

Down but not out - Working towards legal reform in post-Gaddafi Libya

The transition inherent in moving on from Muammar Gaddafi's all-embracing autocracy in Libya towards an inclusive democracy, which inspired the 17 February 2011 revolution, has served simply to reveal the true extent of his political, economic and social legacy.

On the positive side, Libya now has a democratically elected parliament and a new interim Government, which are, despite the inevitable controversies, attempting to deliver a nationally accepted constitution and permanent system of Government.

Yet while they do their difficult work, Libya's problems are being compounded by increasing regional instability and conflicts prompted by the void left by the former regime. These destabilising factors have fuelled an increasingly – and usually self-serving – political and ideological polarisation, which plays out on the streets in Libya from time to time.

Finding its way

So while Libya strives to find its way, what has become of the post-2011 'buzz' that brought with it the promise that the country would finally realise its enormous potential? In February 2012, I wrote an article for Legal Week that listed some of the issues Libya had to address to capitalise on this buzz and begin the long and arduous road towards development and prosperity.

Among these issues was the need to resolve the status of the estimated \$180bn (£115bn) of contracts inherited from the previous regime, particularly those entered into in relation to the Libyan development programme, all of which have been at a standstill since the outbreak of the revolution.

The so-called '20 Committee', made up of Libyan academics and jurists, and established by the interim Government between October 2011 and July 2012, was promising but has so far had little impact on initiatives to restart contracts. The committee concluded its legal analysis by classifying the events of 2011 as force majeure, but did not go as far as to formulate any practical strategy that would allow the Libyan Government to address contractor concerns and claims, leading to the commencement of work.

As a result, the Libyan Government's approach to the development programme has so far been piecemeal. Direct negotiations with a number of contractors and foreign states about government-to-government deals are ongoing but are yet to yield much. This may be caused partly by the multiplicity of stakeholders in the Libyan development programme, which complicates decision-making, and the post-Gaddafi desire for consensus-based Government.

The Ministry of Transport, the Public Projects Authority and the Housing and Infrastructure Board (HIB), to name a few, all have a say in the development programme. Navigating these various stakeholders and trying to reach consensus has taken time.

But some progress seems to be on the horizon. In June this year, at an infrastructure conference in Tripoli, engineering company AECOM said it had reached an agreement with the HIB to resume work on the development programme.

AECOM, a Fortune 500 company, was appointed by HIB as manager of the \$60bn (£38.4bn) housing and infrastructure programme in 2007. This project seeks to deliver up to 500,000 housing units and full and partial infrastructure across Libya.

It is estimated to have directly and indirectly employed 70,000 Libyans and hundreds of local and international contractors and construction managers. The return of AECOM is the strongest sign yet from Libya's Government that things are getting back on track.



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Legal reform

Among the other issues listed in my previous article was the need for legal reform. Libyan laws relating to the commercial, property, banking and finance sectors are in need of reform to move away from the monopolistic policies of Gaddafi's socialist state and help create a new market economy underpinned by legal certainty and transparency. Progress with such reforms has been slow because any action could be seen to pre-empt the outcome of the constitutional debate.

The General National Congress (GNC), Libya's first democratically elected legislature in more than 40 years, has struggled to get to grips with such matters.

This can be blamed in part on the need to prioritise security and stability, and in part on the apparent confusion about the GNC's constitutional role and mandate. There does not seem to be a clear agreement about whether it is a law-making body exercising the normal functions of a legislature or whether its remit is limited to presenting the nation with a constitution and managing the transition to a permanent form of Government.

This has left it a somewhat reactive body, with no clear sense of purpose. This can, in part, be seen in the most notable piece of legal reform to date: the law passed earlier this year banning and criminalising the charging of interest on loans.

The GNC later agreed to delay the law's implementation until 2015, following complaints from Libyan banks that they could not implement the changes within such a short period. It soon became clear that more thought was required before introducing such far-reaching reform.

So while this law may never reach the statute books, it has highlighted the fact that Libya needs a comprehensive and considered long-term policy for legal reform, which is perhaps best left to a permanent legislature.

Desire for progress

Nevertheless, one encouraging sign is the growing willingness of the Libyan Government to engage with international advisers. Under the Gaddafi regime, they were used rarely and limited to a certain number of state entities.

The playing field has widened in the new Libya as the Government seeks to apply a 'best practice' approach to its problems. As the country stabilises, the benefits should start to trickle down to contractors and ultimately help get the economy moving again with creative solutions to old problems and developing new models.

Libya might still be down, therefore, but she is certainly not out. Political transition can be a slow and at times frustrating business, but the rewards for the country will be significant once it is complete.

Stability is now a regional problem rather than a local one, and given that economic justice and development are high on the list of people's demands – and are the most likely ways that the country will achieve lasting stability – real traction can be expected in the not too distant future.

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