organizations. Most are available in English translation:



<http://www.brookings.edu/about/projects/idp/resources/laws>

Framework on Durable Solutions (2009) This framework sets out basic criteria for determining when IDPs can be considered to no longer be displaced. Unlike the other tools, which are meant to provide direct assistance to national authorities, the framework is meant to be applied by civil society actors, who can play an important role in both adapting the general criteria set out in the framework to local conditions and in monitoring and assisting the process of achieving durable solutions. The Framework can be accessed in Arabic and English here:

<http://www.brookings.edu/research/reports/2010/04/durable-solutions>

Annotations to the Guiding Principles on Internal Displacement (2008, 2<sup>nd</sup> edition) This document concisely sets out the key international law treaty rules and judicial precedents that provide the legal foundations for each of the Guiding Principles in turn. It is available in English and French here:

<http://www.brookings.edu/research/reports/2008/05/spring-guiding-principles>

In terms of the application of human rights to refugees and other non-citizens in Libya, a slightly different set of rules applies. Ordinarily, where states have acceded to international refugee law treaties, this entails an obligation not only to grant refugee status to persons that meet internationally accepted refugee definitions, but also to treat refugees in accordance with minimum standards set out in international and regional refugee law conventions. For instance, limited protections of the rights to housing and to acquire property are included in the 'refugee bill of rights' set out in Chapters II-V of the 1951 Refugee Convention. However, the situation in Libya is distinguished both by the limited extent to which the country has accepted to be bound by international refugee law and the fact that it has taken virtually no steps to give effect to the resulting obligations:

While Libya is a party to the OAU's 1969 Convention Governing the Specific Aspects of Refugee Problems in Africa, it is not a signatory to the 1951 Refugee Convention. No national legislation or administrative structures have been established to address matters of asylum. As such, refugees and asylum-seekers are part of a mixed-migration context that includes up to two million migrants, having entered the country owing to Libya's "open door" policy and historical position as a destination country for people seeking employment and a departure point for Europe.<sup>109</sup>

In any case, the fact that human rights law is generally applicable to all 'persons' (rather than 'citizens') within a state's jurisdiction has arguably led to the supersession of provisions like the 'refugee bill of rights' in the 1951 Refugee Convention. For instance, a key issue in applying the right to adequate housing to protect refugees from forced evictions is the

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<sup>109</sup> 2012 UNHCR country operations profile - Libya, available at: <http://www.unhcr.org/pages/49e485f36.html>.

question of the extent to which the rights under the ICESCR are applicable to non-nationals on the same basis as nationals. Here, as noted by Displacement Solutions, the language of the ICESCR is inclusive, with social and economic rights to be granted to “everyone” and discrimination in the enjoyment of such rights forbidden on a broad and open-ended range of grounds including “national or social origin”.<sup>110</sup> The only exception is found in a rule that developing countries “with due regard to human rights and their national economy, may determine to what extent they would guarantee the economic rights recognized in the present Covenant to non-nationals.”<sup>111</sup> However, this exception can generally be presumed not to apply to refugees. Seen in historical perspective, it represents a hangover from colonial circumstances that, as such, “should be interpreted narrowly”.<sup>112</sup>

Finally, the UN Committee on Economic, Social and Cultural Rights (CESCR) has itself asserted an implied right to be free from discrimination on the basis of nationality, noting that the rights under the Covenant “apply to everyone including non-nationals, such as refugees, asylum-seekers, stateless persons, migrant workers and victims of international trafficking, regardless of legal status and documentation.”<sup>113</sup> The anti-discrimination rule in the ICESCR allows a degree of protection of refugee housing rights considerably beyond the abovementioned rules of the 1951 Refugee Convention, which guaranteed only treatment no less favorable than that accorded to other non-nationals. In light of the UN CESCR’s interpretation, any distinction between even nationals and non-national refugees in the exercise of the right to adequate housing would have to be justified on “reasonable and objective” grounds in order to avoid a finding of discrimination.<sup>114</sup> The UN CESCR has

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<sup>110</sup> ICESCR, Article 2 (2).

<sup>111</sup> ICESCR, Article 2 (3).

<sup>112</sup> Specifically, this rule was portrayed as an effort “to end the domination of certain economic groups of non-nationals during colonial times.” *The Limburg Principles on the Implementation of the International Covenant on Economic, Social and Cultural Rights* (1986), paragraph 43. Displacement Solutions has also noted that this exception cannot be applied to the “core content of the most basic rights set out in the Covenant”. Displacement Solutions, Brief Commentary on Article 21, 8. The authors note that the extent to which housing rights qualify as such core content has yet to be fully clarified. *Id.* However, the emphasis placed by the UN CESCR on the right to adequate housing as a provision “of central importance for the enjoyment of all economic, social and cultural rights” indicates that the exclusion of non-nationals would be inherently problematic. UN CESCR, General Comment 4, paragraph 1.

<sup>113</sup> UN CESCR, General Comment 20 (2009), paragraph 30.

<sup>114</sup> The UN CESCR applies a proportionality test in assessing differential treatment, meaning that such treatment will not be found to amount to discrimination if it is justified and undertaken through reasonable and proportional measures. UN CESCR, General Comment 20, paragraph 13.

applied similar reasoning to prohibit discrimination against IDPs on the basis of their place of residence.<sup>115</sup>

In specific relation to the right to property, it is also worth noting the existence of a more recent soft law standard asserting a right to post-conflict property restitution in favor of both refugees and internally displaced persons. The Principles on Housing and Property Restitution for Refugees and Displaced Persons (“Pinheiro Principles”) were adopted by the UN Sub-Commission on Human Rights in 2005.<sup>116</sup> Although they are not as broadly accepted and implemented as the Guiding Principles on Internal Displacement, they summarize best practices to date in providing remedies for property dispossession in systems with relatively bureaucratic and centralized property administration systems. The Pinheiro Principles assert, among other things that:

- all displaced persons have the right to restitution of housing, land or property of which they were arbitrarily deprived, and to just compensation if this is impossible.
- restitution of property should contribute to the achievement of durable solutions but should not be dependent on the outcome of individual displaced persons’ decisions on whether to return.
- states should ensure equitable, independent, transparent and non-discriminatory procedures, institutions and mechanisms for the prompt assessment and enforcement of displaced persons’ claims to housing, land and property.
- claims procedures should be accessible on a fair and equal basis to all potential claimants; free of charge; and not encumbered with unreasonable preconditions or requirements;
- reparative processes related to housing, land and property should be based on consultation with affected persons, and particularly with vulnerable sub-groups of IDPs;
- restitution measures should be accompanied by such measures to recognize and register informal property rights as are necessary to ensure legal security of tenure; and
- even rights to housing, land and property based on tenure forms short of full ownership should be restored to the greatest extent possible.

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<sup>115</sup> Discrimination in the enjoyment of social and economic rights on the basis of residence – including internal displacement – is also implicitly forbidden under the ICESCR. UN CESCR, General Comment 20, paragraph 34.

<sup>116</sup> U.N. Sub-Commission on Human Rights, *Principles on Housing and Property Restitution for Refugees and Displaced Persons*, U.N. Doc. E/CN.4/Sub.2/2005/17 (28 June 2005).

### 1.C.iii The right to security of tenure in displacement settings

Security of tenure is one of the most important aspects of the human right to adequate housing.<sup>117</sup> Housing rights fall within the category of ‘economic and social’ human rights, as opposed to those of a ‘civil and political’ nature. Social and economic rights are often conceived of as ‘positive’ in nature, in contrast to ‘negative’ civil and political rights, which focus on actions that government authorities must refrain from taking. An example of this difference in practice involves comparing the right to adequate housing with a right it is frequently associated with, the right to property. The right to adequate housing is primarily positive, as it involves steps the authorities should take to assist individuals in accessing housing and improving its adequacy, while the classic right to property is negative in the sense of requiring authorities to avoid interfering with property rights unless doing so is necessary to an important public purpose.<sup>118</sup>

The right to adequate housing is protected as part of the broader right to an adequate standard of living in Article 11 (1) of the *International Covenant on Economic, Social and Cultural Rights* (ICESCR).<sup>119</sup> The rules of this Covenant have been clarified through authoritative interpretations – called ‘General Comments’ – by an expert body, the UN Committee on Economic, Social and Cultural Rights (UN CESCR). In the case of the right to adequate housing, the UN CESCR has issued two General Comments. The first, issued in 1991, defined the right in broad terms as “the right to live somewhere in security, peace and dignity” as well as seven criteria by which the ‘adequacy’ of housing in any given situation could be judged.<sup>120</sup> While six of these factors – availability of services, affordability, habitability, accessibility, location and cultural adequacy – relate to the nature of the housing itself, the seventh, security of tenure, relates to the legal relationship between the housing and its occupants. Legal security of tenure is defined as guaranteeing “legal protection against forced eviction, harassment and other threats.”

As with the other social and economic rights protected by the ICESCR, the right to adequate housing is meant to be implemented “progressively” by states “to the maximum of [their]

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<sup>117</sup> See, Rhodri C. Williams, “From Shelter to Housing: Security of Tenure and Integration in Protracted Displacement Settings”, *Norwegian Refugee Council Thematic Report* (December 2011), available at: <http://www.nrc.no/?did=9642916>.

<sup>118</sup> For instance, Article 17 of the Universal Declaration of Human Rights (UDHR) sets out the basic right to “own property alone as well as in association with others” and enjoins state authorities to refrain from interfering with such property rights: “No one shall be arbitrarily deprived of his property.”

<sup>119</sup> International Covenant on Economic, Social and Cultural Rights (ICESCR), UN Doc. A/6316 (1966). Article 11 (1) of the ICESCR requires states parties to the Convention to “recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions”.

<sup>120</sup> UN CESCR, General Comment 4 (1991), paragraph 7.

available resources”.<sup>121</sup> The progressive approach to the fulfillment of positive rights contrasts with the immediate obligation on states to ‘respect’ negative rights – by refraining from violating them through their own actions – as well as to ‘protect’ their exercise by taking reasonable measures to prevent foreseeable violations by non-state actors. States are also explicitly required to provide effective legal remedies – usually through access to proceedings before an impartial adjudicator – when civil and political rights are violated. By contrast, no explicit right to a remedy exists with regard to social and economic rights, fueling a persistent debate about whether they were, by their very nature, averse to being ‘justiciable’ before courts of law.

The UN CESCR has taken pains to counteract the impression that states enjoy an entirely free hand to decide whether, when and how to give effect to economic and social rights. In its third General Comment in 1990, the Committee noted that social and economic rights give rise to two immediate ‘obligations of conduct’.<sup>122</sup> First, states are obligated to ensure that social and economic rights are exercised without discrimination.<sup>123</sup> Second, they must take steps to implement these rights “by all appropriate means”, including not only the adoption of legislation giving effect to such rights but also by guaranteeing their justiciability through the provision of effective domestic remedies when they are violated.<sup>124</sup> The Committee went further to identify a number of obligations ‘of result’ related to the performance of states in promoting social and economic rights. These include moving as quickly as possible toward the fulfillment of such rights, refraining from any deliberately retrogressive measures that undermine their achievement, providing “minimum essential levels” of observance of these rights under all circumstances, and affording vulnerable members of society special protection “even in times of severe resources constraints”.<sup>125</sup>

The right to security of tenure – as a component of the right to adequate housing – must be understood in this context. As a ‘positive’ economic/social right, the right to tenure security entails a number of obligations. Perhaps most important, enjoyment of the right to tenure security may not be made subject to any form of discrimination.<sup>126</sup> This point is underscored by the fact that discrimination in regard to housing rights is forbidden by two other global human rights treaties, namely the Convention on the Elimination of Racial Discrimination

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<sup>121</sup> ICESCR, Article 2 (1).

<sup>122</sup> UN CESCR, General Comment 3 (1990).

<sup>123</sup> UN CESCR, General Comment 3, paragraph 1.

<sup>124</sup> UN CESCR, General Comment 3, paragraph 5. The Committee also noted that further administrative, financial, educational or social measures may be necessary in any given case. *Id.*, paragraph 7.

<sup>125</sup> UN CESCR, General Comment 3, paragraphs 9-12.

<sup>126</sup> UN CESCR, General Comment 4, paragraph 6.

(CERD) and the Convention on the Elimination of All Discrimination Against Women (CEDAW).<sup>127</sup>

A second immediate obligation of states in regard to the right to housing is the duty to “take immediate measures” to confer legal tenure security to persons and households lacking it.<sup>128</sup> Examples of such measures include introducing legal protections against arbitrary, or ‘forced’ evictions, discussed further below. Notably, this protection is not limited to homes held in formal ownership or leasehold. The right to security of tenure extends to a broad spectrum of tenure forms including “rental (public and private) accommodation, cooperative housing, lease, owner-occupation, emergency housing and informal settlements, including occupation of land or property.”<sup>129</sup> Although the right to adequate housing does not explicitly include land, an increasing number of commentators concur that secure tenure to land should properly be seen as a precondition for the meaningful exercise of both the right to housing and the right to food.<sup>130</sup>

A further duty under the right to adequate housing is the obligation to abstain from other negative practices such as arbitrarily obstructing under-housed groups from engaging in ‘self-help’, or initiatives to organize and manage their own housing.<sup>131</sup> More broadly, states should adopt housing policies based on consultation with marginalized groups that emphasize not only tenure security but also achievement of the other factors related to adequacy of housing, such as affordability and habitability.<sup>132</sup> In doing so, they should consistently give “particular consideration” to the needs of social groups living in unfavorable conditions.<sup>133</sup> As in the progressive implementation of all other social and

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<sup>127</sup> The CERD requires states-parties to “undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of ... economic, social and cultural rights, in particular ... the right to housing” at Article 5 (e) (iii). The CEDAW requires states to guarantee women “equal rights to conclude contracts and to administer property” (Article 15 (2)), as well as to respect the equal right of rural women to “enjoy adequate living conditions, particularly in relation to housing, sanitation, electricity and water supply, transport and communications” (Article 14 (2) (h)).

<sup>128</sup> UN CESCR, General Comment 4, paragraph 8 (a). Such steps should be based on genuine consultation with affected persons and households. *Id.*

<sup>129</sup> UN CESCR, General Comment 4, paragraph 8 (a).

<sup>130</sup> The current UN Special Rapporteur on the Right to Food, Olivier De Schutter, has frequently asserted this link. See, UN General Assembly, Report of the Special Rapporteur on the Right to Food, UN Doc. A/65/281 (11 August 2010). The UN CESCR recognized this link early on in its first General Comment on the right to adequate housing. UN CESCR, General Comment 4, paragraph 8(e).

<sup>131</sup> UN CESCR, General Comment 4, paragraph 10.

<sup>132</sup> UN CESCR, General Comment 4, paragraph 12.

<sup>133</sup> UN CESCR, General Comment 4, paragraph 11.

economic rights, states are required to request international cooperation and assistance in cases in which the cost of fulfilling the right to adequate housing is beyond their maximum resources.<sup>134</sup>

The right to tenure security is somewhat unusual among social/economic rights in the sense that in addition to the positive rights aspects listed above, it also has the characteristics of a negative, civil/political right. While the UN CESCR has clearly identified what states *should do*, in the form of legal guarantees to provide security of tenure, it has also identified what they *must refrain from doing*, in the form of carrying out ‘forced evictions’ in violation of such guarantees. Forced evictions were described as “incompatible with the requirements of the Covenant” in 1991,<sup>135</sup> and defined in a separate General Comment six years later:

The term ‘forced evictions’ ... is defined as the permanent or temporary removal against their wills of individuals, families, and/or communities from the homes and/or land which they occupy, without the provision of, and access to, appropriate forms of legal or other protection.<sup>136</sup>

Forced evictions are, as such, a violation of the right to legal security of tenure. Where forced evictions take place, it is presumably either because the state has failed in its positive obligation to adopt legal measures guaranteeing tenure security or because such measures have not been respected or properly applied. However, in cases where the positive right to tenure security is also understood in terms of its negative corollary – the right to be free from forced evictions – this can allow for a legal analysis of state actions similar to that applied in cases of alleged violations of civil and political rights.<sup>137</sup> Most important, the “proportionality analysis” typically used to identify violations of civil and political rights can be applied. Accordingly, where evictions take place in a manner that interferes with the right to security of tenure, they must be found to be violations of this right if they either (1) were not ‘lawful’ in the sense of being permissible under domestic law; (2) were not necessary to the achievement of an important public purpose; or (3) were not undertaken in a ‘proportional’ manner, or one that strikes a fair balance between the burden such measures place on individual rights-holders and the benefit they provide to the broader public interest.<sup>138</sup>

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<sup>134</sup> UN CESCR, General Comment 4, paragraph 10. Article 2 (1) of the ICESCR requires states to “take steps, individually and through international assistance and co-operation” to achieve the fulfillment of social and economic rights. *See also*, UN CESCR, General Comment 2 (1990).

<sup>135</sup> UN CESCR, General Comment 4, paragraph 18.

<sup>136</sup> UN CESCR, General Comment 7 (1997), paragraph 3.

<sup>137</sup> The Committee points out that the right to be free from forced evictions is similar in practice to an established civil/political right, namely the right under Article 17 (1) of the International Covenant on Civil and Political Rights to be protected against arbitrary interference with the home. UN CESCR, General Comment 7, paragraph 8.

<sup>138</sup> UN CESCR, General Comment 7, paragraph 14.

In practice, meeting these requirements involves adopting a number of concrete procedural protective measures such as the following:<sup>139</sup>

- Evictions and resettlement of communities should only be undertaken where necessary in order to achieve an important public purpose and as a last resort after all other reasonable means of achieving this purpose have been ruled out.
- Communities affected by evictions should be consulted in advance with the aim of not only securing their informed consent but, where possible, their active participation in developing and implementing a sustainable resettlement plan.
- Prior notice must be given of all planned evictions, which should not be scheduled until such time as all preparations have been made for the resettlement process, and any relocation site is fully habitable.
- Persons affected by evictions should have access to complaints mechanisms and effective legal remedies.
- Evictions may not be undertaken in a manner involving arbitrary or excessive use of force nor under conditions that jeopardize the life or health of affected persons.

These protections should be applied in virtually all settings involving evictions in order to safeguard the ‘negative’ aspect of the right to secure tenure. As such, they contrast strongly with the discretion governments enjoy in identifying measures to fulfill the ‘positive rights’ aspects of tenure security, which can vary greatly depending on policy and contextual factors.

From the moment of displacement, shelter is one of the most accepted and integral parts of the basic ‘package’ of humanitarian services intended to alleviate the suffering of both IDPs and refugees.<sup>140</sup> However, as humanitarian agencies have adopted an increasingly rights-based approach, aid such as shelter has increasingly been provided on the basis of human rights rules, as well as humanitarian law and practice.<sup>141</sup> An antecedent to this approach can be found in the Guiding Principles on Internal Displacement, which not only reprise the standard formulation of states’ obligation to facilitate humanitarian assistance in Principle 25

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<sup>139</sup> UN CESCR, General Comment 7, paragraphs 11-15. *See also*, UN High Commissioner on Human Rights, “Basic Principles and Guidelines on Development-based Evictions and Displacement: Annex 1 of the report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living”, UN Doc.A/HRC/4/18.

<sup>140</sup> The other core components of humanitarian aid are generally considered to be food and non-food items, water and sanitation and essential medical services. Other services such as education, training and legal advice are increasingly prominent in aid provision.

<sup>141</sup> This trend is perhaps best reflected in the Sphere Project handbook on humanitarian response, which explicitly grounds its recommendations on shelter and settlements in the requirements of the right to adequate housing. The Sphere Project, *Humanitarian Charter and Minimum Standards in Humanitarian Response* (Sphere Standards) (2011), 243.



but also imply an individual right to such assistance by associating its basic elements – including “basic shelter and housing” – with the right to adequate housing in Principle 18.<sup>142</sup>

In traditional humanitarian terms, shelter involves explicitly temporary measures meant to address immediate needs. In the past, humanitarian actors have tended to avoid either planning for the contingency that ad hoc shelter solutions might become permanent or actively considering the role of such shelter in the attainment of durable solutions. However, given that social and economic rights such as adequate housing are to be fulfilled progressively through continuous steps, the nature of their relationship with a presumptively temporary model of humanitarian shelter is not always self-evident in practice. In setting out practical steps regarding shelter, humanitarian guidelines such as the Sphere Standards must be cognizant of the fact that humanitarian settlements may experience a number of fates, varying from discontinuation to movement to different locations and upgrading. The resulting recommendations tend to favor progressive steps to improve adequacy in a manner that encourages household self-help:

As initial shelter responses typically provide only a minimum level of enclosed space and material assistance, affected populations will need to seek alternative means of increasing the extent or quality of the enclosed space provided. The form of construction and the materials used should enable individual households to maintain and incrementally adapt or upgrade the shelter to meet their longer-term needs using locally available tools and materials....<sup>143</sup>

Ultimately, the dilemma involved in adopting a human rights-based approach to humanitarian shelter issues is that this requires humanitarian actors to provide such shelter virtually from the outset of a displacement crisis in a manner meant to facilitate eventual durable solutions. However, although information on likely durable solutions is likely to be speculative and incomplete at such an early stage, this may not matter. As noted in the 2008 IDP Manual, the only housing solutions that shelter actors directly control and enjoy responsibility for are those capable of being implemented locally at the site of displacement:

...the competent authorities in displacement settings should strive to meet relevant minimum standards (in the form of national safety or habitability rules and international guidelines), both by continually seeking to provide better housing alternatives and by following timelines for improving, upgrading, or replacing the least adequate forms of shelter occupied by IDPs. In all situations, IDPs should be afforded maximum choice in terms of both the types of shelter options available to them and their location.... Wherever possible, competent

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<sup>142</sup> This linkage between humanitarian shelter and the right to adequate housing in responding to the needs of IDPs is elaborated on in further guidance on applying the Guiding Principles. See, e.g., Global Protection Cluster Working Group (GPCWG), *Handbook for the Protection of Internally Displaced Persons* (IDP Handbook) (March 2010), 235.

<sup>143</sup> Sphere Standards, 264.

authorities should support and facilitate ‘self-help’ by IDPs willing and able to take steps to house themselves.<sup>144</sup>

As the repeated emphasis on self-help implies, decisions by displaced persons to invest in the improvement of their shelter during displacement may include a tacit recognition of the possibility of local integration (rather than return) as a durable solution. However this relationship remains ambiguous due to the nature of local integration itself, which “differs from return and settlement elsewhere in that it does not always involve physical movement and IDPs may not always make a conscious choice to integrate locally at a certain point in time.”<sup>145</sup> It is important to recall that tenure security is typically a precondition for households’ willingness to engage in voluntary self-help housing improvement, but that it does not amount to local integration on its own.

In internal displacement settings, tenure security and adequate housing are necessary, but not sufficient preconditions for the achievement of durable solutions.<sup>146</sup> Even in refugee situations where host states have been acknowledged as enjoying sovereign control over whether to permit local integration, blanket denial of security of tenure to refugees as a means of discouraging local integration would be virtually impossible to square with contemporary understandings of the right to adequate housing and non-discrimination.

In many cases, the vulnerability and uncertain prospects of protracted refugees and IDPs may militate against tenure security solutions involving the immediate transfer of ownership rights. Although such rights should not be denied to displaced persons and the purchase of property should be available to displaced persons with the means, the use of ‘incremental tenure’ approaches in displacement can provide IDPs with “legal rights to the housing they are allocated that serve to protect them from forced evictions at all times and that become stronger with length of residence, affording IDPs in protracted displacement situations with the possibility to seek full ownership.”<sup>147</sup>

Incremental tenure solutions may bring additional advantages as a means of securing tenure in protracted displacement settings. For instance, solutions that do not immediately transfer full ownership may help to reassure donors or taxpayers asked to foot the bill for meeting the long-term housing needs of displaced persons without a guarantee that this investment alone will be sufficient to bring about a durable solution to their displacement. As described in a recent report on protracted displacement in Serbia, for instance, donor funding is being sought for permanent housing solutions for IDPs from Kosovo in a context where the

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<sup>144</sup> Brookings-Bern Project on Internal Displacement, IDP Manual, 130.

<sup>145</sup> Brookings Institution, IDMC and NRC, “IDPs in protracted displacement: Is local integration a solution? Report from the Second Expert Seminar on Protracted Internal Displacement” (May 2011), 6.

<sup>146</sup> Non-discriminatory access to an adequate standard of living (including housing) is only one of four criteria for the achievement of durable solutions applicable in all situations (a further four are to be applied depending on context). Framework on Durable Solutions for IDPs, Section V.

<sup>147</sup> Brookings-Bern Project on Internal Displacement, IDP Manual, 141-2.

Government of Serbia has yet to embrace local integration as a durable (as opposed to merely 'interim') solution.

...facilitating meaningful integration requires more than merely renouncing restrictions that prevent IDPs from exercising their rights. Rather, interim integration measures may have significant costs and consequences. In Serbia, the most effective means of 'improving living conditions' [for IDPs] has proven to be subsidised access to housing. Although such an approach promises to be both sustainable and cost-effective in comparison to the administration of collective centres, it was developed as a means of providing permanent durable solutions for refugees and is no less expensive when applied as an 'interim' measure for IDPs.<sup>148</sup>

Such concerns may be heightened when, as in the case of Serbian IDPs from Kosovo, the possibility of restitution or compensation for lost properties exists but the extent to which such remedies will be fully implemented remains unclear. Simply put, if long-term humanitarian shelter needs are best met by providing permanent housing solutions, should displaced beneficiaries be required to pay for these solutions in the case that their former assets are restored to them directly or through compensation? Incremental tenure approaches may ease such concerns by providing security of tenure without actual ownership at first, while holding the possibility of transfer of ownership open for later stages when it may have become more evident whether displaced persons are likely to receive remedies for lost assets and which durable solutions are likely to be feasible and preferred by displaced beneficiaries of housing assistance.

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<sup>148</sup> Williams, "Protracted Internal Displacement in Serbia", 99.

## **Section 2: Assessment Report of the specific housing, land and property issues affecting various categories of displaced persons countrywide**

This part of the report distinguishes between three key categories of displaced persons in Libya. These comprise:

1. “Targeted” internally displaced persons (IDPs) located outside of their places of 2011 residence and unable to return due to resistance from the communities at their place of origin;
2. “Non-targeted” IDPs located within their place of 2011 residence and unable to return due to conflict-related destruction; and
3. Refugees and other non-citizens that have been evicted or face the risk of eviction from their homes.

While both of the first two categories involve internal displacement, the first and much larger group can be considered to be in a state of *protracted* internal displacement. Unlike the second group, which faces only temporary, technical obstacles to return related to the reconstruction of their homes, the “targeted” IDPs were often expelled from their homes on the basis of their tribal or ethnic identity and face sustained and intense hostility from neighboring communities at their place of origin that indefinitely rule out the possibility of return in safety and dignity.

This state of affairs exacerbates the housing, land and property issues faced by these protracted IDPs both at their place of origin and where they find themselves displaced. At the place of origin, the legitimacy of the rights of the first category of IDPs to property left behind is more likely to be questioned as part of a broader strategy to block their return. Meanwhile, at the site of displacement, the longer-term and open-ended nature of protracted IDPs’ occupancy of both private and collective shelter leaves them both in need of more adequate and potentially permanent alternative housing, but also at greater risk of forced evictions.

Meanwhile, the key issue for the third category addressed in this section – refugees and other non-citizens of concern to UNHCR – is the adequacy of their housing conditions, and particular their security of tenure in Libya, where they are displaced or currently located (the question of claims they may have to property in their country of origin is beyond the scope of this report).

### **2.A “Targeted” IDPs located outside of their area of 2011 residence and unable to return due to local resistance**

The communities in this first category of IDPs (those unable to return due to hostility from their former neighbors) represent both the numerically largest categories of displaced persons in Libya and those that are most severely at risk. Although none of the groups

addressed in this report is likely to have been displaced for more than a year (e.g. since the February 17 revolt began to take on the character of an armed conflict in the late Spring and Summer of 2011), many of them can nevertheless be said to be in a state of *protracted internal displacement* based on the current lack of realistic prospects for them to seek voluntary durable solutions that include return in safety and dignity, as well as the risk of impoverishment, political disenfranchisement and dependence that accompany this status. In referring to this category of IDPs as ‘targeted’, this report adopts the terminology used by the UN Commission of Inquiry in its March 2012 report (which covers the displaced groups described in this section as well as some others not subjected to significant levels of ongoing displacement).<sup>149</sup>

### **Protracted internal displacement**

In a 2007 expert seminar, participants agreed on a definition of ‘protracted internal displacement’ that focused neither on the size of the affected population or the duration of their displacement, but rather on the following two criteria:

- the process for finding durable solutions is stalled, and/or
- IDPs are marginalized as a consequence of violations or a lack of protection of human rights, including economic, social and cultural rights.<sup>150</sup>

In most cases, targeted IDPs consist of members of tribes and ethnic minority groups that have either clashed with their neighbors, or are collectively suspected of being Gaddafi regime loyalists. In some cases, both of these characteristics apply, leaving them exposed to ongoing suspicion and attacks months after the end of large-scale hostilities in Libya. The highly politicized and violent nature of the 2011 uprising intensified many regional and tribal rivalries that had already been inflamed by Gaddafi-era patronage policies. Although these local conflicts did not always result in mass displacement, they have spawned periodic, low intensity conflicts that continue to destabilize Libya even after the July 2012 elections.<sup>151</sup>

In this context, individuals or families that left areas they had previously migrated to and re-joined the safety of home communities or tribes, have seen their loyalty to the areas they had left behind subjected to question. For many communities that were seen to actively support Gaddafi’s forces, the punishment has been expulsion from their homes. Such expulsions may not only be seen as an act of retribution but also the righting of a historical wrong in cases in which the group’s presence in a particular area was seen as a product of the policies of the

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<sup>149</sup> See, UN Commission of Inquiry, “Report of the International Commission of Inquiry on Libya”, UN Doc. A/HRC/19/68 (2 March 2012).

<sup>150</sup> United Nations High Commissioner for Refugees and The Brookings-Bern Project on Internal Displacement, “Expert Seminar on Protracted IDP Situations” (2007), 2. More information on protracted internal displacement is available at: <http://internal-displacement.org/thematics/durable-solutions>.

<sup>151</sup> ICG 2012, 24-7.

Gaddafi regime. In such circumstances, the permanent removal of such populations may be seen as restoring the rightful situation that prevailed prior to the beginning of a wrongful dictatorship (in much the same manner as calls for property restitution).

Despite the fact that international and national actors have condemned acts of mass displacement and denial of return as human rights violations, the possibility of further explosions remains a very real risk in areas of the country where lethal tribal tensions persist and government capacity to contain them remains weak. For some observers, for instance, pre-election violence between the Zintani and Mashashya tribes in the Nafusa mountains were understood as a push by the former to drive the remnants of the latter out of the area entirely (see Part 2.A.ii, below). Meanwhile, a recent journalistic portrayal of the conflict in Kufra between the Arab Zuway and non-Arab Toubou tribes showed how close this narrative remains to the surface in the deep south of the country:

“We have a tradition of welcoming our guests,” said the Zuwayy’s tribal sheikh, Mohammed Suleiman, in less than welcoming tones, once we had found his mansion. “But we’re cursing this government for abandoning us to the Africans.” A room full of sixty tribesmen echoed his rebuke; since the revolution, members of the Toubou tribe had swarmed into the town and were threatening to wrest control of the oil fields nearby, he said. For the sheikh, the only solution was to expel them.<sup>152</sup>

The key feature distinguishing “targeted” IDPs, in other words, is the local resistance of communities at their place of origin to their return. This is not to say that this resistance is always absolute and monolithic. However, while some targeted groups have succeeded in initiating negotiations on return or have even returned in significant numbers, others continue to be actively pursued and attacked by communities from their area of origin that have publicly rejected their return. In the face of such circumstances, there are a limited number of options available to the worst affected displaced communities. While the ongoing displacement of such communities involves violations of core Libyan human rights commitments, the central state has demonstrated little capacity to control the actions of the perpetrators, who are not only heavily armed, but who also come from cities like Misrata and Zintan that led the struggle against Gaddafi and have played a particularly influential role in the transitional period as a result.

In light of these factors, the ideal scenario would be the clear assumption by the post-election national authorities in Libya of responsibility for fulfilling their human rights obligations, including steps to ensure protection and assistance for IDPs throughout the country and ensure voluntary durable solutions. In light of the relatively weak mandate and low capacity of the earlier interim government, it was disappointing but unsurprising that less appears to have been done in the transitional period to end displacement than to protect parties that may have caused it (see parts 1.B.ii and iii, above). However, while the incoming

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<sup>152</sup> Nicolas Pelham, “Is Libya Cracking Up?”, *The New York Review of Books* (21 June 2012), available at: <http://www.nybooks.com/articles/archives/2012/jun/21/libya-cracking/?pagination=false>.

government will enjoy a far stronger legitimacy as a result of having been elected, it remains unclear how much priority and resources they will devote to the resolution of displacement problems in the post-election period. The general lack of discussion of human rights abuses such as torture and illegal detention as well as displacement during the recent election campaign does not bode well for the future.<sup>153</sup> While the international obligations on Libya in this area are relatively clear, in other words, the political groundwork necessary for an effective response to displacement and other human rights abuses on the part of anti-Gaddafi revolutionary forces has yet to begin.

In the case that displacement cannot be made to feature more prominently on the post-election political agenda, “targeted” IDP groups will be left to the same strategies they have used up until the elections, namely seeking whatever support and leverage they can find in negotiating their way back to their former homes in mediated talks with the groups that expelled them and often openly oppose their return.<sup>154</sup> In either scenario, the issue of restoration of the property left behind by targeted IDPs will be complicated and potentially contentious.<sup>155</sup> Even in the best case scenario, with the government taking full responsibility “to establish conditions, as well as provide the means” for voluntary return in safety and dignity (in accordance with the Guiding Principles on Internal Displacement and Libya’s international obligations),<sup>156</sup> the immediate political space to take the corresponding step of assisting IDPs “to recover, to the extent possible, their property and possessions which they left behind or were dispossessed of upon their displacement” may be limited.<sup>157</sup>

This is particularly the case for individual IDPs, as well as entire communities, that currently derive their rights to homes and lands from Gaddafi-era legal acts. For individual targeted IDPs, and particularly those from the city of Misrata (see below, Part 2.A.i), a significant number of people who acquired homes that had changed hands earlier due to confiscations in accordance with Gaddafi’s Law No. 4 may now find their rights to such properties open to question (and may even face directly competing claims from historical owners). Meanwhile, several of the targeted communities discussed here derived land rights in the areas they

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<sup>153</sup> Human Rights Watch, “Libya: Candidates Should Address Torture, Illegal Detention” (18 June 2012), available at: <http://www.hrw.org/news/2012/06/18/libya-candidates-should-address-torture-illegal-detention>.

<sup>154</sup> IDPs are frequently assisted in these efforts by informal local and regional ‘reconciliation committees’ that include representatives of powerful tribes. To date, these committees have frequently played a role in achieving ceasefires in cases of actual armed violence, and have also occasionally facilitated the actual return of displaced groups, such as the Siaan in the Nafusa Mountains (see below, Part 2.A.ii).

<sup>155</sup> Even in the case of ongoing communal tensions and conflicts in Libya that have not resulted in large-scale displacement, land and property issues frequently feature as root causes that have yet to be addressed. ICG 2012, 29.

<sup>156</sup> Guiding Principles on Internal Displacement, Principle 28.1. See Part 1.C.ii, above.

<sup>157</sup> Guiding Principles on Internal Displacement, Principle 29.2.

were displaced from through acts by the Gaddafi regime. For instance while the rights of Tawerghans to the town of Tawergha and surrounding agricultural lands were expanded and strengthened by the Gaddafi regime, the rights of the Mashashya tribe to towns in the Nafusa mountains such as Al Awinya were essentially granted outright – and over the protest of the neighboring communities – by the regime.

In both individual and community cases, the ability of targeted IDPs to legally return to homes and lands that they may have ‘owned’ until 2011 under the then-prevailing law is likely to be contingent on the far broader and highly contentious issue of what the post-Gaddafi authorities should do about Gaddafi-era confiscations more generally (see above, Part 1.B.i). So far, there has been relatively little serious discussion of these issues simply because the risk of physical attacks on returnees alone has been sufficient to prevent significant return or restitution.

However, if legal measures to restore the homes of the displaced begin to be discussed seriously, these questions may emerge to constitute a significant barrier to return. In addition, the fact that this question is likely to be addressed as part of a broader legislative response to Gaddafi’s confiscations raises concerns. It is not clear that such a process, even by a democratically elected legislative body, will be capable of fully taking into account the legal rights of politically disgraced and potentially disenfranchised IDP populations. Indeed, the more the outcome of such a process is consistent with revolutionary principles (in terms of systematically revoking Gaddafi-era legal acts), the greater a threat it will represent to the ability of IDPs to achieve voluntary durable solutions.

Numerous other legal issues will remain to be clarified in the context of any official commitment to return and restitution. For instance, in the case of displaced Misratans, the question of what remedy should be available for former tenants, who only had rental rights to their homes, must be considered. Another issue that may arise in the context of restitution is the extent to which unaccompanied female heads of households (including those whose husbands have disappeared or been killed) are able to access effective remedies on a basis of equality with men.

A further latent property issue is the integrity of records and documentation, with public records in some cases (for instance the registry for Tawergha) remaining under the physical control of communities that initiated the expulsions of IDPs. However, the most fundamental issue, both now and in the case of an official return and restitution program is the physical security of IDPs and their ability to safely dispose over property that is returned to them. The willingness of individuals within communities opposed to return to use violence and intimidation to prevent it can be expected to continue as long as there is any prospect that it will be effective. In case a restitution program is agreed and implemented, such violence must be anticipated and prevented. This underscores the importance of seeking a solution that is not solely supported by the central authorities but rather where local communities have publicly accepted the necessity of respecting IDPs’ human rights.

In addition to the numerous issues related to property left behind by expelled IDPs, many housing and land problems remain unresolved in the locations where targeted IDPs have



found shelter. As described below, these shelter solutions vary considerably, with Misratans tending to be dispersed to family homes or tribal villages in western Libya, Tawerghans frequently occupying camps in a chain of displacement sites from Tripoli in the west to Benghazi in the east, and IDPs from the Nafusa mountains more likely to be residing with family members around Tripoli. In all cases, the longer-term and open-ended nature of protracted IDPs' occupancy of both private and collective shelter leaves them both in need of more adequate and potentially permanent alternative housing, but also in a situation of tenure insecurity and at greater risk of forced evictions.

The issue of housing, land and property rights in shelter settings while displaced is a complicated one. On one hand, targeted IDPs tend to insist that they wish to return as soon as possible to their original homes, and view return as an overriding concern that overshadows ostensibly temporary questions related to adequacy of their current shelter conditions. On the other hand, given the levels of resistance on the part of some communities at IDPs' places of origin, return in safety and dignity is not likely to be a realistic possibility for some time to come. As a result, it is important to plan for relatively prolonged stays in temporary and transitional shelter by targeted IDP communities, raising many of the possibilities and dilemmas discussed in Part 1.C.iii (on tenure security), above. For the Libyan post-election authorities, it will be crucial to acknowledge not only the right of IDPs to voluntarily return in safety and dignity, but also their right to choose to locally integrate where they find themselves displaced or to resettle anywhere else in the country.<sup>158</sup>

Although the respective Local Councils have generally approved the use of IDP camps in their area and even referred IDPs to them, they have not specified the terms of such use, nor sought agreements with others with legal interests in the sites in order to ensure their involvement and consent regarding the current use of the properties (see above, Part 1.B.ii). This has left the occupants of camps without legal security of tenure, impairing their ability to plan for the immediate future or, in many cases, engage in basic improvements of their shelter environment. For targeted groups most at risk, such as the Tawerghans, these concerns are currently overshadowed by more basic questions related to armed incursions into camps, arbitrary arrests and safe access to local public facilities (such as health clinics or schools) and services (such as banks). However, Tawerghans are also currently facing the necessity of resettlement from several camps due to the planned resumption of their original uses or tensions with the local community.

Nevertheless, some camps have been considerably improved, not only through NGO donations but also through the sweat equity of residents themselves, who have refurbished, built and maintained not only housing and common facilities but also health clinics and schools. Some of the communities interviewed for this report took visible pride in showing parts of their camps that remained in the uninhabitable, looted state they had found them in, and contrasting them with tidy residential and school facilities they had helped to create.<sup>159</sup>

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<sup>158</sup> Guiding Principles on Internal Displacement, Principle 28.1. See discussion of the right to freedom of movement and choice of residence in Parts 1.C.i and ii, above.

<sup>159</sup> Interview, Tawerghan IDPs, Tripoli (26 March 2012).

Such self-help activities manifest a clear sense of subjective tenure security and the fact that they are allowed to take place may reflect some degree of implicit local understanding that some segments of the IDP population may choose not to return. However, until these understandings are backed up by a government policy on internal displacement that includes steps to secure tenure security to IDPs and facilitate voluntary local integration, the expectations raised by permissive approaches to self-help refurbishment now may be dashed later when legal owners reassert their interests.

For IDPs in abandoned construction sites, there is an assumption that relocation will be necessary if and when foreign companies return to complete their contracts. For those in public buildings, more immediate pressure to vacate often results from the fact that such facilities could rapidly be returned to their prior use. Perhaps of most concern is the sense of an assumption underlying both scenarios that all IDPs will eventually move on from places of current shelter, either through return or 'resettlement by the Government.' No one is planning for the likely scenario that a significant proportion of IDPs may either opt for local integration or begin locally integrating by default.

Beyond the camps, many IDPs are thought to be living in private accommodation, either with family or friends or in private rental situations. For instance, a large majority of the IDPs now residing in the capital, Tripoli, are believed to be outside camps. While little is currently known about the level of tenure security enjoyed by such IDPs, experience from other settings gives rise to concern over the longer term. Unless IDPs in private accommodation are able to meaningfully integrate, and particularly to access employment, they are likely to expend whatever goodwill and resources they currently enjoy, and find themselves facing eviction from their current accommodations without a clear fallback option. At the same time, recent research by UNHCR in Libya indicates that IDPs in private urban accommodation "feel better protected" and enjoy better access to social services.

As in other protracted displacement settings, promotion of interim local integration is likely to help IDPs to increase their resilience, preserve their economic self-sufficiency and ultimately retain the capacity to sustainably return when the opportunity arises and they so choose. Key steps toward such integration include ensuring tenure security in viable camp situations, as well as seeking means of profiling and providing effective support to IDPs in private housing.

### **2.A.i Targeted IDPs from Tawergha and Misrata**

Misrata, Libya's third-largest city, remained in opposition hands throughout the 2011 conflict despite a sustained siege and indiscriminate shelling by Gaddafi's forces. Many of the neighborhoods of Misrata were periodically frontline areas, and while many civilians stayed and braved the fighting, thousands of others fled to other areas of Libya, and often back to towns or villages where they still had family or tribal ties. Located about 40 kilometers south of Misrata, the town of Tawergha became one of the staging points from which the assault on Misrata was launched. Tawergha is inhabited largely by a visible minority composed of the descendants of slaves brought to the area by Misratan traders before the Italian colonial period. Although they have traditionally lived in the coastal area around Misrata, the

Tawerghans were favored by Gaddafi, who created a new town called Tawergha and encouraged them to settle there.<sup>160</sup> Tawerghans also enjoyed generous access to public sector jobs, and many were part of the military units that besieged Misrata and are thought to have committed atrocities against civilians there.

By mid-August of 2011, Misratan revolutionary brigades (*thuwar*) had broken the siege and began a two-day assault on Tawergha that resulted in the flight of virtually all its 30,000 residents.<sup>161</sup> Columns of Tawerghan IDPs were pursued by the Misratan brigades via Jufra to Benghazi in the East and to Tripoli and Tarhouna in the West. Attacks by Misratan brigades have continued to date, including the arrest of Tawerghan men at check points and violent raids on IDP camps, in which men have been arrested and taken away and bystanders or protesters have occasionally been shot and killed. Following a particularly severe incident involving the death of seven Tawerghans (including three minors) in Tripoli in February 2012, significant movements of IDPs were reported to safer areas around Bani Walid and Benghazi.<sup>162</sup> Many Tawerghans remain in jeopardy despite mounting international criticism of the failure to protect them and facilitate an end to their displacement.<sup>163</sup> However, the Misratan authorities have responded by denying allegations of torture and illegal arrests of Tawerghans and insisting that their permanent resettlement, rather than return, is the only possible solution:

As coexistence between the two areas is impossible at the current time, we believe it is necessary to search for alternative solutions that will be appropriate and acceptable to the people of Tawergha. This is an appeal to the government and all citizens to solve this problem on the national level.<sup>164</sup>

Resistance to return is frequently linked with one of the most damaging charges laid against the Tawerghans, namely allegations that they participated in a systematic policy by Gaddafi forces of raping civilians captured during the siege of Misrata. The crime of rape raises particularly sensitive issues in Libyan culture. This fact, as acknowledged by the UN Commission of Inquiry, has complicated the ability of outside observers to verify the existence of such a policy.<sup>165</sup> Meanwhile, the Misratan authorities imply that the exile of the

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<sup>160</sup> ICG 2012, 3.

<sup>161</sup> UN Commission of Inquiry, "Full Report", paragraphs 394-6.

<sup>162</sup> UN Commission of Inquiry, "Full Report", paragraphs 419-22.

<sup>163</sup> Amnesty International, "Libya: 'We are not safe anywhere': Tawarghas in Libya" (08 June 2012), available at: <http://www.amnesty.org/en/library/info/MDE19/007/2012/en>.

<sup>164</sup> Human Rights Watch, "Misrata Local Council Response to Human Rights Watch" (11 April 2012), available at: <http://www.hrw.org/news/2012/04/11/misrata-local-council-response-human-rights-watch>

<sup>165</sup> UN Commission of Inquiry, "Full Report", paragraph 536: "The Commission did not find documented evidence to substantiate claims of widespread sexual violence or a systematic attack or overall policy against a civilian population such as to amount to crimes against humanity. The

Tawerghans is effectively self-imposed and therefore beyond their control to affect. For example, one civil servant interviewed in Misrata said that all Tawerghans had voluntarily left with Gaddafi's armies. He stated that if families wish to return to Tawergha, they would have no problem with Misratans generally but could not be protected from the families they had molested.<sup>166</sup> The implications that Tawerghans voluntarily fled because they knew their crimes were unforgivable – and that they cannot return because they cannot be forgiven – were also reflected in the Misrata Local Council's official response to allegations of human rights violations by Human Rights Watch:

Regarding Tawergha, we note that the people of Misrata and the revolutionaries of Misrata did not forcibly displace the people of Tawergha. Rather, they fled with brigades after their defeat. ... When the Misrata revolutionaries entered Tawergha, they found a few elderly people, children, and women – no more than 80 people – who were treated well and were provided with transportation, based on their request, to join their relatives in various cities. During these days, there was no attack on the property of the residents of Tawergha or their homes. What was done by unknown persons were individual acts that cannot be attributed to a particular body or specific persons. These assaults occurred after voices were raised and pressure increased on the people of Misrata to permit the people of Tawergha to return to their homes.<sup>167</sup>

However, these descriptions do not comport well with the March 2012 findings of the UN Commission of Inquiry, which records not only a concerted attack on the town of Tawergha but also the systematic destruction of their property by Misratan brigades in an apparent attempt to prevent all possibility of return:

In the months after Tawergha was emptied of its population, houses and public buildings continue to be looted, shot at, and burnt by the Misratan *thuwar*. According to an analysis of UNOSAT satellite imagery, 49 structures were destroyed or damaged in Tawergha between 12 June 2011 and 20 August 2011, including multiple buildings that were destroyed and showing indications of fire. Between 20 August 2011 and 24 November 2011, while the town was empty, an additional 27 buildings were destroyed or damaged, all likely residential and commercial structures. On 24 November 2011 imagery, a relatively large smoke plume from a fire is visible in central Tawergha.

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Commission recognizes that there is under reporting of rape due to the factors already mentioned, and that there is sufficient information received to justify further investigation to ascertain the extent of sexual violence in Libya.”

<sup>166</sup> Interview, Misrata Local Council civil servants, Misrata, 02 April 2012.

<sup>167</sup> Human Rights Watch, “Misrata Local Council Response to Human Rights Watch” (11 April 2012), available at: <http://www.hrw.org/news/2012/04/11/misrata-local-council-response-human-rights-watch>.

The Commission visited the roads bordering Tawergha on 21 January 2012 and found that all the roads into the town had been blocked by mounds of sand. There were bulldozer tracks leading to each mound. Investigators observed houses being set alight in the town and the sounds of active shooting. They were informed by members of the Misrata *thuwar* that buildings in the town were being used for target practice. The Commission observed that each building appeared to have been struck by multiple weapons. In some cases, buildings appeared to have been deliberately bulldozed. The Commission observed that, while some buildings were totally destroyed, all were uninhabitable with many now structurally unsound.

The Commission notes that the Independent Civil Society Fact-Finding Mission was in Tawergha on 21 November 2011 and stated in its report that “a number of apartment buildings and houses in separate compounds throughout the town began to burn. It was apparent that these fires were intentional, and there was a strong smell of petrol in the air”. According to Human Rights Watch, its investigators were present in Tawergha from 3 to 5 October 2011 and witnessed “militias and individuals from Misrata set 12 houses aflame”. Human Rights Watch investigators also were said to have observed “trucks full of furniture and carpets, apparently looted from homes” being driven out of Tawergha.<sup>168</sup>

Despite the evidence of extensive looting and destruction of private property, there are few signs as yet that homes and land in Tawergha are being occupied and used. Although the Gaddafi-era expansion of Tawergha may have caused some Arab displacement, and land disputes with Misrata appear to exist, there are few signs of an attempt to actually confiscate property to date. For instance, ostensible renaming of Tawergha as ‘New Misrata’ appears to be calculated to prevent Tawerghan return rather than to promote an actual Misratan claim.<sup>169</sup> A Misratan bureaucrat interviewed for this report claimed that there was no risk of occupation of the town itself as no one wanted to move there and other possibilities for meeting Misratans’ future housing needs existed.<sup>170</sup> While this may be true, there has been extensive theft of movable property in the town, including the entire inventories of retail stores, alongside the extensive destruction. There are also questions surrounding the use of the water resources in Tawergha, as well as the highly productive agricultural lands they

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<sup>168</sup> UN Commission of Inquiry, “Full Report”, paragraphs 400-2.

<sup>169</sup> UN Commission of Inquiry, “Full Report”, paragraph 403: “The Commission observed that the word “Tawergha” had been scratched off road and other signs. In some cases, the words “New Misrata” has been written over them. Public buildings such as the school and hospital had been vandalised and the word “slave” appears as graffiti throughout the town. This is consistent with the observations made in a Wall Street Journal article, dated 21 June 2011, where its reporter noted that “on the road between Misrata and Tawergha, slogans like “the brigade for purging slaves, black skin” have supplanted pro-Gadhafi scrawl”. Similar graffiti was noted by several other newspapers.”

<sup>170</sup> Interview, Misrata Local Council civil servants, Misrata (02 April 2012).

feed. While there have been no reports to date of usurpation, some Tawergha had heard rumors of Misratans who had been observed harvesting their date palms.<sup>171</sup>

Rightly or wrongly, Tawerghan IDPs interviewed for this report did not seem concerned about the possibility of attempts to deny their legal rights to their homes and lands in Tawergha. Although Gaddafi-era land allocations are reported to have played a role in the creation of the new town of Tawergha, IDPs from the area had not considered the potential effect that a reversal of the Gaddafi property regime might have on them. Instead, Tawerghans understand their tenure to be fundamentally based on ancestral title to the area that was handed down at least 200 years ago by the then-Ottoman authorities in Libya.<sup>172</sup> However, while documentation of these original tribal land grants are allegedly in safe hands, the national registry office containing all the current title deeds for individuals and families in Tawergha is located in Misrata. According to Misratan officials, it is currently dormant, as with the rest of the Gaddafi-era registry system, and kept under lock and key.<sup>173</sup> Nevertheless, the potential for tampering is clearly evident and may be heightened by the admitted tendency of many Tawerghans (along with many other Libyans) to avoid taxes by only registering the minimum portion of their property necessary to be used as collateral for loans.<sup>174</sup>

While neither the reports of Gaddafi-era land allocations (and evictions of non-Tawerghans), nor the claims of ancestral title could be verified, it was clear that land title was not viewed as the primary issue by either side. The Tawerghans felt their ownership to be beyond question and did not anticipate challenges to it. The Misratan position focused mainly on preventing the return of Tawerghans as a penalty for the crimes they were deemed to have committed during the 2011 conflict. There were few grounds for an inference that the Misratans challenged the legitimacy of the Tawerghans earlier presence or their property rights, or coveted their land and property. For the Tawerghan IDPs, the main issue after return to Tawergha was therefore recovery of the economic value of possessions that had been destroyed and looted. As a result, there is an ongoing effort by Tawerghan IDPs to develop a comprehensive compensation claim based on a compilation of all movable and immovable household property destroyed or stolen to date, including commercial property.<sup>175</sup> However, as with the issue of return itself, there is a real question of who to address this compensation claim to, given the past tendency of the interim government

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<sup>171</sup> Interview, Tawerghan IDPs, Benghazi (21 April 2012).

<sup>172</sup> Interview, Tawerghan IDPs, Tripoli (26 March 2012).

<sup>173</sup> Interview, Misrata Local Council civil servants, Misrata (02 April 2012).

<sup>174</sup> Interview, Tawerghan IDPs, Tripoli (26 March 2012). This minimum comprised 500 square meters of land.

<sup>175</sup> Interview, Tawerghan IDPs, Benghazi (21 April 2012).

authorities to equivocate and defer to Misrata in discussing violations against the Tawerghans.<sup>176</sup>

Meanwhile, the current shelter situation for many Tawerghans is characterized by both a lack of tenure security that they have in common with other targeted IDPs and a strikingly particular lack of physical security. Over one-third of the Tawerghan population is currently displaced in Benghazi, with a slightly smaller concentration in Tripoli and many of the rest in smaller groups in Tarhouna, Sirte, and Al Jufrah. According to UNHCR monitoring, since an incursion into a Tripoli camp by Misratan brigades that left seven dead in February 2012, the balance of the Tawerghan IDP population has shifted more firmly to Benghazi with the new arrival of some 1,000 Tawerghans there. In both Benghazi and Tripoli, Tawerghan IDPs are distributed between private housing in residential neighborhoods and IDP camps located in abandoned construction sites and public buildings. As is the case for other targeted IDP populations, Tawerghans in camps enjoy little or no tenure security, while little is known about the situation of those in private accommodation.

The ability of Tawerghans in camps to make necessary improvements is to some degree contingent on the nature of the camps. For instance, UNHCR has observed in the case of a camp in a former naval academy in Tripoli, the interest of the management in resuming use of the campus quickly has inhibited the ability of IDPs and organizations providing them with aid to make necessary improvements to the sanitation infrastructure there. By contrast, Tawerghan IDPs occupying abandoned construction sites in Benghazi have been allowed (and indeed supported by local and international NGOs) in undertaking extensive refurbishment, including the development of schools and health clinics.<sup>177</sup>

This situation reflects the broader circumstances of tenure security in different types of camps. Given that foreign construction firms have not yet resumed their activities in Libya due to the security situation (as well as the process of reviewing Gaddafi-era contracts discussed above in Part 1.B.i), abandoned construction sites are freely available for the time being, but could become subject to claims for resumed use and occupation at any time in the future. By contrast, camps in buildings previously subject to public uses are often under immediate pressure, inhibiting any activities that might perpetuate the stay of IDPs and spurring some of the earliest serious attempts to relocate IDP communities.

Although many IDP communities in camps have reportedly been threatened with eviction, it is not always clear who has been behind these threats and how serious they were. However, a Tawerghan camp in Benghazi located in an electrical engineering school has become a precedent setting case for camp relocation. After the receipt of an eviction notice from the management of the school in early Spring of 2012, the UNHCR office in Benghazi and local civil society organizations participated in the formation of a ‘New Land Committee’ set up to assist the Benghazi Local Council in identifying alternative sites. Although the Committee identified several potential sites, the Council did not take a decision. In the meantime, a local

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<sup>176</sup> UN Commission of Inquiry, “Full Report”, paragraphs 449-51.

<sup>177</sup> Interview, Tawerghan IDPs, Benghazi, 21 April 2012.

representative for the Ministry of Social Affairs (which had not previously been involved in the process) announced that a new site had been selected and that MSA funds earmarked for housing IDPs (see Part 1.B.ii, above) would be used to ensure its refurbishment. It subsequently transpired that the relocation site was not only rented out to another company but also occupied by one of Benghazi's revolutionary brigades, and the relocation plan was abandoned. Although the situation in Benghazi reflects a broader failure to formally allocate responsibility for coordinating humanitarian response, it also indicates a basic level of goodwill toward Tawergha IDPs seen in Eastern Libya. For instance, the owner of the electrical institute has subsequently given a further extension of time for the Tawerghans there to find other accommodation and the MSA money may now be used to provide them with private rental assistance.

However, the level of risk posed to Tawerghan IDPs where such good will does not exist is exemplified by the case of Hoon, a municipality of 20,000 in the southern central Al Jufra district. According to a recent UNHCR monitoring, a Tawerghan IDP population there consisting of some 50 households was given a 24 hour ultimatum to leave the town by local revolutionary brigade on June 6, 2012. Over 20 families left immediately due to the violent nature of the brigade's threats, which were accompanied by property damage and kidnappings. A local mediation (*shura*) council intervened to extend the deadline to allow children of the remaining 38 IDP families to pass their final exams in local schools. However, despite evidence that Tawerghan IDPs have integrated peaceably into the local community, the council insisted that the town could not absorb these IDPs on a long term basis since they were a burden to the city's capacity (hospital and other infrastructure).

Beyond the Tawerghans, some 6,000 former residents of the town of Misrata have also become displaced.<sup>178</sup> According to UNHCR interviews, some of these are known Gaddafi supporters, but many if not most are households that fled to shelter outside of Misrata, rather than remaining behind in the chaotic early days of the siege. In practice, the loyalty of any 2011 resident of Misrata that did not remain and endure the siege is treated as suspect, severely complicating their prospects of return. Many ethnically Arab IDPs from Misrata are from the peripheral neighborhoods of Tomina and Karariem (which also housed many Tawerghans who are now displaced), but some of these IDPs also come from central neighborhoods. As reported by UN Commission of Inquiry, the authorities of Misrata applied a policy of flatly blocking property repossession for "Misratans perceived as not having supported the Misrata *thuwar*" as recently as February 2012:

The Commission received information that a number of people from Misrata itself were subject to a refusal to allow them to return to their homes after the conflict. These were people who had left the town prior to the fighting and seem to have been considered insufficiently committed to the revolution as a consequence.

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<sup>178</sup> UNHCR Libya, "External Update" (March 2012). The precise number of displaced Misratans at the time this source was published was 6,122.



According to multiple interviews conducted by the Commission, families who left Misrata during the conflict returned to find their houses occupied and their belongings given over to those now occupying the houses. Another interviewee told the Commission that the person living in her house told her “you are traitors. You didn’t defend Misrata. You have no rights”. Attempts to appeal to the local council have reportedly been in vain. In one interview, a woman reported that she had been told by the local Misratan authorities that she would not be able to return to her house as “Misrata houses are revolutionary houses”. Another interviewee stated to the Commission that the local council told her “you better go to Al Khums, we don’t want you here. You have nothing here”.<sup>179</sup>

In interviews conducted for this Report, Misrata Local Council staff clarified that it had temporarily allocated IDPs’ homes to some 700 families that stayed in Misrata but whose own homes were destroyed by Gaddafi forces during the siege (see below Part 2.B).<sup>180</sup> According to these interlocutors, such allocations are strictly temporary pending the reconstruction of occupants’ own homes. Apparently, the personal belongings of the prior users of these homes are placed in a locked room and no changes are made to the registered ownership. A separate return procedure adopted in Misrata requires potential returnees to apply for return with the Security Committee in Misrata for clearance.<sup>181</sup> Applicants must then seek signed attestation that they did not participate in crimes against the city of Misrata from seven neighbors, all of whom must come from families deemed honorable. In cases in which the property of cleared returnees is occupied, they are expected to share their homes with the occupying families until their prior homes are reconstructed.

While there appears to have been some return to Misrata, there is no evidence that any of it has taken place in accordance with the new procedures. Instead, many IDPs from Misrata allege that the procedures are part of a broader and largely successful effort to prevent their return. Complaints include the fact that lists of suspects for crimes against Misrata have yet to be published, meaning that an application for return can result in the disclosure of sensitive information that could result in the arbitrary arrest of family members. Similarly, the idea of returnees sharing their homes with occupants allocated temporary rights to them was deemed to be blatantly inappropriate in Libya’s conservative culture by many observers.

Anecdotes also abound regarding failed returns in the face of violence and threats, raising an inference that the Misratan authorities cannot or will not act to protect returnees against local actors motivated either by the desire for retaliation against perceived collaborators or hopes of acquiring rights to their property. Authorities from the Department of Social Affairs in Sirte, who have sought to assist some 1,000 Misratan IDPs in their municipality, described

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<sup>179</sup> UN Commission of Inquiry, “Full Report”, paragraphs 477-8.

<sup>180</sup> Interview, Misrata officials, Misrata, 02 April 2012.

<sup>181</sup> Interview, Mercy Corps Libya, Tripoli, 19 April 2012.

the Misratan policy as effectively barring return.<sup>182</sup> Although they were aware of some isolated cases of return, the Sirte officials asserted that neighbors tended to block the return of entire families in cases where even one family member was under suspicion. Misratan IDPs have also alleged widespread looting and squatting. One group of IDPs interviewed near Sirte described return efforts to empty homes that were subsequently abandoned due to threats, including shots fired on the houses at night.<sup>183</sup> One IDP's relative had sold his house in Misrata at less than one-sixth of its value. Others had gone back to find brigades guarding their homes and land, or had heard that their properties had been burned, looted or occupied. They also showed mobile phone video footage allegedly showing the condition of a house visited in an unsuccessful return effort; threatening graffiti was scrawled on all the walls and a pile of bullets was left in front of the door.

Another group of IDPs interviewed in Tripoli expressed concerns that the occupation of their homes was strictly opportunistic.<sup>184</sup> About one-third of an informally polled group of twenty IDPs had acquired their homes in connection with Law No. 4. In only one case was the apartment acquired directly in accordance with Law No. 4, in the sense that the now-displaced owner of the apartment had been renting it in 1978. In all other cases, IDPs had bought such apartments, acquiring a receipt of purchase that apparently allowed them to dispose over the apartment and transfer it to their children, but not to register ownership (despite what they described as a thriving *de facto* market for such apartments). Half of those polled had bought their homes from persons who owned them, but had not always succeeded in registering them due to endemic delays at the land registry office. Approximately 10-15% had rented their homes and appeared to believe they had no claim as a result. Many reported that their homes were now occupied by others who had changed the locks and warned them not to try to return.

The current shelter situation of Misratan IDPs is mixed. While some have ended up in collective settlements, it is thought that most fled either to family members outside of Misrata or, failing that, to areas populated by people who shared their tribal affiliation. Although Misratan IDPs were initially targeted for arrests along with Tawerghans, they do not constitute a visible minority and have suffered fewer security threats in recent months. However, their current situation poses a strain on relatives and tribal compatriots that is unlikely to be relieved until the conditions begin to be created for voluntary durable solutions and property remedies. While there are grounds to hope that the problem may be at least partially unlocked once families allocated claimed apartments in Misrata are able to move into their own reconstructed homes, IDPs whose homes are destroyed or occupied by squatters – as well as those suspected of being collaborators – face a less clear prospect of safe return.

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<sup>182</sup> Interview, Sirte Department of Social Affairs, Sirte, 23 April 2012.

<sup>183</sup> Interview, Misratan IDPs, Sirte, 23 April 2012.

<sup>184</sup> Interview, Misratan IDPs, Tripoli, 26 March 2012.

## 2.A.ii Targeted IDPs from the Nafusa Mountains

Three Arab tribes from the Nafusa mountains of western Libya – the Mashashya, the Gualish, and the Siaan – have been targeted by neighboring communities for displacement during and after the 2011 conflict. All three were perceived as having allied themselves with the Gaddafi regime and were resented for the high levels of public investment they were seen to have received as a result. However, there is also much that distinguishes these three tribes, including the extent to which they are portrayed as newcomers to the area without legitimate claims to remain there, as well as whether they have managed to achieve a degree of reconciliation with their neighbors and begin to return.

The Mashashya comprise Libya's second largest targeted IDP community after the Tawerghans, with some 17,000 members having been expelled to Tripoli from Al Awiniya and other nearby towns. Unlike the Tawerghans, however, the Mashashya have not been expelled entirely from the Nafusa mountains. However, those who have remained face significant risks; armed clashes between Mashashya in the Nafusa towns of Shegiga and Mizdah and their main rivals, the Arab Zintani tribe, continued into the period immediately before the elections.<sup>185</sup> As noted by the UN Commission of Inquiry, the conflict between the Mashashya and their neighbors has been particularly intractable and is related to pre-existing land conflicts:

Reconciliation attempts have, so far, been unsuccessful. According to testimony collected by the Commission, the common understanding of the mountain tribes that fought together to oust the Qadhafi government is that the Mashashiya cannot return unless they can prove that they own the land that they used to live on. The requirement that the Mashashiya prove ownership of their land appears to be linked to the historical context in which the Mashashiya came to live in western Libya.<sup>186</sup>

In fact, the Mashashya have had a historical presence in the Nafusa mountains, which constituted the northern end of their traditional nomadic transhumance route. As the Mashashya abandoned pastoralism, the bulk of their population appears to have settled south of the Nafusa Mountains, in the Fezzan region. However, some Mashashya settled in the Nafusa mountains and others moved there prior to the Gaddafi coup on the basis of land purchases from other tribes in the area. However, when a conflict erupted between the Mashashya and other tribes in Fezzan in the early 1970s, the Gaddafi regime forcibly resettled 2,000 Mashashya families to the area of Al Awiniya, in the Nafusa Mountains.<sup>187</sup> This resettlement was contested by the immediately adjacent Khalahifa tribe, which saw lands it claimed allocated to the Mashashya. However, it also stoked the resentment of more distant but powerful tribes in the region such as the Zintanis, who not only found themselves

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<sup>185</sup> "Troops sent to quell clashes in western Libya", BBC World News (17 June 2012), available at: <http://www.bbc.co.uk/news/world-africa-18474834>.

<sup>186</sup> UN Commission of Inquiry, "Full Report", paragraph 461 (citation omitted).

<sup>187</sup> ICG 2012, 2.

politically subordinated to the Mashashya but also resented the highly developed infrastructure built for them in towns such as Al Awiniya.

During the early stages of the uprising, Gaddafi forces deployed in Mashashya areas and used them as a staging ground for campaigns aimed at subjugating rebel-held towns such as Zintan in the Nafusa Mountains. When the Zintanis captured Al Awiniya in May 2011, over 10,000 Mashashya were displaced. Reports were quick to emerge of a campaign of beatings, pillage and arson against members of the Mashashya tribe in retaliation for their imputed support of the Gaddafi regime.<sup>188</sup> Further displacement has been caused by subsequent bouts of low intensity conflict between the Mashashya remaining in Nafusa towns such as Shegiga and the militarily stronger Zintanis.

Sources interviewed for this report indicated that the tribes directly adjacent to Al Awiniya and other cleansed Mashashya towns would be willing to accept the negotiated return of the Mashashya on several conditions. According to UNHCR interviews, these include an apology for crimes they committed, the handover of suspects for prosecution, and – crucially – agreement to restrictions on return based on a renegotiation of Gaddafi-era land grants meant to compensate for the perceived harm they inflicted on tribes such as the Khalahifa. However, the Zintani tribe has flatly refused to accept the possibility of Mashashya return to Al Awiniya in a manner reminiscent of the Misratan Local Council’s insistence that Tawergha return is impossible (see Part 2.A.i, above). Although Mashashya tribal leaders interviewed for this report conceded that some land disputes persisted between them and the Zintanis, they apparently concerned distant and rarely used watering areas for livestock.<sup>189</sup> From their perspective, these disputes were essentially pretextual, whereas the actual dispute with Zintan related to the balance of tribal political power in the Nafusa Mountains.

In the meantime, the great majority of Mashashya IDPs are in private accommodation, often with relatives in Tripoli and other towns in the region. Only about twenty families are located in a camp in the southern outskirts of Tripoli. Although private accommodation may be more secure, it is not clear how tenable such arrangements will be over the long term. Anecdotally, for instance, it was not uncommon to hear Tripolitarians speaking of ethnic Mashashya neighbors putting up as many as sixteen displaced families from the Nafusa Mountains in their houses.

The other two targeted groups from the Nafusa mountains, the Gualish and the Siaan, are less evidently in protracted displacement. The Gualish are affiliated with the larger Kikla tribe and enjoy accepted land rights in the Nafusa Mountains of long standing. However, they were patronized by the Gaddafi regime beginning in the 1970s in a manner that undermined both the land claims and the political dominance of the Kiklas.<sup>190</sup> During the

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<sup>188</sup> C.J. Chivers, “Libyan Rebels Accused of Pillage and Beatings”, *The New York Times* (12 July 2011).

<sup>189</sup> Interview, Mashashya IDP leaders, Tripoli, 14 June 2012.

<sup>190</sup> Interview, Kikla Local Council, 14 October 2012.

2011 fighting, the town of Gualish became the Nafusa Mountains frontline after the Zintanis took Al Awiniya in May. However, Gualish also fell in mid-August 2011, resulting in the displacement of virtually the entire population of some 9,000 individuals to Tripoli and other towns in the region, where they have lived in private accommodation.

The Gualish were quick to open negotiations on return with the Kikla, who are inclined to seek reconciliation. Although actual return attempts failed in January 2012, members of the Kikla Local Council asserted that full agreement had been reached as of June on the conditions and procedures for return.<sup>191</sup> These included the handover of suspects for an initial investigation pending prosecution once the national courts resume functioning, payment of compensation for crimes against life and property and resolution of land issues described as being “of a social and family nature”. The nature of the land agreement involved a concession by the Gualish that the Kikla own all the land, but that they, as a sub-tribe of the Kikla, are entitled to inhabit their part of it. In essence, this agreement appears to have annulled Gaddafi-era de jure land allocations without necessarily affecting the de facto ability of returning Gualish to dispose over their homes and lands. The relatively high level of good faith between the respective communities appeared to be indicated by the fact that most homes and all public facilities such as schools in Gualish town appeared to be empty and locked up but not damaged.<sup>192</sup>

As one of the first post-2011 negotiated return agreements in Libya, the Gualish-Kikla resolution has evident potential as a precedent for attempts to resolve other conflicts related to targeted and displaced communities. However, in order to fully understand its value it will be necessary to closely follow its implementation and ensure that those elements of the agreement related to land and property, in particular, do not unduly prejudice the rights of any of the parties involved or clash with the legislative rules regulating Gaddafi-era property transactions that will ultimately be adopted by the new constituent assembly.

The final targeted group, the Siaan, are an Arab tribe that historically engaged in pastoralism between the western Nafusa Mountains and Tunisia. They were encouraged by the Gaddafi regime to settle in the towns of Tiji and Badu which were located on land claimed by the local Amazigh (Berber) communities in Jadu and Nalut. Tiji, Badu and outlying Siaan villages were used as staging grounds by Gaddafi troops attacking Jadu and Nalut when these towns rose up against the regime. There were reprisals against the civilian populations of Tiji and Badu but no major displacement when brigades from Nalut initially took these towns in August of 2011. However, UNHCR monitored how an eruption of violence two months later led to extensive destruction of homes and public infrastructure in both towns as well as the displacement of virtually the entire Siaan population.

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<sup>191</sup> Interview, Kikla Local Council, Kikla, 13 June 2012.

<sup>192</sup> Observations by the author based on a drive through West and East Gualish on 13 June 2012. A small number of houses had been looted and burned, with spray painted messages on the walls indicating that they had belonged to accused Gaddafi loyalists.

After negotiations facilitated by a reconciliation committee, virtually full return of the Siaan occurred in December 2011. During early 2012, security incidents occurred almost weekly, but the situation had calmed down by June.<sup>193</sup> However, one key sticking point remains, namely the inability of about 60 Siaan families to return to their homes in the village of Umm Alfar. According to the Tiji Local Council, the Siaan have unsuccessfully proposed to resolve the issue with Nalut through talks, and have prevented the affected families from trying to return on their own in the meantime in order to prevent security incidents. They also claimed that the village lies on the border between Siaan and Nalut land, and was awarded to the Siaan in a 1963 court decision. However, the Nalut Council responded by questioning the Siaan claims to the land and asserting that Umm Alfar had consisted of houses used for smuggling activities by people who actually lived elsewhere.<sup>194</sup>

The Umm Alfar issue is relatively minor in some senses, but reflects the destabilizing influence of persistent land disputes in tribal reconciliation processes. For the Siaan, cooperation with Nalut had been reestablished along a number of fronts, but the intransigence of the Nalutis on Umm Alfar had led to concerns about the integrity of land records held in the Nalut registry office and proposals to set up a separate registry for the Siaan in Tiji. More worrying, the Umm Alfar issue was seen as still having the potential to seriously destabilize what had otherwise become a tribal relationship characterized by pragmatic cooperation.<sup>195</sup> For the Naluti side, preventing return to Umm Alfar was portrayed as holding the line. When asked directly if he accepted the presence of the Siaan, a Naluti official responded affirmatively, “as long as they stay where they are, but they keep expanding to dominate as much land as they can.” The village of Umm Alfar itself remains empty and inaccessible behind a roadblock and a checkpoint.<sup>196</sup> Many houses have been shot up and heavily damaged, probably in connection with fighting with Gaddafi forces that had been billeted there. However, some damage, such as the snapping of power pylons, appeared to be gratuitous.

## ***2.B “Non-targeted” IDPs located within their area of 2011 residence and unable to return due to conflict-related destruction***

Some IDPs have found themselves displaced from their homes by conflict-related damage, but still present in and supported by their local communities. In the cities of Misrata and Sirte, in particular, these ‘non-targeted’ IDPs’ current housing conditions are provisional but

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<sup>193</sup> Interview, Tiji Local Council, Tiji, 12 June 2012.

<sup>194</sup> Interview, Nalut Local Council, Nalut, 12 June 2012.

<sup>195</sup> In this sense, the Umm Alfar dispute is typical of many latent tribal conflicts in Libya, in which the failure of the transitional authorities to deliver sustainable resolutions has left the security enjoyed by many communities entirely dependent on the willingness of aggrieved individuals and families not to take matters into their own hands. ICG 2012, 32.

<sup>196</sup> Observations of the author during a drive through the village of Umm Alfar, 12 June 2012. Signs of permanent rather than transitory use included a large mosque and a water tower.

characterized nevertheless characterized by strong tenure security in that the local authorities have guaranteed them the right to remain until their own homes are repaired or replaced. Moreover, given the level of support these IDPs enjoy from the surrounding communities, they are not exposed to the type of basic protection risks facing targeted communities. Finally, as a result of the fact that return for these displaced households is contingent only on the technical and financial factors currently hindering the reconstruction of their homes, the nature of their displacement cannot be described as protracted.

While the lower protection needs of this group renders response less challenging than in the case of targeted IDPs, it is worth recalling that a rapid and even-handed response to the needs of 'non-targeted' IDPs may nevertheless yield a significant dividend in terms of reconciliation. Misrata is the sole western Libyan town that remained in opposition hands throughout the 2011 conflict. As a result of the sacrifices and resilience of the Misratans while under siege by Gaddafi forces, proposals to split the country and allow Gaddafi to remain in power in the western part never received serious attention. Sirte is the hometown of Muammar Gaddafi and was heavily invested in during his time in power. Gaddafi made his final stand and was killed in Sirte by Misratan brigades, and the city suffered extensive damage during the fighting. Recognition of the unjustifiable suffering of civilians in both cases - and a rapid and even-handed effort to reconstruct homes in all cities where significant damage resulted from the 2011 conflict - would clearly establish the credentials of the new authorities as a government for all of Libya.

Destruction in Misrata during the Spring 2011 military assault and subsequent shelling of the town by Gaddafi forces was heavy but localized, according to the UN Commission of Inquiry:

The Commission's senior military adviser conducted a site survey of damage to the city on 10 December 2011. He observed extensive weapons damage to all buildings along Tripoli Street, the main axis of fighting. .... Damage from heavy machine-gun fire of various calibre was clear on nearly every building on Tripoli Street. There were also clear signs of cluster munition use including debris and strike patterns from submunitions. Some of these attacks appear to have been aimed at *thuwar* positions in civilian buildings. For example, some attacks were aimed at *thuwar* fighters firing from civilian buildings down into the streets. Some of these munitions caused effects beyond their intended targets, with tank shells, for example, penetrating a building and travelling through into neighbouring areas before exploding. Grad rockets, which are only capable of being aimed in a general direction,<sup>197</sup> were also used in attacks. Strikes from RPGs were also evident. Fire damage was not extensive. Damage

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<sup>197</sup> Grad rockets are area-effect weapons meaning they are targeted against a geographic position and not a point target.

throughout the rest of the city was spotty and less extensive with some areas exhibiting no damage.<sup>198</sup>

A survey carried out by the Misrata Local Council found that some 6,000 homes were damaged in the course of the fighting, of which 700 were completely destroyed.<sup>199</sup> The families rendered homeless as a result have been allocated properties left behind by persons who fled to other parts of the country during the siege of Misrata (see above, Part 2.A.i). While some of the IDPs from Misrata whose homes were now occupied expressed concerns that this policy was a pretext to keep them from returning, Misratan officials asserted that the allocations were temporary pending reconstruction. They also stressed that one of their immediate priorities was to place the ad hoc efforts at reconstruction to date within the context of a strategic plan for urbanization infrastructure.<sup>200</sup> At the time of the interview, the Local Council in Misrata had completed its own survey of destroyed and damaged homes and was engaged in evaluation of the results and an initial costing of reconstruction. The next planned steps were to submit the results to the Local Council as well as the central Ministry of Housing and Infrastructure for a decision on how to proceed. At that point, there had not been any contact with central planning officials, who were described as “still sleeping”.

The siege of Misrata was broken in September 2011. Shortly afterwards, Misratan forces arrive at Sirte, and had fought their way into the city center by mid-October. The UN Commission of Inquiry described damage in Sirte as “the most extensive observed in any location in Libya other than in Tawergha”, with “nearly every building” in the town affected by rocket, machine gun and rocket-propelled grenade fire:<sup>201</sup>

Although some of the buildings were doubtless used by the Qadhafi forces and were therefore lawful targets for attacks by *thumar*, damage was so widespread that the shelling appeared indiscriminate. Interviewees traveling with *thumar* during the attack on Sirte in late October 2011 told of night-long Grad rocket barrages fired indiscriminately, without the aid of spotters or other attempts to aim fire at military objects. Mortar use was similarly widespread. The Commission found buildings damaged and destroyed deep within the city - not just along main roads and the axis of fighting.<sup>202</sup>

In the aftermath of this destruction, the citizens of Sirte, like those in Misrata, were left largely to rebuild by themselves. In the case of Sirte, however, some 2,000 households remain

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<sup>198</sup> UN Commission of Inquiry, “Full Report”, paragraph 552.

<sup>199</sup> Interview, Misrata officials, Misrata, 02 April 2012.

<sup>200</sup> Interview, Misrata officials, Misrata, 02 April 2012.

<sup>201</sup> UN Commission of Inquiry, paragraph 579.

<sup>202</sup> UN Commission of Inquiry, paragraph 580 (citation omitted).



displaced within the municipality due to the complete destruction of their homes.<sup>203</sup> As a matter of expedience, most of these families have been allowed to occupy apartment complexes that had only partially been built at the time of the 2011 uprising. In many cases, these apartments are not only unfurnished and without basic services and utilities but themselves damaged by the fighting. IDPs resident in such apartments have generally not been issued written allocation documents, not only because of the ad hoc nature of the response but also to discourage them from claiming squatters' rights to the apartments rather than continuing to seek the reconstruction of their own homes. Nevertheless, as many as 300 cases of wrongful squatting had been identified, in which Sirte residents with habitable homes had occupied unfinished apartments. According to the Sirte Local Council, these squatters had been informed that they had to leave, but no evictions had yet been initiated.

At the time of the interview conducted for this Report, the Sirte Local Council had nearly completed a survey of the damage to the town. The Council had previously met with the central Housing Ministry in late 2011 and been promised both short and long-term assistance housing IDPs whose homes had been destroyed. While short term assistance consisted primarily of offering MSA funding to provide rental subsidies to IDPs, other interim measures under discussion included prefabricated housing. The Council expected reconstruction procedures responding to long-term needs to be in place by August 2012. Although the Council had initially sent a list of affected households to Tripoli in December of 2011, none of the promised measures had materialized to date. There was nevertheless some optimism that submission of the damage survey would speed the process.

## ***2.C Refugees and other non-citizens that have been evicted or face the risk of eviction from their homes***

Palestinian and other refugees in Libya have traditionally been housed in accordance with a broader system of providing subsidized rental homes to foreign workers (see Parts 1.A.i. and ii., above). These arrangements were revoked with the loss of work contracts, and thus not intended to provide long-term tenure security at the time. However, non-citizens living in such housing now appear to constitute the group most at risk of evictions and eviction threats from historical owners of properties rented out by the Gaddafi regime. This is not only because non-citizen occupants of such homes have few legal rights to them and no local networks to protect them, but also because the properties involved were frequently available for rental by the state because they had been confiscated in accordance with Law No. 4. In other cases observed by UNHCR, non-citizens in Libya accommodated in private rental housing have simply lost their income as a result of the last year's turmoil and have therefore faced eviction for non-payment of rent.

Given that this lack of tenure security experienced by refugees and other non-citizens in Libya is leading to their involuntary displacement within Libya, it is logical to begin by inquiring as to whether these groups can be considered internally displaced after having

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<sup>203</sup> Interview, Sirte Local Council, 23 April 2012.

been evicted. The answer, as expressed in a recent manual on domestic application of the *Guiding Principles on Internal Displacement*, is somewhat ambiguous:

It is significant that the Guiding Principles do not refer to the notion of citizenship, thus indicating that foreigners may also qualify as internally displaced persons. Reference to “homes or places of habitual residence,” however, indicates that their presence in the country concerned cannot be of just a passing nature but must have reached some permanency. ....

IDPs who are non-citizens, however, are not automatically entitled to rights mentioned in the Guiding Principles that may be specifically reserved to citizens under applicable international law, such as the right to vote and to participate in governmental and public affairs (Principle 22(d)).

Refugees displaced in their country of refuge or asylum remain refugees, but it would be appropriate to apply the Guiding Principles by analogy to the extent that applicable refugee law does not address their displacement-related needs. Similarly, displaced migrants with short-term permits or in irregular situations remain migrants, with lesser rights than those accorded to the permanent population of the country. However, as long as they have not left the country concerned, their rights as migrants must be respected. To the extent that these norms do not address their displacement-related needs for humanitarian assistance and protection, the Guiding Principles may be applied by analogy.<sup>204</sup>

As a general matter, international human rights law still accepts that state discretion to treat non-citizens differently from citizens in certain respects, such as the right to vote. As discussed above in Part 1.C.ii, international standards on the protection of IDPs proceed from the assumption that IDPs *are citizens* and are therefore entitled to non-discriminatory treatment in the form of equal enjoyment of their rights vis-à-vis their *non-displaced fellow citizens*. By contrast, the key inquiry with regard to non-citizens, including refugees, is whether they are being treated equally vis-à-vis other comparable non-citizens.<sup>205</sup> Given Libya’s failure to fully implement the limited obligations it has taken on under international refugee law to date, combined with the common tenure security issues faced by all non-citizens in Libya under current circumstances, this line of inquiry is unlikely to be very helpful. However, the observation that standards such as the Guiding Principles can be applied by analogy to groups such as evicted refugees is important, particularly where they find themselves dependent on humanitarian aid as a result of being evicted.

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<sup>204</sup> Brookings-Bern Project on Internal Displacement, *Protecting Internally Displaced Persons: A Manual for Law and Policy-Makers* (October 2008), 12-13.

<sup>205</sup> This type of analysis has been applied in Lebanon, where claims that the state has discriminated against Palestinian refugees are not based primarily on comparison of Palestinians’ rights with those of Lebanese citizens but rather with those of other categories of non-citizens. Rhodri C. Williams, “From Shelter to Housing: Security of Tenure and Integration in Protracted Displacement Settings”, *Norwegian Refugee Council Thematic Report* (December 2011), 32.

A more promising line of inquiry relates to the fact that, as discussed above in Part 1.C.ii, economic and social rights (such as the right to adequate housing) should be respected without discrimination on the basis of nationality, unlike some civil and political rights (such as the right to vote). The UN Committee on Economic, Social and Cultural rights has confirmed that these rights “apply to everyone including non-nationals, such as refugees, asylum-seekers, stateless persons, migrant workers and victims of international trafficking, regardless of legal status and documentation.”<sup>206</sup> Accordingly, any distinction between nationals and non-nationals in the exercise of the right to adequate housing (including tenure security) would have to be justified on “reasonable and objective” grounds in order to avoid a finding of discrimination.<sup>207</sup> In the case of Libya, the tenure insecurity of non-citizens is rooted in Gaddafi-era limitations on the circumstances under which they could purchase or occupy residential property in Libya. These rules may well include elements that could be found discriminatory, but it is not clear to what extent they will continue to be applied in the future.

However, as discussed in Part 1.B.i, the current rule adopted by the interim government is that anyone with valid documentation of their Gaddafi-era right to occupy their home cannot be evicted by court order pending a legislative determination of how to proceed. This means that refugees and other non-citizens with valid rental agreements should be protected from official eviction proceedings and reinstated in the case of private evictions.<sup>208</sup> Although the courts in Libya are not currently functioning and cannot be expected to uphold these rules, they may present a basis for at least future legal challenges and claims for compensation. However, this approach may be less helpful for many of those non-nationals who arrived from the 1980s onward, when it began to be possible for foreigners to access housing without strictly following the procedures that had been strictly applied earlier, leaving them without any documentation establishing their rights now.

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<sup>206</sup> UN CESCR, General Comment 20 (2009), paragraph 30.

<sup>207</sup> The UN CESCR applies a proportionality test in assessing differential treatment, meaning that such treatment will not be found to amount to discrimination if it is justified and undertaken through reasonable and proportional measures. UN CESCR, General Comment 20, paragraph 13.

<sup>208</sup> Interview, Libyan lawyer, Tripoli, 01 April 2012.

### **Section 3: Issues and Recommendations related to legal and humanitarian support to displaced persons**

The overarching recommendation in this section is that the response to displacement should seek to emphasize rights-based approaches wherever possible. For IDPs, in particular, greater reliance on the UN *Guiding Principles on Internal Displacement* would provide an objective set of standards to ensure that Libya's humanitarian response to displacement satisfied its international obligations related to human rights. This connection is of particular importance for addressing housing, land and property issues, which tend to be not only technically complex but also highly politicized..

Even before the fall of the Gaddafi regime, Libya had ratified a range of key human rights covenants, and the new authorities in Libya have repeatedly affirmed their commitment to human rights. At the same time, both the human rights and transitional justice discourses have focused heavily on victims of the Gaddafi regime to the exclusion of those whose rights may have been violated by the acts and omissions of anti-Gaddafi forces. For the latter, including targeted IDPs, the emphasis has been on reconciliation, rather than justice. This implies that the violence against these communities is to some degree justified by their past behavior, and that their current claims for redress must be offset by their culpability for past acts. In order to achieve reconciliation, in other words, they may be required to concede some of what they have lost (due to rights violations such as arbitrary displacement) in order to get the rest back.

This approach to reconciliation reflects a crucial reality in the new Libya, which is that communities were divided and played off against each other, and that all sides have been made to suffer as a result. The problem is that unambiguous acknowledgment of this suffering is only being accorded to one side. Meanwhile, targeted communities are frequently attributed collective guilt and in some cases subjected to treatment that can only be described as collective punishment. Emphasizing a rights-based approach to displacement may be helpful in underscoring that targeted IDP communities are composed of individuals, some of whom must be prosecuted for their crimes (a prospect explicitly countenanced in the Guiding Principles, see above Part 1.C.ii), but many more of whom are not only innocent but extremely vulnerable and in need of assistance to meet their basic needs and reintegrate into society.<sup>209</sup>

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<sup>209</sup> The vulnerability of many IDPs is clearly recognized by figures such as the grand mufti of Libya, who is quoted by the ICG as recommending constitution of interim courts in Libya: "With the case of Tawergha, for example, if we could deal with the crimes of a few people, then at least it would make the Misratans feel better; justice could be seen to have been served, emotions will calm down and then you could begin to talk about reconciliation for all the other Tawergha." ICG 2012, 32. Reinforcing the notion that "all the other Tawergha" remain citizens entitled to equal treatment might help to reinforce such arguments.

### **3.A. *Encouragement of rights-based approach to displacement issues***

The UN Guiding Principles on Internal Displacement are one of the most effective and well-accepted statements of how to implement a rights-based approach to humanitarian responses to displacement. The Guiding Principles have several advantages both as an advocacy document and as a blueprint for mitigating and ending displacement:

- First, they are well accepted, and indeed routinely applied by numerous other states contending with internal displacement in virtually every region of the world. This is particularly the case in Africa, where the Guiding Principles are reflected in both the regional peace process for the Great Lakes region and the new African Union “Kampala Convention”, which constitutes the world’s first regional treaty on addressing internal displacement.<sup>210</sup>
- Second, they have been extensively ‘field-tested’ since their adoption in 1998. As a result, while the Principles themselves are highly concise and therefore necessarily without a great deal of detail, subsequently published guidances and manuals on implementing the Principles go into extensive detail that is explicitly based, wherever possible, on the experiences of other countries that have sought to systematically address internal displacement. The 2008 Manual on drafting laws and policies on internal displacement (see part 1.C.ii, above) includes chapters dedicated to relevant issues such as humanitarian shelter and property restitution, for instance. Another important factor is that many of these guidance documents (including the Principles themselves) have now been translated into Arabic.
- Third, the Principles set out systematic guidance on dealing with internal displacement. They include advice on preventing displacement, which remains relevant to many embattled groups within Libya, such as those Mashasha still remaining in the Nafusa mountains (see part 2.A.ii), as well as many groups not covered in this report that remain vulnerable to displacement. Their main focus is on addressing the effects of displacement while it is ongoing, with key clusters of rights ranging from physical security to shelter, education, livelihoods and political participation covered. However, they also include guidance on how to end displacement through voluntary ‘durable solutions’ including both return to places of origin and local integration as well as restitution of property. Although they were drafted over a decade ago, the Principles have also proved remarkably prescient in identifying the key issues faced by IDPs and prescribing ways of addressing them that comply with basic human rights standards.

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<sup>210</sup> The 2006 Pact on Security, Stability and Development in the Great Lakes Region includes a “Protocol on the Protection and Assistance to Internally Displaced Persons” designed to reflect the Guiding Principles on Internal Displacement. See <https://icglr.org/index.php>. For more information on the Kampala Convention, see <http://www.internal-displacement.org/kampala-convention>.

- Fourth, adopting the Guiding Principles as a central element of response to displacement will allow Libya access to a well-established system of capacity-building that is sensitive to the issues and conditions frequently found in post-conflict states. Most obviously, past office-holders of the position of UN Special Rapporteur on Internal Displacement established a tradition of frequent country visits to encourage and provide guidance to countries struggling with the complexities of addressing internal displacement. Such country missions can be a prestigious event for post-conflict governments, providing recognition for their past efforts and political space to shift to a more systematic and rights-based approach to internal displacement. The Internal Displacement Monitoring Center, an offshoot of the Norwegian Refugee Council based in Geneva, is also in a position to provide sustained capacity building and training.
- Fifth, at a political level, the Guiding Principles provide a different vocabulary for speaking about Libya's post-conflict displacement problem that may be of aid in addressing it. In discussions with local authorities around Libya that were undertaken in connection with this report, it was repeatedly made clear that humanitarian assistance and protection were being provided to IDPs as a matter of compassion, charity or policy, not rights, and that the question of their return was seen as contingent on negotiations and political criteria, rather than obligations. Adopting a rights-based approach would not contradict the salience of these other factors, but would serve to link the plight of IDPs directly with Libya's human rights commitments. In doing so, it could hopefully modify a discourse of reconciliation that has only afforded human rights protection to the victims of the Gaddafi regime to date.

As a means of securing greater commitment to proceeding on the basis of the Guiding Principles, a number of immediate steps could be taken. These include:

- Awareness building: Based on his observation that key national humanitarian actors such as Libaid were not familiar with international standards on internal displacement, the Author of this Report undertook three half-day trainings for humanitarian actors and civil society organizations on the Guiding Principles (Tripoli, 19 April; Benghazi, 25 April; and Tripoli, 10 June). The trainings were well-attended and the participants were enthusiastic and engaged, posing numerous questions related to their work in Libya throughout the presentations.
- Bottom-up advocacy: In discussions with targeted IDP groups, in particular, the Guiding Principles should be disseminated and referenced in discussing issues of concern to them. Given the oppressive security situation faced by some of these communities, the Principles should be introduced as guidance for long-term advocacy rather than a document that will transform their existence overnight. However, IDPs should be encouraged to begin framing their demands around the standards set out in the Principle in their contact with the authorities in order to reinforce the idea that they are not seeking charity but rather respect for their human rights.

- Greater prominence in UNHCR and implementing partner activities: Consistent use of the Guiding Principles as a benchmark for reporting, analysis and advocacy may serve as a means of encouraging IDPs to understand their human rights and pressuring the authorities to respect them. There is also apparent interest on the part of both implementing partners and outside organizations for more training on rights-based approaches, with room to develop narrower topical approaches, focused on topics such as political participation or tenure security for the displaced.
- Top-down advocacy: Upon the formation of the new government, UNHCR and its partners should urge it to address internal displacement in accordance with international standards and best practice. A high-level affirmation of the need to address internal displacement and intent to rely on standards such as the Guiding Principles would be a useful start. At least two possibilities exist for facilitating such high-level approaches. One key step that could be taken would be the signature of the new African Union 'Kampala Convention' on IDPs and its ratification by the new constituent assembly. Another option would be the extension of an invitation to the Special Rapporteur on IDPs, Chaloka Beyani, to undertake a mission to Libya and advise on the response to internal displacement there. Given the tradition established by Mr. Beyani's predecessors in office, such Missions tend to involve constructive criticism of the authorities' efforts and a strong component of capacity building.

The ultimate goal of these efforts should be to encourage the Libyan government to develop a policy on internal displacement. There can be tremendous variation in the nature and comprehensiveness of such policies (see the Brookings database on national IDP policies, referenced as a "practical tool in Part 1.C.ii, above). As witnessed by the level of detail in the 2008 Manual on implementing the Guiding Principles through national laws and policies (also under "practical tools" in Part 1.C.ii), such policies may in some cases need to address issues of considerable technical complexity. A Libyan policy may take a variety of forms but in any case should ideally address the following issues:

- Acknowledgment of the primary duty and responsibility of the government for preventing further arbitrary displacement, protecting and assisting IDPs, and creating the conditions and providing the means for voluntary durable solutions to displacement;
- Identification of specific protection needs of IDPs in Libya and the measures to be taken to address them while they remain displaced, based on extensive consultation with IDPs. Wherever possible, specific measures should be based on the recommendations in Sections 3 and 4 of the Guiding Principles, as well as the more detailed advice in the 2008 Manual;
- Identification of necessary steps to facilitate voluntary durable solutions, based on consultations with IDPs and other displacement affected communities (both at the place of origin and the place of current displacement). This part of the policy should be based on consideration of Section 5 of the Guiding Principles, relevant sections of

the 2008 Manual and the 2009 Framework on Durable Solutions (also under “practical tools” in Part 1.C.ii);

- Where legislative measures such as the amendment of existing laws (or the passage of a specific law on IDPs) may be necessary, the policy should identify such changes. This is typically the case where laws affecting IDPs rights were not drafted with the possibility of displacement in mind. For instance, the application of property rules penalizing individuals for not using or occupying certain types of property must often be reconsidered where the reason for non-use involves forced displacement.
- Allocation of roles between actors at various levels and identification of necessary coordination mechanisms. There is room for a certain degree of flexibility here. However, given the weak attention given to these issues by the interim government, any central level coordinator or focal point should enjoy direct access to the highest levels of government in order to ensure a consistent and effective response. Thematically, response to internal displacement should be linked with domestic disaster response and humanitarian coordination rather than refugee issues, given the key distinguishing factor that IDPs are generally Libyan citizens. The relatively high capacity of local government in Libya and efforts made to date by Local Councils to respond to displacement should be recognized by ensuring that they have a significant ongoing role, albeit one properly backed by central level support and resources (see below on Serbia).
- Finally, the contribution of civil society actors should be recognized and enhanced. This point is strongly made in the 2009 Framework on Durable Solutions, which emphasizes the role that civil society can play in developing, implementing and monitoring national policies related to durable solutions. In the Libyan context, consideration should be given to the role that religious leaders and organizations can play in ensuring effective responses to IDPs’ needs.

An IDP policy along the lines described above will not only provide the basis for dealing with tenure security and property remedy issues, but should also link the approach taken to these issues more firmly to Libya’s human rights obligations and international best practice. Further general steps that can be taken in terms of IDP response are set out in the box on “practical tools”, above in Part 1.C.ii.

However pending such steps, one way of developing an advocacy platform and promoting official application of international standards would be the formation of a broad coalition of national (and possibly international) humanitarian actors and civil society organizations that could jointly promote rights-based responses. By developing common policies and practices on rights-based responses and advocating them consistently with local and national authorities, such a platform could raise awareness of both their importance (as a matter of respect for Libya’s obligations in regard to human rights) and their basic nature (in terms of practical steps that need to be taken).



### **3.B. Ensuring Legal Security of Tenure for IDPs in their Current Shelter**

The Guiding Principles are generally written in a manner that reflects the need for states to prioritize in their response to internal displacement based on which issues are most pressing in any given context as well as what resources are available. However, one exception to this flexible approach relates to life-saving humanitarian aid, including shelter. In Principle 18, the Guiding Principles relate this type of aid to the right to an adequate standard of living (which includes the right to adequate housing and tenure security, see Parts 1.C.i. and iii., above) and highlight respect for this right as a fundamental obligation for the state: “At the minimum, *regardless of the circumstances*, and without discrimination, competent authorities shall provide internally displaced persons with and ensure safe access to ... (b) Basic shelter and housing....”<sup>211</sup>

As discussed above in Part 1.C.iii, Guiding Principle 18 reflects a broader trend by which shelter is not only seen as a humanitarian obligation for the state, but is also viewed as a matter of rights on the part of the displaced. As a result, the rights-based approach has helped to shift common understandings both of the urgency of providing shelter (which can mean the difference between life and death in emergency settings) and the criteria by which humanitarian shelter can be deemed to be “adequate” in the sense of the right to adequate housing. One of the most important criteria for “adequacy” of housing enunciated by the UN Committee on Economic, Social and Cultural Rights is security of tenure. Without basic protection from arbitrary evictions, few of the other standards such as affordability or cultural appropriateness are particularly meaningful. The link between humanitarian shelter provision and the right to adequate housing is extensively discussed in Chapter 9 (“Basic Shelter and Adequate Housing”) of the 2008 Manual on IDPs (“Practical Tools”, Part 1.C.ii).

It is important to recall that the level of protection of tenure security provided varies according to the nature of the legal tenure in question. However, even residents of informal settlements with no legal claim to their homes are entitled to a degree of tenure security, in the form of basic due process and respect for proportionality (e.g. no use of disproportionate force) in the event of an eviction. For IDPs, a particularly high level of tenure security must be provided precisely because their shelter needs are a direct responsibility of the state. This does not mean that IDPs cannot be moved from one settlement to another, but rather that such movements should be avoided unless they are necessary or justified and undertaken in a manner that is fair and proportional.

In the Libyan context, for instance, a very strong justification for moving IDPs would be to get them out of settings in which they have little tenure security (such as facilities needed for public use or construction sites likely to be reclaimed by foreign companies) and move them to places where they will enjoy security of tenure as well as the other criteria for basic adequacy. Proportionality and process requirements in such cases could be satisfied by consulting on IDPs on the reasons for the move and allowing them to choose between

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<sup>211</sup> Guiding Principles on Internal Displacement, Principle 18.2 (emphasis added).

various options (such as subsidized private rental or other camp locations in the area with improved tenure security and other conditions). As discussed below in Section 4, planning for transitional shelter strategies should be undertaken based on an understanding that some IDPs are likely to opt for local integration even when return becomes possible, and therefore that some temporary housing situations may need to become permanent.

Perhaps the most important post-election priority related to tenure security is the attribution of government responsibility at both the national and local levels. At the national level, the presumptive interlocutor is the ministry responsible for social affairs, but this is subject to any government reorganization that may now occur. At the local level, it would be helpful to clarify whether Local Councils, Departments for Social Affairs or other instrumentalities should have the primary responsibility for housing IDPs and how they relate to the central level focal point for these issues. In an ideal scenario, a policy on shelter that allocates responsibility and sets out criteria and procedures should issue as quickly as possible, either on its own or as part of a broader IDP policy (see Part 3.A., above). However, pending such official action, it would be helpful for humanitarian actors to seek to actively inform local and national officials about international standards on tenure security, how they relate to IDPs and what practical steps can be taken to fulfill them.

In terms of practical steps, the most important starting point is to ensure that there is at least a medium-term legal basis for all current shelter solutions adopted by IDPs. Where IDPs are located on construction sites, for instance, the status of the sites must be ascertained. If it is deemed necessary and expedient for IDPs to remain on such sites, then procedures need to be developed for ensuring that the rights of foreign companies are respected (at least to the extent that the current review of foreign investment contracts upholds their validity). Similarly, understandings must be sought with the owners or administrators of public facilities now used as IDP settlements.

Ideally, agreements should be reached with both of these types of actors setting out the terms under which the property they own or administer may be used by IDPs, including payment of rent and eventual compensation for any damage caused by such use (keeping in mind that sites used for IDP shelter may actually be better maintained than sites that are simply left abandoned). Such agreements should also set out the procedures for terminating use as IDP camps that include a sufficiently long notice period for the authorities to seek realistic alternative shelter solutions and consult with IDPs on their preferences. Where it is not possible to reach such agreements (either due to refusal by the owners/administrators, inability to locate them or competing legal claims to the property), preparations should be made to relocate the affected populations to sites where adequate shelter (including tenure security) can be guaranteed as soon as possible.

Another key starting point is to ascertain the situation of IDPs accommodated in private shelter. Typically such IDPs are either renting on the private market or staying with family members. Because they are dispersed in unknown locations, IDPs in private accommodation are notoriously harder to contact and 'profile' (through the collection of basic demographic data) than IDPs in camps and other collective settlements. While it is generally thought that private accommodation is both safer and more conducive to access to local services in the

Libyan context, according to UNHCR interviews, these IDPs are generally forced to use their own resources to pay rent or contribute to household costs. As a result, they may be at a higher risk than IDPs in camps of impoverishment and evictions for failure to pay rent over the long term. The invisibility of 'urban IDPs' in particular may afford them short term safety from illegal arrests, but can entail a degree of exclusion from humanitarian assistance and programming over the longer term.

However, where Libaid and other humanitarian organizations are active, they have begun to compile lists of households in private accommodation through registering participants in centralized distributions of humanitarian aid carried out in urban neighborhoods.<sup>212</sup> These methods should be built on in order to generate a more accurate sense of the needs and risks faced by IDPs in private accommodation, particularly as they relate to tenure security. Wherever possible local efforts to profile IDPs in private accommodation should take into account international best practices. Although IDP profiling is still an emerging and imperfect discipline, tools and resources have been compiled and made available by organizations such as the Internal Displacement Monitoring Centre (IDMC).<sup>213</sup>

Beyond ensuring the inclusion of non-camp IDPs in profiling exercises, steps that can be taken to ensure a greater degree of security of tenure include either payments directly to IDPs to assist in paying rent (a measure contemplated but never uniformly implemented by the pre-election Libyan Ministry of Social Affairs, see Part 1.B.ii), or subsidies to families hosting IDPs. An example of the latter approach comes from Georgia, where the government discounted utilities payments for host families. Ultimately, where IDPs are no longer able to remain in private accommodation, they must have access to other forms of transitional shelter provided the authorities on an ongoing basis.

The bottom line in both camp and private sector scenarios is that the Libyan authorities bear "the primary duty and responsibility" for ensuring that IDPs are provided with shelter solutions that afford them basic adequacy, including security of tenure, for as long as they remain displaced. In collective shelter settings this means preventing arbitrary evictions by actively regulating the use of camps and moving IDPs to other shelter solutions where necessary. In non-camp settings, by contrast, security of tenure can be promoted both by supporting both IDPs and displacement-affected communities and retaining the capacity to act as shelter provider of last resort where such IDPs are no longer able to arrange their own shelter.

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<sup>212</sup> Interview, Libaid, Tripoli, 29 March 2012.

<sup>213</sup> For IDMC's thematic page on profiling, see: [http://www.internal-displacement.org/8025708F004D404D/\(httpPages\)/FA87C21FCA29BBA9802574B1003F05D6?OpenDocument](http://www.internal-displacement.org/8025708F004D404D/(httpPages)/FA87C21FCA29BBA9802574B1003F05D6?OpenDocument).

### ***3.C. Steps to Prepare Property Remedies and Durable Solutions for IDPs***

Perhaps the most important step that can be taken immediately with regard to property remedies for the displaced is to prevent more displacement from occurring. Reports and advocacy by international human rights actors like Human Rights Watch and Amnesty International have been helpful in clarifying that acts of displacement are human rights violations and can rise to the level of being considered crimes against humanity. However, the knowledge that fighters from revolutionary brigades may incur international criminal responsibility for acts of displacement did not serve to rein in the outbreak of fighting with the potential to result in mass displacement even in the run-up to the election. In the post-election period, humanitarian actors and their partners should emphasize that the resolution of local conflicts through violence and displacement is unacceptable in a democratic state founded on the rule of law and take all possible steps to support the new government in preventing it.

In the meantime, for as long as voluntary durable solutions remain out of reach for those displaced prior to the election, IDPs should be counseled to be creative and persistent in developing ways to document their property claims and collectively consider how these relate to their preferences in terms of long-term durable solutions. However, a great deal of caution should be exercised in relation to targeted IDP groups such as the Tawerghans, who face staunch resistance to their return by the same local authorities that also enjoy physical control over both their property and the registry office holding evidence for their claims. Until it is clear that an appropriate mechanism exists for IDPs to effectively assert their claims, in other words, seeking to do so may actually carry the risk of prejudicing their chances of both receiving effective property remedies and being able to sustainably return. The development of such mechanisms is incumbent on the new government, but given the numerous other competing priorities in Libya, a degree of delay is to be expected.

Nevertheless, there is a good deal that can be done by displaced communities to prepare their claims while still displaced. These include the following:

- Collection and safeguarding of evidence: Most obviously official documentation of individual and community property claims should be compiled and kept safe. In cases in which displaced communities largely fled without their documentation and do not enjoy safe access to it now, every effort should be taken to seek backup copies or confirmation of their claims that may be found in safely accessible archives or offices. As a fallback, any documentation that serves to connect particular households with their pre-displacement residential and business addresses should be compiled. This can include anything from utilities bills to local phone books. Other options such as officially notarized witness statements establishing ownership and residence of properties should also be considered where necessary. Legal advice may be of particular importance in planning such activities so as to ensure that evidence is compiled and stored in a manner that will not prejudice its probative value or admissibility in any future proceedings under Libyan law.

- Mapping and dispute resolution: In cases where entire targeted communities are compiling land and property claims, another means of facilitating the process is to map their claims out on satellite photos or media such as Google Earth. In some cases, this may require seeking to resolve any pending boundary or inheritance disputes within the community through mediation or other means in order to be able to present a united community claim when the possibility arises.
- Awareness-raising within the community: Wherever possible, networks should be set up to allow the rapid dissemination and discussion of information related to the status of property left behind and measures that may allow it to be reclaimed.

As a general matter, IDPs should be encouraged to engage in an ongoing discussion about their preferences in terms of durable solutions. This discussion should be informed by international standards such as the *Guiding Principles on Internal Displacement* and the 2009 *Framework on Durable Solutions for IDPs*. In particular, it will be important for IDPs to understand that voluntary durable solutions and property remedies are both matters of human rights and that they are not formally connected. In other words, all IDPs are entitled to choose where they want to live within their own country *and* all IDPs who wrongfully lost property are entitled to remedies, including restitution, *whether or not* they choose to actually return.<sup>214</sup>

In encouraging such discussions, the aim should not be to force individuals or households to take premature choices about whether to seek return or integration somewhere else. Instead, IDPs should be encouraged to consider the concrete obstacles they would face in the case of either return or integration elsewhere, their own capacities and strategies for overcoming those obstacles, and the role that the authorities and other actors can play in assisting them. Property issues will clearly be prominent in such discussions, but numerous other questions such as security and non-discriminatory access to livelihoods, jobs and educational activities should also be taken up. Ultimately, these discussions should help to shape informed approaches to durable solutions that will allow both options involving return and reintegration and those involving local integration to be undertaken more sustainably. In addition, by pro-actively identifying issues and needs, the communities concerned can eventually put pressure on government authorities rather than passively waiting to be consulted.

For non-targeted IDPs such as those remaining resident in their own cities pending reconstruction of their homes (see Part 2.B., above), it should be possible to plan for relatively quick and sustainable return. In addition to ensuring proper assistance to such IDPs while they remain displaced, humanitarian actors should advocate for reconstruction programs that are both quick, effective and consciously evenhanded as between cities that were destroyed for opposing the Gaddafi regime (such as Zawiya and Misrata) and those destroyed for being seen as regime strongholds (such as Bani Walid and Sirte). As noted above in Part 3.B., there is an apparent potential for evenhanded reconstruction programs to

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<sup>214</sup> *Guiding Principles on Internal Displacement*, Principles 28 and 29, see also Part 1.C.ii, above.

promote reconciliation by implicitly recognizing that there were victims on both sides of the recent conflict whose needs must now be attended to in order to move forward.

One very concrete action that can be taken in this regard is for humanitarian actors to seek to provide appropriate information and support to the Libyan Urban Planning Agency (UPA), which plans utilities, infrastructure and housing countrywide.<sup>215</sup> The UPA has a longstanding partnership with UN-HABITAT, and has recently expressed interest in exploring its potential role in the reconstruction of areas destroyed in the 2011 fighting. Should the UPA confirm post-conflict reconstruction as a priority issue in the post-election period, humanitarian actors with a insights into displacement and reconstruction issues in Libya should seek appropriate means of supporting this aim.

### ***3.D. Steps to Support Legal Security of Tenure for Refugees***

Where evictions of non-nationals of concern to UNHCR have already taken place, there is little that can be done under current circumstances to directly address these acts. Given the current inactivity of the judicial system, court-ordered reinstatements are unlikely to be a realistic prospect for the foreseeable future. However, for reasons that remain somewhat unclear, the pace of evictions and eviction threats against non-nationals has slowed considerably in the period since late-2011. It may be possible to reinforce this trend as well as to address the humanitarian needs of those who have already faced eviction.

A key first step already undertaken by UNHCR is the inclusion of evicted and destitute non-nationals into humanitarian programming meant to address the needs of those rendered most vulnerable by events since February 2011. However, in the interest of the sustainability of such housing solutions, it may be worth exploring the extent to which it may be possible to seek the inclusion of vulnerable and destitute long-term non-citizen residents of Libya in official programs to provide social housing assistance. If this is not currently possible, then advocacy for the inclusion of refugees and other non-nationals should be considered. Such advocacy should be based on current understandings related to discrimination on the basis of nationality in the exercise of social and economic rights, including the right to adequate housing (see above, Parts 1.C. and 3.C.). In drafting post-Gaddafi laws and policies on housing, property ownership and tenancy, these understandings would militate for the elimination of restrictions arbitrarily targeting non-nationals.

In the meantime, an immediate step that should be taken is the dissemination of the Attorney General decisions forbidding both private evictions and court-ordered evictions of residents with Gaddafi-era documentation of their rights (see above, Part 1.B.i). As a matter of instilling respect for rule of law principles, all such decisions should be made public. In addition, information on any civil or criminal liability that could be incurred by private individuals that evict others extra-legally should be made public in order to discourage such actions.

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<sup>215</sup> Interview, UN-HABITAT, Tripoli, 19 April 2012.

## **Section 4: Long-Term Recommendations including identification of legal principles or specific legislative reforms necessary to ensure respect for the housing, land and property-related rights of displaced persons and minorities**

The overarching long-term recommendation made in this report relates to the need to avoid seeing property questions in both displacement and transitional justice situations in zero-sum, binary terms. Instead, appropriate sensitivity to both context and to the needs and aspirations of IDPs and displacement-affected communities is required. Put simply, the long-term issues related to tenure security should not be about a zero sum scenario in which all IDPs are expected to either collectively return or collectively integrate locally, but rather about the conditions under which individuals, households and communities should be able to make these choices.

Similarly, property remedies for IDPs need not be a stark choice between restitution for all property or blanket cash compensation instead, considering that some communities may have wrongfully acquired some of their land during the Gaddafi era but still have justified claims to much of the rest of it. And finally, the broader transitional justice question should not be oversimplified to whether or not to attempt to undo every legal act undertaken during the Gaddafi regime, but should instead focus on the long-term significance of those acts for both those that benefited and those that lost out as a result.

### **4.A. *Advocacy for effective property remedies for IDPs***

Any proposed solution for the displacement of targeted communities in Libya must respect two principles in order to be compliant with relevant international standards. First, the choice of destination must be left to displaced individuals, households and communities. Those IDPs who wish to go back to their homes must be supported in overcoming significant obstacles to return and those who wish to remain where they are displaced or resettle in a different part of the country will also require support until they have integrated with local communities. In accordance with the basic non-discrimination argument underlying standards such as the Guiding Principles on Internal Displacement (see Part 1.C.ii, above), ‘special measures’ in favor of IDPs will typically be required to end IDPs’ displacement, regardless of the durable solutions they choose.

It is important to provide a caveat here. The 2009 Framework on Durable Solutions, referenced above in Part 1.C.ii, allows for some discretion to governments to encourage certain durable solutions and discourage others when there are pressing and objective reasons for doing so (such as when return sites are prone to recurrent and deadly natural disasters).<sup>216</sup> However, an important restriction on this discretion applies in favor of targeted communities in Libya:

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<sup>216</sup> UN Human Rights Council, “Report of the Representative of the Secretary-General on the human rights of internally displaced persons, Walter Kälin: Addendum – Framework on Durable Solutions for Internally Displaced Persons”, UN Doc. A/HRC/13/21/Add.4 (29 December 2009), Section IV.A.

In situations of displacement resulting from serious violations of human rights, in particular ethnic cleansing, the authorities are under a strict obligation to protect IDPs from further violations and returns may not permanently be prohibited.<sup>217</sup>

A second rule that must be respected in ending displacement in Libya is that effective legal remedies must be provided in cases where IDPs have been dispossessed of their homes, lands and property. In principle, such remedies must be provided regardless of whether or not displaced owners choose to return or not. However, post-conflict property restitution has been closely associated with the return of IDPs, particularly since the 1995 Dayton Peace Agreement that ended the war in Bosnia included obligations related to both return and property restitution. The example of Bosnian property restitution was instrumental to both the inclusion of restitution obligations in the Guiding Principles on Internal Displacement (Principle 29.2) and the subsequent drafting of an entire set of standards on this topic, the 'Pinheiro Principles' (see Part 1.C.ii, above).

#### **Property restitution in Bosnia**

In Bosnia, the 1992-1995 conflict sparked by the country's secession from the former Yugoslavia displaced half the population, comprising over one million who sought refuge abroad and an equal number of IDPs. Homes and property abandoned by the displaced were often reallocated to others under color of law in a bid to consolidate the ethnic un-mixing of the country. However, the 1995 peace accords included strong requirements related to both voluntary return and restitution. The implementation of these provisions was hindered at first by both political obstruction and the need to anchor the peace accords in domestic rules and institutions. However, by 1998, strong international pressure led to the passage of domestic restitution laws and a programmatic approach to monitoring their implementation in the form of the "Property Law Implementation Plan."<sup>218</sup> These laws set up an expedited administrative procedure run by local officials and backed by a credible threat of eviction by local police. By 2003, these measures led to the return of some 200,000 claimed properties to their pre-war owners and occupants, facilitating the return of as many as one million displaced persons and other durable solutions for many more.<sup>219</sup>

Although Bosnian property restitution was successful on its own terms, many observers have questioned its applicability as a blueprint in other settings. A key objection relevant to Libya was the fact that property relations were relatively uncontroversial in Bosnia prior to the fighting, making it relatively easy to simply seek to recreate the pre-displacement status

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The Framework is available at:  
[http://www2.ohchr.org/english/issues/idp/docs/A.HRC.13.21.Add.4\\_framework.pdf](http://www2.ohchr.org/english/issues/idp/docs/A.HRC.13.21.Add.4_framework.pdf).

<sup>217</sup> Ibid., paragraph 32.

<sup>218</sup> See "PLIP Inter-Agency Framework Document" (2000) and "New Strategic Direction" (2002) under "key documents" at <http://www.ohr.int/plip/>.

<sup>219</sup> See Williams, Section III.C.



quo (unlike Libya where displacement was preceded by thirty years of controversial property confiscations that must also be addressed). Another salient point is that the international community had tremendous powers to force through restitution policies in Bosnia. For instance, international administrators repeatedly and extensively amended the restitution laws, fired local officials and police that obstructed them, and monitored the process with an extensive field presence. In Libya, the international community plays a strictly advisory role, and responsibility for addressing displacement rests fully on the Libyan authorities. While this is likely to lead to more sustainable solutions in the long run, it also means that the process, for better and for worse, will be subject to the give and take of national politics.

Both the Guiding Principles on Internal Displacement, Principle 29.2, and the Pinheiro Principles stipulate that of property left behind by IDPs must be physically restored to them (restituted) unless doing so is not possible. Only in the case of impossibility will other forms of redress such as financial compensation be acceptable. To paraphrase Guiding Principle 29.2:

Competent authorities have the duty and responsibility to assist returned and/or resettled internally displaced persons to recover, to the extent possible, their property and possessions which they left behind or were dispossessed of upon their displacement. When recovery of such property and possessions is not possible, competent authorities shall provide or assist these persons in obtaining appropriate compensation or another form of just reparation.

Recently, this ‘impossibility standard’ for restitution has come under criticism in settings in which the pre-displacement land and property relations that restitution programs set out to restore were themselves problematic.<sup>220</sup> Critics have noted that many post-colonial, underdeveloped, and agrarian economies present the need to move beyond the conditions that prevailed before displacement rather than to recreate them. In such settings, strictly corrective restitution programs could end up inadvertently recreating land relations that development experts had been seeking to transform, precisely because they were so unjust or unsustainable that conflict could ensue. These concerns are reflected in the 2009 Framework on Durable Solutions for IDPs.<sup>221</sup> The Framework stipulates that a credible mechanism for addressing property rights violations is a necessity for the achievement of durable solutions. However, in contrast to Guiding Principle 29.2, the Framework distances itself from the impossibility standard:

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<sup>220</sup> See Sara Pantuliano and Samir Elhawary, “Uncharted territory: land, conflict and humanitarian action”, *HPG Policy Brief 39* (November 2009).

<sup>221</sup> UN Human Rights Council, “Report of the Representative of the Secretary-General on the human rights of internally displaced persons, Walter Kälin: Addendum – Framework on Durable Solutions for Internally Displaced Persons”, UN Doc. A/HRC/13/21/Add.4 (29 December 2009).

Addressing housing, land and property rights issues requires a comprehensive perspective. In principle, restitution is the preferred remedy. But in some cases it may be more equitable, after weighing different interests, to compensate the displaced owner instead of restoring his or her property.<sup>222</sup>

In fact, the definition of remedies for property dispossession in the context of displacement can include a degree of balancing of interests between victims of dispossession and other affected communities. However, a number of key points should be borne in mind in the Libyan context. First, arbitrary displacement is a serious human rights violation and therefore requires a remedy. By contrast, the types of confiscations undertaken by the Gaddafi regime may not constitute human rights violations in every case. Under international law, states retain a degree of discretion to expropriate and even nationalize land, particularly if they do so in a manner that respects the rights of those dispossessed as a result and provides them with compensation. While the Gaddafi regime's record on both process and compensation was clearly far from perfect, the fact that some efforts were made in this regard cannot be ignored. Nothing similar can be said of the dispossession of targeted IDP communities to date.

From this perspective, the failure to provide remedies for the property loss and destruction of targeted IDP communities' properties would represent a clear breach of Libya's legal obligations (see discussion of the right to a remedy, above, Section I.C.i). Without denying the obvious political urgency of addressing Gaddafi-era confiscations as well, it is not as clear that failing to do this would represent a breach of Libya's international human rights obligations of comparable gravity. The bottom line is that IDPs' property issues should be treated as a priority, and should not be held hostage to resolution of broader transitional property issues.

Does this mean that IDPs, including entire targeted communities, are required to have *all of their pre-displacement property* restored to them, even if the ownership of some of it is seriously contested by groups claiming that Gaddafi wrongfully usurped it? Here, the property claims of IDPs are likely to be strongest when they are based on both the right to property and the right to the home (see Section 1.C.i, above, for discussion of both of these human rights).<sup>223</sup> In other words, where IDPs had acquired relatively strong and exclusive ownership rights to property that they used as a home for themselves and their families, these properties should be restored to them (and reconstructed, if they were destroyed). By contrast, uninhabited areas are of less concern, particularly where such displaced groups are not dependent on such areas for their economic livelihoods (e.g., agriculture) and have not invested them with historical or religious significance (e.g. graveyards). The bottom line is

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<sup>222</sup> Framework on Durable Solutions, paragraph 78.

<sup>223</sup> The jurisprudence of the European Court of Human Rights in relation to IDP property claims in Cyprus supports this point. For a discussion of this issue, see: Rhodri C. Williams "When do home and property part ways? New paper on the ECHR and the Cyprus property question", *TerraNullius Weblog* (19 October 2011), available at: <http://wp.me/pNZgJ-wk>.

that there may be some room to compromise on uninhabited tribal territory but far less on homes and adjoining property necessary for livelihoods and community life.

There appears to be an intuitive awareness of this distinction between uninhabited lands and homes in Libya. Targeted communities interviewed for this Report appeared to be willing to consider trading away uninhabited parts of their territory, for instance, if this was the price for being allowed to return to their homes. In fact, this may well be part of the agreement on land issues that has apparently been reached between the Kikla and the displaced Gualish (see above, Section 2.A.ii). Similarly, the potency of the Umm Alfar question between the village's Siaan claimants and the town of Nalut revolves around these issues. For the Siaan, the return of the remaining 60 displaced families to their homes is a final precondition for normalization of the situation in the area. At the same time, the Nalutis defend their prevention of return by claiming that reference to homes is pretextual and that the village was actually an uninhabited smuggling base run by people who lived elsewhere.

Given the need to prioritize the claims of dispossessed IDPs, they should generally receive the benefit of the doubt. In other words where they have evidence that claimed properties were used as homes, this should be sufficient unless overwhelming evidence to the contrary exists. In fact, in principle, IDPs should have their claimed property returned to them first on the understanding that they may eventually need to concede uninhabited areas they came to them by wrongful means. However, under the current political circumstances in Libya, it is understandable that some groups have sought to negotiate their own way back through means that may include preemptively conceding uninhabited land claimed by their neighbors.

In setting up procedures to allow the restoration of property to targeted IDPs, Libya enjoys two significant advantages over other comparable settings. First, because many expulsions were primarily meant to punish or remove communities seen as pro-Gaddafi, rather than to acquire their land, there is relatively little occupation of the properties left behind.<sup>224</sup> In settings such as the war in Bosnia, where territorial gains were actively consolidated by all sides through the reallocation of conquered property to loyalists, the resulting hostile occupation of property posed a fundamental challenge to restitution. By contrast, the situation in Libya may be more comparable with that in Turkey after internal conflict in the 1990s that resulted in the destruction of hundreds of Kurdish villages. Given that these villages were heavily damaged but rarely occupied by others, most IDPs could simply resume use of their own property, without any need of Bosnia-style 'restitution laws'. Libya's second advantage is that, again like Turkey, it has the resources to fund compensation and reconstruction programs of the nature that would be necessary to support sustainable durable solutions, whether or not they involve return.

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<sup>224</sup> Targeted IDPs from Misrata may constitute a notable exception. Officially, however, all those occupying their properties are doing so on a temporary basis until their own war-damaged homes have been reconstructed. While there have been reports of squatters occupying IDPs' homes without a legal basis, the Misratan Local Council has not indicated that it would seek to justify this practice.

### **Compensation of IDPs for damage to property in Turkey**

In Turkey, internal conflict during the early 1990s displaced over one million people. Most Turkish IDPs retain uncontested rights to abandoned housing, land and property, but are not able to return due to widespread destruction, land mines, and intimidation and occasional occupation of land by local militias. In response, Turkey has adopted a number of measures meant to provide both redress for human rights violations and assistance in ending displacement through the achievement of durable solutions. The primary reparations mechanism is a law providing standardized compensation to victims for death and bodily injury, destruction and damage to property, and lost income due to enforced absence from homes and productive lands.<sup>225</sup> Although this law has been criticized for having been adopted without adequate consultation with victims and for providing inappropriate levels of compensation, it represents a novel approach.<sup>226</sup> Turkey has also adopted a pilot Action Plan on IDPs in its Van province that is built on extensive consultations and sets out concrete measures to support both voluntary return and local integration of those IDPs who do not wish to return.<sup>227</sup>

As reflected by the Turkish case, the question of when to provide restitution and when to provide compensation can be complicated and rarely comprises a simple 'either-or' calculation. In Turkey then, as in Libya now, restitution as such was both 'possible' (in the sense of Guiding Principle 29.2) and easily achievable due to the general lack of adverse occupation of property. However, compensation should not only be provided when restitution is not possible, but also where restored properties have been wrongfully destroyed, and ideally in sufficient amounts to allow for their reconstruction. Indeed, Turkey went even further than this principle by providing compensation as well for lost income during the period that IDPs were prevented from accessing agricultural assets such as fields and orchards. This represented an important step toward recognizing the fact that Kurdish IDPs in Turkey had been impoverished by their displacement. However, overall compensation levels were still set at levels many argued were insufficient to allow for the full reconstruction of IDPs' homes.

In post-election Libya, policies on internal displacement and durable solutions should take these principles into account in creating the conditions for IDPs to have their homes restored to them and have meaningful choices about return. In implementing these principles,

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<sup>225</sup> See Law 5233 of 2004 and its implementing regulations, available at: <http://www.brookings.edu/projects/idp/Laws-and-Policies/turkey.aspx>

<sup>226</sup> For criticism of Law 5233 of 2004, see Human Rights Watch, *Unjust, Restrictive, and Inconsistent: The Impact of Turkey's Compensation Law with Respect to Internally Displaced People* (2006), available at: <http://hrw.org/backgrounders/eca/turkey1206/>.

<sup>227</sup> The Van Action Plan can be accessed at: <http://www.brookings.edu/projects/idp/Laws-and-Policies/turkey.aspx>

however, the new government will need to walk a fine line. On one hand, the central government is responsible for ensuring respect for and protection of human rights throughout Libya. This means that the new authorities risk being held responsible if they fail to take reasonable steps to protect vulnerable populations, such as IDPs, from human rights violations at the hands of local communities and private actors such as revolutionary brigades. However, given the entrenched position taken by some local actors against any return or property restitution, this responsibility risks putting the newly elected central government on a collision course with the former.

Property remedies are likely to be more effective (and return more sustainable) if they are at least tolerated by or at best agreed with the local authorities and communities at the IDPs' place of origin. For instance, the fact that the Gualish and Siaan tribes have made significant progress negotiating their return directly with neighboring communities improves the prospect for such return to be sustainable. By contrast, if the central government is ultimately forced to impose the return of other groups over the objections of local authorities, local actors may withhold support from returnees or actively oppose return, reducing its likely sustainability.

From this perspective, it will not be sufficient to support the central authorities in Libya to prioritize responses to displacement through developing policies and devoting resources at the national level alone (see above, Section 3.A.). Instead, as the central authorities commit to addressing the issue, they should be supported in developing means of addressing the concerns of local authorities and communities that remain opposed to property remedies and return. While such strategies must proceed from the recognition that permanently exiling targeted communities would be a gross breach of Libya's human rights obligations, they should also appeal to enlightened self-interest. For instance, reconstruction projects for returning IDPs can often be designed so as to benefit the larger community at the place of origin. It is of crucial importance that infrastructure reconstruction and development projects, in particular, be designed and implemented in an even-handed way. Given the Gaddafi-era legacy of politically motivated granting and withholding of public investment, some observers have argued that infrastructure investment should be treated as a transitional justice issue in Libya in its own right.

Another means of persuading local communities to accept the return of their displaced former neighbors may be to provide active government support to the negotiated resolution of any land disputes that divide them. This may be particularly important where communities at the place of origin have long harbored grievances over property transactions that they perceive as having enriched their neighbors to their own detriment. Encouraging such negotiations may entail risks given the difference in negotiating power between the parties (e.g., Gaddafi victims with current control over disputed territory and 'revolutionary legitimacy' on their side versus persons uprooted from their homes and lands and delegitimized by the perception that they were Gaddafi supporters).

The active role played by reconciliation committees in mediating community disputes to date has helped to ensure a degree of equality of arms between hostile communities. However, observers have noted that many of these negotiated deals "require further action

only a government can take.”<sup>228</sup> Ultimately, the government can and must act as guarantor for the compatibility of such agreements with Libya’s international obligations. It must also demand that the terms of such agreements be written and accessible, that obligations and timelines are sufficiently detailed to allow them to be consistently interpreted and applied, and that meaningful consequences ensue in the event that the parties breach their obligations.<sup>229</sup>

Over the long term, the most important contribution the central government can make to reconciliation may simply be to establish basic security throughout the country along with a functioning judicial system. While the former is likely to be a precondition to sustainable return, the latter can help to prevent future conflict and displacement. Reestablishing the state’s monopoly of violence alone may raise concerns, considering that the Gaddafi regime relied on little else to remain in power. However, accompanying the restoration of law and order with an unambiguous commitment to rule of law principles would represent a genuine departure from the past.

However, it should be kept in mind that a significant number of IDPs may not wish to return or to have their properties restored. Moreover, as long as displacement remains protracted – that is, as long as there is no credible government policy on durable solutions and no prospect for IDPs to be able to safely return on their own – IDPs must be provided shelter and can be expected to seek greater local integration where they are displaced.

Given the current expectation of most host communities in Libya that all IDPs will eventually return, facilitating local integration may raise similar challenges to supporting return. In both cases, the government bears the primary responsibility for implementing the right of IDPs to choose where they want to live within Libya. In both cases, local communities affected by IDPs decisions will also need to be sensitized to the rights of IDPs, as fellow citizens, to choose their place of residence. And in both cases, government programming to ensure the reintegration of IDPs into society should provide tangible benefits to surrounding communities as well.

At a certain point, when restoration of homes has remained out of reach for a long time, claims for property remedies may implicitly or explicitly begin to focus on access to permanent homes with full legal security of tenure where IDPs find themselves displaced. In protracted displacement settings, guarantees of tenure security become a crucial precondition for integration. Tenure security may be achieved by granting greater rights to shelter that was initially provided only on a temporary basis, subject to measures to ensure that title to the relevant properties is not disputed. In other cases, IDPs may be supported in seeking to house themselves. For instance, in Serbia, significant steps have been taken to facilitate integration of IDPs – at least on an interim basis – through facilitated access to permanent housing solutions.

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<sup>228</sup> ICG 2012, 33.

<sup>229</sup> ICG 2012, 34.

## **Decentralized decision-making on housing allocation for local integration in Serbia**

*The below text is an excerpt from a report on Serbia undertaken by this author for a broader study on protracted displacement situations.<sup>230</sup> Over 200,000 people displaced from Kosovo since 1999 currently reside in Serbia. The majority are ethnic Serbs but about one-tenth of this population are members of the extremely vulnerable Roma minority. Given the length of their displacement, IDPs have been allowed to locally integrate in Serbia (in a process referred to as ‘improving the living standards’ of IDPs) in a manner that explicitly does not waive their right to return once the conditions are created.*

Responsibility for the response to internal displacement in Serbia is divided between two institutions. The Ministry for Kosovo and Metohija (MKM) has a mandate to deal with all matters related to Kosovo itself, including the return of IDPs to Kosovo. Meanwhile, the Serbian Commissariat for Refugees (SCR) is mandated to provide humanitarian assistance to IDPs and administer collective centres in Serbia proper and Kosovo. Over time, these responsibilities have evolved into a broader role in ‘improving the living standards’ of IDPs in a manner corresponding to ‘interim integration’ measures in other displacement settings....

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Housing for IDPs is seen as the lynchpin of sustainable integration. The wealthier and more socially mobile categories of IDPs in Serbia had often bought property in Serbia proper prior to 1999, or were able to do so soon afterwards, and are generally (if not officially) viewed as having integrated. However, the bulk of less wealthy IDPs found themselves in substandard shelter in a constellation of collective centres stretching between southern Serbia and Belgrade. Early efforts to close IDP collective centres were poorly co-ordinated and often exacerbated the tenure insecurity of families affected.

In some cases, displaced families with nowhere else to go either moved to closed collective centres or remained in them after they closed, leading to the creation of informal settlements with extremely poor living conditions. In other cases, IDPs were paid cash allowances in return for leaving collective centres but were able to afford to rent substandard housing in locations far from services or employment opportunities. Although those still remaining in the relatively few collective centres still officially open are often seen as the most vulnerable categories of IDPs, others who remained in ‘illegal’ collective centres or moved to peripheral rental housing may not be significantly better off.

More recently, the closure of IDP collective centres has been on the basis of much more robust housing support programmes developed for – and until recently, primarily directed

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<sup>230</sup> Rhodri C. Williams, “Protracted Internal Displacement and Integration in Serbia,” in E. Ferris (ed.), *Resolving Internal Displacement: Prospects for Local Integration* (June 2011) (citations omitted), available at:

[http://www.internal-displacement.org/8025708F004BE3B1/%28httpInfoFiles%29/3960D84820E7C2A4C12578A900553E7E/\\$file/brookings-idmc\\_resolving\\_internal\\_displacement.pdf](http://www.internal-displacement.org/8025708F004BE3B1/%28httpInfoFiles%29/3960D84820E7C2A4C12578A900553E7E/$file/brookings-idmc_resolving_internal_displacement.pdf).

to – refugees from Bosnia and Croatia. These programmes focused early on the need to provide the most vulnerable refugees with social housing, while assisting more self-reliant families to purchase or build their own homes. This principle has carried over to IDPs from Kosovo, with vulnerable individuals and families placed in social housing and others offered the possibility of receiving grants to assist in the voluntary purchase and refurbishment of ‘village houses’ they identify in rural communities. The Serbian Commissariat for Refugees estimates that only the most vulnerable five per cent of IDPs will require social housing, while other IDPs can be assisted with help in acquiring their own housing.

The management of these housing support programmes has been improved through the efforts of the Serbian Commissariat for Refugees to decentralise responsibility to ‘Municipal Migration Councils’ in all affected municipalities. These councils are composed of relevant official and private stakeholders and convened by the ‘trustees’ appointed to act on behalf of the Commissariat in each municipality. Although housing support programmes are largely internationally funded and implemented in part through international NGOs, the engagement of local actors is thought to significantly limit overhead costs and avoid legal issues. Perhaps most significant, however, this decentralisation has facilitated the development of ‘Local Action Plans’ that set procedures and criteria for the allocation of housing benefits.

In practice, this local allocation process has facilitated first the inclusion of IDPs in housing programmes designed for refugees, and second, the inclusion of particularly vulnerable families from local ‘domicile’ (non-displaced) communities. Although some concerns about inconsistent local practices and inclusion of Roma remain, the development of Local Action Plans has helped shift the focus of housing support programming from formal categories (refugees, IDPs and domiciles) to locally salient considerations related to manifest vulnerability.

#### **4.B. *Relating HLP issues to transitional justice and reconciliation***

Long-term respect for the housing, land and property-related rights of displaced persons and minorities is, first and foremost, a question of transitional justice and national reconciliation. The displacement of these communities and the confiscation of their property is not merely a product of the happenstance of war in Libya but also a violent accounting with the past with enormous implications for the country’s current transition and its future. As pointed out by the UN Commission of Inquiry in March 2012 in its analysis of attacks on targeted communities, the allegiances and acts attributed to displaced groups have the effect of throwing into question whether these categories of IDPs truly belong to their regional polities or the Libyan national community:

The contexts in which the various attacks detailed in this Section take place are complex. Those alleged to be responsible believe those being attacked either fought with Qadhafi forces or uniformly supported the Qadhafi forces and, in



some cases, that they committed crimes against their own population or were the recipients of preferential treatment by the Qadhafi government. The Commission also notes, however, frequent comments reflecting the belief that those being attacked are in some way not “indigenous” to the region or to Libya as whole.<sup>231</sup>

This issue has a fundamental bearing on the protection of IDPs. The outset assumption in international standards such as the Guiding Principles on Internal Displacement is that IDPs are citizens who must be provided with equal treatment vis-à-vis those citizens who are not displaced (see Part I.C.ii, above). If part of the rationale for displacing the IDP communities now most at risk was that they were deemed to have renounced their membership in the new Libya (as well as their property rights) by virtue of attacks on their neighbors or their assumed loyalty to the Gaddafi regime, then this represents both an obstacle and an opportunity.

As discussed above in Parts 1.A.i. and 2.A., the presence of many of the targeted groups in the particular locations they have been displaced from was sometimes established through Gaddafi-era relocations, and usually reinforced through public infrastructure investments and other benefits denied to neighboring groups. In the Libyan context, in other words, the lingering effects of acts such as selective public investment must be seen as a genuine transitional justice issue. The sense of victimhood on the part of groups denied these privileges must be assuaged on one hand, but the rehabilitation of those now effectively disowned as a result of their preferential treatment by the prior regime will also be necessary.

In this sense meaningful national reconciliation will not only require coming to terms with Gaddafi’s crimes, as emphasized in the current Libyan legislation (see part 1.B.iii, above) but also addressing the de facto collective punishment suffered by those now collectively deemed to have been complicit in those crimes.<sup>232</sup> This collective punishment has taken the form, first and foremost, of forced displacement and property dispossession. As a result, conceptually rehabilitating displaced communities to the status of equal citizens will be a crucial part of any meaningful response to their displacement, as well as a precondition to a sustainable national reconciliation process based on recognition of the equality of all Libyan citizens.

One hopeful sign is that many of the groups punished for their associations with the Gaddafi regime have recognized their own responsibility for atrocities, and expressed a willingness to forgive the disproportionate retaliation that has often been taken against them. Perhaps most notably, the displaced Tawergha community offered a formal apology to the city of Misrata in February 2012:

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<sup>231</sup> UN Commission of Inquiry, paragraph 484.

<sup>232</sup> UNSMiL, “Transitional Justice”, 2.

The elders admitted: "We, the Tawergha tribes of Libya apologise to our brothers in Misrata for any action committed by any resident of Tawergha. We affirm that their honour is our honour, their blood is our blood and their fortune, is our fortune". They went on to say: "We extend our hands and our hearts in the interests of all of Libya and in the interests of building together a prosperous future and a brighter tomorrow". They further called on all Libyans accused of committing crimes, regardless of their tribal affiliations, to surrender to the authorities and accept their punishment.<sup>233</sup>

Although the Misratans reject this apology as both insufficient and opportunistic, it may represent an unavoidable starting point for a process in which both victimhood and responsibility for crimes must be acknowledged on the part of both parties, but all the political and military power has rested with only one. A similar humility can be found in Sirte, a city that was both heavily damaged by fighting and then extensively looted for its association with Gaddafi. In interviewing Sirte residents for this report, it was impossible to ignore a sense of resentment that was not based so much on the gratuitous destruction of the city, but rather the failure of the interim authorities of Libya to recognize that Sirtawis had now paid the price for their past and should be treated as equal partners in the new Libya. As one interlocutor put it, "They can destroy the whole town, its okay, we still win. We are free."<sup>234</sup> These types of attitudes tend to be viewed as disingenuous throughout much of the rest of Libya, where a widespread (and not entirely unjustified) view still prevails that those who enriched themselves under Gaddafi may now be in a position to buy and ingratiate themselves back into positions of influence.<sup>235</sup>

In a social environment in which advancement and wealth is about who you know, there is deep suspicion that reconciliation is code for giving well-connected Qaddafi officials a free pass to appropriate the revolution. .... A common sentiment expressed by prominent revolutionary activist who is now a senior human rights official in Libya's interim government is that there was no civil war in Libya. There was a revolution in which some fought for freedom and others supported a tyrant. Having backed the wrong side, the losers need to bend to the will of the winners.<sup>236</sup>

Nevertheless, a relatively hopeful example of meaningful reconciliation already exists, albeit one that remains somewhat tentative despite being undertaken between related tribes without a long history of mutual animosity. In describing the reconciliation process with the displaced Gualish sub-tribe, members of the Kikla Local Council emphasized the fact that the Gualish had not only accepted responsibility for their situation, but also that they had quietly

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<sup>233</sup> "Tawergha elders say "Sorry" to Misrata", *Libya Herald* (24 February 2011).

<sup>234</sup> Interview, Civil Society Consortium "17 February", Sirte, 23 April 2012.

<sup>235</sup> Interview, Libyan Lawyers' Organization, Tripoli, 18 April 2012.

<sup>236</sup> Sean Kane, "The Libya Rohrschach", *Foreign Policy* (12 June 2012).

approached the Kikla via a respected intermediary in order to ascertain the Kiklas' demands and commence negotiating their way back.<sup>237</sup> Although the actual return of the Gualish community may well be subject to further delays – and the Kikla were unwilling to discuss any territorial concessions the Gualish may have made – their homes and public buildings remained locked and abandoned but largely undestroyed, in welcome contrast to the gratuitous destruction wrought against the property of other displaced communities.

The Gualish case represents a key transitional dilemma. Confiscation and redistribution of property was a key tool of the Gaddafi regime in seeking to win the loyalty of key constituencies, most notably the urban poor as well as favored tribes. Thus, the post-uprising winner-loser dichotomy that has frustrated reconciliation efforts to date may apply with redoubled force to resolving Libya's property issues. For those that feel that they were dispossessed or denied property rights by the Gaddafi regime, the expulsion of those seen to have benefited from their losses is itself seen as a type of restitution – in the sense of restoring a more just status quo ante. In accordance with the formulation in the transitional justice law (see above, Section 1.B.iii), victimhood is reserved to those oppressed by Gaddafi, while those who have suffered in the wake of his overthrow are left to seek reconciliation with the communities that have, in turn, victimized them.

The concept of negotiated reconciliation appears to denote a give and take in which targeted communities would be expected to countenance a portion of the harm that had been done to them as the cost of being rehabilitated into the Libyan political community (and of being allowed to return, in cases where they are currently displaced). In other words, the onus to make concessions in order to achieve reconciliation is implicitly placed primarily on current victims of displacement. This represents a significant challenge to the human rights-based view that arbitrary displacement is a violation and that IDPs should be entitled to remedies including restitution, full stop. It also suggests that efforts to promote a rights-based response to displacement will function best if embedded in a political narrative that can shift the debate beyond its current terms.<sup>238</sup>

The UN Support Mission in Libya (UNSMIL) recently proposed reviewing the approach to transitional justice adopted by the NTC in order to allow the post-election authorities to preside over a process that would not only be based on broad consultation but also capable of addressing historical root causes through a recognition of injustices committed by both sides in relation to the 2011 conflict.<sup>239</sup> The basis for such a comprehensive transitional justice program would be a truth-telling process meant to get to the bottom of over four

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<sup>237</sup> Interview, Kikla Local Council, Kikla, 13 June 2012.

<sup>238</sup> While the identification of such a message goes somewhat beyond the scope of the current Report, the Author would like to give credit to one of the UNHCR drivers, who eloquently expressed his fear that “this country will never move forward until we recognize that in different ways, each and every one of us were victims of Gaddafi.”

<sup>239</sup> UNSMIL, “Transitional Justice”, 2.

decades of violations and provide a framework for addressing “even the most contentious issues” such as the dispute between the Misratans and the Tawerghans.<sup>240</sup>

Such a process has the potential to build on willingness of targeted communities to date to accept responsibility for their acts in a process that would also be designed to acknowledge the ways in which such communities have both been victimized and victimizers. Such a process could be a crucial step in the rehabilitation of targeted communities, creating the political conditions to end their displacement. However, in order to effectively address property issues in Libya and discourage disgruntled parties from engaging in destabilizing self-help measures, it would need to commence quickly and be linked to a commitment to provide credible mechanisms for implementing a just resolution of both contemporary and historical property disputes.

#### ***4.C. Developing a Joint International Position on Transitional Property Issues***

The resolution of the property issues of IDPs is closely linked with the broader question of how Gaddafi-era property confiscations should be addressed. As discussed above, many individual IDPs, and particularly those from Misrata, may have been evicted from homes that were initially acquired in connection with Law No. 4 and are likely to find their claims subject to question as a result. Moreover many targeted communities were granted rights to significant parts of their land by acts of the Gaddafi regime. However, the implications of any decision taken by Libya’s new constituent assembly on how to resolve the legacy property issue go far beyond these humanitarian concerns. How the property issue is resolved will be a political watershed, a key indicator for adherence to rule of law principles, a central factor in the economic development of the country and perhaps even a determinant of its stability.

The early signs have been unsettling, with many political actors in Libya appearing to assume that the issue will be addressed in an effectively zero-sum manner. Either all Gaddafi-era property transactions should be rolled back in order to create the status quo ante as of 1969 or nothing should be done at all. Although this question goes somewhat beyond the scope of the current inquiry, it is worth pointing out that IDPs would be best-served by an alternative approach that would also have the potential to allow the broader property issue to be resolved in a manner that both redressed the worst injustices from the Gaddafi era and avoided causing serious social instability. Specifically, if the political possibility exists to do so, this Report suggests that the property issue *should be resolved according to clear rules of decision set out in new legislation that take into account both the rights of dispossessed claimants and the rights of subsequent users of claimed properties.*

This approach will be controversial for the same reasons it may be controversial to seek recognition of targeted communities as victims of human rights abuses that should be entitled to reparations (see Section 4.B., above). In the current case, advocates of a full

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<sup>240</sup> UNSMIL, “Transitional Justice”, 3.

rollback of Gaddafi era legal acts will be reluctant to concede that the users of confiscated properties acquired any rights to them, given the wrongfulness of the underlying confiscations. However, there is significant international law support for asserting that they have acquired rights that cannot now be ignored. The most important argument in this regard was initially voiced by the International Court of Justice in its 1970 Advisory Opinion on “the legal consequences for States of the continued presence of South Africa in Namibia (South West Africa).”<sup>241</sup> The Court confirmed that the failure of South Africa to meet obligations it had initially undertaken with regard to the League of Nations rendered its continued administration of Namibia illegal. In defining the obligations this placed on other states to “refrain from lending any support or any form of assistance to South Africa with reference to its occupation of Namibia”,<sup>242</sup> the Court set out a critical caveat:

In general, the non-recognition of South Africa's administration of the Territory should not result in depriving the people of Namibia of any advantages derived from international Cooperation. In particular, while official acts performed by the Government of South Africa on behalf of or concerning Namibia after the termination of the Mandate are illegal and invalid, this invalidity cannot be extended to those acts, such as, for instance, the registration of births, deaths and marriages, the effects of which can be ignored only to the detriment of the inhabitants of the Territory.<sup>243</sup>

In the meantime, the European Court of Human Rights has controversially but consistently extended this ‘Namibia Principle’ to apply to displacement and property issues in its jurisprudence on the divided island of Cyprus. To briefly summarize the Court’s jurisprudence, concerns about allowing a de facto human rights vacuum to arise in Turkish-occupied Northern Cyprus have induced the Court to take into consideration whether efforts by the unrecognized Turkish Cypriot administration to provide remedies to displaced Greek Cypriots can be considered effective. In 2010, a remedy for confiscated property offered by the Turkish Cypriots was found to constitute an effective remedy in the case of *Demopoulos and others v. Turkey*.<sup>244</sup>

This had the effect of requiring Greek Cypriots to seek to avail themselves of this remedy – even though it was placed on offer by a universally unrecognized regime – as a precondition to being able to pursue their cases before the Court. One particularly controversial point was that the Turkish Cypriot remedy privileged compensation over restitution. However, the

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<sup>241</sup> International Court of Justice, Advisory Opinion concerning the legal consequences for States of the continued presence of South Africa in Namibia (South West Africa), notwithstanding Security Council resolution 276 (1970).

<sup>242</sup> *Ibid.*, paragraph 119.

<sup>243</sup> *Ibid.*, paragraph 125.

<sup>244</sup> European Court of Human Rights, *Demopoulos and others v. Turkey*, App. Nos. 46113/99, 3843/02, 13751/02, 13466/03, 10200/04, 14163/04, 19993/04, 21819/04 (Decision on Admissibility, 01 March 2010).

Court found that the failure of the parties to come to a negotiated solution (the Greek Cypriots rejected a UN plan for reunification of the island in 2004) and the effects of the passage of time (Northern Cyprus was invaded by Turkey in 1974) had to be taken into account. In effect, despite the clear wrongfulness of the original Turkish Cypriot takeover of the property, Turkish Cypriot residents of Greek Cypriot homes had acquired competing rights to them:

The Court must also remark that some thirty-five years after the applicants, or their predecessors in title, left their property, it would risk being arbitrary and injudicious for it to attempt to impose an obligation on the respondent State to effect restitution in all cases, or even in all cases save those in which there is material impossibility, .... It cannot agree that the respondent State should be prohibited from taking into account other considerations, in particular the position of third parties. It cannot be within this Court's task in interpreting and applying the provisions of the Convention to impose an unconditional obligation on a Government to embark on the forcible eviction and rehousing of potentially large numbers of men, women and children even with the aim of vindicating the rights of victims of violations of the Convention.<sup>245</sup>

What is striking in the Demopoulos case is that one of the implicit grounds for the Court's ruling appears to be a determination that the protection of rights to the home under Article 8 of the ECHR had shifted *from* Greek Cypriot property claimants (who remain legal owners but are increasingly unlikely to be found to have significant links to homes they left behind two generations ago) and *to* Turkish Cypriot occupants. While the Court does not directly state that occupants of claimed property are now protected under Article 8, such a finding is arguably implicit in the Court's concern that blanket restitution could give rise to 'disproportionate new wrongs'.<sup>246</sup> The Court also appears to give its retroactive blessing to elements of the UN reunification plan rejected by the Greek Cypriots in 2004. They focus in particular on the detailed criteria included in the plan for balancing the rights of Greek Cypriot owners with those of Turkish Cypriot occupants.<sup>247</sup>

The implications of these international law developments for Libya in grappling with Gaddafi's property legacy seem relatively clear. Rather than entirely scrapping or entirely preserving these legal acts, the constituent assembly should seek to strike a balance that recognizes the levels of attachment to and dependence on confiscated properties that may have developed on the part of current occupants without denying the right of dispossessed owners. Another point that should be pressed by the international community is that the determination of these rules should be based on evidence rather than conjecture. Based on discussions with many interlocutors in Libya, one conclusion of the current report is that a

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<sup>245</sup> Ibid., paragraph 116.

<sup>246</sup> Ibid., paragraph 117.

<sup>247</sup> Ibid., paragraphs 11-16.

golden opportunity may now exist to develop a detailed overview of pending claims to property confiscated by the Gaddafi regime.

As discussed above in Sections 1.A.ii and B.i, many of the appeals from decisions by the “2007 Commission” appointed by Gaddafi to provide compensation for Law No. 4 compensations are still pending before the currently inactive courts. Other property claims are likely to have been filed to courts since the fall of the regime in accordance with the current Attorney General decisions banning private evictions (Section 1.B.i, above). Pending the formation of the constituent assembly and debates over how to proceed with revoking Law No. 4, it should be possible to review pending cases in order to develop a much more detailed sense of the categories of claimants and current users whose rights are at stake.<sup>248</sup> The privacy rights of parties to such cases would clearly need to be respected, but if at least a statistical sampling could be carried out, the constituent assembly would have a much sounder empirical basis on which to proceed in legislating on such a significant issue.

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<sup>248</sup> Notaries in Libya, who play a prominent role in property transactions in Libya (see Part 1.b.i), could potentially play an important role in undertaking such a review of pending cases.

## **Annex A: Meetings and interviews**

### ***First Visit to Libya, 25 March-04 April 2012***

25 March

Attended Protection Working Group meeting, UNHCR Tripoli

26 March

Briefing with UNHCR Protection Monitoring, Tripoli

Visit to Misrata IDPs, Janzour Village Camp, Tripoli

Visit to Tawergha IDPs, Marine Academy Camp, Tripoli

27 March

Teleconference with former UN-HABITAT representative

Attended UNSMIL meeting on transitional justice and reconciliation, Tripoli

Meeting with Libaid, Tripoli

28 March

Briefing with UNHCR ProCap, Tripoli

Meeting with Libyan lawyer, Tripoli

Meeting with Tripoli Local Council, Tripoli

29 March

Followup meeting with Libaid, Tripoli

Meeting, Centre for Humanitarian Dialogue, Tripoli

Attended Human Rights NGO Coordination Meeting, UNHCR Tripoli

Meeting, Tuareg NGO representative, Tripoli

31 March

Briefing, UNHCR Benghazi, Tripoli

Briefing, Mercy Corps, Tripoli

01 April

Meeting, UNHCR Protection, Tripoli

Meeting, Libyan lawyer, UNHCR Tripoli

02 April

Meeting, Misrata Local Council civil servants, Misrata

Briefing, Mercy Corps, Misrata

03 April

Meeting, UN SRSG, Political and Human Rights Departments



## *Second Visit to Libya, 16-26 April 2012*

16 April

Attended UNHCR Protection Meeting, Tripoli

17 April

Meeting, UNDP, Tripoli

18 April

Meeting, Libyan Lawyers' Organization, Tripoli

Meeting, UNSMiL Political Department, Tripoli

19 April

Facilitated training on IDP Protection, Libaid, Tripoli

Meeting, UN-HABITAT, Tripoli

Briefing, Mercy Corps Misrata, Tripoli

20 April

Briefing, Centre for Humanitarian Dialogue, Tripoli

21 April

Briefing, UNHCR Benghazi, Benghazi

Visit to Tawergha IDPs, Al Khalis Camp, Benghazi

Visit to Tawergha IDPs, Gary Ouness Camp, Benghazi

22 April

Briefing, ACTED, Sirte

Tour of damaged and destroyed residential areas, Sirte

Meeting with human rights NGO, Sirte

23 April

Meeting, Sirte Local Council, Sirte

Meeting, Libyan lawyer, Sirte

Meeting, Sirte Department of Social Affairs, Sirte

Visit to Misrata IDPs, village near Sirte

Meeting, Civil Society Consortium '17 February', Sirte

24 April

Visit to detention centre for third country nationals, Ajdabiya

25 April

Facilitated second training on IDP Protection, Libaid, Benghazi

Debriefing on situation in Sirte, UNSMiL Benghazi, Benghazi

### *Third Visit to Libya, 07-15 June 2012*

10 June

Facilitated third training on IDP Protection, UNHCR, Tripoli

11 June

Briefing on Nafusa Mountains, UNHCR Protection Department, Tripoli

12 June

Meeting, Tiji Local Council, Tiji

Meeting, Nalut Local Council, Nalut

Visit to Umm Alfar village

13 June

Meeting, Kikla Local Council, Kikla

14 June

Meeting, Mashashya tribal leaders, Tripoli

Debriefing, UNSMiL Political and Human Rights Departments

Debriefing, UNHCR CoM

## Annex B: Timeline of Events in Libya

- 1911** -Italy begins the colonization of Libya, replacing Ottoman rule.
- 1942** -End of Italian rule, World War II Allies administer Libya.
- 1951** -Libya gains independence under King Idris al-Sanusi.
- 1969** -*September*: Muammar Gaddafi takes power in a military coup.  
-*December*: Constitutional Proclamation issued.
- 1971** -Uncultivated land declared state property.
- 1972** -Relocation of large part of Mashashya tribe from Fezzan to Awiniya.
- 1973** -*April*: Gaddafi declares a 'cultural revolution' in a speech in Zuwara.
- 1975** -Green Book, Part I sets out political 'third universal theory'.
- 1977** -Libya declared a 'jamihiriya' (state of the masses).  
-Land ownership restricted to that necessary to meet needs.
- 1978** -Green Book, Part II sets out economic theories.  
-*May*: Law No. 4 passed, resulting in tenants becoming owners.
- 1986** -Property records publicly burned.
- 1988** -Lockerbie bombing.  
-Libyans to declare property in new 'Socialist Real Estate Register'.  
-'Great Green Charter of Human Rights of the Jamahiriyan Era' adopted.
- 1994** -Oslo Accords and expulsions of Palestinians from Libya.
- 1996** -*June*: massacre of 1,300 political prisoners at Abu Salim prison, Tripoli.
- 1997** - 'Code of Honor' adopted to allow collective punishment of communities.
- 2006** -Decision 108 creates '2007 Committee' for Law No. 4 compensation.
- 2011** -*January*: Gaddafi allows occupation of half-finished apartments.  
-*February*: Beginning of uprising.  
-*March*: UN Security Council authorizes no fly zone.  
-*May*: Fall of Awiniya.  
-*August*: NTC adopts interim Constitution; fall of Tawergha and Gualish.  
-*October*: Fall of Sirte, death of Gaddafi.
- 2012** -*February*: incursion into a Tripoli camp for Tawerghan IDPs kills seven.  
-*March*: UN Commission of Inquiry report.  
-*July*: Post-Gaddafi elections.

## **Annex C: Methodological Tools for assessing and planning responses to housing, land and property issues related to displacement**

The objective of this Section is to present a set of inquiries meant to facilitate an assessment of all factors relevant to developing responses to HLP issues in post-conflict settings. Such responses should be aimed at achieving at least three objectives, namely to (1) address HLP conflicts and disputes, (2) prevent arbitrary deprivation of HLP rights, and (3) protect rights to HLP assets left behind by persons affected by conflict and other disaster situations.

Armed conflicts and natural disasters often exacerbate pre-existing grievances, inequalities and tensions related to HLP assets and can give rise to new disputes. The emerging recognition that HLP conflicts must be addressed in order to secure sustainable peace, durable solutions to displacement and early recovery has been accompanied by increased cognizance of the political challenges and technical complexity entailed by such undertakings.

This assessment tool is meant to provide a set of inquiries – on HLP conflicts, on applicable domestic rules, including both law and practice, and on competent institutions – that will allow for a rapid and flexible diagnosis. The aim of the tool is to both identify relevant categories of information and guide analysis of their significance in a manner that facilitates the development of an action plan or policy on addressing HLP issues. Specific objectives in such a process include:

1. Collection, collation, analysis and assessment of information
2. The preparation of a draft action plan
3. Stakeholders' meetings to validate the findings of the assessment and prioritize actions
4. Integration of the resulting action plan in multi-sectoral humanitarian programming (including through inclusion in Flash Appeals, CAP and CERF Appeals, etc.)

This assessment tool is composed of clusters of inquiries related to HLP conflicts, rules and institutions accompanied by short explanatory texts providing context and concrete advice on how the information gathered in each area may affect the formulation of an HLP action plan. The explanatory notes are not meant to provide dispositive answers applicable to every situation, but rather to indicate what conclusions might most reasonably be drawn from the information available to policy drafters in specific local contexts.

In order to provide maximum flexibility, this assessment tool does not prescribe or presume any particular methodology for how the specified information should be gathered. Instead it focuses on inquiries that should be included in whatever assessment methodology is deemed most appropriate under the circumstances prevailing in any given situation. In settings characterized by high time pressure or limited access to affected persons, the assessment tool

may function on a stand-alone basis, suggesting inquiries and data collection methods that should be borne in mind in the process of a desk review of existing reports, analysis of national legislation and meetings with competent authorities, including local leaders and adjudicators. Where time and resources exist, on the other hand, the questions in this assessment should be incorporated into more complex multi-stakeholder consultation processes and integrated with other needs assessment frameworks (such as the PCNA, the PDNA, and related methodologies developed by actors such as the IASC, the EC, etc.)

Disputes over HLP assets tend to be seen as some of the most politically challenging and technically complex obstacles to post-crisis reconstruction and early recovery. However, there is little doubt that they must be addressed in order to avoid perpetuating grievances and nurturing destabilizing forces. The inquiries in this assessment tool are designed to break this complexity down into comprehensible components that can be diagnosed, accorded appropriate levels of priority and addressed through an action plan that is informed and grounded in local realities.

## ***HLP Conflicts***

### **Typology**

*Analysis: HLP disputes are a constant at all times in almost every society and do not present a destabilizing factor in and of themselves. Rather, such disputes threaten stability and early recovery in situations where they have become significantly more widespread, intractable or severe than before the disaster; where the terms of such disputes are politicized, particularly along ethnic or sectarian lines; and where little common ground exists between the parties to such disputes regarding which rules and adjudicatory institutions enjoy both the legitimacy and the actual capacity to mediate.*

*Inquiries:*

- What proportion of HLP disputes are of an ordinary nature, involving predictably recurring issues such as overlapping land uses, the drawing of boundaries between private plots and division of inherited estates? Has the incidence of such disputes increased or decreased and have any new trends in their adjudication emerged? Do such disputes tend to pit potentially politicized groups against each other? Are such disputes adjudicated in an accepted manner and within reasonable timeframes? Do the rules for resolving ordinary disputes affect men and women equally?
- What proportion of HLP disputes has taken on a “territorial” or class dimension, pitting social groups with opposed economic or political interests against each other for control over assets? Do such disputes reflect the breakdown of earlier agreements on division or shared use of assets? Do they reflect the effects of past conflict, discrimination, dispossession or exclusion?
- What proportion of HLP disputes has the potential to ignite or perpetuate actual conflict? Have such disputes resulted in the investment of significant resources by individuals and communities in measures to demarcate, patrol and defend HLP assets (through measures such as fencing off land, roadblocks, formation of militias and community patrols, or

laying of land mines and booby traps)? Have they resulted in threatened or actual harm? Are any channels of communication or mediation open?

## **Geographic Dimension**

*Analysis: While ordinary HLP disputes are likely to be distributed throughout any given countries, disputes exacerbated by or resulting directly from crises are likely to be focused on specific areas. These need not be limited to the areas where the crisis events actually occurred; for instance, new disputes may arise in distant areas where displaced populations have come into conflict with local communities over access to or use of HLP assets. In other situations, ongoing disputes between groups may spread to different areas of the country where similar tensions had not yet erupted into open conflict. It is crucial to be aware of latent future conflicts as well as the effects of past conflicts.*

*Inquiries:*

- How are destabilizing HLP disputes distributed throughout the country? Are they concentrated in particular areas? Are there areas for which information on HLP disputes is not available?
- Are HLP disputes perceived as isolated and local or as part of a broader political struggle? Are they concentrated in areas inhabited by minority groups, indigenous persons or relatively recent migrants to the country in question?
- To what extent do the conditions that have led to destabilizing HLP disputes in some parts of the country exist in other parts of the country? What factors may work against their spreading?
- How do HLP disputes relate to demographic changes and population movements, including forced or involuntary displacement? Are such changes related to historical factors, including demographic trends, urbanization and local climate change, and are they likely to increase or decrease? How did the disaster affect these trends? Are they limited to the territory of the country or do they affect neighboring countries or regions as well?

## **Time Dimension**

*Analysis: Understanding the way in which HLP disputes have peaked and subsided in the past may provide further insights into factors that may aggravate or mitigate them in the present and future.*

*Inquiries:*

-Have destabilizing HLP disputes been a chronic problem in the country's recent history, emerging in regular or predictable cycles, or have they been sporadic and unpredictable?

-What temporal triggering factors may exist? Is the emergence of HLP disputes related to recurring social or political events such as elections, or to seasonal patterns such as growing seasons or cycles of transhumance?

-Can marked improvements or deteriorations in HLP relations be related to a singular primary cause, such as the adoption of a new policy affecting HLP assets, a governmental transition or the beginning of a period of environmental or climate change?

-How do destabilizing HLP disputes relate to the crisis? Did they exist prior to the crisis? Were HLP disputes or their consequences one of the root causes of the crisis or its worst effects (as in cases where inappropriate land use exacerbates the effect of natural disasters)? How did the crisis affect prior HLP disputes? Did it cause new HLP disputes? If so, how do these relate to prior disputes?

## **Parties to HLP Disputes**

*Analysis: While it is most obviously important to identify primary parties to HLP disputes, or those with a direct stake in the outcome, many powerful and influential actors are likely to have a secondary or indirect interest. Understanding the motivations of both sets of actors can help in mobilizing support for just and sustainable resolutions. However, participatory processes for identifying and addressing HLP disputes should clearly prioritize the input and involvement of those parties most directly affected in the development of solutions.*

*Inquiries:*

-Who are the parties directly involved in HLP disputes? Which parties are occupying or using disputed HLP assets, or otherwise preventing others from accessing them? Which parties claim to be displaced from their rightful HLP assets or otherwise prevented from accessing or using them? Are there multiple parties on either side and, if so, do they cooperate or compete?

-Do the groups directly involved in HLP disputes implicitly or explicitly represent broader societal groups? Do they claim to represent ethnic or sectarian communities? Is one of the parties the state or government itself or seen to be acting on behalf of or with the support of public authorities? Are both or all parties associated with competing public bodies or political parties?

-What actors bear responsibility for addressing HLP disputes? What is the role of the judiciary, competent ministries or agencies, administrative authorities and local leaders? (see below, 'HLP Institutions')

-What role is played by civil society actors? What domestic private actors are commenting on HLP disputes, playing roles in negotiating or mediating them, or mobilizing, informing or providing aid to directly affected parties? Are they linked with international NGOs or advocacy groups? Do HLP disputes reflect deeply polarized political crises or does a significant proportion of the population still consider itself not partisan?

-What role is played by commercial and business interests? Are such actors seen as partisan or neutral? Are they exploiting weak state capacity or corrupt access to state officials in order to access or exploit disputed HLP assets? Do they have an interest in acting as spoilers? Are they linked with business interests or governments outside the country?

-What is the role of the international community? Have UN bodies or agencies or other international actors commented on HLP disputes or become involved in attempts to resolve them? What is the role and perspective of development actors active in the country prior to the crisis? Have international actors unintentionally aggravated HLP disputes through their own actions?

-What role, if any, is played by the governments of neighboring states and regional actors or organizations?

## **Historical Context**

*Analysis: Seeking information regarding the historical background to disputes over HLP assets is crucial in order to be able to complement an understanding of the objective situation on the ground with insights into the subjective position of the parties to disputes and how they are likely to perceive developments related to HLP assets. In many situations, past grievances and traditional understandings regarding the motivations of other actors at the national level will color perceptions of the current situation, resulting in surprising and even violent reactions to seemingly innocuous events, and complicating humanitarian, human rights and early recovery responses. Given the inherent value of HLP assets for subsistence, commerce, speculation and political patronage, HLP grievances and disputes often reflect broader power relations and political struggles.*

*Inquiries:*

-When and how did the country come into being? Was it shaped by early migration, displacement and shifts in borders or has it had a relatively steady population development within an established territory? Do significant disputes over borders, natural resources, territorial claims or treatment of minority groups persist with regard to neighboring states?

-What are the historical trends in terms of land ownership and use, national and regional migration and economic development? Has the country experienced colonialism or other forms of foreign domination or exploitation? Has there been significant industrialization and urbanization?

-What historical patterns of HLP conflict, dispossession or exclusion can be identified? Have indigenous or other long-settled groups been pushed off their land? Have national minority groups faced forced integration measures or been suspect of harboring secessionist desires? Have large immigrant or refugee populations been prevented from integrating?

-What role do women play in the political and economic system? Have women faced historical challenges to exercising equal rights to inherit, acquire, use and dispose over property? Have these been addressed or are there still discriminatory rules and practices?

-Is the governance tradition highly centralized or federal? Have any regions traditionally enjoyed a degree of autonomy? Has the state historically been able to project power throughout the entire country? To what extent do HLP-related practices reflect the answers to these questions?



-Do longstanding customary and informal HLP administration regimes exist? Are these tolerated or recognized by the state? Is the trend toward doing away with such systems or protecting them? What is the nature and resilience of voluntary local systems allowing overlapping land uses?

-What economic policies related to HLP assets has the country pursued? Have there been significant episodes of nationalization, collectivization, forced industrialization, or privatization and titling of land? What policies exist regarding the exploitation of undeveloped land, commercial farming and the grant of concessions to exploit agricultural land and natural resources? Do such policies encourage or restrict foreign investment in HLP assets?

## ***HLP Rules***

### **International Obligations**

*Analysis: In post-conflict situations, peace agreements increasingly commonly include rules related to disputed HLP assets and natural resources. The treatment of these issues may also be affected by other treaty obligations, including international and regional human rights rules and agreements on trade and foreign investment.*

*Inquiries:*

-What relevant rules are included in multi-lateral and regional human rights treaties ratified by the country in question? Do these treaties include relevant substantive protections, such as rights to free choice of residence, property, adequate housing, non-discrimination by age, race and gender and protection of indigenous and tribal peoples? Do they include relevant procedural protections such as the right to a fair hearing in the determination of civil rights and obligations as well as the right to an effective domestic remedy for alleged violations? Has the country accepted the jurisdiction of international or regional human rights monitoring bodies or courts?

-Where a peace treaty or ceasefire agreement applies, what relevant rules are included? Are displaced persons recognized as enjoying the right to voluntary return and to remedies for HLP-related violations? Are special institutions set up to implement these commitments or international monitors and peacekeepers mandated to support their implementation?

-Do any applicable bi-lateral or multi-lateral agreements on trade and foreign investment affect the ability of crisis-affected individuals and populations to enjoy their rights to HLP assets? Have HLP assets that remain claimed or disputed been listed as available or allocated to foreign investors?

### **Inventory of Domestic Formal Rules**

*Analysis: It is important to develop an overview of the formal rules set out in the constitutional framework, laws and regulations that apply both generally and, where relevant, in regions of the country. Such formal rules may explicitly provide de jure recognition to informal and customary regimes de facto applicable at the regional or local level. However, where formal rules purport to be the*

*sole source of legitimate normative authority throughout the country, the potential for misunderstanding and conflict in settings involving legal pluralism (see below) increases.*

-Constitutional framework: What relevant rules are set out in the Constitution related to acquisition and protection of property, housing and land rights? Are there guarantees regarding accessible procedures for seeking protection of these rights? Does the Constitution define state or public land broadly, e.g. as any land not formally registered in the name of a natural or legal person? What overall land policies are reflected? (e.g., do strict conditions for expropriation perpetuate an unequal distribution of land? Do rules on acquisitive possession of land promote settlement and cultivation?) Does it guarantee gender equality generally or specifically with regard to property rights? Are indigenous groups or minorities and their customary institutions recognized and protected? In decentralized political systems what competences related to land and property are delegated to the regional or local level?

-Relevant statutory law at the national level: In mapping the statutory framework, important questions include (1) how property rights can be acquired (purchase, gift, inheritance, distribution, privatization, individualization, prescription, adverse position, regularization, recognition, allocation for use, leasehold, etc.); (2) how property rights are registered and regulated (registry and cadastre, rural land administration, urban planning and zoning, laws on pastureland, forests and protected areas, expropriation rules, taxation of ownership, transfers, improvements, etc.); and (3) how property rights are adjudicated (court jurisdiction, ADR and mediation, including through customary institutions).

-Relevant statutory law and legislative competences at sub-national levels: In situations where sub-national levels of government enjoy legislative or regulatory competences related to HLP assets, the above inquiries related to national legislation should be made and the relationship between the exercise of central and regional HLP-related competences understood. Less formally, it is also crucial to understand how state-regional coordination of property issues functions in practice and whether areas of tension or overlap exist. The adoption of HLP-related rules at significant variance with each other by different regions of decentralized states may also be an issue, particularly where regions adopt religious or customary rules rejected by significant local minority groups.

-Relevant executive decrees having force of law: In some legal systems, executive decrees may be issued with the force of law, at least for a limited time. These may set out important rules, including exceptions to ordinary legislation made during times of crisis.

-Administrative by-laws and implementing regulations: Executive and administrative officials may be given a great deal of discretion by legislation to promulgate implementing regulations. Understanding the effect of such regulations as well as practice, in the sense of how they tend to be interpreted and applied, can be crucial to understanding the effect of general provisions of legislation on the HLP rights of local individuals and groups. As with legislation itself, it is important to understand the relationship between regional and national regulatory rules and systems.

## Patterns of Recognition of Informal and Customary Rules

*Analysis: Informal or unwritten rules, along with customary rules of long standing may or may not be recognized by the state. As a general rule, recognition is seen as an important measure in protecting the livelihoods of vulnerable groups. For indigenous groups, in particular, such recognition is an emerging obligation under international law. Recognition can take various forms and has both positive and negative implications. In post-colonial countries, recognition of community laws may historically have been a device for co-opting minority groups and can lead to tensions, particularly where community decision-makers are not institutionally accountable or the rules are seen as arbitrary or unjust. Likewise, attempts to recognize customary rights by transforming them directly into statutory ownership rights can endanger customary holders of secondary rights by denying them access to affected lands. On the other hand, failure to recognize customary rules can jeopardize the tenure of marginalized groups to their lands and facilitate encroachment, land-grabbing and forced evictions. Finally, although the nature of recognition provided to various groups may vary based on their express needs and wishes, arbitrary or discriminatory differentiation between groups is likely to increase tensions.*

-Officially recognized customary, religious or community laws: Some states accord official recognition to indigenous, tribal, ethnic, and religious minorities, delegating a degree of competence to such communities to regulate their own affairs. Where recognition of customary and community laws is limited to family law issues, HLP issues are still likely to arise, particularly in the area of spouses' joint rights to property and inheritance laws that may dispossess women or children in favor of male relatives. However, where recognition includes broader rights to administer customarily held lands according to customary or religious rules, points of contention may still include the extent to which affected communities can bar access to outsiders, their control over sub-surface natural resources and conditions imposed in exchange for recognition.

-Conversion of informal and customary rights through titling: In urban settings, formal recognition of informally held property rights has been proposed as a means of providing the poor with both tenure security and assets that can be used as collateral. However, this approach may be complicated in rural settings by the fact that customary rights tend to be collectively held and exercised. In indigenous communities, an entire lineage group may be the 'owner' of the land, with individuals accorded rights of allocation (within the group), occupation, use and access. Insensitive conversion of 'higher' rights (such as allocation) within customary systems into outright ownership may lead to the exclusion of others whose 'subsidiary' customary rights may have been central to their livelihoods. It is therefore important to not only be aware of whether titling programs are underway, but also whether they provide title in a manner agreed with by the groups involved and compatible with their customary land administration practices.

-Conditional recognition of customary rights: Where states recognize informal and customary rights, they often do so in exchange for concessions by the affected communities. In the best cases, such conditional recognition proceeds on the basis of participatory processes and is based on recognition of the emerging international law requirement that customary rights be recognized to the extent that they do not conflict with fundamental

rights defined by the national legal system and human rights obligations. However, in any case, conditions for recognition may lead to disputes within affected groups or between them and government officials. Examples include requirements that customary groups provide the government with written charters setting out their land administration rules or the manner in which adjudicatory bodies are constituted, as well as acceptance of laws regulating extraction of sub-surface natural resources from customarily-held land.

-Unrecognized informal and customary rights: In very many cases, informal and customary rights simply apply at the local level without state recognition. Such systems tend to function well in providing tenure security based on local attribution under normal circumstances. However, in situations of displacement or encroachment by powerful political or economic actors, such rights are easily brushed aside, leaving affected populations without legal recourse for their dispossession. As a result, the widespread persistence of unrecognized informal and customary rights can itself be a destabilizing factor.

### **Policies supported by statutory law**

Analysis: Understanding the policies underlying statutory laws can help to analyze how their application may affect tensions and conflicts over HLP assets, as well as which societal groups stand to gain and what groups stand to lose. In some cases HLP-related laws may serve policies that are themselves root causes of tension or conflict. In other cases, legitimate purposes served by such laws may become inappropriate when applied without sensitivity to the effects of a disaster or conflict.

Inquiries:

-Who can and does own land? From a de jure perspective, is the state the default owner of much or most of the land or do the laws recognize and encourage strong individual ownership rights? In the former case, is the state following an active policy of nationalization of property or does it simply label any property not held under recognized title documents as state property? From a de facto perspective, who considers themselves to own the land? Does practice vary with law?

-What specific legal rules govern expropriation of property and evictions? Are expropriations required to be in the public interest? Do guarantees of fair procedure and adequate compensation exist? Are evictions legally viewed as a last resort in order to achieve a pressing public interest goal? Do procedural safeguards and appeals possibilities exist for affected persons? Is compensation and assistance available to evicted persons who did not own their homes as well as those that did?

-Do women and men enjoy equal legal rights related to HLP assets and joint rights to marital property? Are any groups excluded by law from exercising property rights on an equal basis with others? In cases in which there is a legitimate basis for such exclusion, e.g. as in the case of orphaned children who have not reached the age of majority, do legal guarantees exist for the exercise of such rights when the justification in question no longer exists? Are facially neutral rules of law applied in a manner that results in the de facto exclusion of certain groups from exercising these rights?

-Do the laws follow a 'land to the tiller' approach with occupation and productive use of land rewarded with stronger tenure? If so, are there any rules on the rights of persons displaced from lands they were using with a view to acquiring title?

-Do the laws favor commercial use of land through measures such as encouraging large-scale consolidation of parcels and concessions, or do they favor smallholders?

-Do the laws serve to reinforce the status quo, in terms of ownership and access to land, or to reform it, e.g. through the breakup of large estates, grant of title to tenants, access programs for landless, etc.? In the former case, is unjust distribution of land a cause of tension? In the latter case, are reform efforts likely to bring about broad-based and sustainable access, or is there a risk that favored groups may arbitrarily benefit at the expense of disfavored ones?

## ***HLP Institutions***

### **Rule-making Institutions**

*Analysis: As discussed in the section on 'HLP Rules', above, formal rules governing HLP assets may be issued at the state, regional and even local levels, while informal rules (which may or may not be recognized by the formal system) tend to be made at the local level but may, in the case of large tribal groups or religious law, be issued in a manner that covers much or all of the state. The relationship between formal and informal rule-making bodies at various administrative levels is important primarily as it affects whether the rules that result will be compatible with each other. Where competences and jurisdictions are clear and legitimate, this may reduce the potential for conflict. However, where there are overlaps or disputes – or where such systems simply operate in parallel to each other – the resulting legal pluralism and uncertainty is likely to result in forum-shopping, with parties to disputes choosing among competing adjudicatory bodies (see below) based on the likelihood that they will apply a set of rules more favorable to them.*

Inquiries:

-Is the formal/statutory lawmaking system coherent? If regional or local governments have legislative or regulatory competences affecting the exercise of HLP rights, do they exercise them consistently with national law rules, or do gaps, overlaps or conflicts exist? Do such issues reflect broader political tensions in the country? Are national and regional legislative bodies perceived as legitimate and representative of the entire areas they are competent to legislate for?

-Is the relationship between the formal and informal rule-making systems uniformly regulated? Where informal or customary rule-making bodies exist and are recognized under domestic law, is recognition universal or selective? Are informal and customary rules required to be in conformity with specific constitutional or statutory rules? Are there direct connections between the systems, e.g. legal rules by which customary rights can be converted into statutory ones?

## Adjudicatory Institutions

*Analysis: The institutions tasked with applying the applicable rules and adjudicating HLP-related disputes play a crucial role in both preventing tensions from developing into open conflict and in stabilizing post-conflict situations. However the centrality of HLP-assets and related natural resources to both economic growth and the basic needs of individuals can place severe pressures on such bodies, exposing them to threats, bribes and political interference. Formal adjudication bodies such as courts or administrative boards are often particularly challenged by HLP disputes, as they tend to be difficult and costly to access for those directly affected, often entail lengthy procedures and may be perceived as partial or corrupt. By contrast, informal adjudicatory bodies tend to be cheap, accessible and quick, and enjoy a high degree of legitimacy, at least within the local communities where they operate, but may have low legal capacity and apply unpredictable, arbitrary or even discriminatory rules.*

*A number of challenges are posed by situations of legal pluralism, in which multiple (formal and informal) adjudicatory bodies apply different rules in HLP disputes without having any clearly defined relationship with each other. The first challenge, as described above, is the risk of 'forum-shopping', in which claimants are able to choose between multiple adjudicators based on considerations of which one applies the most favorable rules with regard to a particular claim – or is most likely to be sympathetic on the basis of ethnicity or political affiliation. A second challenge is legal uncertainty, or the inability of parties to land disputes to reasonably anticipate the outcomes of their cases due to the multiplicity of inconsistent rules in play.*

### Inquiries:

-If informal adjudication bodies exist and are recognized, what is the nature of the recognition? Are their decisions, including settlements, simply deemed final and binding as long as they were taken in cases that clearly fell within their jurisdiction? Is some formal approval such as notarization required? Do they share jurisdiction with formal adjudication bodies or are there areas of unclarity or overlap? If a claimant has received a valid final determination from an informal body (including a settlement), can he or she bring de novo proceedings before a formal adjudicator? Can decisions or settlements by informal bodies be appealed to or challenged before formal adjudication bodies under any circumstances? Are those bodies then obliged to test the informal bodies' application of customary rules in the specific case or merely to determine whether the outcome is in accordance with international and domestic rights protections?

-If informal adjudication bodies exist but are not recognized, is there a de facto relationship or hierarchy by means of which decisions by informal bodies can be either recognized by or challenged before formal ones? Do formal institutions refer claimants to informal ones for alternative dispute resolution under any circumstances? If so, do they approve the resulting settlements and consider the parties bound by them? Can decisions and settlements by informal bodies be challenged – or presented as evidence – in courts?

-If informal adjudication bodies exist and operate completely separately from formal ones, how does this function in practice? Do populations in local communities go to informal

bodies for some types of cases and formal ones for others? Are preferences correlated to social class, ethnic or tribal affiliation or other factors?

-How are formal adjudicators perceived? Are they present and physically accessible throughout the country? Are they viewed as politically partisan, corrupt or subject to influence? Do factors such as high fees, procedural and paperwork requirements, delays and use of languages not spoken locally discourage access? Are they able to conclude cases expeditiously? Are enforcement proceedings effective? Are any shortcomings recognized by the government and corresponding reforms planned or underway?

-How are informal adjudicators perceived? Are they viewed as efficient, transparent, legitimate and representative? Are they factually representative? Specifically, is it possible for women or members of local minority groups to sit in such bodies? Do they have standing to participate as parties in disputes before such bodies? Are informal adjudicators seen as having jurisdiction over all types of disputes (e.g., including serious criminal cases and complex multi-party civil disputes)? If not, whom are parties referred to when they fall outside customary bodies' jurisdiction? What rules do informal adjudicators apply? Are they applied consistently across localities or is there a great deal of local variation? How are HLP disputes between communities (as opposed to within communities) handled? Are any of the rules objectionable from a human rights perspective? Are they viewed as controversial locally? Do informal bodies apply an adversarial system, issuing decisions in favor of a sole 'winning' party, or do they follow a mediation model (or some other approach)? What types of remedies are available in HLP disputes before such bodies and how are decisions or settlements enforced?

## **Record-keeping Institutions**

*Analysis: As with legislative and adjudicatory functions, HLP record-keeping functions can often exist in parallel formal and informal guises. State record keeping typically involves extensive compilation of HLP records in the form of land registers and cadastral offices. Such records may be in paper or electronic forms, but are typically treated as binding evidence of valid title as well as the demarcation between respective properties. As such, they are crucial to resolving disputes, particularly in formal adjudicatory institutions, raising serious problems when they are damaged, lost, not updated properly or tampered with as a result of corruption or political pressure. Informal records may consist of anything from petit papiers – unregistered but signed and witnessed contracts on transfer of property – to the knowledge and attribution of the communities in which property-holders live. Both formal and informal records are vulnerable to loss and destruction in situations of conflict or natural disaster, complicating return processes and delaying reconstruction projects that are preconditioned on beneficiaries demonstrating legitimate possession of their damaged homes and lands.*

**Inquiries:**

-If informal record keeping institutions exist, is there any relationship between them and formal record keeping institutions? Alternatively, is there any device for recognition or conversion of informal title evidence? If not, what is the legal status of land held under informal documentation? Is it treated as state land by default?

-Are formal record-keeping offices accessible for ordinary property-holders? Are they centralized or de-centralized? Are they physically accessible for the majority of the population? Do they charge high fees or are other significant expenses (e.g. taxes) imposed for the registration of property transactions such as sales and mortgages? Is there a tendency toward voluntary updating of formal records (because it brings tangible benefits) or do local populations tend to avoid official records offices and transact in HLP-assets informally?

-Are formal records seen as reliable? Are records offices liable to corrupt or politically motivated tampering? Are they up to date or are there major gaps? If records keeping methods are inadequate, has this been recognized by the government and are corresponding reforms planned or underway?

-What types of informal evidence of legitimate ownership and possession of HLP assets exist? Is there a great degree of local variation in terms of what minimum evidence can establish ownership? Is paper documentation required or do local communities rely primarily on attribution?

-In the wake of conflicts or disasters, have formal records offices – and officials – survived? If records have been destroyed, have they been backed up elsewhere or does other data exist that would allow them to be reconstructed? Given what is known about how up to date and reliable the destroyed records were, would such an effort be worth it?

-Do displaced and other crisis-affected populations still have access to documentation and evidence of their HLP rights? Did many leave such documentation behind in areas that are now inaccessible? Were they forced to surrender such documentation or sign over their property under duress? Do they possess alternative means of documenting their rights? In cases of entirely undocumented rights, are community leaders or others present who are entitled to testify as to local land rights?