

Rule of Law Quick Scan Yemen



The Rule of Law in Yemen: Prospects and Challenges

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Laila Al-Zwaini

Hiil Rule of Law Quick Scan Series

This document is part of Hiil's Rule of Law Quick Scan Series. Each Quick Scan provides a brief overview of the status of rule of law in a country.

September 2012

The main text of the Quick Scan was finalised in May 2012

Foreword

This document is part of HiiL's *Rule of Law Quick Scan Series*. Each Quick Scan provides a brief overview of the status of rule of law in a country.

The Quick Scan Series is primarily meant for busy practitioners and academics who want to have a snapshot of the rule of law in a country, particularly with a view to understanding what the main trends and challenges regarding the rule of law are and where local and international stakeholders can possibly make a positive difference.

Each Quick Scan is written by a reputable rule of law expert from academia and/ or practice, who is either from the concerned country or has spent many years living and working there.

The Quick Scan Series aims to be neutral and balanced. To achieve this aim, the authors have consulted sources from a wide range of stakeholders, including the government, (inter)national NGOs, academia, and international organisations. They present differences of opinion or analysis, but do not pronounce judgement on which view is correct. In the context of their work on the Quick Scan they have visited the country and talked to different stakeholders, presented drafts and revised in view of the comments they received.

All Quick Scans have the same format. Part A describes relevant historical, social, political and economic context. Part B analyses positive trends and challenges. Part C is an overview of relevant indicators on rule of law. To identify relevant trends and challenges in rule of law, the Quick Scans are guided by the conception of the rule of law developed by the World Justice Project Rule of Law Index.

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The Hague,

Ronald Janse
HiiL

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This report has been drafted with the greatest possible care and integrity, and is based on the author's personal research, extended stays in Yemen, and participation to a number of international and bilateral rule of law donor programmes, which all took place between 1996 and 2006. However, given the difficulty of obtaining exact figures in general, and the outbreak of the Yemeni uprisings in 2011 at the outset of writing in particular, it was regrettably not possible to co-draft this report with Yemeni experts, as was envisaged, or to hold local consultative meetings. In light of the continually unfolding events in Yemen, the author therefore dares not claim full certitude of all data provided, and takes responsibility for any error that may have been inadvertently included, or fact overlooked. Website-references with no access-date mentioned, have been last accessed on 23 May 2012.

About the author | Laila Al-Zwaini

Laila Al-Zwaini (BA, MA in Arabic and Islamic Studies, Leiden; LL.B, LL.M, Leiden; Diploma in Law, SOAS, London), specialises in classical and modern shari`a, tribalism, legal pluralism, intellectual and social movements, religious authority, state formation, and human (women's) rights in the Arab/Muslim world. She works as an independent scholar, trainer, and advisor, and also engages in public debates, media, art festivals, policy development, and Muslim women's empowerment.

Between 2007 and 2009, Al-Zwaini headed the Rule of Law Unit of the United Nations Assistance Mission in Afghanistan (UNAMA) in Kabul, where she interacted with leading Afghan and international partners, and ISAF. From 2001-2005 she co-directed the action-research project *Rights at Home. An Approach to the Internalisation of Human Rights in Family Relations in Muslim Communities*. This project was a collaboration between the International Institute for the Study of Islam in the Modern World (Leiden), and Muslim intellectuals, human rights trainers, and young community leaders in the Middle East, Africa, and South-East Asia.

Between 1996 and 2006, Laila Al-Zwaini spent extensive periods in Yemen on rule of law-related field research and projects. She also advised various justice sector missions to Yemen, among others by the Netherlands, United Nations (OHCHR), and United Kingdom (DFID).

Al-Zwaini co-authored *A Bibliography of Islamic Law, 1980-1993* (1994), co-edited *Legal Pluralism in the Arab World* (1999), and wrote various academic articles, policy reports, and op-eds. She is also a member of WISE Global Muslim Women's Shura Council.

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Part A: Overview of the Rule of Law in Yemen



General Background¹

1. Geography

Yemen is located in the Middle East, at the southwestern corner of the Arabian Peninsula between Saudi Arabia and Oman. To the South, Yemen is bounded by the Gulf of Aden and the Arabian Sea, and to the west by the Red Sea and the Bab al-Mandeb strait, one of the most active shipping lanes of trade and oil transports in the world. Yemen's neighbours across the waters are Eritrea, Djibouti, and Somalia.

2. History

Yemen's history and civilisation spans over 3000 years. Formerly known as 'Arabia Felix', Yemen was the location of a number of ancient kingdoms. Historically, Yemen sustained extensive contacts through trade and migration with many other countries in the Arab world, Africa, India, and the Far East.

Yemen became islamised in early 7th century AD, and was subsequently ruled by successive dynasties of Imams from the Zaydi (Shi'i) sect. In the 16th century, and again in the 19th century, parts of former North Yemen came under Ottoman rule. When the Ottoman Empire was dissolved in 1918, the Zaydi Imams of the Al-Mutawakkil dynasty ruled North Yemen until the revolution in 1962. Army officers, led by Colonel Abdallah al-Sallal, took control of Sana'a and declared the Yemen Arab Republic (YAR). Civil war broke out between the traditional royalist forces, supported by Saudi Arabia and Jordan, and the new republicans, supported by Egyptian troops. It was not until 1970 that all parties recognised the YAR.

Former South Yemen was long governed by various Islamic Shafi'i (Sunni) Sultanates. In 1839, the British seized the port of Aden and made it a Crown Colony, while they concluded pacts with the Sultans and tribes from the Hadramawt in the east. By 1965, most of the tribal 'protectorates' joined Aden to form the British-sponsored Federation of South Arabia. Over the next two years, two factions - the Marxist National Liberation Front (NLF) and the Front for the Liberation of Occupied South Yemen (FLOSY) - rivalled for power. By the summer of 1967, the NLF was in control of most areas, which marked the end of the Federation and of British presence in Yemen. On November 30, 1967, the People's Republic of Yemen, comprising Aden and South Arabia, was proclaimed. Under Marxist influence, the country changed its name to the People's Democratic Republic of Yemen (PDRY) on December 1, 1970.²

By 1972 the two Yemens were in open conflict. The YAR received aid from Saudi Arabia, while the PDRY obtained arms from the Soviet Union. The conflict culminated in the assassination of the President of the YAR, Ahmed al-Ghashmi, in June 1978. A month later, the Constituent People's Assembly elected Lieutenant Colonel Ali Abdallah Saleh as the new President. Renewed fighting broke out early 1979, yet in March the heads of state of the two Yemens signed an agreement pledging unification. On May 22, 1990, the two Yemens formally united as the Republic of Yemen.

¹ For a good classic read into Yemen's recent history, see Paul Dresch, *A History of Modern Yemen* (Cambridge University Press, 2000). For a quick overview, see BBC News Middle East, "Yemen Profile" (27 February 2012) at <http://www.bbc.co.uk/news/world-middle-east-14704951> (accessed 22 May 2012); Library of Congress, Federal Research Division, *Country Profile Yemen* (August 2008) at <http://lcweb2.loc.gov/frd/cs/profiles/Yemen.pdf> (accessed 20 May 2012).

² On the PDRY, see for instance Fred Halliday, *Revolution and Foreign Policy. The Case of South Yemen 1967-1987* (Cambridge: Cambridge University Press, 2002).

3. Demography

Yemenis are predominantly Arab and speak (dialects of) Arabic. Ethnic minorities include the Mahra in eastern Yemen and the island Socotra, who speak a variant of the ancient Himyarite language. The coastal population has African features, while in the area of Aden and the eastern districts, Somali, Indonesian, and Indian elements can be traced. In the far north there are still remnants of Jewish communities. A distinct social minority group are the Akhdam (Muhamashin) in the coastal areas, who mostly perform menial tasks and occupy the lowest social class in Yemen.

Yemen's population has almost tripled since 1980 from 8.4 million to an estimated 23.8 million today. Adding to the growth of the native population is the increased influx of Somali refugees (approx. 221,500 as estimated in January 2012).³ About 44 percent of Yemenis are under the age of 15, and about 70 percent of the population lives in rural areas. The most important contemporary demographic trend is the emigration of more than one million males between the ages of 15 and 45 for employment in other countries, mainly in Saudi Arabia and other Gulf countries, the UK, and the US.

4. Religion

Virtually all Yemenis are Muslim. Even though no accurate statistics exist, the great majority of Yemenis are considered to adhere to the Shafi'i school, which is part of Sunni Islam; 35-45% are Zaydis, a moderate Shi'i sect, and 2-5% are of the Ja'fari and Western Isma'ili orders, both also Shi'i. For most of its history, Yemen has been ruled by dynasties of Zaydi Imams. The Zaydis live predominantly in the north and northwest, the Shafi'i in the south and southeast. The opposition between these two identities have gradually given way to more convergence, and in the larger cities there are mixed communities. A very small community of Jews, fewer than 500 (a fraction of the former population) lives in and around Sa'dah in the north.⁴ Historically also a hub of Sufism (Islamic mysticism), Yemen nowadays hosts a growing number of Salafis (Sunni-Islamic puritans). While upholding their Islamic heritage, Yemenis still revere their pre-Islamic history, including the kingdoms of Saba' (Queen of Sheba) and the Hadramawt.

5. Tribes and Tribalism

Tribal affiliation is a deep-rooted component of social identity in Yemen. Historically, Yemen's tribal population can be found in the northern and eastern areas, where three major and tribal confederations dominate: Hâshid, Bakîl, and the weaker Madhhaj. The western and southern landscape of Yemen is basically not tribal, but rather consists of landlords and peasants. Between one-quarter and one-half of Yemenis self-identify as having a tribal affiliation, even those who do not actually belong to a specific tribe. Tribalism serves as a major factor in political and social organisation, and tribal customary laws strongly affect legislation implementation and dispute settlement.

6. Economic Development

Yemen is one of the poorest and least developed countries in the region. Oil exports generate about 70% of the national income and government revenues, but it is estimated that the oil reserves will be depleted within a decade. Yemen also has large reserves of natural gas located mostly in the western part of the country. The opening of Aden's new container port in 1999, the developing fishery, and the on-going development of an industrial free zone in Aden are growing contributors to Yemen's economy.

³ <http://www.unhcr.org/pages/49e486ba6.html> (accessed 25 April 2012).

⁴ It is not known if this community is still intact, following the Huthi wars and the ongoing political turmoil in Yemen (see also Part B, Chapters 3.1 and 5.1).

However, the majority of Yemenis are subsistence agriculturalists. Yemen's two main cash crops in the northern highlands are coffee and qat (*Catha edulis*). Qat is a mild stimulant, the production and consumption of which occupies a very prominent position in the culture and economy of Yemen. Although it also stimulates the local economy, its nationwide consumption leads to a serious decrease of economic activity, as well as critical familial and societal problems.

The socialist command economy of the south was integrated with the market-driven economy of the north when the two Yemens merged in May 1990. The private sector, initially fueled by remittances from the numerous migrant workers, nearly collapsed with their forced return only a few months later, when Yemen refused to join the US-Saudi military coalition against Iraq's invasion of Kuwait. Since 1994, the IMF and World Bank have developed special financial and economic programmes for Yemen. After the settlement of a fifty-year border-conflict with Saudi Arabia in 2000, Saudi Arabia became Yemen's largest donor. Yemen's economy is also highly dependent on Western donor aid.

7. Government and Political System

The two states that now comprise modern Yemen had sharply contrasting political systems. In North Yemen (formerly YAR), policymaking had been in the hands of a relatively progressive military elite who worked closely with a variety of civilian technocrats, major tribal leaders, and other traditional (religious) notables. South Yemen's (PDRY) political system and economy had been based on Marxist ideology, in which the Yemen Socialist Party (YSP) – the only legal political organisation – determined government policy and exercised control over the state administrative system, the legislature, and the military.

The two states merged when the Republic of Yemen was officially declared on May 22, 1990. President Saleh of the Yemen Arab Republic (North Yemen) became President of the new republic, Ali Salim al Baydh, Secretary-General of the Central Committee of the Yemen Socialist Party (from South Yemen) was named Vice-President, and PDRY President Al-Attas (also from South Yemen) became Prime Minister. Sana'a was declared the political capital, and Aden was to be the economic capital.

The most important change after unification was the creation of a multiparty representative democracy. The first legislative elections in April 1993 led to a coalition government between President Saleh's party, the General People's Congress (GPC), and the two strongest opposition parties, the Islamic Reform Grouping (Islah), and the YSP. However, a conflict between the northern and southern political leaders escalated into armed confrontation in the Spring of 1994. The "War of Secession" resulted in the defeat of the southern forces and the exile of the southern leaders, a revival of the power of the security forces and the Islamist/tribal Islah-party, and the curtailment of the freedom of opposition parties, the media, and non-governmental organisations.

In the second parliamentary elections in April 1997, the GPC won an absolute majority, thereby making Islah the major opposition party in parliament. The first presidential elections in 1999 saw Saleh re-elected for a five-year term. After constitutional amendments in 2001, Saleh's re-election in September 2006 granted him a seven-year term extension.

After the GPC won another major victory in the parliamentary elections of 2003, the Islah party and the YSP, two former arch-rivals, grouped together with the Nasserites and two small Zaydi parties to form an unprecedented opposition-coalition -- the Joint Meeting Parties (JMP).⁵ However, the JMP was still unable to defeat Saleh's GPC party, which won the September 2006 elections for local and governorate council seats, and the May 2008 elections for governors, which secured its political power in the populated rural areas.

⁵ Michaëlle Browers, "Origins and architects of Yemen's Joint Meeting Parties", 39(4) *International Journal of Middle Eastern Studies* (2007), pp. 565-586.

January 2011 brought revolutionary changes in this political stalemate. Mass uprisings against the regime, taking inspiration from the outbreak of the Arab Spring revolutions elsewhere, combined with external pressure from the Gulf Cooperation Council and others, ultimately forced President Saleh to step down. On 21 February 2012, former Vice-President `Abd Rabbuh Mansur al-Hadi was elected as Yemen's new president (see further Part B, 1.5).

8. Foreign Relations

North Yemen's geography and former ruling Imams had kept the country isolated from foreign influence before 1962. The Taif Agreement has primarily defined relations with Saudi Arabia on border issues and commercial activities since 1934. Following the 1962 revolution, the YAR became close allies with Egypt. Saudi Arabia, who had backed the royalists, did not recognise the YAR until 1970, but thereafter became its major donor. Simultaneously, Saudi Arabia maintained direct relations with Yemeni tribes, which occasionally affected its official relations with the government. A great number of Yemenis migrated to Saudi Arabia for labour during the 1970s and 1980s.

The PDRY, the successor of British colonial rule after 1967, had diplomatic relations with many nations and had special ties with the Soviet Union and other Marxist countries. Relations with its conservative Arab neighbours were strained. Also, diplomatic relations between the PDRY and the US were broken off between 1969 and 1990, after the US placed the PDRY on the list of nations supporting terrorism.⁶

North Yemen was admitted in the United Nations on 30 September 1947, South Yemen on 14 December 1967. Yemen is also a member of the Arab League, and the Organisation of the Islamic Conference, but not (yet) of the Gulf Cooperation Council.

The 1990–91 Gulf War had a dramatically negative impact on Yemen's relations with its Arab neighbours and on Yemen's economy. While a member of the UN Security Council, Yemen abstained from several resolutions concerning Iraq and Kuwait, which resulted in the suspension of most economic programmes by Gulf states and by the US. Also, Saudi Arabia evicted almost one million Yemeni workers, whose wages had provided the basic livelihood for numerous Yemeni families.

Yemen's subsequent foreign policy has been largely driven by its desire to secure the financial support of the member states of the Gulf Cooperation Council (GCC). Its application for membership to the GCC dates from December 1999, but Saudi Arabia, Yemen's principal donor, to date blocks its admission. The main obstacle appears to be the difference between Yemen and the GCC members' political and economic systems.

Official ties with the West, especially the US, were re-established in the mid-1990s. In July 2001, the United States renewed the bilateral financial aid that had been suspended since the Gulf War. After the October 2000 bombing of the naval destroyer USS Cole in Aden and other terrorist acts against US presence in the region, culminating in the 11 September attack in 2001, the US sought a strategic partnership with Yemen in the United States' global War on Terror, providing major military, diplomatic, and financial assistance to the Saleh regime.

9. Donor Assistance

After the 1994 war, the Government of Yemen (GoY) concluded an agreement with the International Monetary Fund (IMF) to institute a structural adjustment programme, including major financial and monetary reforms. The agreement lapsed due to various difficulties, was renewed in 2010, but suspended again in 2011 following nationwide uprisings. The World Bank has many projects in Yemen in the areas of public sector governance, water, employment, and education, but these were also interrupted in 2011.

⁶ U.S. Department of State, Bureau of Near Eastern Affairs, *Background Note: Yemen* (12 March 2012), <http://www.state.gov/r/pa/ei/bgn/35836.htm#foreign>.

Yemen receives significant bilateral foreign aid for development projects and humanitarian needs. Saudi Arabia, Japan, Germany, and the United Arab Emirates are among Yemen's largest bilateral donors. In the field of rule of law programming, the United Nations Development Programme (UNDP), the United States Agency for International Development (USAID), National Democratic Institute (NDI), the Department for International Development of the United Kingdom (DFID), the Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ), France, the Netherlands and others have spent significant funds over the last 15 years.

In 2010, a ministerial-level meeting of the 'Friends of Yemen' (FoY) group was held in London, after Al-Qaeda in the Arabian Peninsula (AQAP) claimed responsibility for a failed terrorist attack against the US.⁷ The goal of the meeting was to help Yemen tackle its various economic, social, and political challenges. The Friends of Yemen included the G-8, the GCC, European Union member states, multilateral donor organisations, and other key partners of Yemen.⁸ Two working groups were formed, concentrating on 'Economy and Governance' and 'Justice and Rule of Law'.⁹ This process was stalled in 2011, but resumed in February 2012 after the installation of the new transitional government (see also Part B, Introduction).

⁷ The so-called 'underwear-bombing' attempt in a flight to Detroit on Christmas Day 2009, see http://en.wikipedia.org/wiki/Northwest_Airlines_Flight_253.

⁸ To be exact, the Friends of Yemen Group exists of Bahrain, Canada, China, Czech Republic, Egypt, France, Germany, Italy, Japan, Jordan, Kuwait, Netherlands, Oman, Qatar, Russian Federation, Saudi Arabia, Spain, Turkey, United Arab Emirates, UK, US, Yemen, EU, GCC-secretariat, IMF, UNDP, and the World Bank.

⁹ See FoY Working Group on Justice and Rule of Law, *Final Report* (September 2010), prepared for the second FoY Ministerial Meeting on 24 September in New York.

Legal and Judicial System

Introduction

Yemen has a complex legal and judicial history.¹⁰ Although derived from pluralistic sources, the formal legal system in Yemen has developed into a single unified body of law (*qânûn*, code). As a result of the codification process from the 1970s onwards, Yemeni *qânûn* incorporates elements from shari`a, customary/tribal laws (*`urf qabalî*), excerpts from Egyptian and other Arab laws, and international principles. These various elements can be seen in Yemen's fundamental codes (the Yemeni *Constitution*, the *Personal Status Code*, the *Civil Code*, the *Criminal Code*, and the *Arbitration Code*).

Even though one could speak of a unified legal corpus, Yemeni law still contains numerous textual ambiguities and omissions, which leave room for judges to resort to non-codified legal sources to support their decisions.

Meanwhile, the pre-Islamic tribal customary norms, through informal mediation and arbitration procedures, continue to solve the actual majority of conflicts and other legal matters throughout the country (such as homicide, family matters, traffic accidents), despite state-issued laws to limit and regulate the use of tribal customary norms.

All of these formal, informal, modern, and traditional norms and actors come together in a continuous and complex dynamic of interaction. Considering that almost 80 percent of Yemenis are not within reach of the official courts, or for other reasons adhere to tribal customary rules or informally administered Islamic norms, state law is not the supreme law in Yemen, neither effectively, nor in the perception of most Yemenis.

The following section will briefly sketch the role and mandate of the main institutions making up Yemen's formal legal and judicial sector.

A. State Institutions

1. The Executive

Providing justice and security services to the Yemeni people is directed by several ministries, all based in the capital San`a. The key Ministries are: Justice, Interior, Legal Affairs, and Human Rights.¹¹ This section briefly describes the mandate and operations of these executive organs.¹²

1.1 Ministry of Justice

The Ministry of Justice (MoJ) is considered among the primary and long-standing ministries since Yemen's first republican government was formed after the Revolution of 1962. Its overall task is the organisation, supervision, and development of the judicial bodies, their judicial members, and the judicial support agencies. It is responsible for providing all technical, financial, and administrative services to the judiciary.

¹⁰ For in-depth analyses on Yemen's legal history and development see Brinkley Messick, *The Calligraphic State: Textual Domination and History in a Muslim Society* (University of California Press, 1996); Bernard Haykel, *Revival and Reform in Islam: The Legacy of Muhammad al-Shawkânî* (Cambridge University Press, 2003); Rashâd al-`Alîmî, *al-Taqlîdiyya wa-l-hadâtha fî nizâm al-qânûnî al-yamanî: Dirâsa muqâarana* [Traditionalism and Modernism in the Yemeni Legal System: A Comparative Legal Study] (Cairo - Beirut: Al-Shurûq, 1989).

¹¹ In the specific Yemeni context, where the religious establishment has a profound impact on all levels of the state, one should also take note of the Ministry of Awqâf (Religious Endowments) and Religious Guidance, and the *Dâr al-Iftâ'* (Institute of Fatwa-giving). Due to lack of current data and the limitations of this quick scan, these (understudied) institutions have not been included.

¹² The information for this section could not all be duly verified.

These services include the construction, maintenance, and furnishing of courthouses and public prosecution offices, as well as improving job performance of judges, prosecutors, and support staff by training, inspection, and human resourcing.

The Ministry further prepares draft laws and regulations related to its own functions and the judiciary. Additionally, it produces judicial reform programmes, as well as economic and social development plans.

Although the judiciary is constitutionally granted fiscal and administrative autonomy, its budget falls under the responsibility of the MoJ. The Ministry also houses the Judicial Inspection Board (JIB) and the Office of Court Administration, which are staffed by judicial personnel and conduct periodic court evaluations (see Sections 3.3.2 and 3.3.3).

In practice however, the MoJ does not independently determine judicial strategies and policies, or supervises the administration of justice. The primary judicial authority is vested in the Supreme Judicial Council (SJC), of which the MoJ is a member. Until recently, President Saleh - as the Head of State - was the Chair of this Council (see Section 3.3.1).¹³

1.2 Ministry of Legal and Parliamentary Affairs

The Ministry of Legal and Parliamentary Affairs (MoLPA) plays a central role in drafting new legislations (cf. Conseil d'État) and in checking the conformity of draft laws with international treaties, the *Constitution*, and other Yemeni laws. It is also tasked with improving the quality of current legislation, and the printing of laws as well as the Official Gazette. This Ministry is, however, not mandated to distribute copies of the laws, nor is, for that matter, any other state institution. Judges and state organs that are entrusted with applying these laws are thus effectively obliged to purchase much of the prescribed laws and reference literature.¹⁴

It is worth mentioning that Parliament separately publishes the laws and regulations passed by it in booklets. It also issues a quarterly magazine, since 1993 called Al-Shura. Certain ministries and other public bodies also compile and publish their respective laws, resolutions, and regulations, especially when they celebrate their lustrum or other anniversary.¹⁵

The MoLPA further provides legal advice to the different state agencies and ministries, drafts contracts and agreements in which the State or one of its agencies is a party, and represents the State in judicial and arbitral courts. Additionally, it oversees the work of legal departments in the other ministries and public agencies.

In December 2006, the MoLPA prepared a *General Programme for Modernising and Developing the Legal and Legislative Framework and Processes in the Republic of Yemen*. The programme was composed of four axes:

1. reviewing and improving laws and the legislative drafting process;
2. reinforcing the legal protection for the rights, properties, and interests of the State;
3. improving legal oversight and awareness, and legal studies and legal research;
4. establishing administrative branches of the MoLPA in the districts and governorates.¹⁶

¹³ The overlapping jurisdictions and functions of the MoJ and SJC are still not practically resolved, to my knowledge.

¹⁴ Many judges and lawyers purchased their legal references in the reputed legal bookshop *Khalid Ibn al-Walid* next to the Ministry of Justice and the Supreme Court. One could even find copies of draft laws that were not yet promulgated. For instance, the Criminal Code was only officially promulgated in 1994, until which year judges could only consult the (differing) draft laws, or *fiqh* (Islamic jurisprudence).

¹⁵ Nageeb Shamiri, "Yemen", in Eugene Cotran (ed.), *The Yearbook of Islamic and Middle Eastern Law*, Vol. 1, 1994 (The Hague: Kluwer, 1995), pp. 369-384 (370).

¹⁶ Mohamed Jaffer Kassim, *Regulatory Reform and Improving the Quality of Legislations in Yemen* (n.d.), pp. 5-7, available at <http://www.oecd.org/dataoecd/39/11/38376701.pdf> No information was available on the implementation of this program.

1.3 Ministry of Interior

The Ministry of Interior (MoI) controls and manages Yemen's police agencies and the various other internal security forces, including the Central Security Force (CSF), a counter-terrorism bureau, as well as the Coast Guard.¹⁷ The MoI determines strategies, policies, and operations, and also controls public information concerning policing and security activities through its newspaper, and through television programmes.

The MoI further controls and manages the national prison system, determines prison budgets, and centralises prison policy and planning.¹⁸ In practice, chief wardens of local prisons have a certain degree of discretion in determining the implementation of ministerial policies.

The Minister of Interior presides over a high-level coordination mechanism that regularly convenes senior officials from the MoI, various force commanders, and senior representatives from other relevant ministries, including the Ministry of Justice.

1.3.1 Department of Tribal Affairs

The Ministry of Interior also houses the Department for Tribal Affairs (*qism al-shu'ûn al-qabalîya*), which registers locally elected shaykhs (tribal leaders) in exchange for a regular allowance and an ID card. The Department of Tribal Affairs, initially a Ministry, was created as an attempt to formally incorporate tribal affairs into the domain of the state, and to increase the level of administrative control over the registered tribesmen and their affairs.

Traditionally, tribal shaykhs insist on regulating their affairs and dispute settlements autonomously from the state. However, an alliance with the state is often a strategic choice to enhance the shaykhs' authority within and beyond his tribe. Where the state gains a degree of administrative control over the registered tribesmen and their affairs, the tribal leaders in return enjoy financial and other benefits, and a share in national political power.¹⁹

Although the Department of Tribal Affairs seems to have no official mandate to assist in arbitration, people used to assemble daily in front of its entrance or at the residence of its head, a reputable tribal shaykh, to submit their pleas for assistance in solving their personal disputes or requests. The former Head of the Department in the 1990s, Shaykh Ahmad Saleh Duwayd, stated that in his formal capacity he would not deal with blood feuds or other major crimes, but rather only minor disputes. When not acting in his official function at the Department of Tribal Affairs, he was regularly sought after to intervene in conflicts affecting his tribe and other tribes.²⁰

1.4 Ministry of Human Rights

The protection of human rights in Yemen has been assigned to the executive branch. The Ministry of Human Rights (MoHR) was created in 2003, succeeding the Supreme Committee for Human Rights of 1998.²¹ The MoHR has been headed by three consecutive ministers, all women, and has about 87 permanent and 25 contracted staff, of whom about 15 are qualified lawyers.²²

The main focus of the MoHR is to propose actions to improve human rights performance, comply with international obligations, and to raise public awareness of national and international human rights laws.

¹⁷ This by itself seems to indicate overlapping mandates, which will be briefly dealt with in Chapter 5.4 below.

¹⁸ For more on prisons see Chapter 5.3 and Part B, Chapter 2.8.

¹⁹ An OHCHR delegation in 2011 possibly refers to this Department, when it speaks about "an official, tribe-based reserve force under the Ministry of Interior [which] is said to have been mobilised to fight the Huthis in the past and to have participated in recent demonstrations in support of President Saleh." Human Rights Council, UN Doc. A/HRC/18/21, *Report of the High Commissioner on OHCHR's Visit to Yemen* (13 September 2011), p. 7.

²⁰ Based on personal observations and interviews by the author between 1996-2005.

²¹ The institutional set-up of the predecessor is described in detail in MoHR, *Annual Human Rights Report, 2004*, Ch.2; and State Report to ICCPR (2004), CCPR/C/YEM/2004/4, p. 123. See Anna Würth, *UNDP Project on Strengthening National Human Rights Capacity 2003-2007, Evaluation Report [Yemen]*, (October 2007).

²² *Idem*, p. 6.

Examples of its mandate are:

- to suggest and implement human rights policies and programmes to enhance human rights protection and fulfilment;
- to comment on legislation from a human rights perspective and suggest amendments in fulfilment of international obligations;
- to receive, register, and follow up on complaints;
- to conduct human rights research and awareness raising;
- to compile state reports under international treaty obligations.²³

These tasks are in line with the so-called *Paris Principles*, which define the responsibilities of national human rights institutions (NHRIs). However, the MoHR's abilities to act as a NHRI is limited in the following ways:

- the MoHR has no powers to summon or initiate proceedings upon complaints;
- human rights awareness raising does not explicitly cover universal human rights;
- the MoHR has an ambiguous position with international human rights bodies.

The Ministry has a Complaints and Communications Department that records and investigates allegations of human rights violations from individuals and institutions. Complaints are manifold, varying from detention without charge, physical and verbal abuse of detainees, assault on property, trespassing, lack of enforcement of judicial decisions, requests for social welfare rights, claims for compensation, and complaints of unlawful termination of work and lost salary.²⁴

The MoHR does not have the authority to prosecute, but can only advise complainants on solutions to their cases, or direct them to the appropriate authorities. A technical committee, consisting of representatives of eleven different government authorities, supports the MoHR.²⁵ This committee functions mainly as a coordination body for human rights issues, and it also helps to prepare various reports.

Because the MoHR does not have local branches, the Ministry of Local Administration issued a circular in 2004 appointing the chair of the Social Affairs Committee of each governorate's local council as the human rights coordinator for the governorate.²⁶ In the same year, the GoY in a *State Report to the Human Rights Committee* committed itself to pursuing the institutional development of its human rights bodies. Several foreign donors have provided funds to the MoHR in recent years.²⁷ Still, the Ministry is struggling to fulfil its (limited) mandate. Analysts note the lack of institutional independence, the insufficiency and unpredictability of funds, and the lack of donor coordination as possible reasons.

1.4.1 Justice and National Reconciliation Commission

The power-transfer deal brokered by the Gulf Cooperation Council and signed by President Saleh on 23 November 2011 included a guarantee of immunity from prosecution for himself, his family, and all his aides during his 33-year reign. The ensuing *Immunity Law* was approved - with only minor amendments on its original draft - on 21 January 2012, paving the way for Saleh's definitive departure.

In March of 2012, the MoLPA presented a *Draft Transitional Justice Law*, the main purpose of which was to promote non-judicial national reconciliation (restorative justice), by seeking the truth about human rights violations committed between 1994 and 2012, and by compensating victims, all within the terms set out in the brokered immunity clause.²⁸

²³ *Idem*, p. 7-8.

²⁴ *Idem*, p. 20, note 32.

²⁵ Ministry of Interior, Ministry of Justice, Ministry of Foreign Affairs, Department of Public Prosecutions, Political Security Office, Ministry of Information, Ministry of Legal Affairs, Ministry of Planning and International Cooperation, the Prime Minister's Office, and the Office of the President of the Republic.

²⁶ Würth, *UNDP Project, Evaluation Report [Yemen]*, (2007), p. 6-7.

²⁷ In particular the Netherlands, the Danish Institute for Human Rights, and the UNDP.

²⁸ Information on these latest development was taken from *Yemen Times* (15 March 2012), at <http://www.yementimes.com/en/1555/news/572/Transitional-Justice-Law-last-resort-for-ending-Yemen's-conflict.htm>.

For this purpose, a temporary four-year Justice and National Reconciliation Commission will be formed in May 2012, to be operational in June 2012. It will be comprised of nine members, men and women who have never worked in the police, security, army, or any other military body. At least three of those members should not be connected to any political party that signed the *Gulf Initiative* (which excludes those connected to the General People's Congress and the Joint Meeting Parties). The Commission has the right to hire any local or international experts or staff as deemed fit to execute its mandate.

The Commission's work will be three-fold: to investigate grievances, to provide a venue for listening to human rights violations, and to educate the public about human rights. Under the *Transitional Justice Law*, victims, witnesses, and complainants are all to be protected by state institutions. The Commission will also be involved in compensating the families of deceased victims.²⁹

Although the body is a non-judicial entity, it will have the right to summon all sides of the conflict and demand disclosure of evidence, documents, or any materials or facts that would assist in revealing the truth. It is also authorised to inspect residences or places where crimes have taken place, and to seize tools or documents used in those crimes.

Due to the immunity clause negotiated by Saleh, there will be no legal consequences for the perpetrators of past human rights violations. It is however hoped that the "naming and shaming" aspect of the law will become a deterrent for potential future perpetrators.

1.4.2 Human Rights Authority

To prevent future violations, the (draft) *Transitional Justice Law* also foresees the creation of a new independent national human rights authority, based on international standards and the Paris Principles. Its mandate is to receive new complaints and investigate grievances and violations of human rights as from the time of its creation. This authority is further designed to spread awareness of human rights through education, and to issue periodic reports.

This new body would include at least 20% female representatives and is to be formed under the leadership of the Minister of Legal and Parliamentary Affairs within six months after parliamentary approval of the *Law* and the President's signature. Although its funding will come from the state, this new human rights authority will reportedly be independent from the government.³⁰

2. The Legislature

2.1 House of Representatives

Yemen has a presidential system with a representative parliament and a multi-party system.³¹ The legislature consists of two houses: the House of Representatives (or Parliament), whose members are elected by universal adult suffrage every six years, and the Shura (Consultative) Council, whose members are appointed by the President. The House consists of 301 MPs directly elected by a simple majority. Elections take place every six years based on the 'winner takes all'-principle in single-member constituencies (Art. 63). The legislature oversees the executive, discusses and drafts legislation, and authorises government budgets and economic plans.³²

²⁹ *Yemen Times* reports that "[c]ompensation for victims will include medical treatment both locally and abroad, rehabilitation of the injured, compensation or repossession where possible for wrongly claimed or stolen assets, and reinstating those who were wrongly dismissed from their jobs since 1994 with retrograde financial compensation. It will also include sponsoring the education of children of the victims."

³⁰ *Yemen Times* (15 March 2012). At the time of writing, it is unclear if this new authority will fully replace the Ministry of Human Rights.

³¹ For more information, see for instance the National Democratic Institute at <http://www.ndi.org/content/yemen>.

³² This mandate may change following the transfer of power on 27 February 2012.

The *Constitution* grants the Parliament extensive powers (Arts. 62-104).³³ These powers include: the power to initiate laws in all policy jurisdictions (Arts. 62 and 85); to approve the general budget (Arts. 62, 87-91); to ratify international treaties and conventions (Art. 92); and to summon officials from the executive branch, either in plenary sessions or before investigative committees (Arts. 93-99). MPs enjoy broad immunity from arrest or criminal prosecution (Art. 82).

In reality, the legislature is subject to a number of important limitations by the executive branch: Ministers may serve simultaneously as MPs; the Parliament cannot impeach the President or replace the Prime Minister; also, the Parliament has no oversight over the intelligence services, the secret police, and the military law enforcement agencies. Perhaps most significant are the rather broadly defined 'circumstances' under which the President can legally dissolve the Parliament, with or without a national referendum (Art. 101 sub a and b).

Another factor that compromises the separation between the executive and the legislature is that despite the multi-party system, the party of President Saleh - the General People's Congress (GPC) - has always held an absolute majority in Parliament. In the 2009 elections, the GPC won 238 seats, thus keeping the Parliament effectively in the hands of President Saleh.

The number of female MPs is very low. Whereas female voters make up 45% of the registered electorate, only one woman was elected as MP in 2009, out of 16 female candidates.

Apart from the Parliament, the legislative branch further consists of the Presidium, the Executive Secretariat, and the Standing Committees. The Presidium consists of four MPs elected by absolute majority. A second election round among those four MPs nominates the Parliament's Speaker.³⁴ The Speaker and the other members of the Presidium represent Parliament in dealing with foreign affairs.

The Executive Secretariat is led by the Secretary-General, who is appointed by the President of the Republic. The Secretariat is in charge of the administrative and financial affairs of Parliament. It also has the responsibility to train and evaluate personnel, as well as to recruit, promote, and dismiss employees. The Secretariat further manages all the civil servants who work for the House.

The House of Representatives meets both in full sessions and in 20 Standing Committees, comprising between 11 and 16 MPs. Committees formally have the power to summon ministers and government officials for questioning, and can additionally request information from all government agencies. An important legislative task is the oversight of security and justice providers, which legally falls within the competence of the Financial Affairs Committee, the Defence and Security Committee, and the Public Freedoms and Human Rights Committee, but also of the Justice and Endowments (*awqâf*) Committee, and the Shari`a Codification Committee.

2.1.1 Shari`a Codification Committee

The Shari`a Codification Committee considers itself the guardian of Article 3 of the *Constitution*, which states that 'Islamic shari`a is the source of all legislation'. Among the members of this Committee are religious clerics. While exercising its mandate to oversee the compatibility of new laws with shari`a-principles, this committee over the years has introduced several amendments that are inconsistent with international human rights standards, even those which Yemen has ratified.³⁵

³³ The Constitution consulted for this report is the Constitution as amended in 2001. Due to the revolution in 2011, the President at the time of writing, `Abd Rabbuh Mansur Al-Hadi, is expected to oversee the drafting of a new Constitution for 2012 until 2014.

³⁴ From 1993 until his demise in 2007, the Speaker was Shaykh `Abdullah Al-Ahmar, paramount Shaykh of the Hashid tribal confederation. He was succeeded by Shaykh Yahya al-Ra`i.

³⁵ For Yemen's ratified treaties see Part A sub B: Legislation, Chapter 2.

In 1999, for instance, this committee was responsible for the introduction of an article to the *Personal Status Law* that abolished the minimum age for marriage, which led to strong criticism from local and international civil organisations.³⁶

2.2 Shura Council

The Shura (Consultative) Council is a constitutional body created to give counsel to the President of the Republic upon the President's request, and render informed opinions on the State's national strategies in political, economic, social, military, and security matters, as well as to contribute to institutional capacity-building of state agencies (Arts. 125-127 *Constitution*). The President elects all 111 members of the Shura Council from a corpus of qualified individuals with professional expertise and from social dignitaries, when they have reached the age of 40. In August 2007, the President announced that the Shura Council was to transform into a mostly elected body.

The Council holds joint sessions with the House of Representatives to endorse nominations of presidential candidates and ratify international treaties for defence, alliance, conciliation, and border concerns. The Council is also designated to promote freedom of the press, promote the development of civil society, and "cultivate the democratic experience of local authority" by conducting assessment studies (Art. 125 sub 7). It also reviews periodic reports issued by the Audit and Control Bureau, on which it reports to the President.³⁷

3. Administration of Justice

3.1 Courts

The court system in Yemen is based on an independent and integrated judiciary, as laid down in the *Constitution* (Arts. 149-150) and the *Law on Judicial Power* (1/1991, hereafter: LJP). This means that, in theory, the law precludes exceptional courts for military trials, religious courts, a constitutional court, and other such courts. All cases are to be brought before the official courts, which - when necessary - are subdivided into special chambers to handle cases concerning personal, civil, criminal, administrative, or summary justice. The LJP, however, does provide for the establishment of separate courts of first instance "whenever needed" (Art. 8 sub b), and explicitly designates courts for juvenile cases (Art. 49, see below).

The court system consists of three tiers: Courts of First Instance, Courts of Appeal, and the Supreme Court. Yemen has no small claims courts to deal with small monetary claims with simplified procedures and limited rights of appeal.³⁸ The jurisdiction of the courts, their composition, and their competence are regulated by the LJP, as stated in the *Constitution* (Art. 153). The LJP does not determine the number of First Instance and Appeal Courts, but entrusts this to the Minister of Justice, after approval from the Supreme Judicial Council (Arts. 39 and 45). The LJP allows other forms of dispute resolution, insofar as these are consistent with the officially prescribed rules and procedures. Such alternative dispute settlement is laid down in the *Arbitration Law*.³⁹

³⁶ The functioning and impact of this Committee, and more broadly, the (future) role of shari`a on Yemen's rule of law is a pivotal topic in light of the continuing events in Yemen, and forms of the author's research. It should be noted that also the Committee for Justice and Religious Endowments (*awqâf*) has - at least once - proposed a 'shari`a-amendment'. See Part A sub B: Legislation, Chapter 1.7.

³⁷ The Speaker of the Shura Council, `Abdulaziz `Abdulghani, died on 23 August 2011 as a result of the assassination attempt on President Saleh in June 2011.

³⁸ See also World Bank, "Republic of Yemen", *Comprehensive Development Review (CDR) - Phase I, Judicial and Legal System Building Block* (24 January 2000), Legal Department, pp. 2-4 at http://www-wds.worldbank.org/external/default/WDSContentServer/WDSP/IB/2007/08/07/000020953_20070807155850/Rendere d/PDF/404430YE1Legal01PUBLIC1.pdf.

³⁹ See Part A sub B: Legislation, Chapter 1.9.

3.1.1 Courts of First Instance

Courts of First instance (*mahkama ibtidâ'iya*) are (ideally) located in each district (*mudîrîya*).⁴⁰ The number of Courts of First Instance, their location, the number of judges, and their territorial jurisdiction are determined by a resolution of the Supreme Judicial Council (SJC), upon recommendation by the Minister of Justice and the President of the Supreme Court (Art. 45 LJP).

The Courts of First Instance are composed of a single judge or three judges, depending on the monetary value of the case and the availability of judges. The number of judges varies according to the court's case load, the density of the population, and the extent of government power in that region.

Courts of First Instance have jurisdiction to hear all cases. This is done through separate divisions (civil, criminal, commercial, family), which differ according to the district's demands. Their decisions can be appealed to the relevant Courts of Appeal.

3.1.2 Courts of Appeal

Courts of Appeal (*mahkamat al-isti'nâf*) are located in each of the 17 provinces (*muhâfaza*), plus one in the capital San`a, which forms the '18th province'. Courts of Appeal fall directly under the Supreme Court. The total number of appeal court judges in Yemen in 2005 was 132.⁴¹ Courts of Appeal review all (lawful) appeals from Courts of First Instance, both in matters of legality, and in contestation of facts (Art. 43 LJP).

The number of divisions within each Court of Appeal varies according to the volume and nature of cases within the governorate, and is decided by resolution of the SJC. There are divisions for civil, criminal, military, commercial, and personal status/family cases, each presided over by three judges. As with the Courts of First Instance, due to an endemic lack of judges in practice often a single judge presides.

3.1.3 Supreme Court

The Supreme Court (*al-mahkama al-ulyâ*) is the highest judicial body in Yemen (Art. 153 *Constitution*). It is based in the capital San`a, in the same building as the Ministry of Justice.⁴² The Supreme Court is composed of a President, two deputies, and about fifty judges, all of whom are appointed by resolution of the Presidential Council after nomination by the Supreme Judicial Council. The Judicial Inspection Board drafts the original list of candidates (Art. 59 LJP). The Supreme Court serves as a final court of appeal, and as a *cour de cassation* to review contestations of final sentences on points of law and to resolve conflicts of jurisdiction between courts.⁴³ The Supreme Court has its own independent budget, which is overseen by its President.

To fulfil its judicial tasks, the Supreme Court is composed of eight Divisions (*dâ'ira*). The Constitutional Division reviews the constitutionality of laws, statutes, regulations, and decrees, and adjudicates electoral disputes and crimes committed by high state officials (Art. 12 LJP). The Appeals Examination Division determines whether appeals brought before the Supreme Court fulfil all legal requirements, and resolves jurisdictional disputes. The remaining Divisions issue rulings on Civil, Commercial, Criminal, Personal Status/Family, Administrative, and Military appeals respectively.

⁴⁰ This number was 241 in 2005. For an insightful study on a family court of first instance in San`a, see Anna Würth, *Al-Shari`a fi Bâb al-Yaman. Recht, Richter, und Rechtspraxis an der familienrechtlichen Kammer des Gerichtes Süd-Sanaa* (Berlin: Duncker und Humblot, 2000).

⁴¹ World Bank, *Yemen, CDR* (2000), p. 3.

⁴² The physical location of Yemen's Supreme Court in one building with the executive, seems to thwart the Court's constitutionally prescribed independence.

⁴³ Article 153 *Constitution* (cf. Art. 12 LJP) reads: "The Supreme Court of the Republic is the highest judicial authority. The law shall specify how it can be formed, clarify its functions and the procedures to be followed before it. It shall undertake to do the following: a. Judge cases and pleas that laws, regulations, by-laws and decisions are not constitutional; b. Judge disputes over conflict of jurisdiction; c. Investigate and give opinions regarding appeals referred by the House of Representatives which relate to its membership; d. Rule on appeals of final judgements in civil[ian], commercial, criminal, personal and administrative disputes and disciplinary cases according to the law; e. To try the President of the Republic, the Vice-President, the Prime Minister, his deputies, the ministers and their deputies in accordance with the law."

Each Division is composed of five judges - except for the Constitutional Division, which is composed of seven judges - and decides by absolute majority (Art. 17 LJP). In 2006, the Supreme Court appointed its first female judge.⁴⁴

Two other important components of the Supreme Court are the General Assembly (*jam`îya`âmma*) and the Technical Bureau. The General Assembly, in which all the Court's judges are represented plus the Attorney General, examines questions of competence and functioning of the Divisions. It also reviews cases that are brought to it by any one of the Court's Divisions, if such division decides to depart from a judicial interpretation previously established by the Supreme Court. Interestingly, such interpretations by the Supreme Court are not called 'precedents' (which is a term not favoured in Yemen), but '*ijtihâd qadâ`î*' (judicial interpretation), or '*ikhtiyâr*' (choice), after the model of the Imamic *ikhtiyârât*.⁴⁵

The Technical Bureau is tasked with selecting and reviewing the legal principles rendered by the Supreme Court in its decisions, to publish compilations of its decisions, and to prepare legal studies (Art. 35 LJP).

Another crucial task is the Court's constitutional mandate to control the legislature by reviewing contested laws and legal rules in light of the Constitution. This also includes shari`a-inspired legislation and constitutional principles, as seen in Article 3 of the Constitution, which declares shari`a as "the basis of all laws".

3.1.4 Special Courts

The Yemeni *Constitution* dictates that the judiciary is a unitary system, and that "exceptional courts may not be established under any conditions" (Art. 150, also Art. 8 LJP). However, the Supreme Judicial Council has used its legal authority to create a number of special courts on the proposal of the Minister of Justice (Art. 8 sub b LJP). Yemeni lawyers differ as to whether the creation of special courts is constitutional.⁴⁶

The following courts are all Courts of First Instance, and their decisions are subject to appeal:⁴⁷

3.1.4.1 Juvenile Courts

Juvenile Courts were established pursuant to *Republican Decree 24/1992* in the capital and each governorate. The first branch became operational in the Aden governorate in 1992. Their organisation and jurisdiction are regulated by the *Juvenile Code (24/1997)*. Juvenile Courts handle all cases involving children and youth between 7 and 18 years old. They are composed of one judge and two experts. The *Juvenile Code* stipulates that one of these experts has to be a woman.

3.1.4.2 Commercial Courts

Commercial Courts were created in the capital San`a, and the capitals of the four governorates of Aden, Hudayda, Hadramawt, and Ta`izz (*Commercial Code 40/1976*, amended in 1991). They are each presided by a President and two members (if available). This court hears commercial disputes in which the amount in dispute exceeds two million riyals (about 6,300 Euro, conversion rate of July 2011).

⁴⁴ Elham Manea, "Yemen", in Sanja Kelly and Julia Breslin (eds.), *Women's Rights in the Middle East and North Africa* (New York, NY: Freedom House, 2010), p. 21.

⁴⁵ Nageeb Shamiri, "Yemen", in Eugene Cotran (ed.), *Yearbook of Islamic and Middle Eastern Law* (1995), p. 373.

⁴⁶ They point to the manner of its establishment -- by executive decision rather than through a transparent and detailed legislative process. Amnesty International, *Yemen: Cracking Down Under Pressure* (2010), pp. 22, 80, at <http://www.amnesty.org/en/library/asset/MDE31/010/2010/en/da8bd0cc-37ab-4472-80b3-bcf8a48fc827/mde31010210en.pdf>.

⁴⁷ It could not be verified at the time of writing whether there exist special military courts or administrative courts.

3.1.4.3 Public Funds (Property) Courts

Public Funds Courts (*mahkamat al-amwâl al-`âmma*) were established in the 1990s by *Presidential Decree 3/1996*, as a response to the rise in corruption after unification. These courts are located in the Governorates of San`a, Aden, Ta`izz, Hadramawt, Hudayda, and in San`a Capital. In 2009, two other courts, in Ibb and Lahj, were added.⁴⁸ At first, the Public Funds Courts (PFC) had a broader mandate, but this was later constricted to only crimes by public servants or crimes affecting public funds.⁴⁹ Public funds judges often seem to lack specialised knowledge, such as accounting and auditing skills. It is unclear whether and to what extent verdicts in PFC trials are actually enforced, particularly in cases involving higher-ranking officials.⁵⁰ The power to try higher officials is specifically mentioned in Article 139 of the *Constitution*.

3.1.4.4 Special Criminal Courts

In 1999, a Special Criminal Court (SCC) was established by *Republican (Presidential) Decree 391/1999*, following the kidnapping and killing of a number of foreign tourists in December 1998 in Abyan.⁵¹ Initially, the SCC was given jurisdiction to try the crime of *hirâba*, a shari`a-qualification codified into Yemen's *Criminal Code*, concerning the acts of attacking, terrorising, or robbing people on public highways, deserts, buildings, ships or planes. The SCC's jurisdiction also extended to crimes targeting the state, its officials and property, as well as perceived threats to its vital interests – such as abducting foreigners, hijacking, piracy, damaging oil pipelines, and attacking judges.

In 2004, another presidential decree was issued (8/2004) which expanded the SCC's jurisdiction to include offences harmful to state security, and offences with serious repercussions for society or the economy. The executive authorities provided no further clarification to narrow the broad language of *Presidential Decree 8/2004*.

Five years later in 2009, the Supreme Judicial Council issued a decision clarifying that the SCC has jurisdiction over a wide range of security-related offences, namely: (1) *hirâba* (armed robbery); (2) kidnapping; (3) sea and air piracy; (4) drug dealing and trafficking; (5) harming, destroying, burning and bombing oil and gas pipelines, and oil and economic installations, and facilities of public utility; (6) theft of public and private means of transport that is carried out by armed gangs or an organisation, or that is carried out by one individual or more by force; (7) participating in a gang to seize land and property of the state and citizens; (8) harming the security of the state and endangering the public; (9) aggression against members of the judicial authority during the performance of their functions, or because of it; and (10) aggression against witnesses. Most of these offences, however, are already covered by the *Criminal Code*.⁵²

In the same decision, the Supreme Judicial Council established three additional SCCs in Aden, Hudayda, and Hadramawt.⁵³ Like the SCC in San`a, these regional SCCs each have their own special prosecution authorities and a special appellate court.

3.1.4.5 Special Press and Publications Court

In May 2009, a Special Press and Publications Court (SPPC) was created following a decision by the Supreme Judicial Council (120/2009). The SPPC is a Court of First Instance with a single judge, specialised in hearing cases related to press and publication allegations that fall under the *Criminal Code* (Arts. 192-202), the *Press and Publications Law*, and the *Criminal Procedure Law*.

⁴⁸ Nageeb Shamiri, "Country Survey: Yemen", in Eugene Cotran and Martin Lau (eds.), *Yearbook of Islamic and Middle Eastern Law*, Volume 15, 2009-2010 (Leiden: Brill, 2011), p. 214.

⁴⁹ See also Chapter 3.4.3 on Public Funds Prosecution.

⁵⁰ FoY WG on Justice and Rule of Law, *Final Report* (2010), p. 11.

⁵¹ "Abu Hamza and the Islamic Army: Kidnapping of Tourists, 28-29 December 1998", *al-Bab*, available at <http://www.al-bab.com/yemen/hamza/hostage.htm> (accessed on 25 January 2012).

⁵² Except 2, 3 and 4. Amnesty International, *Yemen: Cracking Down Under Pressure* (2010), p. 18.

⁵³ Supreme Judicial Council Decision 131 (11 May 2009).

The SPPC's only branch is in the capital Sana'a and appeals are to be brought before the regular Appeal Court, also in Sana'a (criminal division). The geographical distance from most localities is a large obstacle for many defendants.⁵⁴

The SPPC appears to have its own prosecutors for cases covered by its jurisdiction. It can impose sentences ranging from fines (50,000 YER, approx. 235 USD) to prison sentences and bans from practicing journalism. Amnesty International sees this court as an extension of the executive, used to control and suppress various forms of criticism, dissent, and beliefs, and thus infringing on freedom of expression.⁵⁵ Reportedly, this court has been dismantled upon President Saleh's request.

3.2 Judiciary

3.2.1 Profile of Judges

Anyone who applies for the judiciary - judges and prosecutors - has to be a Yemeni citizen.⁵⁶ S/he (the law makes no difference) has to be legally and physically competent, at least thirty years of age, a graduate of the High Judicial Institute, of good moral behaviour, and not convicted of any offence denoting dishonour or lack of integrity (Art. 57 LJP).

Although the current *Law on Judicial Power* (1991), unlike its predecessor from 1979, does not explicitly require that a judge has 'sufficient knowledge of shari'a', being a Muslim is implicitly required by the prescribed formula to be sworn in as a judge:

"I swear to God Almighty that I will adhere to His Book and the Sunna of the Prophet, that I shall abide by the Constitution and the Law, that I shall do justice to the people with impartiality, that I shall uphold the dignity of the judiciary and the welfare of the people in all my actions, according to what the duties of a judge require. May God be the Witness of my words."⁵⁷

This formula also suggests that the Qur'an and the Prophet's Sunna are to be the judges' primary adherence, over and above the *Constitution* and the law. This interpretation seems to underline the conventional interpretation of Article 3 of the *Constitution*, declaring shari'a as "the basis of all laws".

Whereas the Yemeni courts have been integrated into one system since unification, the Yemeni judiciary is still very heterogeneous. Many of the senior north-Yemeni judges are more knowledgeable in, and also more reverent to, shari'a and classical works of *fiqh* (Islamic jurisprudence). Their south-Yemeni colleagues, to the contrary, tend to have a more 'positivist' mindset towards the rule of law, owing to their modern legal training in former communist and western European countries. This divergence became more prominent after the civil war of 1994, when the Islamists tightened their control over the judiciary and legal education country-wide.

The traditional religious orientation is still predominant in the Yemeni judiciary today, both in the lower courts, which serve the great majority of litigants, but also up to the Supreme Court, especially in the Criminal and Personal Status Chambers, where most senior judges have a conservative shari'a-background.

⁵⁴ Amnesty International, *Yemen: Cracking Down Under Pressure* (2010), pp. 80-82.

⁵⁵ *Idem*, p. 80ff.

⁵⁶ This was not required under the *Law on Judicial Power* of 1979. See also World Bank, *Yemen, Comprehensive Development Review* (2000), pp. 4-5.

⁵⁷ Art. 85 sub b LJP.

3.2.2 Tenure and Salaries

Judges are appointed for life. Apart from the Supreme Court judges, all judges are appointed by republican decree following the nomination by the Minister of Justice and the consent of the Supreme Judicial Council. The compulsory retirement age is sixty-five (see also Arts. 57 and 75 LJP).⁵⁸ The law specifies that a judge's tenure is subject to his correct and professional functioning and behaviour, which are periodically evaluated by various organs (see Section 3.3).

The salaries and allowances for members of the judiciary are laid down in a diagramme attached to the LJP. The Cabinet of Ministers can adjust the salary scale (Art. 67). Additional allowances and bonuses can be granted by decree from the Prime Minister, upon the recommendation of the Minister of Justice (Art. 47 LJP). It is thus the executive power that controls extra payments, which include achievement allowances, hardship allowances (for appointments in rural areas), and housing allowances (for stay-overs in areas far away from home). A pension is granted to judges who have worked at least twelve years in the judiciary, and in case of serious illness or premature death (Arts. 76-78).

3.2.3 Rotation and Promotion

Judicial promotions, lateral transfers, retirement, and dismissal of judges take place at least once every three years (or five, in exceptional cases, see Art. 65(d)). Recommendations are drafted by the Judicial Inspection Board and discussed with the Minister of Justice and the President of the Supreme Court. The outcome is then submitted to the SJC for consideration and approval. Promotions and transfers are issued by republican decree (Art. 59).

Articles 58ff of the *Law on Judicial Power* prescribe the various judicial posts and grades. There are nine grades in total. To be promoted to a higher grade, a judge should have spent at least two years as an assistant-judge, then as a judge in three Courts of First Instance.

Seniority appears to be a decisive factor in promotions. After a sufficient number of years in all grades at the first instance level, judges may be promoted and appointed to a judicial post in one of the Appeal Courts in any of the governorates, or San`a city. The same is true of Appeal Court judges when they are promoted to a Supreme Court judge position.

The judiciary is granted a yearly recess of two months during Ramadan (the fasting month) and Dhu al-Hijja (month of the *hajj*, pilgrimage). During this recess, only urgent cases are heard (Art. 73).

3.2.4 Removal

Being appointed for life, a judge (or prosecutor) cannot be removed from office, unless found guilty of: (a) an improper act, the taking of a bribe, or bias; (b) regular absence from court hearings without proper ground; (c) delay in disposal of cases; or (d) violating the secrecy of judicial deliberation. In such cases, disciplinary proceedings are initiated by the JIB and need to be substantiated by a resolution from the SJC (Arts. 90-91 LJP and 151 *Constitution*).

Disciplinary penalties against a judge range from a reprimand to actual removal, including withholding of salary rises or pension, temporary suspension, delaying a promotion, or transfer to a non-judicial post.

One could have serious doubts, however, whether judicial rotations and removals take place only on the basis of objective criteria, or are used as an instrument (by the MoJ) to purge the judiciary from 'unruly' judges, for political, tribal, or other non-judicial considerations.⁵⁹

⁵⁸ That said, the author has met more senior judges, for instance in the Appeal Court of San`a and in the Supreme Court.

⁵⁹ See also Part B, Chapter 2.

3.2.5 Court Staff

The law prescribes that all three court instances should be 'sufficiently' composed of clerks, secretaries, registrars, prosecution aides, typists, translators, and bailiffs (Art. 124 LJP). Court personnel are employed by the Ministry of Justice and form part of the public civil service, yet they are supervised by a senior clerk or senior bailiff who reports to the president of the court (Arts. 125-126, 140). Court staff should have at least a secondary school degree (or equivalent), or have passed an entry exam organised by the Ministry of Justice (Art. 127). The High Judicial Institute provides short training courses for staff members, but these have in the past been highly irregular and mostly theoretical. This is generally perceived as a shortcoming by court staff and judges alike, and in practice leads to many judges performing the administrative tasks themselves. Courts also generally do not have a manual for court administration, planning, and organisation.

Functions of court staff include: (a) taking delivery of, and recording, documents and papers relating to new or on-going cases; (b) filing and archiving; and (c) collecting court fees and fines. The president of the court has the authority to institute disciplinary measures against any member of his staff (Art. 137). Overall, court staffing is insufficient, both in terms of numbers and in terms of capacity.

3.3 Judicial Oversight and Inspection

3.3.1 Supreme Judicial Council

Power and control within the Yemeni judicial system is vested in the Supreme Judicial Council (SJC, *majlis al-qadâ' al-a`lâ*), as by constitutional provision (Art. 152 *Constitution*). Until as recently as 2006, the President of the Republic headed the SJC. It was only after intensive, mainly donor-driven, pressure to separate the judiciary from domination by the executive, that the Chief Justice of the Supreme Court became the head of the SJC.

Chapter Five of the *Law on Judicial Power* (1/1991) deals with the SJC (Arts. 104-120). The members of the SJC are appointed by law. They consist of the Minister of Justice and his Deputy, the two Vice-Presidents of the Supreme Court, the Attorney General, and the President of the Judicial Inspection Board (JIB). The three remaining members are selected by the Presidential Council from among active and retired legal experts and judges.

It follows that the executive - directly or indirectly - continues to control the SJC, and thus all judicial appointments and removals. As noted earlier, the SJC has significant powers to hire, assign, transfer, and remove judges (and prosecutors) from their positions and to take disciplinary measures (Art. 152 *Constitution* and Art. 109 LJP). It further has constitutional authority to draft the budget for the judiciary, which falls under the overall state budget. Notably, despite an explicit constitutional prohibition (Art. 150), in practice the SJC orders the creation of exceptional courts. It is standard practice for the Ministry of Justice to submit its reform plans to this body. The SJC further influences the vocational training of, and the influx of, candidate judges, by having the authority to approve students (initially selected by the JIB) to attend the High Judicial Institute, and by drafting its budget.

Observation of the way in which the SJC performs its supervisory functions reveals serious deficiencies that undermine the efficiency of the judicial branch, and its independence from the executive. Although the SJC has a broad administrative mandate, it lacks the resources and capacity to execute its functions. There is no standard system through which disciplinary matters are reported and investigated, or any clear set of guidelines for the conduct of employees. Corruption often goes unpunished. On an even more basic level, the SJC does not avail of expert staff to deal with disciplinary cases, and does not seem to have its own premises.

3.3.2 Judicial Inspection Board

At least once a year, with or without prior notice, every judge is to be reviewed by the Judicial Inspection Board (*hay'at al-taft'ish al-qadâ'î*, JIB). This body was established by the *Law on Judicial Power 1991* (Arts. 92-97), and is within the Ministry of Justice.

The JIB consists of a Chair, who must be a senior judge of the Supreme Court, a Deputy-Chair, and several experienced judges. Although its members are all judges, the JIB falls under the (semi-)executive authority of the Supreme Judicial Council and the Ministry of Justice (Art. 92 LJP).

This MoJ-unit has the power to investigate judiciary performance, e.g. by monitoring courts and reviewing complaints against judges. For many years, however, JIB inspections were not conducted systematically, and its ability to follow up with actionable advice and guidance seemed limited. There seems to be no published standards for these inspections.

The actual mandate of disciplining judges lies with the SJC, to whom the JIB submits its evaluations, and whose decisions have direct consequences for judicial rotations, which take place every three years. The JIB further cooperates with the High Judicial Institute in developing its curriculum.

The *Friends of Yemen Final Report* (2010) states that in 2006, the SJC re-established the Council of Discipline.⁶⁰ In the period between mid-2006 and June 2010, the SJC and the JIB referred 80 judges and members of the public prosecution to the Council of Discipline. The Supreme Judicial Council has also issued a Code of Conduct, which will be part of the rules and procedures for judicial inspections and is to be included in the curriculum of the High Judicial Institute.

3.3.3 Office of Court Administration

The Office of Court Administration in the Ministry of Justice also conducts periodic personnel reviews. However, without a clear job description and without an established system, it has very limited efficacy.⁶¹

3.3.4 Inspections and Evaluations Office

The Ministry of Civil Service, in turn, houses an Inspections and Evaluations Office for evaluating the performance of public service employees, including judges and administrative clerks. Its operations are nevertheless inconsistent and too remote from day-to-day operations to be effective. Its mandate also seems to overlap with the other judicial inspection organs.

None of the mentioned evaluation bodies seem wholly capable of performing their function, and the degree to which they coordinate their activities appears to be minimal.

3.4 Anti-Corruption Agencies (COCA and SNACC) and Public Funds Prosecution⁶²

3.4.1 COCA

The Central Organisation for Control and Auditing (COCA), established by *Republican Decree 39/1992*, is Yemen's supreme audit institution.⁶³ It falls under the Presidential Council and is entrusted to effectively audit and control public monies and ensure their good management and to investigate corruption complaints. It is further tasked with enhancing the accounting and auditing performance of the institutions subject to its review - including state and local-level administrative and economic institutions - and of the auditing profession country-wide.⁶⁴

⁶⁰ FoY WG on Justice and Rule of Law, *Final Report* (2010), p. 11. I am not sure to which body this refers.

⁶¹ No further information was available with regard to the law or decree under which this body was created, or about its relation to the other inspection bodies.

⁶² For an overview of corruption and (legal) anti-corruption measures in Yemen, see Mohamed Abdo Moghram, *Legal and Institutional Structure for Fighting Corruption in the Republic of Yemen* (San`a, n.d.).

⁶³ For a detailed overview of COCA, see *AOA Fact Sheet, Institutional Overview No. 1* (22 June 2010), available at <http://www.scribd.com/collections/3353336/Yemen-Laws-Institutions>.

⁶⁴ <http://www.state.gov/documents/organization/160081.pdf>, pp. 30-31.

COCA is composed of a president with the rank of Minister, a vice-president at the rank of Deputy Minister, and a number of deputies and directors of central administrations, and specialist members. All are appointed by decree of the Presidential Council.

To perform its tasks, COCA consists of several divisions. The Administrative Department audits central ministries, the Parliament, the President's Office and the various higher-level committees, such as the High Security Committee. The Economic Department audits para-statal companies, including banks and oil companies. The Legal Division determines whether audit cases rise to the level of legal transgressions, such as corruption and misappropriation, and if so, refers these to the Public Funds Prosecution (PFP), a division of the Niyaba (see hereafter).

As part of the executive branch, COCA's members are not judges and therefore do not issue judicial decisions. COCA presents its reports to parliament, yet does not make them publicly available. In cases involving high-level officials, COCA submits reports directly to the President, who has the power to veto them.

Under pressure of international actors, in 2006 the GoY prepared a national strategy to fight corruption. One measure was to bolster the effectiveness of COCA. Over the last few years COCA has referred several hundred cases to the Public Funds Prosecution, but only a handful have resulted in prosecutions, and involve only low-ranking officials. By some estimates, over 50% of cases have gotten 'lost' during the referral process. It is generally assumed that the actual extent of corruption is significantly greater than what is being reported (confidentially) to parliament.⁶⁵

3.4.2 SNACC

The Supreme National Authority for Combating Corruption (SNACC) was created in 2007 as a direct result of the national strategy against corruption. It is the first anti-corruption authority of its kind in the Middle East. Critical to its establishment were a number of Yemeni MPs, who had founded in 2006 the Yemen Parliamentarians Against Corruption (YemenPAC), a chapter of the Global Organization of Parliamentarians Against Corruption (GOPAC), with support from the foreign National Democratic Institute.⁶⁶

The SNACC was mandated to prevent and investigate corruption, monitor all government bodies for corruption, and to educate the public. Although state-controlled, the SNACC has attracted a variety of civil society actors who participate intensively in its anti-corruption activities.⁶⁷ While initial efforts have focused largely on infrastructure development and staff recruitment, it is reported that the SNACC has been actively investigating cases of corruption with a clear emphasis on procurement and government contracts with the private sector. The SNACC also keeps records on the official holdings of more than 10,000 government officials. This activity results from a new law drafted by YemenPAC in 2007, the *Law on the Declaration of Assets by Public Officials*, which requires all nationally-appointed figures to disclose their financial assets to the SNACC.

The SNACC has broad powers of investigation, but not of prosecution. For prosecutions, the SNACC must cooperate with the Public Funds Prosecution. Based on its mandate, the SNACC is not allowed to publicly release information on its cases, unless with explicit permission from the executive.

With significant foreign support, especially from the NDI, both the COCA and the SNACC seem to function relatively well. They have produced multi-year plans, trained their staff, and built infrastructure superior to most other ministries. Reportedly, much of SNACC's staff was drawn from COCA, which facilitates coordination between the two bodies.

⁶⁵ *Idem*.

⁶⁶ <http://www.ndi.org/yemen?page=0%2C2#StrengtheningParliamentaryInstitutions>.

⁶⁷ Laurent Bonnefoy and Marine Poirier, *Civil Society and Democratization in Contemporary Yemen: Enhancing the Role of Intermediate Bodies*, Knowledge Programme Civil Society in West Asia, Working Paper 3 (University of Amsterdam and Hivos, 2009), p. 19.

The SNACC nonetheless still has limited capacity. Reportedly, of the more than 500 complaints received in 2009, less than 25 resulted in investigations. Moreover, both the SNACC and COCA appear to suffer from Yemen's endemic institutional 'defect': a limited independence from the executive, and - reportedly - a persistent culture of impunity.

3.4.3 Public Funds Prosecution

Special subdivisions of the judiciary and public prosecution handle public finance corruption cases. Public Funds Courts (PFCs) were created in the 1990s.⁶⁸ The Public Funds Prosecution (PFP) collects evidence - often conducting its own investigations - files charges, and refers cases to the PFCs. The PFP also forms a link between COCA and the courts, given that most of the PFP's cases are submitted by COCA's Legal Division. Alternatively, the PFP receives allegations from junior officials within ministries, or sometimes even on the basis of media stories. There is no formal mechanism through which the complaints are received. The SNACC forms another channel through which public funds cases come to the PFP.⁶⁹

4. Legal Education⁷⁰

4.1 Shari`a and Law Faculties

Until 1971, there existed no exclusive legal training in Yemen. Senior jurists today still remember the old Imamic "Madrasa `Ilmiya", the first government-funded school in the YAR where future government officials and judges were trained together. This training mainly concentrated on the study of *fiqh* (Islamic jurisprudence) according to the ruling Imam's Zaydi school of law.

The *Law of Judicial Power* (1/1991) prescribes that graduation from a Yemeni Faculty of Shari`a and Law is now required to become a judge or public prosecutor.⁷¹ In 1971, the University of San`a opened the Faculty of Shari`a and Law (*kulliyat al-sharī`a wa-l-huqûq*). In its first years, the curriculum was changed yearly due to an unresolved debate between modern-oriented lawyers and traditional Islamic scholars on the portion of shari`a-related subjects. This resulted in a double-tracked programme with both modern law and shari`a-subjects, which until today - as far as is known - has remained mostly unchanged.⁷²

Courses follow the traditional lecture method, with some halls in the faculty building holding as many as 500 students. The school year consists of one term, with a single written exam at the end. No legal clinics or practical courses are offered; students are only subjected to a few written requirements during the course. Many faculty members are trained in Egypt or at other Arab universities.

Other law faculties are located in Hadramawt University, which is a Faculty of Shari`a and Law, and in Aden and Ta`izz, which are simply 'Law' Faculties (*kulliyat al-huqûq*). Prior to the unification, the latter two faculties mainly taught modern legislation, but since unification, shari`a topics have also become a major part of the curriculum.

⁶⁸ See Section 3.1.4.

⁶⁹ FoY WG on Justice and Rule of Law, *Final Report* (2010), p. 11. This report also mentions other organs and authorities specialised in combating corruption, namely the High Tender Board (HTB) and the High Authority for Tender Control (HATC). No further information was available to the author.

⁷⁰ Information for this Chapter has been drawn from the author's own field-research up to 2006. More updated data were not available at the time of writing.

⁷¹ Though the law also permits experienced lawyers to be appointed as judges. In 2005, leaders of the Bar claimed that the Minister of Justice had prepared a list of eligible lawyers, but that this shortlist was subsequently vetoed by the Chief Justice of the Supreme Court.

⁷² In 1998, the Faculty at San`a University for the first time permitted students to choose between a major in shari`a or in law. When more than 80% selected law, however, the program was quickly shelved.

Next to the state universities, five private law faculties have been established in recent years. The precise locations and status of these faculties are unclear. Private schools need to obtain a licence from the Ministry of Education. The faculty of Shari`a and Law at San`a University remains the pre-eminent source of most judges, prosecutors, and lawyers in Yemen.⁷³

4.2 High Judicial Institute

To pursue the judicial training, law graduates are required to follow a three-year course at the High Judicial Institute (HJI) in San`a. The earlier controversy about the curriculum between Islamic traditionalists and legal modernists resurfaced at the HJI. Whereas modernists drafted the proposal that led to the HJI's creation in 1981, traditionalists secured their influence through the Supreme Judicial Council, which has the authority to supervise the internal organisation of the HJI, and to draft its curriculum. Almost three-quarter of its three-year curriculum therefore comprises subjects of shari`a law, such as: Quranic legal verses, the Sunna of the Prophet, Islamic *fiqh* (jurisprudence), comparative Islamic jurisprudence, Arabic language, religious duties, biography of the Prophet, and Islamic criminal law. Many lecturers from San`a University also teach at the HJI.

The teaching methods at the HJI are also rather 'classical' (mostly lectures and passive learning), but the HJI also organises moot courts under the supervision of practicing judges, and on-the-job trainings in courts during the summer period. Additionally, the HJI provides courses and refreshment workshops for sitting judges, court staff, and staff of the Ministry of Justice and the SJC.

In 2005, the HJI had the capacity to graduate 100 students per year, which resulted in a surplus of new judges. Graduates from the HJI are automatically offered a job in the judiciary. Thus, when there are no vacancies they often act as supporting court staff. For several consecutive years, the HJI halted the influx of new students.

Officially independent from the Ministry of Justice, the HJI does look to the Ministry and the Supreme Judicial Council for policy guidance. The SJC, after a proposal by the Judicial Inspection Board, effectively selects its students.⁷⁴

In Yemen's political and social reality, religious scholars and Islamists have exerted significant influence on the HJI since its creation. Recent reports further note an emerging Salafi-inspired movement at the law faculties and the HJI. Fueled by the events in Sa`dah since 2004, they seek to revise the religious legal texts according to their ultra-conservative Sunni teachings. They claim that the standard curriculum prescribes texts of Zaydi (Shi`i) origin, the school of the deposed Imams and also of their contemporary followers, the Huthi rebels. While the doctrinal differences are minimal, the political - and possibly future judicial - significance of this 'legal' battle is huge.⁷⁵

5. Law Enforcement

5.1 Police

Yemen's unification in 1990 integrated two very different police forces under a single force in the Ministry of Interior.⁷⁶ The Criminal Investigation Department (CID) carries out much of Yemen's police activities. This unit makes most arrests and conducts most police-led criminal investigations in the country.

⁷³ In 2005, more than 8.800 students were attending the four-year undergraduate program in 2005. Of the 8.800, 391 were women.

⁷⁴ According to the Ministry of Justice, candidates are selected by a committee of judges and academics, chaired by the President of the Supreme Court.

⁷⁵ This Shi`i-Sunni polarisation is not juridically inspired, as also former President Saleh is (formally) Zaydi, and Zaydi Islam is often called the 'fifth Sunni school of law'. For a detailed study on Zaydi legal legacy in modern Yemeni law, see Bernard Haykel, *Revival and Reform in Islam: The Legacy of Muhammad al-Shawkânî* (Cambridge University Press, 2003). On the Huthis, see Part B, Chapter 3.1.

⁷⁶ Hesham Nasr, Jill Crystal, and Nathan Brown, *Criminal Justice and Prosecution in the Arab World: A Study Prepared for the UNDP Program on Governance in the Arab Region* (October 2004), p. 6 at <http://www.pogar.org/publications/judiciary/criminaljustice-brown-e.pdf>.

The total strength of the CID is estimated to be 13,000 personnel. Police are trained at the High Police Academy in Sana'a, but deployment is controlled by the Ministry of the Interior, whose Security Deployment Plan is approved by the Supreme Security Council.

Police stations keep basic complaint books for reported incidents. The police force in the capital avails of high-tech instruments to support their work. Many of Sana'a's major intersections are monitored 24/7 by an ultra-modern CCTV surveillance system. The operations room receives calls for assistance from the public (emergency or routine), and is capable of forwarding information on serious incidents within five minutes of its receipt.

On the downside, police structures, work patterns, management, and chains of command appear to be excessively rigid. In Sana'a, most incidents, other than minor ones, are forwarded up the chain of command to the Office of the Minister of Interior before action is taken. Also, most police stations do not have women police officers or a women's section, which practically bars women from reporting to the police. A general perception exists among the populace that the police are not to be trusted and are overall corrupt. The CCTV surveillance system, above all, seems a disproportionate investment given the widespread social deprivation in Yemen, and the priority felt by citizens to improve the professionalism of the police force.

A large part of policing in fact remains outside government control. Tribal leaders continue to employ their private ways of policing in large areas of Yemen, even to the extent of operating private jails. Prominent tribal leaders in the cities maintain their own bodyguards who every so often clash with the government's security forces.⁷⁷

5.2 Public Prosecution (Niyaba)

The Office of Public Prosecution (*niyâba*) was not known in Yemen (YAR) until 1977.⁷⁸ Since Yemen's unification, the Niyaba has become integrated into the judicial corps, as stated in the Constitution (Art. 149) and the *Law on Judicial Power 1991* (Arts. 50-56). Both prosecutors and judges are thus subject to the same rules regarding the conditions for training, appointment and inspection, transfers, accountability, and discipline. Prosecutors can also be rotated into judicial positions, and vice versa.

The Attorney General (AG) is the head of the prosecution. The AG's appointment is confirmed by the Presidential Council. The AG selects applicants for prosecutorial positions, subject to the approval of the Minister of Justice. The Technical Office of the Attorney General handles a variety of functions within the prosecution and judiciary. For example, it prepares reports to the Supreme Court on legal issues in capital punishment cases. The Technical Office also disseminates circulars and legal texts to prosecutors to keep them updated. The Niyaba's office further employs clerks, administrators, and other employees, such as the judicial police.

⁷⁷ *Idem.*

⁷⁸ Brinkley Messick, "Prosecution in Yemen: The Introduction of the Niyâba", 15 *International Journal of Middle Eastern Studies* (1983), pp. 507-518; Nasr et al., *Criminal Justice and Prosecution in the Arab World* (2004), pp. 7-9.

The Niyaba has far reaching powers that include policing, prosecution, and judicial functions (Art. 53 LJP):

- to oversee the implementation of the law;
- to investigate and prosecute crimes, in cooperation with the CID;
- to order the detention of an individual beyond 48 hours;
- to prepare cases and render opinions in cases to be brought to trial;
- to investigate crimes, gather evidence, and render opinion in appellate criminal cases;
- to ensure the legality of arrest and detention procedures;
- to execute criminal sentences;
- to investigate and prosecute allegations of official corruption;
- to order a defendant to prison;
- to order his/her release upon completion of sentence;
- to supervise and inspect detention centres, prisons, and juvenile correctional institutions.

A drawback is that the law fails to clearly define the scope of authority between the public prosecutor and the police. A victim of a criminal offence can either go to the police or to the public prosecutor, but neither appears to have sufficient resources to conduct adequate investigations, nor the requisite training or equipment to do so. For instance, both lack training in methods for gathering evidence and forensic science, which is imperative to minimise coercive means to obtain confessions. And absent bribes, neither initiates action, thus severely curtailing equal access to justice.

The Niyaba is also the starting point for cases of accountability, good governance, and in curbing unlawful excesses by government agencies, including its own prosecutors. A special department is charged with the handling of public funds crimes.⁷⁹ However, the law leaves unanswered how the Niyaba should address the exercise of impunity by higher government officials. Alleged violations of human rights are also under the purview of the Niyaba.

Since 1999, prosecutors receive a two-year training at the premises of the High Judicial Institute. The curriculum was set up in 1998 by the then newly-appointed Attorney General `Abdullah Al-`Ulufi, who signalled that a basic vocational training for the prosecution had been lacking since its establishment. The current training is supervised by the Inspection Authority within the AG's office. While the Inspection Authority uses lecturers from the High Judicial Institute, the training of prosecutors is not formally part of the judicial training. Candidate prosecutors take a final written exam.

While the Niyaba is - in its investigative and judicial functions - formally an independent judicial 'sub-body', in its prosecutorial function and for funding, it depends on the Ministry of Justice, an executive body (*Law on Judicial Power*, Art. 54). The head of the Niyaba is appointed by the President of the Republic (Art. 60).⁸⁰ Other prosecutors are appointed by republican decree upon nomination by the Ministry of Justice and the consent of the Supreme Judicial Council, for a two-year trial period (Art. 59).

The *Law on Judicial Power* further states that the Niyaba answers to the Supreme Judicial Council for disciplinary matters (Art. 111), a body that is to date still not clearly separated from the executive. The SJC (with the MoJ among its members) thus remains the key organisation controlling the composition of the Niyaba.

⁷⁹ See Sections 3.4 and 3.1.4.

⁸⁰ The President not only appoints, but can also dismiss the Attorney General. President Saleh effectively sacked AG `Abdullah Al-`Ulufi on 16 May 2011, after 13 years of service, because Al-`Ulufi refused to follow orders from President Saleh to prosecute demonstrators, and to dismiss charges filed against the snipers who shot at the sit-in of demonstrators in San`a on 18 March 2011.

In 2004-2005, there were 223 offices and roughly 800-850 prosecutors in Yemen, including (reportedly) 30-40 women.⁸¹ This number is insufficient to cover the country's large territory. The Niyaba also suffers from lack of infrastructure (buildings, equipment), administrative staff, and logistical support.

5.3 Prisons

The prison system formally operates under the authority of the Ministry of Interior, through the Directorate of Prisons. Its Director and an Assistant-Director supervise five sections, responsible for: (1) prison services; (2) finance; (3) secretariat functions; (4) men's corrections; and (5) women's corrections.

Internal and external prison security is under the control of different sections of the Ministry of Interior. Several other tasks directly related to prison management are assigned to other Ministries or government agencies. Juvenile detention facilities, for instance, fall under the responsibility of the Ministry of Social Affairs. According to the law, pre-trial detainees fall under the responsibility of the police, even though in practice the Directorate of Prisons appears to assume that responsibility. The Ministry of Justice, through the Niyaba, keeps the records related to the prisoners' detention, and is authorised to release prisoners. This differentiation of tasks and responsibilities for prison-related affairs hampers effective management and control of prisons (see Part B, Chapter 2.8).

Even though reliable data are lacking, it is often reported that aside from the formal prison system, there are private (unofficial) prisons that are run by powerful tribal authorities, opponents of the GoY, by the army's Political Security Organisation (PSO), and the MoI's Central Security Office (see 5.4.2).⁸²

5.4 Internal Security Forces

Internal security is a major concern not only of the Government of Yemen, but also of the international community. An increasing number of forces and units, often overlapping and with little transparency, have been created over recent years. The five sections below describe five of these units.

5.4.1 Political Security Organisation

The Political Security Organisation (PSO), led by military officers, is the major intelligence organ of the state and is perhaps the most feared internal security and intelligence organisation, reporting directly to the President through the Deputy Prime Minister for Defence and Security. The PSO operates its own detention centres and has an estimated force strength of 150,000 spread throughout the country.⁸³

5.4.2 Central Security Office and Counter Terrorism Unit

The Central Security Office (also called the Central Security Organisation, hereafter CSO) has an official force strength of 40,000 (although some estimates put the actual number between 50,000 to 60,000). They are equipped with a range of infantry weapons and armored personnel carriers.⁸⁴ This force is overseen by the Ministry of Interior and - at the time of writing - headed by Brigadier-General Yahya Saleh, one of former President Saleh's nephews. The CSO was created to operate in situations that require greater force, or more specialised skills, than the police can handle. The CSO receives international support to train its staff internally, and has specialised units including riot control, VIP-protection, tourist protection, border patrol, and a Counter Terrorism Unit (created in 2002 and heavily backed by international actors). The CSO further serves as a paramilitary force in Sa'dah (against the Huthi rebellion) and in the south (against the southern separatist movement), and operates its own extrajudicial detention facilities.⁸⁵

⁸¹ Nasr *et al.*, *Criminal Prosecution and Justice in the Arab World* (2004), p. 7.

⁸² Human Rights Council, *OHCHR's Visit to Yemen*, UN Doc. A/HRC/18/21 (2011), p. 10.

⁸³ Library of Congress Federal Research Division, *Country Profile Yemen* (August 2008), p. 24.

⁸⁴ *Idem.*

⁸⁵ Part of these data are based on an undisclosed source, due to unavailability of public data.

5.4.3 National Security Bureau

In 2002, the GoY created a National Security Bureau (NSB), another intelligence organisation with significant support from international actors. Like the PSO, the NSB does not report to any ministry, but is directly overseen by the Deputy Prime Minister for Defence and Security. The NSB operates chiefly in San'a. It has received training and state-of-the-art equipment from international donors. Although the NSB appears to have similar responsibilities to those of the PSO, it remains unclear how the two organisations coordinate their responsibilities.⁸⁶

5.4.4 Republican Guard

The Republican Guard is an elite unit of the Yemeni Army. It includes the special forces wing of the military, and falls under the Ministry of Defence. The commander of the guard is former President Saleh's son, General Ahmed `Ali `Abdallah Saleh. This guard is highly trained and better equipped than other parts of the armed forces. Until the uprisings in 2011, it interacted far less frequently with citizens as compared to forces controlled by the Ministry of Interior. The major part of its force is stationed near urban areas.⁸⁷

5.4.5 Coast Guard

The Yemeni Coast Guard is also a relatively new unit, created in 2003 and overseen by the Ministry of Interior. It has a constabulary and navigation role in Yemen's ports and regional waters. Its duties include countering smuggling, illegal immigration, protecting national waters against indiscriminate fishing, and fighting (Somali) piracy.⁸⁸ In 2008, the Coast Guard had 1,200 personnel. The level of coordination with the Yemeni navy is unclear. Despite heavy international support, especially from the U.S. and Australia who provided the Guard with hardware, technology, and training to bolster its counterterrorism capacity, the effectiveness of this force remains unclear.⁸⁹

The departmental structure of the security offices in the governorates follows a pattern whereby each security office consists of three departments:

1. The complaints department (*idârat al-shakâwâ*) for all complaints against public prosecutors, police, and other security personnel.
2. The department for supervision and inspection (*idârat al-raqâba wa-l-taftish*), which supervises security personnel, prisons, security in the districts, tidiness of the premises, behaviour towards citizens, etc. On these findings, regular reports are drafted.
3. The department for external relations (*idârat al-`alaqât al-`âmma*), which scrutinises all daily papers and other means of communication to collect complaints against security personnel and police, or in general with regard to violations of human rights by other public officials. These violations include incidents of arbitrary detention, torture or the use of other cruel means to force confessions from the accused. The practical functioning of these departments falls beyond the scope of this report.⁹⁰

⁸⁶ Library of Congress Federal Research Division, *Yemen* (2008), p. 24.

⁸⁷ See note 83.

⁸⁸ See http://en.wikipedia.org/wiki/Yemen_Coast_Guard

⁸⁹ Interview with the Commander of the Coast Guard, Ali Ahmad Ras`ee, available at <http://www.yemenpost.net/28/InvestigationAndInterview/20081.htm>; Library of Congress Federal Research Division, *Yemen* (2008), pp. 23-24.

⁹⁰ Details about the practical functioning of these departments were not available, but indicative may be the overview in Part B of this report.

B. Legislation

Introduction

North Yemen

Yemen's codification process has taken quite a unique course compared to other Arab countries, whose legal systems became thoroughly influenced by French civil law or British common law in the colonial era.⁹¹ Compelled by rapid post-WWII economic developments, for which the old Zaydi manuals proved increasingly inadequate, Imam Yahya's son Ahmad in 1952 installed a Board of Ulama (religious scholars) to codify shari`a principles into a more updated and accessible legal manual. The result was a handbook with 1479 principles ('articles') selected from the prevalent opinions (or *ikhtiyârât*, choices) from the Zaydi school and all four Sunni schools of law. These articles were organised according to legal subject matter (marriage, divorce, custody, wills, sales, court procedure, criminal law, etc.), thus increasing accessibility for judges and law students. It also secured a more consistent application of shari`a, while still adhering to the Zaydi method of interpretation.⁹²

Following the 1962 Revolution, but only after the ensuing chaos finally settled down 10 years later, North Yemen's first Minister of Justice, `Abd al-Rahman al-Iryani, issued his own 'Book of Choices' in 1971, composed of 68 articles and published with the approval of the Court of Cassation, the predecessor of today's Supreme Court. In 1975, the Government installed the Shari`a Codification Commission, with the aim to "halt the borrowing of foreign laws that were inconsistent with shari`a and with Yemen's particular history and tradition", as well as to bridge the gap between the old-style *fiqh* rules and the new social and political realities. Most members of this Commission were trained in classical shari`a, and the product of their intellectual exercise became known as the 'Shari`a Codes'. Amongst them were the *Law on Judicial Power*, the *Civil Code*, the *Law on Civil and Commercial Appeal*, the *Law on Criminal Procedure*, the *Arbitration Law*, and the *Personal Status Law*. Notably, the first official *Criminal Code* was published as late as 1994.

Though unique in their inception and modern in format, these 'Shari`a Codes' were still very Islamic in content, leaving much room for multiple interpretations, and by far not all encompassing. Other codes, such as the *Commercial Code*, were often drafted (or copied) from other Arab laws, by lawyers hired by the Ministry of Legal and Parliamentary Affairs or other ministries. Most of these lawyers were educated in Egypt, and their drafts thus often reflected Egyptian codes. Also (parts of) European models have been used, which is permitted in shari`a on the basis of the Islamic legal methodology of 'istislâh wa-istihsân', searching for the public good and for the most favourable construction. In other instances, rounds of consultations are held in which NGOs may comment on drafts, or NGOs themselves take the initiative to lobby for amendments (e.g. the *NGO Law 2001*, and the *Law on Civil Procedure 2002*).

South Yemen

Meanwhile, South Yemen has had a markedly different legal history. There, shari`a according to the (Sunni) Shafi`i school was mostly restricted to matters of personal status and inheritance in the local Sultanates. During the British protectorate in Aden (1839-1967), the British introduced common law in Yemen modelled after the Anglo-Muhammedan law in India, especially for commercial matters. For personal status matters, they upheld Shafi`i law, and even translated Shafi`i manuals into English for the British judges to apply.

⁹¹ For an authoritative Yemeni study on legal development, see Rashâd Al-`Alîmî, *al-Taqlîdiyya wa-l-hadâtha fî nizâm al-qânûnî al-yamanî. Dirâsa muqârana* [Traditionalism and Modernism in the Yemeni Legal System. A Comparative Study] (Cairo: Al-Shurûq, 1989). I am also grateful for the insightful information from Qadi Mohammed `Abdulsalam Mansour, interview in San`a (7 November 2005).

⁹² Haykel, *Revival and Reform* (2003), p. 215ff.

After their departure in 1967, Marxist ideology dominated the newly-declared People's Democratic Republic of Yemen (PDRY) in politics and law. All Islamic principles that were considered against the Marxist ideology were abolished, which resulted in more egalitarian family and labour laws, perhaps one of the most progressive in the Arab region at the time. Judges and legal practitioners were mostly trained in (formerly) communist countries, as well as in the UK, Germany, and France.

Unification

The collapse of the Soviet Union in 1989 and the sudden deportation of numerous Yemeni migrant workers from Saudi Arabia and other Gulf states after Iraq's invasion of Kuwait in 1990, accelerated the merger between the two Yemens on 22 May 1990. The two distinct legal systems were unified by declaring the codes of the YAR as the official legislation of the new Republic of Yemen, displacing all former laws of the PDRY.

At these crossroads, the young republic prompted its new leaders to promote laws and regulations that reflected a process of democratisation and economic liberalisation. The main characteristics of these legislations - many of which were issued by presidential decree⁹³ - were the adoption of a free market economy and multi-party democracy, liberalisation of foreign and internal trade, free press, and decentralisation through elected councils for local authority. This was also reflected in the first *Constitution of 1990*.

However, many of these modernisations were met with fierce resistance from the traditional religious elite, who joined hands with the rising Islamist movement to regain their influence on the legal and political arenas. They publicly challenged the new republic about the doubtful compatibility of the new *Constitution of 1990* and other laws with shari`a, and proposed 'Islamic amendments'.⁹⁴ Over the years, and especially after assisting the northern regime in suppressing the 'secessionist' southerners, they captured crucial legal positions, such as the Ministries of Justice, Religious Endowments and Guidance, and Education, the Parliament, judiciary, and legal education institutions. In 1994, the *Constitution of 1990* was amended to declare Islamic shari`a once again as "the basis of all laws" (Art. 3, *Constitution of 1994*, italics added by author, lz).

The result of this re-islamisation movement is a weak system for formal legal training in modern positive law and procedures. Further, efforts to promote an informed and critical legal community by publishing legal commentaries, an index of court decisions, or legal journals are hardly existent.⁹⁵ Consequently, Yemeni judges admit to frequently looking to Egyptian court decisions, legal commentaries, and Zaydi *fiqh* manuals for interpretation of Yemeni legislation. Abbreviated compilations of *fiqh* manuals, taken from a range of Zaydi works of jurisprudence, have in fact been officially prescribed for easy reference for judges and to harmonise interpretation of 'open' Islamic norms in Yemeni legislation.⁹⁶

Even though classical shari`a and state-issued law formally appear to be integrated into one single legal corpus, in practice, one can observe a critical discrepancy -- one group of judges, scholars, political actors, and lawyers hold that statutory law (*qânûn*) has replaced shari`a and is now the only source of law, and the state the sole legislator. Another (still much larger) group maintains that state law as well as international treaties should always be reviewed in the framework of classical shari`a, given that shari`a is divine law, and thus remains superior to any human-made law. Although nobody actually agrees on what shari`a actually means, and by whom shari`a should be decisively interpreted, both standpoints - and many in between - co-exist today throughout all levels of the state, politics, the judiciary, education, and society in Yemen.

⁹³ All laws in the 1990s were issued as Republican (or Presidential) Decrees, instead of following the normal legislative procedures through Parliament. The official argument was that the newly created Republic rapidly needed laws to become operational. Some laws and amendments were nevertheless later repealed by Parliament.

⁹⁴ `Abdu'llâh al-Misrî, *Ma`rakat al-dustûr fi l-Yaman: Risâlat al-`ulamâ' bi-khusûs mashrû` dustûr dawlat al-wahda* [The Constitutional Movement in Yemen: Letter from the Ulama Regarding the Draft Constitution of the Unitary State] (San`a, n.d.).

⁹⁵ See Part B, Chapter 2.5.

⁹⁶ Qâdî Ahmad b. Qâsim al-`Ansî, *Al-Tâj al-mudhhab li-ahkâm al-madhhab* [The Gilded Crown regarding the Judgements of the (Zaydi) School], 4 Vols. (San`a: Maktabat al-Yaman al-Kubrâ, n.d.). See also Haykel, *Revival and Reform* (2003), p. 215.

1. Key National Laws⁹⁷

1.1 The Constitution

After unification, the *Constitution of 1990* (adopted by referendum in May 1991) set up the framework for the formal justice system in Yemen.⁹⁸ The *Constitution of 1990* designated Islamic shari`a as “the principal source of legislation” (Art. 3, italics by author, lz). This was a major deviation from the previous (North-) Yemeni *Constitution of 1970*, which declared shari`a as “the source of all laws (Art. 3). As explained before, this change was successfully contested by the religious elite, hence the *Constitution of 1994* declared shari`a again as “the basis of all laws”. This is still the formulations since the latest amendment in 2001.⁹⁹

Other constitutional provisions referring to the Islamic character of Yemen and its laws include Article 1, which declares Yemen an Arab Islamic State, and Article 2, denoting Islam as the official state religion. In Article 7, “Islamic social justice” in economic relations is put forward as the basis of the national economy. Article 23 states that inheritance is regulated by shari`a. Article 26 classifies the family as the basis of society, its pillars being “religion, custom and love of the homeland.” Article 31 states that women have rights and duties, which are “guaranteed and assigned by shari`a and stipulated by law.”

The position of customary law is not explicitly mentioned in the *Constitution*, but can be found in lower codes, such as the *Civil Code* and the *Arbitration Law*.

The *Constitution of 2001* also calls for rights and institutions usually associated with a liberal parliamentary democracy. It declares the President as the head of state, who appoints the Vice President and the Prime Minister (Art. 106); the latter is the head of government. The President, elected by “direct popular voting in competitive elections” (Art. 108e), holds office for no more than two seven-year terms (Art. 112) and is assisted by a cabinet.¹⁰⁰

The House of Representatives and the Shura (Consultative) Council make up the Legislature (see above). While President Saleh proposed in 2000 to extend the term of the House of Representatives from four to six years (Art. 65), the changes would also make it easier for him to dissolve Parliament early, “in urgent circumstances”, but only after a national referendum (Art. 101). Another proposal envisaged a greater role for the presidentially-appointed Shura Council, which was expanded from 59 to 111 members (Art. 126). Both the President of the Republic and the House of Representatives have the right to request constitutional amendments (Art. 158). Changes to a number of constitutional provisions specified in this article are to be submitted to a national referendum, after approval of three quarters of the House of Representatives.

Of special interest is Article 116: “If the post of the President of the Republic becomes vacant or should the President become permanently disabled, the Vice President temporarily takes over the presidential functions for a period that does not exceed sixty days, during which new elections for the President of the Republic shall take place.”

⁹⁷ Laws related to commercial and business activities have been omitted from this report. See for instance the Arab Center for the Development of the Rule of Law and Integrity (ACRLI), MENA Commercial Law Strengthening (CLS) Project, *National Commercial Law Assessment Report Yemen*, (San`a, November 2008), MENA Commercial Law Strengthening (CLS) Project, available at <http://www.arabruleoflaw.org/compendium/Files/MENACLS-NationalReport-YemenEn.pdf>.

⁹⁸ This constitution was actually already completed on 30 December 1981, in anticipation of the unification.

⁹⁹ Judge Nageeb Shamiri interestingly remarks that the official source of Yemeni legislation is in fact the Official Gazette (hence, not shari`a technically speaking), because Art. 103 of the *Constitution* provides: “All laws are published in the Official Gazette, and are announced within two weeks of issuance, coming into force within thirty days of their publication. [...]” Nageeb Shamiri, “Yemen”, in Eugene Cotran (ed.), *The Yearbook of Islamic and Middle Eastern Law*, Vol. 1, 1994 (The Hague: Kluwer, 1995), pp. 369-384, at 369.

¹⁰⁰ In January 2011, former President Saleh proposed constitutional amendments that would reduce the presidential term from seven to five years, yet would also cancel the limit of these two consecutive terms all together, thus allowing him to be president for life.

Part Two of the Yemeni Constitution deals with the basic rights and duties of citizens, such as the principle of equality among people in rights and duties (Art. 41), and freedom of thought and expression of opinion (Art. 42). Citizens have the right of recourse to the courts to protect their rights and legal interests (Art. 51). Equality before the courts is ordained by the *Law on Judicial Power*. Hearings are open to the public, unless the court decides otherwise for reasons of security or public morals. Verdicts are made public in an open session (Art. 154).

Chapter Three of the *Constitution* sets out provisions to protect the judiciary. It states that the judicial authority, including the public prosecution, is an autonomous authority in its financial and administrative aspects. Judges are independent and subject only to the law (*qânûn*), (meaning state-issued law). No other body may interfere in any way in the affairs of the judiciary; this is considered a crime punishable by law (Art. 149 *Constitution*; Arts. 185, 187 *Criminal Code*). Members of the judiciary and Public Prosecution Office shall not be dismissed except under conditions stipulated by law (Art. 151). Even so, the Yemeni *Constitution* does not include a clear reference to the principle of the *trias politica*. Article 4 of the *Constitution* only mentions the three powers as an "indirect means for the Yemeni people to exercise power" (referendum and elections being the direct ones).

1.2 Law on Judicial Power

The first *Law on Judicial Power* of the YAR was issued in 1976. The introduction of three categories of courts – Summary/Country/District Courts; Provincial Courts; and the Supreme Court of Appeal - did not clearly indicate whether this implied a separation of *relative* (territorial) jurisdictions, or rather an *absolute*, three-tier hierarchy of litigation opportunities. The second LJP of 1979 therefore revised the names of the courts, to Courts of First Instance, Appeal Courts, and Supreme Court, to clearly demarcate the *absolute* jurisdiction of each court. For the first time, Yemenis could have their cases heard before two different court level judges, and in 'final instance' regarding legal and procedural questions, a legal novum in Yemen.

The unification between the two Yemens called for a revision of the LJP, congruent with the new *Constitution*. *Law 1/1991* prescribes in much more detail the organisation of the judicial branch, the hierarchy and jurisdiction of the courts, the rights and duties of judges, and their review, rotation, and discipline. In its first articles, *Law 1/1991* reiterates (following the *Constitution*) that the judiciary is independent and that litigants are equal before the court. It outlines Yemen's three-tier court system and defines their tasks and organisation. The issue of the Special Courts is regulated in Article 8 (see Chapter 3.1.4).

Law 1/1991 further expounds the rights and obligations of judges and court employees, and the conditions for their appointment and transfer. It determines the organisation and functions of the Judicial Inspection Board and the Supreme Judicial Council (see Chapters 3.2 and 3.3).

1.3 Criminal Code

Since the overthrow of the Imamate in 1962, there existed no officially enacted criminal code in (North) Yemen. Judges were compelled to base their decisions either on shari`a texts or on draft codes, of which several different versions were in circulation. A definitive version of the *Criminal Code* was published only in 1994.¹⁰¹

The present *Criminal Code* (12/1994) states that "criminal liability is personal, and there is no crime or punishment without a preceding statutory law (*qânûn*)" (Art. 2). This clearly establishes that common liability, as known in tribal law, is not legitimated by statutory law, and that crimes and punishments can only be defined by state law, not by shari`a or other normative systems. *Law 12/1994* divides crimes into two types: (1) crimes punished with *hadd* (pl. *hudûd*, fixed Islamic punishment) or *qisâs* (retaliation), and (2) crimes punished by the judge's discretion (*ta`zîr*), within the limits of the law (Art. 11).

¹⁰¹ Its full name is *Law of Crimes and Punishments* (12/1994).

The *hudûd* “are based on an Islamic legal text and belong to God’s rights”, i.e. they are irrevocable if all conditions are fulfilled (Art. 12). Only the President of the Republic can delay or annul their implementation (Art. 48).

The seven codified *hudûd* are: revolt (*baghy*), apostasy from Islam (*ridda*), armed robbery (*hirâba*), theft (*sariqa*), unlawful intercourse (*zinâ*), false accusation of unlawful intercourse (*qadhf*), and alcohol beverage (*shurb al-khamr*) (Art. 12). The punishments vary from lashes (for alcohol beverage and unlawful intercourse between unmarried persons), amputation of a hand (theft, armed robbery) or foot (repeated theft, armed robbery), to capital punishment (apostasy), stoning to death (unlawful intercourse for married persons), or crucifixion (robbery with killing) (Arts. 259ff, 282ff, 306ff).

It should be noted that the *Criminal Code* also provides explicit conditions and guarantees in order to prevent the application of *hadd* punishments as much as possible (Arts. 46-49). For example, a *hadd* conviction is invalid if the judge has not reviewed all possibilities to exempt the accused of having committed a *hadd* offence (Art. 46). Also, the President can grant amnesty for the sake of public interest (Art. 48). In practice, reportedly, *hadd* punishments are rarely inflicted, but rather converted into a non-corporal punishment by the judge based on the judge’s discretionary power (*ta`zîr*). Mentally-ill convicts are exempt from (*hadd*) punishments and placed in special state-houses for psychiatric treatment (Art. 105).

Qisâs (retaliation) applies to two crimes: homicide and bodily injury (Art. 13). Unlike the *hudûd* punishments, *qisâs* is revocable by the victim or his/her legal heirs. They can grant amnesty to the perpetrator unconditionally, or against blood money (*dîya*, Arts. 50-52 and 234ff). Amnesty can be granted by the victim’s family up to the last moment prior to the execution. But even in the case of total or conditional amnesty by the claimants, the court can still impose capital punishment by discretion (Art. 235).

Chapter Four of the *Criminal Code* is dedicated to crimes and misdemeanors by or against public officials in the discharge of their function. These include: bribery (Arts. 151-161), abuse of power (Art. 166-169), violence or threats against officials (Arts. 171-172), disturbing or influencing the process of adjudication (Arts. 178-189), unlawful arrest or detention (also by citizens, Art. 246), and violation of privacy (Art. 253-256).

Other major crimes punishable by law include: slavery or human trafficking (Art. 248), kidnapping (Arts. 249-250), sodomy (Art. 264), and forced prostitution (Art. 280). Significantly, the *Criminal Code* does not criminalise blood feuds, implying that the state leaves this jurisdiction to the informal tribal mechanisms.¹⁰²

1.4 Criminal Procedure Code

The present *Criminal Procedure Code* dates also from 1994 (*Law 13/1994*). It amended some of the provisions of the Public Prosecution Office, with regard to the duties and functions of the judicial police and the jurisdiction of the Criminal Courts in relation to the Public Prosecution Office.

Book One determines the general principles of criminal procedure, as follows from the Yemeni *Constitution*. Criminal liability is strictly personal and the accused is innocent until proven guilty (Arts. 3-4; 71). Every citizen is equal before the law, and no punishment is afflicted on the basis of nationality, race, descent, language, belief, profession, level of education, or social status (Art. 5).¹⁰³ Inhuman punishment or treatment to force a confession - either physically or mentally - is forbidden, and annuls the statement (Art. 6, also 71).

¹⁰² For a comprehensive overview of Islamic criminal law, see Rudolph Peters, *Crime and Punishment in Islamic Law: Theory and Practice from the Sixteenth to the Twenty-First Century* (Cambridge University Press, 2005).

¹⁰³ Note that ‘gender’ is missing.

Unlawful arrests are forbidden (Arts. 7, 13), and any accused has the right of defence. The state shall provide poor people with legal aid by authorised lawyers (Art. 9). The law also protects the privacy of homes, places of worship, and all means of communication, and the right to free assembly and free movement (Arts. 12-14, see also 131-132).

Book Two sets out the procedures during the pre-trial stage. The arrest phase is surrounded with explicit legal guarantees (Arts. 70-83 and 172-176). Chapter Two deals with the investigatory stage. It sums up who belongs to the security officers, their duties, and the extent of their authority (Arts. 85-108). Articles 109-114 are directed to the Public Prosecution Office when this body proceeds to file a charge. Chapter Three details the procedures during the judicial inquiry by the Public Prosecution Office, including investigation, the hearing of witnesses, arrest, interrogation, preventive detention, and appeals (Arts. 115-230).

Book Three covers the criminal procedures during a court trial (Arts. 231-408), and Book Four addresses the procedures after appeal or cassation. Book Five goes into the execution of judicial decisions. Final decisions not involving corporal punishment are executed through the Public Prosecution Office. In case of corporal or capital punishment, the Attorney General sends a copy of the final Supreme Court decision along with a full report on the case to the President of the Republic, who has the power to confirm, revise, or annul the sentence (Arts. 470; 478-480). Detailed instructions on how to inflict corporal punishments, such as the death penalty, stoning, crucifixion (after the convict's execution), amputation, and flogging, are provided in Articles 485-492. The remainder of the law deals with administrative procedures surrounding detention, confiscation of goods, and handling of court documents.

1.5 Civil Code

The first *Civil Code of the Yemen Arab Republic* (10/1979), one of the illustrious 'Shari`a Codes', opened with the hierarchy of legal norms: "If no text in this law is applicable, reference shall be made to the principles of the Islamic shari`a on which this Law is founded, failing which the judge shall decide in accordance with custom (*`urf*) that is consistent with Islamic shari`a, failing which [the judge shall decide] in accordance with the principles of justice conform to the sources of Islamic shari`a in their totality." (Art. 1)

The present *Civil Code* (19/1992) can still be denoted as an 'Islamic code'. It comprises 1399 articles, covering many areas, such as contracts and torts, sale of goods, landlord and tenant, agency, insurance, ownership and possession, and conflict of laws (e.g. in cases of mixed marriage). The Islamic character of the Civil Code is demonstrated by Article 1, which declares:

"This law is based on the rules (*ahkâm*) of Islamic shari`a with regard to all legal transactions (*mu`âmalât*) and matters, as rendered in the (classical) texts in word and meaning. If the judge does not find an applicable rule in this code, then he can refer to the principles (*mabâdi'*) of Islamic shari`a on which this law was based. If no rule can be found, then the judge can rule on the basis of custom that is permitted by shari`a (*al`urf al-jâ'iz shar`an*). If not, then on the basis of principles of justice (*mabâdi' al-`adâla*) which conform to the fundamental sources (*usûl*) of shari`a in their totality. When custom is applied, it is required that it is a general and established custom, and does not conflict with the public order and public morality."

Some general principles (*mabâdi'*) of Islamic shari`a that were incorporated into the *Civil Code* are worth mentioning: "necessity justifies that which is forbidden" (Art. 6); "intention shall be taken into account, not the terms used or the form of acts or deeds (Art. 7); "as a general rule, in matter of transactions, parties must comply with the laws and customs as well as agreements, unless they are against the provisions of the law, or authorise what is forbidden (*harâm*), or forbid what is authorised (*halâl*).

If *harâm* and *halâl* are both present, the rule forbidding *harâm* prevails. Any rule based on custom or usage must change when this custom or usage changes, and must disappear when they disappear (Art. 13).¹⁰⁴

The judge can thus apply shari`a and customary law in civil cases, within the specified limits. Open terms such as 'public order' and 'public morality' are understood in Islamic terms. One can thus say that shari`a and custom have been incorporated into this statutory code, but their invocation and interpretation still lies with the individual judge.

1.6 Civil Procedure Code

The *Civil Procedure Code* (40/2002) contains procedural provisions ranging from family matters to enforcement of local and foreign judgements in Yemen. The Code underscores the principle of equality before the court (also for foreigners), of an adversarial hearing, and of judicial impartiality. The *Civil Procedure Code* affirms that trial procedures are public and oral. A chapter is also included on judicial ethics.

1.7 Personal Status Law

In most, if not all, Muslim countries in the world, the personal status laws represents both the Islamic legacy of society, and the Islamic legitimacy of the state. Because these laws cover matters that affect all Yemenis in their daily lives - birth, parenthood, marriage, divorce, custody, inheritance - it is the principal domain where the social and legal relationship between men and women is consolidated, and continually contested.¹⁰⁵

The *Personal Status Law* of post-unification Yemen (20/1992)¹⁰⁶ was derived primarily from the former *Personal Status Law* of the YAR (27/1976) - one of the earlier 'Islamic codes' - and the draft *Unified Arab Law of Personal Status*. It mostly side-lined the *Family Act* of the former PDRY (1974), which was known as a "radical piece of legislation", and one of the most liberal codes in the Arab world at the time.¹⁰⁷

After the civil war of 1994, the traditionalists not only amended the constitutional shari`a-clause, but also further islamised the personal status rules (see below). The shari`a-clause of this law appears towards the end -- Article 349 stipulates that "when this law is silent, the "strongest proofs" (*aqwâ al-adilla*) in the Islamic shari`a apply". As in other laws, no clarification is given to what these "strongest proofs" would mean, who decides these, and which sources to use.

The current *Personal Status Law* permits a Muslim man to be polygamous with up to four (also non-Muslim) women, if he can do justice to them all (Art. 12). Muslim women can only marry one man, who must be Muslim. Where the 1992 Law required from the husband to prove 'lawful benefit' to marry more than one wife, the 1998 law revoked this (mostly theoretical) warranty for the first wife. Another modification in 1998 exempted the husband from informing his existing wife about his intention to take another wife. He now only has to inform the *future* bride that he is already married (Art. 12).

¹⁰⁴ See further Abdel Hamid El-Ahdab and Jalal El-Ahdab, *Arbitration with the Arab Countries, Third revised and expanded edition* (Wolters Kluwer Law & Business, 2011), "Chapter 18: Arbitration in Yemen", pp. 831-873, at 832-834.

¹⁰⁵ See Anna Würth, "Stalled Reform: Family Law in Post-Revolutionary Yemen", 10(1) *Islamic Law and Society* (2003), pp. 12-33,

¹⁰⁶ Amended by Law 27/1998 and Law 24/1999.

¹⁰⁷ See Lynn Welchmann, *Women and Muslim Family Laws in Arab States: A Comparative Overview of Textual Development and Advocacy* (AUP 2007), p. 41; and specifically on South Yemen, Susanne Dahlgren, *Contesting Realities: The Public Sphere and Morality in Southern Yemen* (Syracuse University Press, 2011).

To conclude a valid marriage contract, a Yemeni woman needs the permission and signature of a male guardian or, in his absence, a court judge (Art. 15-17). Although Article 10 stipulates that any marriage contracted by force is void and Article 23 explicitly requires the bride's consent to the marriage, Article 7 does not require the presence of the bride to seal a marriage contract.¹⁰⁸

According to shari`a, the wife has the option to include stipulations in the marriage contract, a tool used by past generations of Muslim women to strengthen her marital rights. Although the *Personal Status Law* does not prohibit this entitlement, it is strongly discouraged by traditionalist convictions and social customs. Also, Yemeni women are mostly not aware of this possibility. Without contractual stipulations, the law obliges the wife to obey her husband, and she cannot leave home or travel abroad without his consent (Art. 40).

A very controversial matter concerns the age of marriage. The 1992 *Personal Status Law* set the minimum age of marriage at 15 years for both boys and girls, but at the same time revoked the right of a minor to dissolve the marriage upon reaching puberty, as *YAR Law 1976* had allowed. The 1999 amendment - proposed by the parliamentary Shari`a Codification Committee - no longer sets a minimum age for marriage of girls or boys, but instead prohibits consummation until the child-wife is capable of intercourse, "even if she exceeds 15 years".¹⁰⁹ However, where statutory law fails to protect children (especially girls) against coercion and early marriage, shari`a has proven at times to be at their side: Yemeni judges have in several cases invoked the 'shari`a-clause' of Article 349 to dissolve such early marriages, grounded on their personal interpretation of shari`a.¹¹⁰

The husband has the right to end the marriage by *talâq*, a form of unilateral divorce (repudiation) by pronouncing three times "I repudiate you" (Art. 58). This provision does not specify whether the husband should pronounce the sentence to his wife directly, nor does it require a witness or notification to a court. It simply states that the divorce becomes valid once the husband utters the sentence with the intention of divorcing his wife. A woman can only initiate a divorce before a court on a limited number of grounds specified by law, such as when the husband fails to provide maintenance, or has caused her harm, or is absent for more than six months. When her divorce request is based on other grounds (*khul`*), she is required to pay back her dowry and forego claims to maintenance.

After divorce, the mother has temporarily a greater right to custody of her children than the man, namely in the first 9 years in the case of boys, and 12 years for girls. The conjugal house and older children are mostly allotted to the husband. A divorced woman usually returns to her father's home. She receives maintenance for three months, the period of her *idda* (three menstruations), until it is proven that she is not pregnant. She is - legally - free to remarry.

A personal status matter which caused enormous uproar in Yemen in 2000 was an amendment proposed by the parliamentary Committee for Justice and Religious Endowments (*awqâf*) to import to Yemen the Islamic institution of *bayt al-tâ`a*, the so-called 'house of obedience'. The draft amendment would give the executing judge the complete discretion to force a 'disobedient' wife back to the conjugal home. This was halted by a powerful and univocal reaction from Yemeni civil society organisations, which, in a unique campaign, employed "an amalgam of customary and Islamic norms in defence of the legislative *status quo*."¹¹¹

¹⁰⁸ According to the findings of Oxfam's Legal Protection and Advocacy Program, women who married without their guardian's consent, or who escaped to marry men of their choice, have been charged with adultery or shameful acts. Manea, "Yemen", in Kelly and Breslin (eds.), *Women's Rights* (Freedom House, 2010), p. 8, note 13. Adultery is punishable by up to 100 lashes if committed by unmarried men or by women.

¹⁰⁹ See also Part B, Chapter 5.4.1.

¹¹⁰ The solid shari`a-training of most Yemeni judges makes them a *mujtahid*, someone who can autonomously interpret Islamic legal sources.

¹¹¹ Anna Würth, "Mobilizing Islam and Custom Against Statutory Reform: Bayt al-Tâ`a in Yemen", in Baudouin Dupret and François Burgat (eds.), *Le shaykh et le procureur. Systèmes coutumiers et pratiques juridiques au Yémen et en Égypte*, Égypte/Monde Arabe No.1 (CEDEJ, 2005), pp. 289-308, at 289.

1.8 Juvenile Code

The administration of juvenile justice is regulated by the *Juvenile Code* (1992, amended by *Law 24/1997*), and the *Criminal Code* (1994). Children up to 7 years who have committed a crime will not be prosecuted. Between 7 and 15 years, the *Juvenile Code* imposes rehabilitation measures instead of the prescribed penalty. From 15 to 18 years, the punishment is not more than half of the legally prescribed maximum punishment. For juveniles who commit capital offences, the death penalty is converted into imprisonment between three and ten years.

Given Yemen's very low birth registration, the *Juvenile Code* prescribes age determinations conducted by an expert. However, it does not clarify how the determinations should be conducted, nor does it give defendants the benefit of the doubt if the expert finds that the defendant might have been younger than 18. Lack of forensic facilities and trained staff further complicate this matter.

There is no policy or programming for the rehabilitation of juvenile offenders. Rehabilitation facilities for juveniles are rarely separated from the adults' section, often due to lack of finances.

1.9 Arbitration Law¹¹²

The procedural relationship between formal and informal law is regulated in the *Arbitration Law*. The first *Arbitration Law* from 1976 (90/1976) was drafted by the Shari'a Codification Commission and contained only four articles dealing with arbitration proper. These articles situated arbitration (*tahkîm*) and mediation (*sulh*) as alternative procedural courses within the framework of state law.

The second *Arbitration Law* (33/1981) approached arbitration much more with an eye toward the tribal reality in Yemen, and allowed a separate jurisdiction for tribal law and procedure. Customary (tribal) rules were allowed to overrule statutory norms in cases of homicide and dispute settlement, when these would take place within and between tribes. The *Arbitration Law* of 1981 did not prescribe a state-controlled mechanism over such settlements.¹¹³

The third *Arbitration Law*, issued two years after unification (22/1992, amended in 1997), decrees that all types of arbitration and mediation on Yemeni territory fall directly under the state's exclusive jurisdiction (Art. 3). This code is textually tailored to regulate national and international arbitration, such as in the field of commercial transactions. It offers parties a legal base for maximum flexibility in procedural law, while upholding international standards of arbitration.

Arbitration is defined as "[t]he choice of two parties by mutual consent of another person, or more persons, to judge between them, other than the competent court, [to solve] the disputes or conflicts that exist between them." (Art. 2).

Based on this law, Yemen's first *Center for Conciliation and Arbitration* was created in San'a in 1997 specially for commercial and private arbitration. In Ta'izz, the *Yemeni Chamber of Commerce and Industry* was founded in 2005. Also the NGO for tribal arbitration *Dar al-Salaam* in San'a (1997) derived its formal legitimacy from this code (see Section 6 hereafter).

¹¹² See also Laila al-Zwaini, "State and Non-State Justice in Yemen", paper for the *Conference on State and Non-State Justice in Afghanistan* (USIP, 10-14 December 2006), available at http://www.usip.org/files/ROL/al_zwaini_paper.pdf. Only very recently did the author become aware that a new draft *Law on Arbitration in Civil and Commercial Matters* was set to be issued in 2010. It has 68 articles and is based on the Egyptian and UNCITRAL model. However, as the author had no access to the original text, or to verifiable information whether this law has actually been promulgated, this section discusses *Law 22/1992*, as amended by *Law 32/1997*. For a preliminary analysis of the 2010 draft law, see El-Ahdab and El-Ahdab, *Arbitration with the Arab Countries (Yemen)* (2011), pp. 835-873.

¹¹³ Kambeck states that this law nevertheless was the first Arab law based on the UNCITRAL (United Nations Commission of International Trade Law) model code. See Jens Kambeck, "Arbitration in Yemen", 22 *Arab Law Quarterly* (2008), pp. 331-333, at 332. See also World Bank, "Yemen", *Comprehensive Development Review* (2000), pp. 6-8. Laws on arbitration from South Yemen (the PDRY) were not available to the author at the time of writing.

The third *Arbitration Law* permits parties to choose the procedural rules and the applicable law for settling their dispute. Arbitration can be initiated only with a prior written agreement of both parties, be they private persons, companies, or tribes. Judges cannot act as arbitrators in cases pending before them, even if the parties request so. Disputes between state agencies are settled either by the issuance of a legal opinion by the Ministry of Legal and Parliamentary Affairs, or by resorting to 'government arbitration' which is regulated by the *Public Authorities, Corporations, and Companies Law* (1991). The Ministry's decisions are final.¹¹⁴

Mediation (*sulh*) is another alternative to court litigation, and is also covered by the *Arbitration Law*. Article 2 defines mediation as "[a]n agreement between two parties to entrust one arbiter (*muhakkam*) or more to judge between them, other than the competent court, and leaning on the principles of equity and fairness." Mediation is voluntary; the parties are free to reach an agreement or not. The *Law on Civil Procedure* prohibits judges from acting as a mediator in cases pending before them. Usually, only when mediation fails, or if the matter is more complicated, the disputants will submit their case to arbitration.

Arbitration and mediation are forbidden in the following types of cases:

- the *hudûd* (Qur'anic crimes)
- *li`ân* (sworn allegation of adultery by a spouse)
- annulment of the marriage contract
- impeachment and prosecution of judges
- disputes related to procedures of compulsory enforcement
- other matters in which no mediation is allowed, and
- everything connected to the public order (Art. 5).

Matters "in which no mediation is allowed", are all those cases regulated by other codes, such as divorce initiated by the wife, nationality issues, and electoral fraud. "Public order", as in other modern legal systems, includes all criminalised offences and their punishments. However, by not explicitly excluding crimes other than the *hudûd* from non-state arbitration, such as inflicting injuries, homicide, or theft (other than the Quranic theft, *sariqa*), the *Arbitration Law* actually contradicts the *Criminal Code*, which grants a monopoly on defining and punishing crimes to the state alone (Art. 2). In other words, the *Arbitration Law* itself is ambiguous about whether such other crimes are possible to resolve through arbitration.

While arbitration procedures are more flexible than judicial rules, the *Arbitration Law* states that the outcome of an arbitration decision, including customary arbitration, should remain within the framework of the official code (*qânûn*, Art. 45). As a control mechanism, the *Arbitration Law* requires that arbitration decisions (*ahkâm al-muhakkamîn*) be registered at the competent court (Art. 20). For tribal arbitration decisions this would be the nearest Court of Appeal, since a tribal shaykh is considered equal to a judge of First Instance (this is based on an informal, cultural understanding). The court can review a customary decision only when an official appeal is instigated by one of the parties, and on grounds specified by the *Arbitration Law* (Arts. 53-55).

It should be noted that because there is no sanction for not registering arbitrations, and no other incentive to do so, in practice only a very limited number of customary arbitration decisions are submitted to the court. These *ahkâm al-muhakkamîn* are, remarkably, classified by the court as *civil* cases, on the ground that the Public Prosecution had not been involved in the legal proceedings from the outset. 'Informal' criminal cases such as homicide thus end up formally under the jurisdiction of a civil appeal judge.

¹¹⁴ World Bank, *Yemen, Comprehensive Development Review* (2000), p. 7.

In 1997, two significant amendments to the *Arbitration Law* were enacted: the first being the re-insertion of the formula that “any principle” (*qawâ`id*) can be applied to settle disputes, instead of only “statutory principles” (*qawâ`id qânûniya*). This change was instigated by a powerful tribal lobby, demanding formal legitimation of their tribal *qawâ`id*. The second amendment ensured that all arbitration decisions ultimately must comply with “the rules of the Islamic shari`a” (new Art. 45). This amendment was advocated by a committed Islamic/Islamist lobby.

Based on these 1997 amendments, one must conclude that in Yemen: (1) most tribal dispute settlements are formally condoned, and (2) non-codified shari`a rules, rather than codified, state-issued principles (*qânûn*), are designated as the ultimate legal reference for all arbitrations, formal and informal.

1.10 Local Governance Law

Government authority is centered in the capital, San`a. In 1999, the first *Local Governance Law* mandated decentralisation of government authority to elected councils at governorate and district levels, to give a greater voice to citizens living in rural areas.

The *Local Governance Law* initially prescribed that the local councils would be headed by government-appointed governors. The local governance system was to be founded, as in South Yemen, on a series of governorates, 20 in total, plus the capital San`a forming its own unit. The governorates are in turn divided into several hundred districts. The boundaries of the governorates largely converge with existing tribal boundaries.¹¹⁵

Local council elections were held for the first time in 2001, but lack of resources hampered their efficiency, and the elections suffered from interference from the central government. However, by the end of 2005, local government offices had been established at governorate and district levels, where the local budgets for 2005 were being prepared fully and directly by local authorities.

After the local and governorate council elections in September 2006, former President Saleh announced various measures that would also allow the direct election of future governors and directors of the councils. Hence, in May 2008, governors were being elected for the first time. Despite this procedural improvement, the elections did not alter the structural domination of Saleh’s ruling party, the General People’s Congress (GPC), over the local and governorate councils.

2. International Treaties Ratified

The Republic of Yemen has ratified a large number of international treaties, many of which already prior to unification. In 2004, the cabinet issued a decision on the harmonisation of legislation with international obligations, and consequently passed amendments to some articles in various laws.¹¹⁶

¹¹⁵ Library of Congress, Federal Research Division, *Country Profile Yemen* (August 2008).

¹¹⁶ The laws amended are *Law 2/1991 on Diplomatic and Consular Corps*; *Personal Status Law 20/2001*; *Law 15/2000 on Police Authority*; *Civil Law 14/2002*; *Penal Law 12/1994*; *Civil Procedure Law 40/2002*; *Prison Law 48/1991*; *Law 25/1991 on Insurance and Pensions*; *Law 26/1991 on Social Security*; and *Labor Law 5/1995*. From Würth, *UNDP Project Evaluation Report Yemen* (2007).

Some of the major international treaties to which Yemen has acceded are:

- *Forced Labor Convention*, ratified 1969;
- *Geneva Convention Relative to the Treatment of Prisoners of War*, ratification 1970;
- *Geneva Convention Relative to the Protection of Civilian Persons in Time of War*, ratification 1970;
- *The Convention on the Elimination of all Forms of Racial Discrimination* (CERD), ratification and accession 1972;
- *Convention of 1951 and Protocol of 1966 Relating to the Status of Refugees*, ratification 1980;
- *Convention on the Elimination of All Forms of Discrimination against Women* (CEDAW), accession 1984 with reservation to Art 29(1);
- *International Covenant on Civil and Political Rights* (ICCPR) and *International Convention on Economic, Social, and Cultural Rights* (ICESCR) accession 1987 with general declaration;
- *Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages*, accession 1987 without reservations;
- *Convention on the Rights of the Child*, signature and ratification 1991 without reservations;¹¹⁷
- *The Convention Against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment* (CAT), ratification and accession 1991;
- *Convention on the Prevention and Punishment of the Crime of Genocide*, ratification 1987;
- *Convention on the Non-Applicability of Statutory Limitation to War Crimes and Crimes Against Humanity*, ratification 1987;
- *Convention on the Political Rights of Women*, ratification 1987;
- *Slavery Convention*, ratification 1987;
- *Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others*, ratification 1989.¹¹⁸

Despite this number of important international legal treaties to which Yemen has pledged itself, several officials and representatives of different organisations in Yemen have stated that the new Republic in 1990 'unwillingly' inherited some treaties from the former PDRY, and that Yemen would not otherwise have signed these treaties without reservations.¹¹⁹ In actual practice, the provisions of these treaties ratified are thus very likely to be interpreted by courts and by Parliament in light of the Islamic shari`a, based on Article 3 of the *Constitution*. A notorious example in Yemen is the on-going debate about the minimum age for marriage, but other examples can be found in the issues of the status and rights of women, children's rights, and other international standards which are considered by the ruling Islamist elite as contrary to shari`a.

C. Legal Professionals

1. The Bar and Legal Aid

Legal representation was formerly unknown in Islamic courts. Classical *fiqh* prescribed that the Islamic judge interacts face-to-face with the litigant, without any intermediary or representative. In Yemen, apart from imams (religious leaders) or muftis (Islamic scholars issuing fatwas, legal opinions), court litigants could turn to so-called *wukalâ' al-shari`a* (Islamic legal agents), to advise them about shari`a rulings and proceedings pertinent to their specific case.

The modern legal profession in Yemen only developed after the creation of law faculties in the 1970s. The first bar organisation, created in the middle of the last century, was merely a committee of a union of law graduates. Subsequent bar associations in the YAR and PDRY were controlled by the Ministries of Justice. These bars unified at the time of the political unification to form the Yemeni Bar Association (YBA).

¹¹⁷ However, Yemen is not a party to the *Hague Convention on the Civil Aspects of International Child Abduction* (1980), or the *Hague Adoption Convention* (1995).

¹¹⁸ All these and other international treaties ratified by Yemen can be found at <http://www.yemenembassy.org/issues/democracy/International%20Treaties.htm> and http://www.adh-geneva.ch/RULAC/international_treaties.php?id_state=234. But note that the information differs.

¹¹⁹ Based on personal interviews by author with MPs in August 1998.

The YBA is a quasi-governmental body, empowered by the *Law on Advocacy* to regulate the legal profession. The history of the YBA and the *Law on Advocacy* is somewhat turbulent. The 1977 *Law on Advocacy* of the YAR remained in force alongside *Law 12/1982* promulgated in Aden, after the new unified draft law of 1992 was repealed by the Parliament. This draft law required that the YBA became part of the Ministry of Justice, which was forcefully contested by a lobby of Yemeni lawyers.

Although in the new *Law on Advocacy 1999* this provision was dropped, the YBA still lacks the institutional and professional means to protect and strengthen the legal profession vis-à-vis the government and the judiciary. The YBA leadership allegedly receive their licence fees from the government, and their election depends – informally – on governmental approval. Most lawyers are in some form employed by the state and have their licence fees paid for by the government. They work, for example, in the legal departments of the various ministries and other public bodies. These ‘legal advisers’ draft bills and regulations, and give legal opinions and advice.

Law graduates seeking to become independent advocates, i.e. licensed to appear in court, must be a member of the YBA and complete a three-years training course. Even though the *Law on Advocacy* specifies that the YBA should conduct these formal training programmes, in 2005 it was observed that no course had by then taken place.¹²⁰ Instead, law graduates can apply to the YBA for placement at a lawyer’s office. After completion of these internships, and without final examinations, trainees can become practicing lawyers.

In 2005, the YBA had nine branches in major cities throughout Yemen, with roughly 800 advocates in San`a, 450 in Aden, and 214 in Ta`izz.¹²¹ The San`a Bar Association, which in theory is a chapter of the YBA, also has membership throughout Yemen. This chapter seems better equipped than the YBA, and conducts regular conferences and lectures, provides pro bono legal aid assistance to the poor, and publishes a regular newsletter for its members.

Another point of contention in the debates around the *Law on Advocacy*, involved the question of who may legally call him/herself a lawyer, and who is legally authorised to represent a client in court. The hitherto exclusively operating wukalâ’ al-sharî`a (shari`a agents), who have knowledge of Islamic and customary laws, but not in modern Yemeni law and procedure, adamantly fought for official recognition. The first *Law on Advocacy* (81/1977) accredited their legal status, but their licence to operate as advocates was withdrawn by an amendment in *Law 31/1999*.

In practice, however, even without legal recognition many judges permit these shari`a agents to appear before the court, especially in rural areas. The law also permits a husband or close family members to represent parties in court. This is not only grounded in the local practices of both judges and litigants, but also has practical merit because of the fact that more than 80% of the licensed lawyers in Yemen are concentrated in the three major cities, with only a fragment in the remaining six cities, and none in rural areas or smaller municipalities.

The *Law on Advocacy* further regulates lawyer discipline: complaints can be filed by any person, and are investigated by the secretary of the YBA Council. Warranted complaints are referred to disciplinary panels headed by Court of Appeal judges. Sanctions range from admonishment to disbarment.

¹²⁰ William D. Meyer and Judge Rosa Jansen, *Assessment Report of a Rule of Law Mission to Yemen for the ABA/CEELI Middle East Legal Initiative* (2-13 January 2005), 12-13 and 38-39.

¹²¹ Data supplied by the YBA showed that in that period the YBA had 1758 members, plus an additional 2290 law graduates serving their three-year traineeship. Of those numbers, 125 licensed attorneys and 170 trainees were female.

2. Notary Public

Public notaries (*ma'dhûn*) are elected by the communities and officially accredited by the Ministry of Justice. Under the supervision of the nearest district court, they register contracts, agreements, and deeds for the community, as well as arbitration decisions. This is regulated by *Law 21/2002 on Documents*, *Presidential Decree 7/2005 on the Execution of Law 21/2002*, and the *New Edict for Notaries* issued by the Minister of Justice by *Decree 1727/2000*.

Accredited notaries play a crucial role in linking the formal and informal justice systems, acting also as public scribes in an overwhelmingly illiterate society, and often holding office at public places, such as near a court, a market, or a legal bookshop. Notaries thus have a potential role to play as 'justice brokers' that has yet to be fully recognised.

3. Women Legal Professionals

At Yemeni universities, female students can freely register, and their number appears to be increasing. Female law graduates can theoretically also enroll at the High Judicial Institute, to become a candidate judge. However, in practice they have been systematically sent away when trying to register. There is no legal ground for this in the law or the HJI's statutes, rather it is mandated by the Islamic traditionalists and Islamists who dominate the HJI and hold that women are not allowed to exercise higher public functions.

This attitude has led to a near absence of women in the judiciary as judges, prosecutors, and even as administrative clerks. It also affects access to justice for women in the currently male-dominated courts. The few sitting women judges, and some prosecutors, have been 'inherited' from the South after the unification in 1990. They have mostly been redeployed to the special Juvenile Courts, or the Family and Personal Status Divisions of regular courts.

Women judges' limited deployment is based on the same traditionalists' reading of shari`a, which holds that women are not permitted to adjudicate or mediate in criminal cases. Even though shari`a does not mention other legal fields, women are also generally barred from adjudicating commercial or civil law disputes in Yemen. The reality is that sitting female judges (from the former PDRY) have mostly become judges 'without portfolio', and they fill other positions at the Ministry of Justice. Since unification, with no new appointments of women judges or prosecutors, their already small numbers are further shrinking.

Given all these practical obstacles, most female law graduates do not pursue a career after their degree, and only a relatively small number join the YBA. In 2005, women reportedly made up only slightly more than 7% of the licensed attorneys and 7% of the trainees for admission to the bar, predominantly in the south. In San`a, these numbers were probably closer to 1%.

On a positive note, already in 1996 the first Yemeni all-female law office opened its doors in San`a, *Al-Ra'idât al-Muhâmât*, The Women Lawyers Pioneers.¹²² Representation of women lawyers in the male-dominated courts continues to involve many cultural and practical constraints and, despite legal warranties, the women pioneers have to face a great deal of discrimination and discouragement in their professional advancement. Still, the numbers of Yemeni women 'pioneers' are increasing.

¹²² For an interview with one of these pioneering female lawyers, see <http://www.emmabonino.it/news/7383>. The second pioneer, Nabila Al-Mufti, was the first female lawyer who tried in vain to register as a candidate-judge at the HJI, and raised the issue publicly.

Non-State Justice:

Tribal Custom and 'Informal' Shari'a

1. What is Non-State Justice?

Throughout the history of Yemen, alternative or 'informal' systems of tribal law and other forms of customary laws have operated alongside the legal system imposed by the ruling Imams or Sultans.¹²³ This is attributable to the large distances and unsafe roads between the rulers' residences and the rural population. Additionally, in Yemeni culture, family bonds are strong, and are the focus of the individual's primary loyalty. This primary allegiance stretches out to the tribe, an extended family unit that ordinarily traces its ties to a common genealogy, or that has entered into agreements of protection or services with non-tribal individuals.

Historically, tribal structures in Yemen have been strongest among the populations in the northern mountains and in the desert fringes along the borders with Saudi Arabia, where the population belongs to either one of the two major tribal confederations, Hâshid and Bakîl (and less often, Al-Madhahaj). Tribalism is relatively weaker in the mid and lowlands of the former northern Republic and in the provinces of the former southern Republic, where a sort of feudal system prevails which has created its own social, political, and economic hierarchy. Even so, the overwhelming majority of Yemen's population self-identify as tribal members and support tribal principles, also those who do not actually belong to a specific tribe (some call this 'cultural tribalism').

In legal terms, the spread of tribalism - or put differently, the absence of state structures - implies that in 70-80% of Yemen, disputes are solved by local arbiters according to (mostly uncodified) customary norms. Many of these customs were historically upheld by shari'a, and formalised by the then ruling Imams and Sultans, but other customs were outlawed by the Islamic scholars and rulers of the era. The same goes for contemporary Yemen, where shari'a has become the basis of all statutory laws, and customary norms and mechanisms have been legitimised only in certain fields, such as specified forms of arbitration and mediation, and in various civil and commercial matters.

Other 'outlawed' customs have nevertheless persisted, especially in the field of criminal offences (types of homicide, blood feuds), family matters (marriage, dowry, inheritance), property, and conflict resolution. Until today, ultra-orthodox religious scholars and Islamists denounce these customs as 'un-islamic' or 'idolatry' (*tâghût*), even though for pragmatic reasons they may at other times condone it.

From a different perspective, foreign experts generally refer to this phenomenon as 'non-state justice' or 'informal/traditional justice'. This term denotes all mechanisms of dispute resolution operating parallel to formal state institutions, with or without formal state recognition or control. Tribal leaders, as noted earlier, also regularly interfere with litigation before official courts, and have strong footholds in the executive and legislative branch, and the military.

¹²³ Authoritative monographs on Yemeni tribes and tribal justice include: Paul Dresch, *Tribes, Government, and History in Yemen* (Oxford University Press, 1989); Shelagh Weir, *A Tribal Order: Politics and Law in the Mountains of Yemen* (London: The British Museum Press, 2007); Fadl Abû Ghânem, *Al-Qabîlah wa-l dawlah fi-l Yaman* [Tribe and State in Yemen] (Cairo: Dâr Al-Manâr, 1990); Rashâd Al-'Alîmî *Al-Qadâ' al-qabâlî fi-l-mujtama' al-yamanî* [Tribal Justice in Yemeni Society] (San'a: Dâr al-Wâdî, 1986). An original approach to tribes and rule of law, using mass attitude survey data, is presented in Daniel Corstange, *Tribes and the Rule of Law in Yemen*, paper prepared for the 2008 Annual MESA Conference (Washington DC, 22-25 November 2008), pp. 1-40, available at <http://www.bsos.umd.edu/gvpt/corstange/doc/corstange-tribes.pdf>

The bottom line is that there is no clear division between the formal and informal justice systems.¹²⁴ Rather, one should regard these as a continuum of methods and rules of resolving disputes, depending on whose power is deemed most authoritative in a certain context (state, Islam, tribe, village, market, family, etc.), or for pragmatic reasons. This entails that in reality, Yemen has no 'final resort' where a dispute is decisively and legitimately resolved.

2. Why Customary Law?

Yemenis in rural areas resort to customary law in part because it may be the only mechanism of dispute resolution available in their area, and in part because they may value their known traditions over 'distant' (not only geographically) and unknown state law. Many even consider it shameful to take recourse to an official authority. Sometimes this is based on a conviction that court judges do not apply "proper shari`a" (*sic*). But most complaints are that court judges are incompetent, corrupt, inefficient, and "unfamiliar" (that is literally: not family). Women are almost completely barred from official courts due to social restrictions of free movement, honour, and also (legal) illiteracy.

Informal tribunals are considered by many to be more transparent and less corrupt, and produce decisions more quickly than state courts. Another advantage is that the tribal shaykh or mediator has better devices to guarantee enforcement. These relate closer to the collective belief in the sanctity of agreements and social pressure, than the zero-sum decisions and the application of coercion, which the formal system stands for. Adding to this are the less strict rules of evidence, the fact that one can select one's own judges, and that the fees paid for informal settlement are openly agreed to, or at least perceived as non-corrupt (this is not to say that customary settlements are inexpensive). These factors also cause non-tribal city-dwellers resort to customary arbitration and mediation.

The Yemeni situation holds out little prospect for government outreach and efficiency to be improved in the near future. Courts and other legal structures still do not exist in many districts in several governorates. Until 1984, for instance, the government had not installed branches of the Ministry of Justice and the Public Prosecution Office in five of the eleven districts into which North Yemen was divided, although these are very populous areas. Further, it was reported in 2005 that in the Sa`dah governorate there were only five primary courts for twelve districts. In other places, a court's presence is more symbolic than real, with the courts being seldom staffed and mostly incompetent. This is often due to the power of local tribal leaders and their rules. Even where courts are in function, the extreme poverty of most Yemenis put the costs of justice - which include the 'obligatory' bribes - effectively out of their reach.

3. The Working of Tribal Mechanisms

Yemeni tribal settlements in the 'classical' sense proceed by way of mediation (*sulh*) or arbitration (*tahkîm*). They are guided by customs and traditions, religious law and symbolic acts, all emphasising containment of the dispute, reconciliation, compensation of damages, and keeping the 'face' (honour) of everyone involved. Although the specifics differ somewhat between regions and tribes, the basic principles of customary law are comparable.

Tribal justice is achieved by a meticulous system of guarantees, which include persons and material objects, to ensure that both parties refrain from aggression during the procedure, and comply with the eventual decision. In brief, disputants take their claims to local shaykhs, 'âqils, or other respectable authorities, who can be governors, military officers, religious leaders, even judges and ministers. The disputing parties submit guarantees (daggers, firearms, cars, watches, livestock, mobile phones) to the mediator(s) or arbiter(s).

¹²⁴ See also Baudouin Dupret, "Legal Traditions and State-Centered Law: Drawing from Tribal and Customary Law Cases of Yemen and Egypt", in Dawn Chatty (ed.), *Nomadic Societies in the Middle East and North Africa entering the 21st Century* (Leiden: Brill, 2005), pp. 280-301, available at <http://halshs.archives-ouvertes.fr/halshs-00178830/en/>.

Both parties also designate guarantors, who are usually respected tribal members, whose role is to guarantee that their protégés will abide by the procedures and the final decision.¹²⁵

The proceedings involve multiple symbolic acts, ideally leading to an agreed judgement, which is put down in writing, signed by the parties and the arbitrators, and usually publicly announced at market places or other tribal gatherings. Parties may appeal the ruling, or challenge the arbitrator, before another (higher) shaykh, governor, or powerful local leader. Arbitration decisions can also be appealed to the nearest competent court under certain conditions, but this option is rarely pursued.

Tribal justice is primarily concerned with containing violence, maintaining of honour, ensuring the sanctity of one's given word, and protecting the 'weak'. This latter category includes women, children, and persons who lend services to the tribe on the basis of contractual agreements, such as butchers, tailors, and religious experts. In tribal vocabulary, one could say the concept of 'weak' persons refers to unarmed individuals. Special protection agreements are made to secure public places where tribal markets or gatherings are held (to ensure safe commerce or political meetings, also for arbitration tribunals), or in *hijras* (where religious men and their families reside), and even for some cities, such as San`a.

The tribal system leans heavily on responsibilities toward others, all revolving around different protection agreements. The distinction in many legal systems between civil and criminal law, is not relevant to the customary system. Its main objective is restitution and restoration of the social balance (or hierarchy) within or between tribes. Punishment is therefore not imposed upon an individual, but upon the collectivity. Punishment is meant not only to compensate for loss, but also as a (materialised) apology for the violation of a person's - and his/her tribe's - honour. A tribal arbitrator traditionally does not inflict corporal punishment, but is traditionally bound to impose payment of cash or commodities, such as cattle or weapons. Overall, however, the utmost effort is taken to prevent the outbreak or escalation of violent conflict.

4. Challenges of Tribal Justice

Although the users of the 'non-state' justice system often perceive it as more legitimate, fair, participatory, efficient, and effective than formal state procedures, there is no assumption that these systems respect rights better. Under the scrutiny of human rights organisations, the informal system is reported to perpetuate discriminatory practices against women, and those coming from weak tribes or indigent people who do not have any tribal affiliation or support. Also from within Yemeni society, civil as well as tribal, arbiters are more and more accused of favouritism and outright corruption.

Having established earlier that informal justice is primarily committed to maintaining stability and social hierarchies, and that it holds the collectivity as its primary focus, this seems incompatible with contemporary (Western) conceptions of human rights, which are focused on the equal rights of individuals. Also, the informal system seems at odds with the concept of centralisation of power and state monopoly over the rule of law. These are indeed fundamental challenges when devising ways of linking the two legal spheres. While women, and other vulnerable groups, certainly lack access to the non-state systems, these groups likely have even less access to the formal justice system.

¹²⁵ For more details on tribal conflict resolution, see Dresch, *Tribes* (1989); *Le règlement des conflits tribaux au Yémen*, Les cahiers du CEFAS n°4 (San`a: CEFAS, 2003); Baudouin Dupret and François Burgat (eds.), *Le shaykh et le procureur: systèmes coutumiers et pratiques juridiques au Yémen et en Égypte*, Égypte: Monde Arabe, No.1 (Cairo: CEDEJ, 2005); Nina Sherg, *Conflict Resolution in Yemen Today: A Report for the German Development Cooperation*. Discussion Paper (GTZ, April 2006); Laila al-Zwaini, "State and Non-State Justice in Yemen", paper for the *Conference on State and Non-State Justice in Afghanistan* (USIP, 10-14 December 2006), available at http://www.usip.org/files/ROL/al_zwaini_paper.pdf; National Democratic Institute for International Affairs, *Yemen: Tribal Conflict Management Program Research Report* (March 2007), available at <http://www.ndi.org/files/Conflict%20Management%20Program%20Research%20Report%20March%202007.pdf>.

Also, regardless of the elaborate rituals and personal and material sureties grounded upon tribal honour to guarantee adherence to the rulings, tribal conflicts such as kidnappings, blood feuds, weapon incidents, and other violent acts remain persistent, and are a major factor for the continuing instability and lack of basic security for the people. These violent acts are not confined to the tribal regions, but have also been brought into cities, including the foothold of state power, San`a.¹²⁶

5. 'Informal' Shari`a

For many centuries, Islam has had an influential role in Yemeni state and society. The codification of shari`a into Western-style codes in the 1970s was a ground-breaking event in Yemeni - and Islamic - history. This is true for at least two reasons: the class of ulama (or *sayyids*) officially lost its monopoly to define Islamic law in matters that affected people's lives most, such as birth, marriage, divorce, custody, inheritance, and common criminal offences.¹²⁷ All legislative power, including that of shari`a, was thereafter to be vested in the new nation-state, and to be protected by the *Constitution*.

The centralisation of power was further enhanced by the fact that the many divergent legal prescriptions of the religious scholars, which had always enjoined equal legal validity, were now reduced to only one opinion or interpretation that became codified. The process of state-formation thus introduced for the first time in Yemen's history uniformity of law, with the state as the supreme lawmaker.

The class of ulama, however, did not simply abide by the marginalisation of their formerly supreme 'legislative' power. They secured for instance that the shari`a-clause in the *Constitution* was amended back from "a" to "the" basis of all state law in Yemen. At the same time, the *Constitution* does not clearly designate who is to interpret this formalised shari`a. This way, it is ensured that the judiciary needs solid training in shari`a next to, or primary to, modern legislation.

The religious/Islamist establishment to date continues to play a powerful role, which is further expanding both inside and outside the formal institutions. Judges are for instance directed to refer to a special summarised edition of Zaydi *fiqh* if there is no clear rule in the statutory codes.¹²⁸ Ulama (also those with foreign ideologies) further influence normative thinking and behaviour of the people, through school curricula, mosque sermons, fatwas, (satellite) media, politics, and through charities.¹²⁹

Religious men also play a role in the Yemeni informal legal system. Known as *sayyids* (which title denotes a social class, rather than scholars per se), they previously enjoyed a special status of protection (*hijra*) among the tribes. By virtue of their 'inherited' knowledge of shari`a, they were called upon to settle family matters, which have shari`a dynamics even within the tribal framework. In addition to this 'informal' shari`a jurisdiction, these sayyids (and nowadays also the notaries public) also write down contracts of sale, marriage contracts, customary decisions, deeds, and the like, for the mostly illiterate tribal communities.

As the situation requires, some learned men seem prepared to adjust shari`a rules to fit the customary traditions, or even to endorse customary rulings that contradict shari`a rules. Women, for instance, are given greater rights under shari`a in divorce and inheritance, than under tribal customs. Yet in tribal areas, women are often pressured - with religious approval - to renounce their legitimate Islamic portion of the inheritance.

¹²⁶ According to Yemen's tribal laws, San`a used to be a protected place, a *hijra*, which means that surrounding tribes were obliged to guarantee that no violence would take place within its walls. This concept is still known, but, it seems, not anymore rigorously practiced.

¹²⁷ Previously, the Islamic state had the authority to supplement shari`a rulings from the ulama in other areas, and to secure implementation of shari`a (this is called *siyasa shar`iyya*). A fine study on the changing roles of the Zaydi *sayyids* (ulama) is by Gabrielle vom Bruck, *Islam, Memory, and Morality in Yemen: Ruling Families in Transition*, (New York: Palgrave Macmillan, 2005).

¹²⁸ See also Part II, B, 1.1.

¹²⁹ Janine Clark, *Islam, Charity and Activism. Middle-Class Networks in Egypt, Jordan, and Yemen* (Bloomington: Indiana University Press, 2004).

Especially inherited land-plots are thus exchanged for jewellery or economic support from their male kin. On the other hand, when a woman is wounded or (accidentally) killed, reparations under tribal law are often 11 or 44 times higher than under shari`a.¹³⁰

Yemenis from all strata and regions, rural-urban, poor-wealthy, overwhelmingly see shari`a as superior law. This implies that shari`a in any case represents the main legal discourse in Yemen. Yet, in actual practice, the boundaries between shari`a and custom, and between shari`a and state law, are volatile, and in most dispute settlements, tribal customary norms and procedures are still prevalent.

6. Linkages Between State and Non-State Justice

Linkages between non-state and state justice have historically existed in Yemen, and continue to exist. The Zaydi Imams never succeeded to extend their shari`a-justice far beyond the cities, and employed different strategies to extort the loyalty of the tribes, e.g. by kidnapping the sons of key tribal leaders, or more diplomatically, by concluding agreements with the tribes to separate their respective jurisdictions (roughly: shari`a for personal status matters and *`urf* for tribal matters).

The Yemeni republic has tried to regulate the relationship between formal and informal justice especially through successive laws of arbitration (see Section 1.9). It recognises arbitration as legally binding under certain conditions, while encouraging registration and/or appeal of arbitration decisions at courts. The Department for Tribal Affairs in the Ministry of Interior - headed by an affluent tribal shaykh - serves to draw elected local shaykhs into the formal framework and tries, through monthly stipends, to get some level of compliance. Likewise, public notaries, who used to operate informally within their communities, are now accredited by the MoJ and work under the supervision of a local court.

The regime, and especially former President Saleh since his rise to power in 1978, has made considerable efforts to co-opt tribal leaders and other traditional elites into the civil and security apparatuses of the state. The reasons were typical (strategic, pragmatic, nepotistic), yet the outcomes are very complicated. The Chair of the House of Representatives and hence the second most powerful person in Yemen previously was the renowned Hashid Paramount Shaykh `Abdullah Al-Ahmar, from 1993 until his death in 2007. About 70% of the MPs reportedly are tribal leaders who maintain their loyalties to their own tribe. Also, security sector and military posts are commonly used to garner tribal support, while strong business leaders and Islamists often vie for other crucial positions (See Part B, Chapter 1).

With all of this, it is hardly surprising that many state officials also perform mediating roles in the 'non-state' justice circuit. Judges, policemen, MPs, Ministers, local government officials, and the former President himself have all acted regularly in their 'tribal' capacity in order to mediate disputes in their communities, or to participate in informal proceedings as witnesses or guarantors. Much of these interactions relate to land disputes and blood feuds. Sometimes, mediated customary decisions are endorsed by the court or the police, even without a legal basis, if it helps to obtain peace among the local population. In such localities, arbitration agreements are still most effectively enforced by the tribes. Overall, the role of state officials in such dispute settlements remains unregulated and informal.

While the government does not officially encourage non-state mechanisms, such interactions are unavoidable given the state's deficits in delivering justice, governance, and security throughout the country. Difficulties arise when state representatives demand payment for such services. This is particularly troublesome for women and other vulnerable groups, such as migrant workers and the *akhdâm* (the lowest social class of servants), as it clearly affects their access to justice.

¹³⁰ This is even the first principle of a '70-rules'-agreement between the tribes of Barat, north of San`a. See Paul Dresch, *The Rules of Barat: Tribal Documents from Yemen* (San`a: Centre Français d'Archaeologie et de Sciences Sociales, Deutsche Archaeologisches Institut, 2006).

A rather unique civil society response to the lack of access to justice, involved linking the state and non-state legal systems through the creation of tribal arbitration centres. Registered as an NGO and following the dictates of the *Arbitration Law*, the centre *Dar al-Salaam* in San`a, founded in 1997, was probably the first to offer adjudication services for every imaginable conflict: civil, criminal, personal status, labour, commercial, national or international. *Dar al-Salaam* was particularly concerned with halting tribal blood feuds, and was unique because among its members were an impressive number of influential tribal leaders, judges, religious authorities, lawyers, and other prominent figures from various strata, and also a few women. However, operating within the volatile and very politicised spectrum of state, tribal, and Islamist power struggles, *Dar al-Salaam* soon was forced to scale down its arbitration activities and instead engage in 'less provocative' acts like awareness-raising projects, such as discouraging the use of arms and violence.¹³¹

¹³¹ Laila al-Zwaini, "Mediating Between Custom and Code: Dâr al-Salâm, an NGO for Tribal Arbitration in San`â", in Baudouin Dupret and François Burgat (eds.), *Le shaykh et le procureur. Systèmes coutumiers et pratiques juridiques au Yémen et en Égypte*, Égypte/Monde Arabe, No.1 (CEDEJ, 2005), pp. 309-335.

Part B: Positive Trends and Challenges Regarding the Rule of Law



Introduction

Before the onset of the uprisings against former President Saleh's regime in January 2011, Yemen was already in a precarious situation. Extreme poverty in combination with multiple security challenges, a weak and corrupt central government, poor standards of health and education, and declining natural resources, have for decades posed daily challenges for the great majority of Yemenis.

Perhaps at the heart of Yemen's most urgent troubles is economics. As one of the least developed and poorest countries in the world, Yemen faces a high rate of unemployment (35 percent officially), high population growth, rapid economic decline, unequal job opportunities, and enduring armed conflicts. Yemen's population has almost tripled since 1980 from 8.4 million to an estimated 23.8 million today. According to some estimates, in two decades this number will grow to 40 million and in thirty years to 60 million.

Given current trends, oil resources will likely be depleted by 2018. Oil accounts for 90 per cent of export earnings and 70 per cent of government revenues. Meanwhile, fuel subsidies and the public sector wages absorb about 50 per cent of government expenditures.¹³²

Without clear alternatives for a sustainable post-oil economy, this imminent budgetary breakdown, in combination with widespread corruption, will affect the state's core functions, from its institutional capacity and efficiency to its service delivery to the most populated remote areas, which will further intensify mass discontent.

Poverty is extreme and widespread, affecting about 42 percent of the population. Gross national income per capita was just USD 950 in 2008. Yemen was badly affected by food and other commodity price shocks in 2007 and 2008, when food prices rising 60 per cent led to riots. Literacy rates are the lowest in the region at about 35 percent for women and about 70 percent for men. Even today, reportedly only one third of Yemeni children attend school.

In addition to these economic and demographic challenges, Yemen is also likely to become the first country to run out of water. The water table is falling by several meters a year, and meanwhile water quality is deteriorating, affecting public health and hygiene.¹³³ Water reserves in major cities (San'a, Ta'izz) are predicted to dry up within 15 to 30 years (or less).

Despite the enormous impact of the economic challenges on Yemen's present and future prospects, the current report seeks to identify those challenges that are more specifically related to issues of rule of law. Yemen's complex socio-legal reality notwithstanding, the majority of rule of law and justice sector assistance programmes in Yemen by Western donors have focused on improving the formal justice sector in the cities. Major donors in the justice sector are DFID (UK), GTZ (now GIZ, Germany), USAID (USA), the World Bank and UNDP.

Typically, projects have been designed for training judges and judicial staff, automating court management, improving the judicial infrastructure, fighting corruption among judges and police, and reforming the curriculum at law faculties and at the High Judicial Institute. Only a few projects in recent years broadened their focus to include tribal justice and authorities, but these have so far not succeeded in aptly identifying and operationalising potential linkages with the formal justice system. Generally speaking, the impact of decades of rule of law and justice sector assistance in Yemen appears to be minimal.¹³⁴

¹³² World Bank, *Yemen Development Policy Review. Report No. 35393-RY* (Washington, DC: World Bank 2008), pp. 33, 51.

¹³³ On Yemen's main challenges, see for instance Christopher Boucek, "Yemen: Avoiding a Downward Spiral", *Carnegie Papers, Middle East Program*, Number 102 (Washington D.C., September 2009), available at http://carnegieendowment.org/files/yemen_downward_spiral.pdf.

¹³⁴ *Overview Study on the State of the Rule of Law and Justice Sector in Yemen. In Support of the Friends of Yemen Rule of Law and Justice Sector Working Group* (Hague Institute for the Internationalisation of Law, April 2010).

The Friends of Yemen (FoY) in their *Final Report* of September 2010 - in close coordination with the Government of Yemen - identified the following as key challenges facing the justice and rule of law sector in Yemen:

- access to justice for all (in particular women and children)
- tackling radicalisation
- border security
- corruption

As additional challenges the FoY report highlighted:

- legal awareness
- counter-terrorism
- public order management
- oversight in the justice and security sectors
- separation of powers in the judiciary
- parallel structures and coordination in the security sector
- weak management capacity¹³⁵

In the specific Yemeni context, the FoY further acknowledged that intrinsic reform would require:

“the transformation of the current legal culture into one that embodies universal rules, which apply to, are understood by and are accessible to all citizens, and are uniformly enforced by the state.”¹³⁶

‘The current legal culture’, may refer to several themes that were not explicitly mentioned in the report, such as the profound influence of Islamic law (shari`a) on legislation, legal education, and on adjudication; the persistence of non-state/informal (tribal) laws and dispute resolution aside from the formal justice system; and the state’s prioritisation of national security over the protection of its citizens, which is manifested by records of (gross) human rights abuses by state organs against individuals in the name of national security.

Whereas rule of law programmes often focus on state-citizen relations, much of the instability and insecurity in Yemen is caused by, and result from, armed conflicts among (groups of) citizens in the sphere of private law, such as over land, water, and family-law issues (marriage, divorce, inheritance). Such initially minor disputes too often escalate into major and long-lasting conflicts (bloodfeuds), which become aggravated by the abundance of weapons in the country. Estimates on the number of light weapons in circulation vary greatly, the more realistic ones suggesting about 10 million for a population of 23 million, thus roughly one weapon for two civilians (women and children included).¹³⁷

The following section will briefly cover the challenges in Yemen relating to the rule of law. These challenges are grouped under four headings, and based primarily on data gathered prior to the recent uprisings. Some topics have been already introduced in previous chapters, but were dealt with in a more textual legal sense, rather than contextually.

¹³⁵ FoY WG on Justice and Rule of Law, *Final Report* (2010), p. 5.

¹³⁶ *Idem*, p. 6.

¹³⁷ *Yemen Armed Violence Assessment (YAVA), Small Arms Survey Issue Brief*, Number 1 (May 2010), p. 6, note 64.

1. Structures of Power

1.1 Patronage

A myriad of problems confronting Yemen's political and social scenes are symptoms of a specific feature - the structures of power in the country. Informal patronage networks that were developed and maintained by and around former President Saleh have kept the country together for decades. This system has produced a relatively small political elite that includes family-members of the former President and co-opted tribal figures, security and military officials, and business leaders. Former President Saleh for a very long time also benefited from - and effectively engineered - the absence of a clear and charismatic alternative leader.

According to observers, this elite largely commands and controls, through both formal and informal channels, state institutions, the military, security agencies, and important parts of the private economy. Virtually all the top military commanders are Saleh's blood relatives, and the security apparatus is fragmented between personal fiefdoms. Most ordinary Yemeni citizens are excluded from equal access to jobs and civil service positions, while state personnel payrolls are bloated with ghost employees and redundancies.

The shift from Zaydi Imamic dynasties coupled with autonomous local (tribal) leadership, to a patronage-based republican political system, led to the co-optation of many local leaders, especially tribal shaykhs, who were consequently drawn away from their constituencies. As part of a larger trend of urbanisation and modernisation, many tribal leaders refocused their attention from their traditional tribal affairs, to state, military, political, and business affairs, thus becoming significantly wealthier than their fellow tribesmen. This trend has notably weakened the traditional social fabric, and the relative stability of their homelands.

The patronage system has also generated an increasingly uneven distribution of state resources, not only among rural (tribal) Yemenis. Southerners, for instance, claim to be cut off from an equal share in the dividends of oil wealth, which flows particularly from wells in the south.¹³⁸

1.2 Tribes and State¹³⁹

"The State is part of the tribes, and our Yemeni people is a collection of tribes. Our towns and countryside are all tribes. All the official and popular apparatuses of the state are formed from the tribes [...]."

Thus spoke former President Saleh in a well-known interview in 1986, which was captioned "Yes, We Are All Tribesmen".¹⁴⁰ Indeed, state institutions in Yemen in many aspects reflect a continuum of local tribal structures. In rural areas, where local state councils prove to be ineffective or are simply unavailable to promote local development or deliver services, tribal and other local (religious) leaders fill the vacuum.

¹³⁸ The topic of patronage and power structures in Yemen is clearly much more complex. See further Sarah Philips, *Yemen's Democracy Experience in a Regional Perspective: Patronage and Pluralized Authoritarianism* (London: Palgrave Macmillan, 2008); Lisa Wedeen, *Peripheral Visions: Publics, Power, and Performance in Yemen* (Chicago: Chicago University Press, 2008); Daniel Egel, *Tribal Diversity, Political Patronage and the Yemeni Decentralization Experiment* (University of California, Berkeley: 19 November 2009), available at http://www.egels.org/daniel/Research_files/Egel_Tribes.pdf.

¹³⁹ On the significance of the relationship between tribes and state in Yemen, see Paul Dresch, *Tribes*, (1989); Paul Dresch, "Imams and Tribes: The Writing and Acting of History in Upper Yemen", in Philip S. Khoury and Joseph Kostiner (eds.), *Tribes and State Formation in the Middle East* (University of California Press, 1990), pp. 252-287; Fadl Alī Ahmad Abū Ghānem, *Al-Qabīlah wa-l dawlah fi-l Yaman* [The Tribe and the State in Yemen], (Cairo: Dār Al-Manar, 1990). On tribes and (civil) society, see Sarah Ben Nefissa, Maggy Grabundzija and Jean Lambert (eds.), *Société civile, associations et pouvoir local au Yémen* (San`a: CEFAS/FES, 2008).

¹⁴⁰ Quoted by Dresch, "Imams and Tribes" (1990), p. 280. The journal was *Al-Majalla* no. 347, 1-7 October 1986.

As previously stated, these tribal figures do not only operate in parallel to the state, but also play a strong role within state institutions. They assume significant roles in Yemen's legislative and executive bodies, the armed forces, the security apparatus, and the political system as a whole. Tribal structures also prove able to act as an intermediate body between the state and the people. In the early 1990s, for instance, large tribal conferences were organised around pressing local concerns – such as equal treatment of different tribes, and the revival of local development cooperatives. The written resolutions (*bayân*) produced by these conferences were directly addressed to the central government. In 2007, the prominent tribal leader Husayn Al-Ahmar created the National Solidarity Council (*Majlis al-Tadhâmun al-Watani*), a conservative forum and pressure group representing tribal affairs.¹⁴¹

Political decision-making in Yemen is a complex and extremely delicate process of consultation, compromise, and trade-offs with constantly shifting alliances, which used to be masterminded by Saleh. As a result, significant groups of society, such as leftists, liberals, workers, farmers, women, have been consistently excluded from access to decision-making positions, and thus to any form of effective influence. The co-optation, rather than integration, of tribal and other traditional (religious) authorities into governance structures and legislative bodies, has also led to neglecting basic issues that would generally concern a modern state, such as the protection of citizens and individual rights.

The state's personalised and centralised nature of power has further undermined traditional systems of accountability, and fed a political culture of impunity when the interests of the powerful are at stake. Whereas authorities in the past were accountable to their local constituents through established customary rules and practices, state patronage disconnects leaders from their traditional base. At one and the same time, local communities have become increasingly dependent on their leaders for goods and social services distributed through patronage networks, while having fewer opportunities and mechanisms for holding their leaders accountable. The overall result of exclusion from partaking of public goods such as justice, security, and political participation, is a further fragmentation and erosion of social cohesion and social capital.

1.3 Islam(ism) and State

Co-optation of potential competitors for power, rather than their repression, was also Saleh's strategy with regard to Islamist groups.

Laurent Bonnefoy (2009) explains:

"Muslim Brothers, Salafists, violent 'jihadi' fringes, Sufis, and Zaydi revivalists have all at some point collaborated with the state to a certain extent. Since the 1970s, such an equilibrium has proved rather functional, as it has reduced the level of political violence, allowed the participation of most, and maintained government stability. Yet, due to internal developments and external pressures after September 11, this system has increasingly been placed in jeopardy with still unknown consequences."¹⁴²

These five so-called Islamist 'ideal types' overlap and shift alliances whenever situations change, but each is structured in a distinct way, and has different aspirations. One should also mention the traditional Islamic establishment (ulama), many of whom collaborate with Islamist groups, and are therefore often hard to distinguish from those. Suffice to say here that Islamists have integrated into most state and non-state sectors, wielding significant influence over schools, mosques, charities, mass media, political parties, the legislature and judiciary, security forces, and even local tribal institutions.¹⁴³

¹⁴¹ Bonnefoy and Poirier, *Civil Society and Democratization in Contemporary Yemen* (2009), p.7

¹⁴² Laurent Bonnefoy, "Varieties of Islamism in Yemen: The Logic of Integration Under Pressure", 13(1) *Middle East Review of International Affairs* (2009), pp. 1-11, at p. 1.

¹⁴³ For a better understanding of islamism and the state in Yemen, see Ludmilla du Bouchet, "The State, Political Islam and Violence: The Reconfiguration of Yemeni Politics since 9/11", in Amélie Blom, Laetitia Bucaille, and Luis Martinez (eds.), *The Enigma of Islamist Violence* (London: Hurst, 2007), pp. 137-164.

It should be stressed that only a fraction of the Islamist groups develops extremist agendas and resorts to violent activities. Others, in contrast, adhere to the principle of complete loyalty to the ruler. Most of such groups gain popularity in isolated, underdeveloped regions (in which Yemen is abundant) and among marginal groups and disaffected youth, those who do not benefit from state investments, job opportunities, and infrastructures. One should also distinguish Islamism from the conservative, yet more tolerant Yemeni Islamic traditions.

If Saleh's primary objective by incorporating Islamist groups into political foray was to secure government stability and territorial security, he thereby often compromised the constitutional protection of individual rights and even safety of Yemeni citizens. As a political compromise after the 1994 civil war, which Saleh won with the crucial support of the Islahis, he granted the Islamists as a quid pro quo the Ministries of Justice, Religious Endowment, and of Education. The Islahis promptly re-Islamised laws, school curricula, judicial training, and other domains, which directly affected Yemeni citizens.¹⁴⁴

Hard-line Islamist presence in state and societal institutions, often in close alliance with tribal factions, has also quashed opportunities for free parliamentary and media debates, public forms of expression, independent judicial review, and the like. A rather telling example of an ad-hoc Islamist/tribal alliance took place in July 2008. A grand convention in San`a of thousands of Yemeni religious scholars, supported by prominent tribal chiefs, announced the creation of a commission to 'protect virtue and combat vices'. They proclaimed to act against the spread of night-clubs, drugs, mixed-sex education, singing and dancing, temporary marriages by (mostly Arab) tourists, and the quota of women MPs. 'Morality guardians' would roam the streets to look out for such 'Islamic infringements', and would alert the official police.

Religious Shaykh `Abdalmajid al-Zindani¹⁴⁵ and Tribal Shaykh Sadiq al-Ahmar, the two leaders of the Islah Party and of this initiative, urged the government to deploy its organs, such as the Ministry of Endowment and Guidance and the Public Prosecution, to create a special virtue police force. Zindani also encouraged the population to report to the governmental authorities any violations of Islamic norms. Civil society organisations, women's groups, and the media strongly protested the creation of such a force. As far as known, the previous regime did not openly take position with regard to this demand.

The relationship between the state and the diverse Islamist groups remains ambivalent and volatile. In 2003, Saleh relentlessly ousted his former coalition partner Al-Islah from government participation, after the GPC won 238 out of 301 seats in the elections. Islah subsequently joined its former sworn enemy, the southern Socialist Party, and several other parties, to form a broad opposition-coalition, the Joint Meetings Parties (JMP).¹⁴⁶ Since the 2011-uprisings, the Islamist parties, who reportedly turned *en bloc* against Saleh's regime, now seem to be gaining political and social traction in the run-up to the general elections under the new President, as seems to be the trend in other 'Arab Spring' countries.¹⁴⁷ The insecure situation in Yemen further opens the door for external Islamist (and extremist) groups as well.

¹⁴⁴ For an analysis of the Islamist/tribal Islah Party, see among others Paul Dresch and Bernard Haykel, "Stereotypes and Political Styles: Islamists and Tribesfolk in Yemen", 27(4) *International Journal for Middle Eastern Studies* (1995), p. 405-431; Jillian Schwedler, *Faith in Moderation: Islamist Parties in Jordan and Yemen* (Cambridge University Press, 2007).

¹⁴⁵ Shaykh Zindani is a controversial cleric who speaks for the Muslim Brotherhood and has Salafi inclinations. He runs Al-Iman University in San`a, and was listed in 2004 as 'specially designated global terrorist' by the US Treasury Department and the United Nations' 1267 Committee.

¹⁴⁶ On the JMP, see Browers, "Origins and Architects of Yemen's Joint Meeting Parties" (2007).

¹⁴⁷ See for instance Rami G. Khouri, "Why Islamists Will Just Keep Winning", *Yemen Times* (5 March 2012), at <http://yementimes.com/en/1552/opinion/522/Why-Islamists-will-just-keep-winning.htm>

1.4 Corruption

Another pervasive by-product, or rather essential ingredient, of the prevailing culture of patronage is corruption.¹⁴⁸ The Yemeni *Criminal Code* provides penalties for corruption by state officials. However, separate legal procedures apply to the highest ranking state officials. Article 136 of the *Constitution* states that a criminal investigation may not be conducted on a deputy minister or above, without first securing a 1/5 approval vote in parliament. Subsequently, it requires a 2/3 parliamentary vote and presidential permission to bring the case to the General Prosecutor for indictment.

The World Bank's Worldwide Governance Indicators recurrently confirm Yemen's deep-seated corruption problem, and the widespread corruption (perceived and actual) in every branch and level of government. International observers presume that government officials and parliamentarians benefit from insider arrangements and embezzlement. Corruption and impunity are especially widespread within the military-security establishment and intelligence bureaucracy.

Some police stations reportedly maintain an internal affairs section to investigate security force abuses. Citizens can also file complaints directly at the Prosecutor's Office. Even so, government agencies, including the judiciary and the prosecution, reportedly take only negligible measures to combat corruption, thus leaving notoriously corrupt officials, including parliamentarians, with impunity.¹⁴⁹

1.5 Transfer of Power

Although former President Saleh had ruled Yemen since 1979, he was only elected by the people since 1999, despite Article 108(e) of the *Constitution* prescribing a "direct popular voting in competitive elections." There must be at least two candidates for a presidential election. Applicants who meet the requirements must win the support of at least five percent of the House of Representatives and the Shura Council in a joint sitting. The President is elected for a seven-year term, which can only be extended once (Article 112).

Saleh's second re-election was on 20 September 2006, simultaneously with the governorate council and local council elections. For the first time, Saleh, as the candidate of the ruling party the General People's Congress (GPC), faced a credible opponent in Faisal Bin Shamlan, the former Minister of Oil, nominated by the opposition-coalition, the Joint Meeting Parties (JMP). Saleh was re-elected with 77.3 percent of the votes, with a voter turnout of 65.1 percent. The political climate during those elections was marked by large distrust of members of the JMP towards the Supreme Commission for Elections and Referendum (SCER).¹⁵⁰

Two years before Saleh's third re-election, the political scene changed dramatically due to the Yemeni uprisings. Yemeni street protesters demanded Saleh's resignation, and later on also his prosecution for crimes committed against peaceful demonstrators. After being severely wounded in an attack on 3 June 2011 in San`a, Saleh left Yemen for Saudi Arabia for medical treatment and remained outside the country for more than 100 days, until his sudden return to Yemen on 23 September 2011. This period of absence - during which Saleh's recovery was uncertain - exceeded the 60 day-period prescribed by the *Constitution*, in which the Vice-President is to temporarily assume the president's functions, and elections for a new President are to take place (Art. 116).

¹⁴⁸ On corruption in the judiciary, see Section 2 hereafter.

¹⁴⁹ Mohamed Abdo Moghram, *Legal and Institutional structure for Fighting Corruption in the Republic of Yemen* (n.d.); and see <http://www.state.gov/documents/organization/160081.pdf>, p. 30..

¹⁵⁰ IFES Briefing Paper, *Transition in Yemen: An Overview of Constitutional and Electoral Provisions* (Washington DC, 7 June 2011), pp. 3-4.

In reality, Vice-President `Abd Rabbuh Mansur al-Hadi had not overtly taken on his constitutional prerogatives during Saleh's recovery in Riyadh, as Saleh had never publicly stated he would resign as President, and repeatedly rejected deals brokered by the Gulf Cooperation Council and the UN for a managed transfer of power. This stalemate was finally overcome on 23 November 2011, when Saleh eventually signed an agreement in Riyadh to effectuate a power transfer.

While Saleh symbolically remained president for another 90 days (until 21 February 2012), the deal empowered Vice-President Mansur Hadi to form a power-sharing government, and assigned to the opposition coalition JMP to nominate a prime minister. Mansur Hadi would also head a temporary security council to negotiate the demilitarisation of San`a, which is currently controlled by rival military factions of Saleh's son Ahmed, the defected General Mohsen, and the Al-Ahmar brothers. After 90 days, Mansur Hadi was effectively elected president as a 'consensus candidate' (he was the only candidate). In this function, he is tasked with overseeing a national dialogue to prepare for constitutional reform. He is also mandated to begin talks to restructure the military.¹⁵¹

Despite opportunities for a peaceful transition period, multiple challenges remain that could derail the process. The situation at the time of writing is still too open-ended to provide details. In broad terms, there is an on-going power-struggle between Saleh's family, his political/tribal rivals the Al-Ahmar brothers (Sadiq and Hamid), and General Ali Mohsen, whose violent clashes in the capital San`a have already claimed dozens of lives. There is also the problem of strong distrust between GPC and JMP members. Moreover, many practical problems defy quick solutions, including the on-going chaos, poverty, unemployment, and security threats throughout the country.

Another major dynamic is that the transition deal was not supported by the youth protesters, who are upset that it included an immunity guarantee for Saleh and his allies. They also believe that too much control remains with the established political actors, whom they see as 'corrupt beneficiaries of the existing system of power.' As a matter of fact, hundreds of tents of the protesters have remained in place at Change Square, and miles around it, for already more than a year after the start of the Yemen Spring revolution.¹⁵²

¹⁵¹ For instance Ginny Hill, "Pitfalls Ahead Despite Saleh Quitting Power in Yemen", *BBC/News Middle East* (23 November 2011), available at <http://www.bbc.co.uk/news/world-middle-east-15861103>.

¹⁵² Such was the situation in May 2012, at the time of completing this report.

2. Justice Delivery

When asked, Yemenis identify a myriad of problems when engaging with state organs, but most prominent among these are the state's rule of law institutions. The following part highlights some of the main challenges within the justice sector in Yemen.¹⁵³

2.1 Judicial Independence

According to the law, Yemen's judiciary and individual judges are independent and enjoy a large measure of protection. Art. 149 of the Yemeni *Constitution* provides that the judiciary shall have judicial, financial, and administrative autonomy and that 'judges are independent, and not subject to any authority, except the law'. The law that regulates and protects the judiciary is the *Law on Judicial Power*.¹⁵⁴

In practice, however, there are serious questions regarding the actual independence of the Yemeni judiciary. Judicial affairs, promotion, discipline, and protection of judges are invariably tied to the Supreme Judicial Council (SJC). Despite being designated as a body set up by the judiciary (Art. 152 GW), the SJC has been effectively under the domination of the executive branch, as explained above, even though the President of the Republic is no longer its chair.¹⁵⁵

This lack of independence is one of the main reasons for dysfunctions within the judiciary, and its poor record. It has left the door open for clientelism (patronage) and interference by political and government actors at all levels of the judiciary, and of the Niyaba (prosecution). Through the SJC's control of court budgets and effective authority over the hiring, promotion, and assignment of judges and prosecutors, this 'executive' judicial body exercises significant influence over the administration, strategies, policies, and decisions of the judiciary. This influence, reportedly, does not always translate into effective leadership.

A recurring critique is that the prescribed rotation of judges every three years by the SJC is often employed for retribution and other political purposes. For instance, in one widely known case a judge who entered preliminary rulings against the government was 'rotated' to a different court in the middle of the case. There was also a high number of Zaydi judges dropped, reportedly, in the aftermath of the anti-government, pro-Zaydi Huthi uprisings.

Apart from politicisation and personalisation of the judiciary, judges are also subject to interference from tribal leaders, be it by harassment or by offering protection. This occurs most evidently in tribal areas, where judges often hold court at the premises of tribal leaders, to be protected from harassment by others. The sphere of tribal influence reaches even up to the Supreme Court.

Other manifestations of the lack of judicial independence are that graduates from the High Judicial Institute do not always serve as judges, but often hold positions in the executive as civil servants. Similarly, judges are regularly rotated into the public prosecution and vice versa, which blurs the distinction between those two institutions. The organisation of judges is weak, and also influenced by societal powers (religious, Islamist, tribal).

¹⁵³ These challenges have been repeatedly identified by the GoY in its various Judicial Reform Programs, as well as by western donors who have over the last two decades been involved in justice sector reform in Yemen, especially Germany (GTZ), UK (DFID), USA (USAID, NDI, ABA), the Netherlands (CILC), France, UNDP, Worldbank, and lately the Friends of Yemen group.

¹⁵⁴ See Part A sub B: Legislation, Chapter 1.2.

¹⁵⁵ See Part A, sub A: State Institutions, Chapter 3.3.1.

2.2 Legal Education and Judicial Training

The present-day legal education, despite many attempts at reform, still fails to meet legal and judicial needs in Yemen. The curricula of the Sharia and Law Faculties and the HJI are heavily infused with shari`a teachings. There is no continued judicial training or refreshment courses for sitting judges. Written standards of conduct for judges seem to be absent, or at least not part of their basic education.

Even skilled Yemeni judges lack a solid background in applying current legislation and court procedures, managing court personnel, interacting with prosecutors, lawyers and litigants, drafting verdicts, and other elements of modern adjudication. Their rotation every three to five years to other judicial posts and geographical areas also delays their skill-development.

The lack of sufficient modern legal training translates into a persisting traditional legal culture among the judiciary, especially in north Yemen. In other words, Islamic norms and values continue to have a noticeable impact on the interpretation and implementation of state legislation in court.

2.3 Court Administration and Leadership

Lack of adequate training also affects the capacity of court staff. The MoJ does not have fixed and transparent policies, criteria, or examination for the hiring of court employees. The current system offers very few tools to the judge for evaluating the performance of court personnel, or to foster their accountability. Job descriptions are not clearly defined; hence the court president often carries out even the simplest administrative tasks, which put a great strain on the court president's more important judicial tasks. The court president has the duty to report disciplinary matters to the SJC, but without accompanying standards or administrative support, this step is rarely taken.

2.4 Housing, Furniture, and Technical Equipment

Court buildings are often rented from private owners, and therefore the court has to relocate regularly when the owner ends the lease. There is often no clear exterior sign indicating that the building is a court. Basic facilities such as electricity and sewage are often in a deplorable condition or lacking, as are basic furniture, office supplies, filing cabinets, etc. Typing and copy machines, computers, printers, and other modern hardware are rarely found. Court sentences are mostly handwritten. All this adds to the inefficiency and unproductivity of courts, and their low institutional reputation.

2.5 Court Archiving and Publication of Laws and Decisions

Chronological entries of all court actions and decisions are generally well kept in large, handwritten logbooks archived at the courts. The MoJ has in recent years redesigned and reprinted many of its routine forms, simplifying case filing and record keeping. However, case files are not efficiently stored, and often kept by the judge at the judge's home. Lawyers and litigants often do not have ready access to the files of their own case, unless after bribing court personnel or even the judge. Courts also generally lack a routine to inform litigants and other interested parties about when their case will be heard.

Whereas new laws are printed by and kept in stock at the Ministry of Legal and Parliamentary Affairs, the state apparatus fails to distribute these to courts nationwide. Hence, many judges do not have the latest legislation, unless they purchase these themselves. The Technical Bureau of the Attorney General's Office in 1998-1999 eventually prepared its own 'bench books', containing relevant laws and procedures. According to the Attorney General's Office, these written materials were distributed among all prosecutors, and to judges upon their request.¹⁵⁶

¹⁵⁶ Interview with the Attorney General `Abdullah Al-`Ulufi (December 2005).

The Technical Bureau of the Supreme Court has the statutory mandate to publish Supreme Court decisions with added commentary, but has done so only sporadically due to lack of capacity. Law reports and indexes of decisions were published before the unification (and very irregularly) in law journals issued by the law faculties of the Universities of San`a and Aden. After the 1962 Revolution, only three issues of a legal journal were published by the Ministry of Justice of the YAR. The Jurists Union in Aden had published ten volumes of *Dirâsât Qânûniya* (Legal Studies).¹⁵⁷

The UNDP, in an effort to create some baseline of written jurisprudence, undertook a project in the late 1990s to create an electronic legal information database containing all Yemeni laws plus selected decisions of the Supreme Court, especially on commercial cases. This database was made available on the internet and CD-ROMs, and circulated among judges, prosecutors, lawyers, Yemeni embassies, and others. A problem with these high-tech solutions was that Yemeni judges typically had neither the equipment, nor the skills to utilise them.¹⁵⁸

Without widely available and authoritative precedents from the Supreme Court, there is no jurisprudential basis to harmonise court decisions countrywide, or to foster legal scrutiny and debate. Moreover, many cases that have been referred to the Supreme Court have literally been kept in drawers for a long time.¹⁵⁹

From 1998 until 2005, the Yemeni NGO Forum for Civil Society ran an instantly popular legal journal, *Al-Qistâs* (The Scales of Justice), to inform the legal community about the latest (even draft) legislation, court cases and decisions, critical news stories about harassed judges, external interference in court procedures, or positive trends, and critical cartoons. It provided a hitherto unprecedented platform for discussion and critical exchange for a broad range of legal professionals.¹⁶⁰ Prompted by its imminent success, the MoJ - after an almost twenty year lapse - started re-issuing its own legal journal, *al-Qadâ`îya*, with official information on legal and judicial developments, and some court decisions.

2.6 Security of Judges and Courts

Another reality is the omnipresent threat of violence against judges and their staff. Court security and security for travelling judges, are minimal. Especially outside urban areas, judges are often afraid to show up to their own court, and instead have to rely on a litigant or his tribe for protection while conducting a court session. They are not provided by the state with sufficient means, housing, or secure transportation to protect them in the execution of their function.

2.7 Implementation of Court Decisions

According to the Minister of Justice (in 2005), approximately 60% of all court judgements remain unenforced. Execution of court rulings is formally assigned to the execution departments of the courts, and to the Public Prosecution for criminal matters.

¹⁵⁷ Shamiri, "Yemen", in Cotran (ed.), *Yearbook of Islamic and Middle Eastern Law* (1995), p. 371.

¹⁵⁸ The UNDP therefore established a legal information centre at the Ministry of Justice in San`a with computers containing this database and other (Arab) on-line legal databases. This facility also housed a centre for training judges and prosecutors on how to use these tools. I am not aware whether this project has proved sustainable. See *UNDP Draft Program for Enhancement of Accountability, Transparency and Rule of Law* (March 1999).

¹⁵⁹ The major exception are decisions from the Commercial Chamber, which were prioritised for publication and dissemination already during the 1980s with assistance from Sudan and Egypt, and more recently by the UNDP project.

¹⁶⁰ See Brinkley Messick, "Cover Stories: A Genealogy of the Legal Public Sphere in Yemen", in Armando Salvatore and Mark Levine (eds.), *Religion, Social Practice, and Contested Hegemonies* (New York: Palgrave Macmillan, 2003), pp. 207-229.

Courts report a persistent problem with summoning litigants to attend court sessions. This is partly due to a lack of good cooperation with the Ministry of Interior and the police to enforce court orders decreeing such attendance. The major difficulty, however, lies in the widespread distrust among litigants in the fairness of trials and the impartiality of judges. Litigants therefore often do not abide by court decisions, and either turn to informal judges or resist enforcement by threatening execution officers with weapons. Court rulings against government actions are - for reasons explained elsewhere - very rarely enforced.

2.8 Prison Conditions

Yemen's prison system suffers from an absence of a strategic vision, poor managerial control, and poor maintenance. Policy directives issued by the Ministry of Interior are implemented sporadically, and there does not seem to be any ministerial process for fostering consistency or evaluating prison management performance. Prisons are plagued by poor facilities and unhygienic living conditions, as they often serve a population that is approximately 250% higher than the buildings are designed for. Not all prisons have drinking water available on a continuous basis.

The lack of a strategic prison vision is evidenced by four examples. First, since only the Niyaba is authorised to release individuals from prison, the Ministry of Interior is unable to exercise effective control over its jails. Second, because prison security is under the control of different sections of the Ministry of Interior, basic safety standards are difficult to implement. Third, prisoners routinely serve sentences beyond the duration set by courts, because of their inability to pay the financial penalties that accompany their time-sentences. This 'dual sentencing' system can lead to indefinite incarceration of individual prisoners, prison overcrowding, and difficulties with in-prison social service programmes.

Fourth, the justice system (police, Niyaba, and prisons) does not know how to deal with the special needs of juveniles and female prisoners. Juveniles are usually incarcerated together with adult convicts. Women inmates are often detained with their young children, who remain with their mothers until the age of 5 or 7, after which they may become wards of the state. Many female prisoners cannot leave prison after their term, because their husbands usually divorce them, and their families often disown and abandon them. These women are considered 'stigmatised' for life for having spent time in prison, even if unjustly.¹⁶¹

2.9 Qat

The judicial system, like every other aspect of Yemeni society, is tremendously impacted by the pervasive use of qat.¹⁶² Courts often shut down shortly after noon, so that judges can host afternoon qat-chews at home, or join others. It is not unusual that judges, lawyers, and litigants gather to discuss pending cases in such informal settings under the influence of qat. Case documents and evidence can be submitted to the judge at his home. Under such circumstances, corruption, partiality, lack of transparency, and lack of (equal) access to justice, become rife. On another note, limited office hours lead to an enormous case-overload for judges, and thus excessive delays in litigation proceedings.

¹⁶¹ *Yemen Times* (30 April 2012), available at <http://yementimes.com/en/1568/culture/785/Families-in-Yemen-shun-female-prisoners.htm>.

¹⁶² Qat (*Catha edulis*) is a mildly narcotic leaf that is chewed daily by a large number of Yemenis. Qat-chew sessions have a major impact on Yemeni society, demography, economy, politics, and governance. See Daniel Martin Varisco, "On the Meaning of Chewing: The Significance of Qat (*Catha edulis*) in the Yemen Arab Republic", 21 *International Journal of Middle East Studies* (1986).

2.10 Corruption

Perhaps even more than in other sectors, corruption deeply affects the justice sector, including the security forces and the police. Public opinion surveys confirm that Yemenis especially distrust the efficiency and integrity of judges, prosecutors, and the police. In recent meetings with the 'Friends of Yemen' group, the Government of Yemen concurred that corruption was a major challenge to be tackled.

Several studies claim that corruption is so endemic that court cases are commonly resolved only through bribing judges and court staff. Clerks reportedly overcharge on filing fees, and extract bribes for processing routine court documents. If the bribe is not forthcoming, the papers might not be served, the file may be lost, or the case might never appear before a judge. In courts with multiple judges or chambers, litigants bribe clerks to assign their cases to 'friendly' judges.¹⁶³

A similar culture prevails in the police force, where officers systematically demand payment in order to conduct or halt an investigation into an alleged criminal incident. Although a system is in place for handling allegations of police malfeasance, reports are not customarily forwarded to the Niyaba for criminal investigation, but are handled internally. The abundance of reported incidents has led to a widespread distrust of the police forces among the Yemeni population.

Practices of bribery and petty corruption inevitably affect access to justice of vulnerable groups, especially the poor and women (which, in fact, refers to most Yemenis). Moreover, the associated culture of impunity undermines the formal judiciary and security forces, leading in turn to disrespect for the law and legal institutions among the public at large.

In their final report, the Friends of Yemen acknowledged that "corruption vulnerabilities" are created by structural weaknesses in the justice, rule of law, and security sectors. These include low salaries, weak procedures (either by lack of knowledge or lack of incentive to follow procedures), poor infrastructure, institutional opacity, and strong executive control.¹⁶⁴

2.11 Access to Justice

Formally speaking, there is no lack of institutions that are mandated to receive complaints and assist in settling disputes. There is the judiciary (formal and informal), law enforcement (police, prosecution), Parliament, and the Shura council, and different levels of the executive authority, especially the Ministry of Human Rights.

Very often, as explained, justice is delivered on the basis of power and patronage, rather than on the basis of law and fair procedure. Corruption is deeply engrained in all these institutions. Moreover, the widespread 'legal illiteracy' (lack of legal awareness) hinders most Yemenis in knowing their rights, and knowing how to claim these at the right time and place. For instance, despite a special law to reduce official court fees in civil cases (*Law 28/1999*), court personnel often continue to demand higher amounts. This deters most litigants from courts, especially the destitute.

There are also purely logistical obstacles to achieving justice. In cities, courts mostly do not have a sign indicating that the building is a court, neither do they have designated waiting rooms. There are no announcements of court schedules and no fixed administrative procedures to clarify to whom to turn for filing a case. Especially outside the large cities, deficient infrastructure and weak central authority result in a daunting shortage of courts, police, and lawyers. Even if there is a court building, the judge often does not hold office there, as noted before, but instead operates from the premises of a tribal shaykh for security reasons. However, litigants are not protected on their way to court. Sometimes, courts are moved from cities to the centre of a region.

¹⁶³ World Bank, *Yemen, Comprehensive Development Review* (2000), p. 39; Moghram, *Fighting Corruption* (n.d.), p. 8.

¹⁶⁴ FoY, WG on Justice and Rule of Law, *Final Report* (2010), p. 3.

Either way, the journey from a village to urban centres poses significant economic, logistical, security, and social difficulties for most Yemenis. It follows that the majority of people effectively lack access to state justice.

Social restraints affect especially women. Their free movement in public spaces usually depends on the consent of their male relatives. The fact that (virtually) all police stations and courts are staffed by men hinders most women from accessing justice. Moreover, many family law disputes and also criminal matters are not even brought to a court. Especially in tribal areas with strong customary traditions, bringing disputes to courts is considered shameful, as explained elsewhere.

Provision of legal aid to poor and vulnerable people in criminal matters is mandated by Article 49 of the *Constitution*. This legal obligation remains hitherto largely unfulfilled, especially due to the near-absence of lawyers in remote areas.

The FoY report states that the MoJ is making efforts to improve the delivery of legal assistance and judicial aid to children and juveniles, although legislative gaps remain. It says that a need still exists for programmes aimed at crime prevention and social reintegration of children who have been in trouble with the law. A committee was formed to develop a mechanism to provide judicial assistance to the poor and insolvent persons. To better support women litigants, the government reported that it has 'made efforts' to contract more female lawyers.¹⁶⁵

2.12 Formal and Informal Justice

For all reasons mentioned, thereby adding the prevailing traditional legal culture in Yemen, the great majority of Yemenis rely on informal justice mechanisms to avoid the incompetent, corrupt, or simply absent formal courts. A judicial assessment team in Yemen in 2005 aptly observed that:

"[t]radition, poverty, and a profoundly inefficient Yemeni judiciary means that most Yemenis barely know that the formal judiciary exists. [...] Where the Yemeni government is not able (or willing) to even construct paved roads to connect districts, or provide basic services as schools and hospitals in populated rural areas, [...] the laws and associated legal structures and processes play little or no role in the life of ordinary citizens. [...] Yemen presents an example of a nation with laws, but not the rule of law."¹⁶⁶

It comes down to the observation that state law - and the state as such - is largely irrelevant to most ordinary Yemenis. Where the government often acts against its own constitutional and legislative provisions, rural and tribal communities instead abide by their 'rule of man', dispensed by known and trusted personalities, and are less concerned with the source of the applied rules (religious, tribal, customary, etc.). Formal laws and legal reform efforts - including those implemented by a multiplicity of foreign donors over the past decades - therefore hardly affect the behaviour of most Yemenis.

The coexistence of different legal cultures and different expectations regarding the (rule of) law clearly forms a source of tension among Yemen's different communities, weakening solidarity and cohesion among groups. This was, in part, wilfully caused by the 'divide-and-rule' policies of Saleh's former regime, and in part by the grinding and enduring poverty and on-going violence. Additionally, the ancient tribal mechanisms for preventing and managing conflicts are gradually eroding; hence, a growing number of Yemenis find themselves excluded from any form of justice and dispute resolution.¹⁶⁷

¹⁶⁵ *Idem*, p. 7.

¹⁶⁶ William D. Meyer and Judge Rosa Jansen, *Assessment Report of a Rule of Law Mission to Yemen for the ABA/CEELI Middle East Legal Initiative* (2-13 January 2005), pp. 8-9.

¹⁶⁷ One recent example illustrates this point: <http://www.yementimes.com/en/1515/report/743/Waiting-for-Saleh%E2%80%99s-help-Three-years-in-a-tent.htm>

3. Enduring (Armed) Conflicts

Introduction

At least five decades of social and political turmoil - ranging from separatist political clashes, all-out civil war and terrorism, to enduring social conflicts, mainly over land and water - has profoundly contributed to Yemen's fragility.¹⁶⁸

In Yemen, armed violence is strongly affected by the widespread availability and proliferation of small arms and light weapons. Violence is also exacerbated by (structural) factors such as weak governance and rule of law, weak political institutions, competition for scarce land and water resources, growing social, economic, and religious cleavages, extreme inequality in wealth distribution, jihadism, porous borders, smuggling, and popular disenchantment with the slow pace of democratisation. Underscoring all of this is Yemen's chronic poverty, rapid population growth, and continual underdevelopment.

The Yemen Armed Violence Assessment (YAVA) Brief considers armed violence as a continuum that runs from interpersonal disputes to widespread collective action. Although armed violence does not completely fit into neat categories, and motives are often complex and not easily known, YAVA presents an interesting typology of specific forms of armed violence, to facilitate an understanding of how types of violence are interconnected and mutually reinforcing.¹⁶⁹

The categories are:

- **political violence**: relating to the acquisition and use of political power, including electoral processes and government policies;
- **social violence**: between non-state groups, often sustained over a period of time, particularly in the context of norms relating to collective responsibility and blood revenge;
- **ransom-related violence**: seizing people, goods, or infrastructure as collateral for material demands;
- **criminal violence**: all other forms of predatory and economically-motivated violence;
- **domestic violence**: between spouses or other cohabiting individuals, including against children;
- **unintended violence**: including mishandling of weapons by owners or others and accidents related to unexploded landmines or hand grenades.

The following headings will highlight several major conflicts and their causes in present-day Yemen, most of which deeply affect the rule of law.

3.1 Huthi Wars¹⁷⁰

The 1990s witnessed a growing influence of Salafi and Wahhabi (Sunni) institutions of preaching and teaching in Yemen, backed by Saudi Arabia.¹⁷¹ Former President Saleh had accepted support of these and other Islamist groups in the secessionist southern conflict in 1994 for regime survival.

¹⁶⁸ For a thoughtful analysis of ongoing conflicts, see International Crisis Group, *Yemen: Coping with Terrorism and Violence in a Fragile State*, Middle East Report No. 8 (8 January 2003). On the current uprisings, see International Crisis Group, *Popular Protest in North Africa and the Middle East (II): Yemen Between Reform and Revolution*, Middle East/North Africa Report No. 102 (10 March 2011).

¹⁶⁹ Yemen Armed Violence Assessment, *Small Arms Survey Issue Brief*, Number 1 (May 2010), p. 8.

¹⁷⁰ For an in-depth analysis of the Huthi wars, see Barak Salmoni, Bryce Loidolt, and Madeleine Wells, *Regime and Periphery in Northern Yemen: The Huthi Phenomenon* (Santa Monica: RAND, 2010) at http://www.rand.org/pubs/monographs/2010/RAND_MG962.pdf; International Crisis Group, *Yemen: Diffusing the Saada Time Bomb*, Middle East Report No. 86 (27 May 2009); Iris Glosemeyer, "Local Conflict, Global Spin: An Uprising in the Yemeni Highlands", *Middle East Report* 232 (Fall 2004). On the Zaydi-Salafi tension in Sa`dah, see Shelagh Weir, "A Clash of Fundamentalisms: Wahhabism in Yemen", *Middle East Report* 204 (July-September 1997).

¹⁷¹ Du Bouchet, "The State, Political Islam and Violence" (2007), pp. 148-9.

At the same time, Saleh must have been weary that too much Wahhabi impact could disrupt the historically accommodating nature of the religious landscape in Yemen. For this reason, it has been argued, Saleh's regime initially encouraged the Al-Huthi-led, Zaydi-revivalist movement *al-Shabâb al-Mu'min* (the Believing Youth) in Sa`dah between 1995 and 2001. Saleh reckoned that Sa`dah's history of Zaydi (Shi`i) leadership and teaching would counterbalance the growing influence of more extreme forms of (Sunni) Islam coming from abroad.¹⁷²

A full turn in this alleged Saleh-Huthi strategic alliance came after 9/11. Gradually worked up by the myriad of problems facing Yemen's economy and society, the regime's governance methods, its role in the international 'War on Terror' as well as inter-tribal factors, the Huthis started to publicly express their discontent and resentment with Saleh's regime, accusing him of being pro-American and pro-Israeli. Shaykh Hussayn Badr Al-Din al-Huthi, the clerical leader of the armed group the Believing Youth, explicitly called for the restoration of the imamate and rule by Zaydi *sayyids* (descendants of the Prophet), thus challenging the legitimacy of President Saleh's leadership, and threatening Yemen's stability and unity.

Shaykh Hussayn had a wide religious and tribal backing in Yemen, particularly in Yemen's northern mountains, and was a former MP for the pro-monarchy Islamic party, *al-Haqq* (the Truth).¹⁷³ After months of heavy fighting between the Huthi rebels and Yemeni security forces, the latter using warplanes and heavy artillery which hit armed rebels and unprotected civilians alike, Shaykh Badr Al-Din and some of his close allies were killed in September 2004. Violent clashes intensified and continued over the following years, despite cease-fires negotiated in March 2006, June 2007, and February 2008.

In August 2009, the government started the military operation 'Scorched Earth' which involved the deployment of military force against the Huthis on a scale not witnessed before, particularly after Saudi Arabian forces entered the war in November 2009. Months of heavy bombardment of Sa`dah by Saudi Arabian and Yemeni forces killed hundreds of people not engaged in the fighting, and caused widespread damage to homes, mosques, schools, as well as local industries and infrastructure.

The Huthi-wars have caused the killing or displacement of thousands of people. Casualty estimates range from hundreds to more than 20,000. Estimates of displaced persons reach up to 350,000 people throughout the country.¹⁷⁴ On February 2010 a cease-fire was negotiated to end 'Scorched Earth'. In August 2010, the government and Huthis signed a peace deal in Qatar that started a process of political dialogue.

The Huthis readily joined the 'Yemen Spring' revolution from its outset in early 2011, and extended their protests to the capital San`a and other regions in Yemen. By November 2011, it was reported that the Huthis managed to gain control over all of Sa`dah Governorate, and parts of `Amran Governorate, Al-Jawf Governorate and Hajjah Governorate.

3.2 Southern Movement¹⁷⁵

Yemen's Southern Movement (*Al-Hirâk al-Janûbi*, or for short Al-Hiraak) is an umbrella group of various southern anti-government factions that trace back to the 1994 civil war. The unification agreement between the two Yemens signed in 1989 had established an equal partnership and a 50/50 power-sharing arrangement between the General People's Congress (GPC) and Yemeni Socialist Party (YSP) at all governmental levels, until the first parliamentary elections in April 1993. In those elections, however, YSP won only 56 of 301 seats, with 123 going to GPC and 62 to the new Islamist party Al-Islah.

¹⁷² Interviews by author in Yemen in summer of 2004 with a Zaydi preacher from Sa`dah, among others.

¹⁷³ It should be noted that the Huthi uprisings were primarily politically motivated, despite media accounts reporting a sectarian Shi`i-Sunni conflict. The leaders of both sides are from Zaydi background.

¹⁷⁴ For more detailed reported human rights violations, see the section hereafter.

¹⁷⁵ Information for this section was derived from, among others, International Crisis Group, *Breaking Point? Yemen's Southern Question*, Middle East Report No. 114 (20 October 2011); Susanne Dahlgren, "The Southern Movement in Yemen", *ISIM Review* Vol. 22 (Autumn 2002).

The elections effectively marginalised the YSP, and put power straight into the hands of Northern tribal and Islamic elites. Consequently, southern leaders refused to join the new government. After escalating tensions, political assassinations, and failed negotiations, civil war broke out on 27 April 1994.¹⁷⁶ The war lasted only two months, ending in victory for Saleh and his new allies, the Islamist Al-Islah party, but leaving 5,000-7,000 dead and causing major damage to buildings and infrastructure in the south. Private homes and land were (illegally) confiscated, and the southern military forces were neutralised by the dismissal and retirement of many southern commanders and soldiers.

Similar reshuffling took place in the political, economic, and judicial spheres. The practice of clientelism among northern political elites excluded southerners from political benefits. Military governors loyal to Saleh were appointed to control the major southern governorates. Economically, southerners claim that the north drained their oil, mineral, and fishery revenues. The 1994 war further cost the YSP its parliamentary veto, which the GPC-Islah coalition utilised to revoke many (constitutional) reforms initiated by the south at unification. Examples are the revocation of equal north/south power sharing, and the sharpening of the 'shari`a-clause' in Article 3.

These grievances were only minimally redressed during the ensuing years. Eventually, in late 2006, a group of army pensioners began peaceful protests and sit-ins in Aden and other southern cities, demanding their reinstatement to army service, and higher pensions in line with ex-soldiers of the army of former North Yemen. By mid-2007, civil servants, teachers, human rights activists, academics, members of opposition parties, journalists, and unemployed youth from across the southern provinces began to join the movement, which later became known as Al-Hiraak, the Southern Movement.

Initially, protesters advocated for equal citizenship and equality under the law, demanding access to government jobs and benefits, just distribution of land, and equal redistribution of oil and gas proceeds, which were mainly extracted from southern soil. They also demanded greater local autonomy and enforcement of the rule of law.

The security forces responded to the peaceful protests with increasingly extreme measures, from arbitrary arrests and unlawful detentions, to the use of rubber bullets and even live ammunition that injured and killed unarmed protesters. The authorities justified their harsh response by accusing Al-Hiraak of links with Al-Qaeda and of harbouring armed elements. Both allegations have been repeatedly denied by Al-Hiraak.

At several instances, the government attempted to initiate a dialogue with the protesters, seemingly prepared to respond to some grievances. This was generally considered as 'too little, too late'. Al-Hiraak saw it as an attempt at co-optation, not a genuine effort to address real or perceived economic and political marginalisation. Al-Hiraak also joined the large-scale uprisings in 2011. Certain groups within the movement not only want a regime-change, but also demand an actual secession.¹⁷⁷

3.3 Spread of Arms

It is widely held that Yemen is among the most heavily armed societies in the world. Estimates of the number of small arms and light weapons in circulation vary from around 10 million to claims of a staggering 50-60 million weapons (for a population of only 23 million). Rashad al-Alimi, the deputy prime minister for security and defence affairs, and former Minister of Interior, reportedly identified arms proliferation as "one of four security challenges facing Yemen", the others being terrorist threats, border protection, and "weak loyalty to the state".¹⁷⁸

¹⁷⁶ The ICG thoughtfully notes, "The conflict [of 1994] was between elites rather than a war between two peoples. Prior to and during the fighting, civil society activists in both North and South mobilised against the war." ICG, *Breaking Point?* (2011), at p. 3.

¹⁷⁷ *Idem*, pp. 6-7.

¹⁷⁸ YAVA, *Small Arms Issue Brief* (2010), p. 6 and note 64.

Law 40/1992 regulates ownership, carrying and trade of firearms, ammunition, and explosives. Article 9 establishes the right to own firearms ("rifles, machine guns, revolvers, and hunting rifles") for the purpose of "legitimate defence". It does not specify a maximum of arms per person. Carrying arms in cities is only allowed with a valid licence (Art. 10). Licence holders, who must be at least 18 years old, (Art. 21) are only permitted to carry one licensed weapon at a time (Art. 14). The law has detailed list of current and former high-ranking officials from civil and military ranks who are exempt from the requirement to have a licence in order to carry firearms (Art. 22). *Law 40/1992* foresees the trade of arms being controlled through a strict licensing system (Arts. 24-37).

Republican Decree 1/1994, which is associated with *Law 40/1992*, further regulates armed escorts (i.e. personal bodyguards) through a licensing system, with a maximum of five, seven, or ten escorts permitted, depending on the seniority of the official or the importance of the person to be guarded (Arts. 21–23).

Remarkably, these official regulations do not seem to apply to rural areas, as only urban areas are mentioned in the law. In reality, ownership of arms is very widespread in rural tribal areas, especially in the northern highlands of Yemen, where it is considered an expression of 'masculine tribal identity'. The public carrying of AK-47s (kalashnikovs) is common among Yemeni males from their mid-teens, but there are also tribes who have access to sophisticated military-issue munitions, including surface-to-air missiles, and - rarely - even tanks (as for instance the Huthi-rebel groups claim).

Not considered a weapon in the legal sense is the traditional *jambiya*, a curved dagger that is worn attached to a broad, typically embroidered, belt. It is commonly part of the daily outfit of men and male youths in northern tribal areas, including San`a. These mainly serve a symbolic function, though at times they are actually used for threatening or wounding.

The application of the weapon laws is very uneven. In San`a, for example, public campaigns to prevent the carrying of weapons have been launched over the past decade, both by the government and by civil society organisations, such as the tribal NGO *Dar Al-Salaam*. There are security checkpoints on roads throughout Yemen, especially roads leading into urban areas, to prevent unlicensed weapons - other than *jambiya* - from being carried into cities. This has led to a significant reduction in the number of weapons in the capital San`a. There are multiple reasons for continued possession of arms among Yemeni males. Many respondents report the prevalent insecurity and the need for self-defence in the absence of state protection (or also, *against* state violence).

3.4 Terrorism and Counter-Terrorism

Yemen has assumed a growing significance as a base for Al-Qaeda-affiliated groups and acts of terrorism since the early 1990s. This reputation was solidified with the bombing of the USS Cole in Aden in 2000, and was strengthened by various violent acts in the following years, including the escape of 23 militants from a prison in San`a in 2006 and attacks on oil installations, tourists, and Western diplomatic targets. The various Al-Qaeda-related groups have also increasingly targeted Saudi interests.¹⁷⁹

In early 2009, Yemeni and Saudi branches of Al-Qaeda merged to form Al-Qaeda in the Arabian Peninsula (AQAP). Its membership is estimated at between 200 and 300, but this an unverifiable number. Organisational and financial relations between Al-Qaeda and two homegrown Islamist militant groups, the Islamic Jihad Movement (IJM) and the Aden-Abyan Islamic Army, remain dubious. Agents of AQAP are reported to be working to extend their influence in several Yemeni provinces, exploiting situations of poverty, economic, social and political turmoil to spread their extreme interpretation of shari`a. To this purpose, AQAP created the offshoot *Ansâr al-Sharî`a* (Partisans of Shari`a), in response to the growing youth movement in Yemen.

¹⁷⁹ On (counter-)terrorism in Yemen, see, among others, ICG Report, *Yemen: Coping with Terrorism*, (2003); Yezid Sayigh, *Fixing Broken Windows: Security Sector Reform in Palestine, Lebanon, and Yemen* (Carnegie Papers 17, October 2009); Jane Novak, "Comparative Counterinsurgency in Yemen", 14(3) *Middle East Review of International Affairs* (September 2010), pp. 12-28.

Al-Qaeda also uses Yemeni territory as a staging and recruitment area, given the presence of thousands of veterans who fought the Soviets in Afghanistan in the 1980s (the so-called 'Afghan-Arabs'), and later in Chechnya, Bosnia, Somalia, Lebanon, and Iraq.¹⁸⁰ Still, Al-Qaeda has reportedly not been able to establish large bases, or act as a coherent and centrally-led player. Attacks on foreign and Yemeni targets have been conducted by diverse actors driven by disparate goals. Overall, it has been impossible to determine whether attacks are politically, personally, or financially motivated.

In a pioneering format, the GoY initially attempted to re-integrate Yemeni jihadists – the majority of whom had been detained in Guantanamo Bay following 9/11 – in a jihadist rehabilitation programme. It was carried out by the 'Committee for Religious Dialogue', headed by a prominent Yemeni judge and religious scholar, Qadi Hamoud al-Hitar, who later became the Minister of Religious Endowments. The goal was to draw jailed militants away from violence by engaging them in what Al-Hitar called "theological duels" – an exchange of views on fundamental Islamic principles between senior Yemeni judges and detained jihadists. These 'duels' were intended to demonstrate that violence in the name of religion is not permissible. Despite initially favourable interest and support from the international community, the lack of political will and funding, and probably an unsuited methodology, eventually led to the programme being abandoned in 2005.¹⁸¹

At the time of writing, the latest international attack claimed by AQAP was the notorious 'underwear bombing' attempt on Christmas Day 2009 in a civilian airplane to Detroit. On April 2010, President Obama approved the targeted killing of the American-born Yemeni cleric Anwar al-`Awlaqi, on the accusation of being a top-commander of, and a charismatic recruiter for AQAP.¹⁸² He was killed by an American drone attack in Yemen on 30 September 2011.

The Yemeni reality is obviously very complex. Several analysts have argued that a narrow focus on terrorism by the international community, and on combating terrorism almost exclusively through military means, obscures and leaves unaddressed the domestic roots of the many problems that confront Yemen. For example, a 2009 report stated:

"[p]ursuing counterterrorism in the absence of the rule of law perpetuates the undemocratic governance of the security sector and undermines state building and post-conflict reconstruction."¹⁸³

Poverty, illiteracy, unequal access to jobs, poor service delivery, porous borders, uneven distribution of scarce (natural) resources, weak political institutions, all have been named as factors leading to radicalisation of Yemeni youth.¹⁸⁴

A second risk of a narrow counter-terrorism approach is that the Yemeni government, like other states, could use the cover of anti-terrorism efforts to pursue its own political objectives, and bend rule of law principles in ways that incite broader anti-government sentiments. For example, some donor representatives believe that former President Saleh used the counter-terrorism agenda to reinforce regime protection and suppress dissidents, especially from the southern movement and the Huthi rebels. Saleh's seemingly uncritical cooperation with the US also nursed Yemeni nationalism, anti-American sentiment, and Islamist militancy among Yemenis.

¹⁸⁰ An estimated 27,000 Yemenis travelled to wage jihad against Soviet forces in the 1980s after which some 29,000 so-called 'Afghan-Arabs' (not just Yemenis) returned to Yemen. See also Barak Barfi, *Yemen on the Brink? The Resurgence of Al-Qaeda in Yemen*, New America Foundation Counterterrorism Strategy Initiative Policy Paper (2010).

¹⁸¹ See Kevin Peraino, "The Reeducation of Abu Jandal", *The Daily Beast* (28 May 2009), at <http://www.thedailybeast.com/newsweek/2009/05/28/the-reeducation-of-abu-jandal.html>; and a video-report by Al-Jazeera on 22 November 2009, at http://www.youtube.com/watch?v=q9VfK_rwraQ.

¹⁸² He was said to also be the creator of Al-Qaeda's jihadist glossy *Inspire*.

¹⁸³ Yezid Sayigh, *Fixing Broken Windows: Security Sector Reform in Palestine, Lebanon, and Yemen* (Carnegie Papers 17, October 2009), title page.

¹⁸⁴ ICG Report, *Yemen: Coping with Terrorism* (2003).

The counter-terrorism focus also slows down efforts to reform the Yemeni criminal justice system, which suffers from inefficiencies, a lack of professionalism, corruption, and a lack of authority to enforce judicial rulings.

3.5 Border Security

Yemen's long sea coast and porous land borders, in addition to the government's limited capacity, contribute to a related set of problems: trafficking, irregular immigration, cash and arms smuggling, movement of terrorists, unsafe and insecure navigation, and maritime crimes such as polluting, illegal fishing, and piracy. Fugitive Islamist militants from throughout the Gulf region, especially Saudi Arabia, Afghanistan, and Iraq, regularly cross the still porous border between Saudi-Arabia and Yemen, despite a long-negotiated border-agreement and ever increasing border security measures.¹⁸⁵

The Friends of Yemen report notes that the Yemeni Ministry of Interior (MoI) has issued legislation on human smuggling, immigration, and illegal transfers of money (*Anti Money Laundering Law, Monopoly & Fraud Prevention Law*).¹⁸⁶ This has contributed to a decrease in the aforementioned crimes. The MoI has also established a special department for refugees in the Immigration and Passport Authority. Further attention should be given to raising the effectiveness of the coast guard and the border police and to finding better strategies for border and coastal security.

3.6 Blood Feuds

Tribal society in Yemen, as explained above, defines itself by notions of collective responsibility and collective action. This collectiveness is expressed by a strong role for honour, which is important to understand the phenomenon of blood feuds (*tha'ir*).

Blood feuds can emanate from simple disputes over land, a stolen mule, or marital problems. If the perpetrator has not made amends, or been killed in retaliation (*qisâs*), another (male) member of the family or tribe may be attacked in revenge. Then, a counter-revenge becomes compulsory on grounds of 'loss of face' ('face' is synonym with 'honour'), and so forth. Such feuds can even go on for decades, paralyzing whole communities, hindering access to schools, health centres and markets, and causing many casualties, including women and children.

The reasons for the persistence of blood feuds in Yemen are complex and diverse. One cannot simply state that it is a failure of the tribal system, nor an inherent part of tribal traditions, nor the result of a 'warfare-predisposition' of tribes. Poverty and competition over scarce resources play a strong role in the perpetuation of these feuds. Other factors are an apparent failure of both customary and formal mechanisms to provide quick and effective justice when disputes arise. Feuds could also be incited by (politically-motivated) state interventions to influence tribal policies and to assert control over local resources.

The easy availability of arms in Yemen fuels the continuance of blood feuds. As mentioned earlier, the *Law on Possession and Carrying of Firearms* (40/1992) only applies to San`a city and other governorates' cities, but not to the tribal and other rural areas that represent 75% of the country. Despite the legislative focus on control of arms in the cities, the law is not always strictly enforced there. Even the traditionally highly-esteemed tribal protection of San`a (*hijra*) is rarely still respected, bringing blood feuds into the hub of state power.

¹⁸⁵ Peter Wennerholm, Erik Brattberg and Mark Rhinard, *The EU as a Counter-Terrorism Actor Abroad: Finding Opportunities, Overcoming Constraints* (EPC Issue Paper No. 60, September 2010).

¹⁸⁶ For the texts of some of these laws and details on related institutions, see "Yemen Exposed" at <http://www.scribd.com/collections/3353336/Yemen-Laws-Institutions>.

The *Yemeni Criminal Code* (1994) does not treat blood revenge itself as a crime, meaning that a killing that is part of a tribal blood feud will be tried in court as a simple murder. A jail sentence plus a fixed (lower) amount of blood money would then be the formal legal measure. However, such a 'dishonourable' sentence is unlikely to actually stop the blood feud. In tribal terms, a court sentence does not purify the violated honour, as it does not involve pure reciprocity, nor can the (unknown) judge suffice as a guarantor of enforcement.

An interesting phenomenon directly related to blood revenge is the use of state prisons by tribal leaders, either as punishment for their tribesmen after a tribal settlement, or sometimes to actually protect tribesmen from an act of retaliation. This practice is clearly at odds with the prison regulations, and thus, several affluent tribal shaykhs instead secretly run private prisons. These private prisons have reportedly become places where human rights abuses go unnoticed.

3.7 Land and Water Disputes

Blood feuds mostly relate to what *YAVA Issue Brief* (2010) classifies as 'social violence' over land and water. According to estimates by the government, violence accompanying land and water disputes results in the deaths of some 4,000 people each year, which is "probably more than the secessionist violence in the south, the armed rebellion in the north, and Yemeni Al-Qaeda terrorism combined."¹⁸⁷

This startling number of disputes relating to land, in combination with a failing land registration system, leads to lost revenue for the government and undermines the security, predictability and certainty of commercial transactions, the pillars of a functioning economy. Land and water provide a basic livelihood for a majority of Yemenis. However, only a very small percentage of Yemen's land is economically productive. This explains why land and water conflicts are so central to understanding Yemen's overall crisis.¹⁸⁸

Land conflicts usually occur when multiple individuals or groups make claims on a piece of land, whether through purchase, inheritance, or some other claim to ownership. Disputed land is typically private, but may also involve former or current state property, and occasionally so-called waqf property (religious endowment).¹⁸⁹ Conflicts over land can escalate quickly, not only because of the symbolic and economic significance of land, but also because of the general lack of a speedy and transparent adjudication process, a faltering land registration system, and the heavily armed nature of Yemeni society.¹⁹⁰ Competition for depleting water resources fuels violence that is closely related to land issues. Conflicts over rainwater tend to be more common during the rainy seasons (approximately April to May and August to September).

Whilst customary structures previously oversaw land ownership and transfers, their authority has weakened so much that claimants now extensively use the courts to formalise land ownership and address competing claims. Estimates of the caseload in primary courts over land and property vary from 50% (YAVA) to a staggering 80% (World Bank). It is not unusual for such cases to drag on for ten or more years. In the meantime, claimants often resort to violence to keep or attain control over the property.

¹⁸⁷ *Yemen Armed Violence Assessment (YAVA) Issue Brief 2* (October 2010), p. 2. See also *YAVA Issue Brief 1* (May 2010). This so-called 'social violence' is widely under-reported, thus the actual figures are probably far higher.

¹⁸⁸ On the political ecology of water management, see Scott Moore, "Parchedness, politics, and power: the state hydraulic in Yemen", 18 *Journal of Political Ecology* (2011), pp. 38-50, available at http://jpe.library.arizona.edu/volume_18/Moore.pdf.

¹⁸⁹ Eirik Hovden has recently completed his voluminous doctorate thesis on Zaydi waqf (in *fiqh*, law, administration, case-studies) in *Yemen: Flowers in Fiqh and Constructions of Validity: Practices and Norms in Yemeni Foundations of Forever Flowing Charity* (Bergen University, Norway).

¹⁹⁰ A detailed account of land tenure, registration, and transfer can be found in World Bank, *Yemen, Comprehensive Development Review* (2000), at <http://siteresources.worldbank.org/INTYEMEN/Overview/20150256/YE-Legal.pdf>.

A particular point may be made with regard to women's access to land. Women are often denied their inherited share of land, or they give up (willingly or unwillingly) their rights to inheritance in exchange for economic protection by their male relatives. This keeps women permanently economically dependent on men. Others, however, note that under the notion of 'tribal collectivity' this arrangement constitutes a woman's safety net. When a woman claims her rightful share of the inheritance according to statutory law (which is based on shari`a), she risks losing her 'honour' within her family and tribe, and hence her safety-net.¹⁹¹

3.8 'Yemen Spring' Revolution

In early 2011, (young) Yemenis from all backgrounds resolutely turned a page in their country's history by joining the 'Arab Spring' pro-democracy revolutions in a large-scale popular revolt against Saleh's regime.¹⁹² As explained previously, the uprisings in Yemen had a much longer background. Already in mid-2007, an epidemic of protests and demonstrations, some of them violent, had broken out across southern Yemen, in protest of a long-felt systematic discrimination against the south since 1994. Another major source of political and social tensions was Saleh's involvement in the international 'War on Terror' since 2001. A third major flashpoint arose with the escalation of the Huthi rebellion between 2004 and 2010 into six outright wars with governmental forces. Meanwhile, Sa`a's political class was locked in a two-year battle over electoral and constitutional reforms.

Events in Tunisia and Egypt, and later also Libya and Syria, inspired Yemeni youth to take to the streets and call for Saleh's ouster. The JMP, tribal leaders, and religious clerics at first mostly remained on the side-lines. However, as the protests grew in number and spread over Yemen's major cities, these groups joined the peaceful protesters, not only in solidarity with their demands, but also for their physical protection, especially when the regime's security forces started to use excessive violence (see next section).

The regime's response was harsh, initially mainly in the south. The events on 18 March 2011, when hidden, plain-clothed gunmen deliberately killed peaceful young demonstrators on Change Square in Sa`a, marked a resolute turn in the events. Overall, the crowds remained determined in their refrain from violence, but demanded judicial investigation and trial of those responsible for the attacks, including the president. The Attorney General, `Abdullah Al-`Ulufi, who had served the government for more than twelve years, followed the people's demand, and was promptly removed from his position on Saleh's order.

Historically, Saleh was able to mobilise his supporters into mass counter-demonstrations. His deep-rooted patronage-system and distribution of benefits kept many loyal to him, whether for financial motives, or based on genuine (tribal or family-based) loyalties. Yet, every week led to more defections from military leaders, tribal heads, and clerics. In the south, Al-Qaeda and affiliated militants played an active role in the growing chaos. In the north, the Huthis gradually took control of Sa`dah and Amran provinces, while in the major cities, armed opponents appeared to gain de-facto control. Despite the deaths and severe injuries, the street protesters continued to use peaceful methods.

In the midst of these multiple, intertwined confrontations, a competition for Saleh's political succession and his spoils was taking place. The main rivals were (at the time) two sons of `Abdullah Al-Ahmar (Hamid and Sa`ad), the defected General Ali Muhsin Al-Ahmar (not related), and Saleh's sons who led important military divisions, especially his son Ahmed. This rivalry allegedly led to the violent attack against Saleh and his close aides during their Friday prayer on 3 June 2011, in which Saleh was severely wounded and subsequently transported to Saudi Arabia for medical treatment.¹⁹³

¹⁹¹ Najwa Adra, exchange during a shared mission in Yemen (December 2005).

¹⁹² Among the numerous media reports and analyses on this continuing subject, one reliable reference is the ICG Report *Popular Protest in North Africa and the Middle East (II): Yemen Between Reform and Revolution* (10 March 2011), at <http://www.crisisgroup.org/en/regions/middle-east-north-africa/iraq-iran-gulf/yemen/102-popular-protest-in-north-africa-and-the-middle-east-II-yemen-between-reform-and-revolution.aspx>.

¹⁹³ It was said that Saleh was only prepared to leave Yemen after Saudi King `Abdullah had promised him on his word of (tribal) honour that he could return to Yemen whenever he wanted.

During the uprisings and successive reconciliation attempts by the GCC led by Saudi Arabia, Saleh was compelled to make a series of concessions, notably regarding his presidential term and hereditary succession. After the steady rejection of these concessions by the street demonstrators and Saleh's multiple last-moment withdrawals from the negotiations, Saleh eventually signed an agreement to transfer power on 21 February 2010. In return, Saleh successfully negotiated that he, his family, and all his aides would receive immunity from prosecution for the entire 33-year period of his regime.

This concession went against the explicit demand of the street protesters, who thereafter continued their mass demonstrations and sit-ins in the major cities. In response, the UN High Commissioner for Human Rights, Navi Pillay, stated that such an immunity agreement would violate international law, which prohibits immunity for gross human rights violations. Nevertheless, the proposed draft was approved by the Parliament, which was at the time dominated by Saleh's GPC party.

With a general apology for his errors in the past and asking for forgiveness for 'any shortcomings' in his farewell speech, President Saleh left Yemen on 22 January 2012.¹⁹⁴

¹⁹⁴ See also Iris Glosemeyer, "Yemen Without Ali Abdallah Saleh?", in Muriel Asseburg (ed.), *Protest, Revolt and Regime Change in the Arab World: Actors, Challenges, Implications and Policy Options* (SWP Research Paper 2012/RP 06, February 2012), pp. 27-30.

4. Fundamental Rights

Numerous incidents point out that Yemeni authorities have side-lined the rule of law and human rights obligations in the name of 'national security' and 'fighting terrorism'. In the previous section, it was explained how the previous government saw its political supremacy challenged by accumulating internal (and external) threats from opposing tribes, southern secessionists, Huthi rebels, Al-Qaeda terrorists, and eventually popular uprisings. Even then, international standards prescribe that such challenges cannot justify or excuse human rights violations that the previous government continually perpetrated, or at best, permitted without sanctions. In its 2010 report, Amnesty International (AI) observed that:

"The government has allowed Political Security and National Security, in particular, to act with impunity to arrest arbitrarily, detain and abusively interrogate and torture security suspects and government critics, and subject them to prolonged incommunicado detention without charge and enforced disappearance. It has set up specialized courts to try security suspects and critics whose proceedings generally fail to respect human rights and to deliver justice. The government has used sweeping press laws and now operates a specialized press court to systematically violate freedom of expression. It has failed to investigate serious allegations that its own military and security forces and those of other states have taken part in unlawful killings, including extrajudicial executions, as well as apparently indiscriminate and disproportionate attacks on civilians."¹⁹⁵

In light of the rapidly changing developments in Yemen at the time of writing, and the difficulty of obtaining verifiable first-hand data on the deteriorating human rights situation, information on human rights violations during the uprisings for this report was primarily derived from the OHCHR mission report on Yemen (summer 2011), and the Amnesty International report (2010).¹⁹⁶ Other frequently reported human rights violations in Yemen that are not particularly related to the on-going conflicts, will also be mentioned, such as equal treatment and rights of women and minorities, and children's rights.

4.1 Extrajudicial Killing and Excessive Use of Force

The six Huthi wars, and the intensifying demonstrations by the Southern Movement had evoked numerous incidents where the use of excessive force and extrajudicial killing were reported. The government often attempted to justify such operations by saying that it was targeting 'terrorist suspects'.¹⁹⁷

The Spring uprisings induced another surge of reported human rights violations and abuses throughout the country. Many of these reports covered excessive use of force by government security forces and their affiliates against the (mostly peaceful) protesters. Allegations pointed out the use of live ammunition, tear gas, batons, electronic stun guns, and spraying polluted water. In particular, the use of live ammunition caused many injuries and deaths, especially during a grave incident on Change Square on 18 March 2011. Police reportedly stood by during these events without interfering.¹⁹⁸

The OHCHR mission reported a number of extra-judicial (or 'summary') executions during the demonstrations.¹⁹⁹ In Ta'izz, security forces were accused of heavy attacks against teachers and students who were demanding higher salaries and postponement of exams.

¹⁹⁵ Amnesty International, *Yemen: Cracking Down Under Pressure* (2010), p. 83; Human Rights Watch, *In the Name of Unity: The Yemeni Government's Brutal Response to Southern Movement Protests* (15 December 2009), at <http://www.hrw.org/sites/default/files/reports/southyemen1209webwcover.pdf>.

¹⁹⁶ Human Rights Council, *Report of the High Commissioner on OHCHR's Visit to Yemen*, UN Doc. A/HRC/18/21 (13 September 2011), available at <http://www.ohchr.org/Documents/Countries/YE/YemenAssessmentMissionReport.pdf>. See also U.S. Department of State, *Human Rights Report: Yemen*, (8 April 2011), at <http://www.state.gov/g/drl/rls/hrrpt/2010/nea/154476.htm>.

¹⁹⁷ Amnesty International, *Yemen: Cracking Down Under Pressure* (2010), p. 30, 63.

¹⁹⁸ *Idem*, pp. 26-27.

¹⁹⁹ Human Rights Council, *OHCHR's Visit to Yemen* (2011), p. 9, (29).

Even though the GoY stressed that “security forces had orders from President Saleh to exert restraint, and use firearms only as a last resort”, such orders seemed to have repeatedly failed to prevent deadly responses by governmental security forces and their affiliates.²⁰⁰ It has been argued that a lack of proper training and equipment hampers the functioning of security officers in a manner consistent with Yemen’s international human rights obligations. In any event, transgressions by security forces commonly escape credible disciplinary or judicial accountability.

The security forces were not the only ones who used violence against peaceful demonstrators. Clashes also occurred between different constellations of pro- and anti-government protesters, armed tribesmen, armed Islamists, and (defected) government security forces. Yemen’s dossier also reveals that the authorities attempted to incite chaos by releasing convicts and suspected criminals, and then using them against the protestors.

Both the GoY and local and international human rights organisations claimed that Huthis also committed human rights violations during their uprisings against the Saleh regime. The government claimed in an August 2009 report that Huthi abuses included unlawful killings, rapes, sexual assaults, looting and destruction of civilian property, plundering, and destruction of public buildings. Some human rights activists claimed that Huthi fighters used human shields and killed and threatened civilians who did not support them. Independent verification of these allegations have been almost impossible because the government and Huthi rebels both blocked nearly all access to Sa`dah.²⁰¹

Against the background of these highly volatile internal developments, Amnesty International observed increased foreign military involvement in arms and ammunition, including by the USA, EU, and other states. AI notes:

“For its part, the US government has deployed the use of drones (unmanned aerial vehicles) in Yemen to kill those it describes as “high value targets”, a practice that has been increasingly criticized as involving unlawful killings. Often used in remote areas, drones are particularly suited to secret use and it is invariably difficult to investigate and assess allegations that they have been used to assassinate specific individuals or to bomb otherwise inaccessible sites where militants are suspected to be present.”²⁰²

The UN Special Rapporteur on extrajudicial, summary or arbitrary executions, Philip Alston, described the use of such weapons delivery systems as “a growing challenge to the rule of law”, and declared that the invocation by the US government - whether the CIA or US Armed Forces - of “an ever-expanding entitlement for itself to target individuals across the globe [constitutes a] strongly asserted but ill-defined licence to kill without accountability.”²⁰³

²⁰⁰ *Idem*, p. 9 (31) and 16 (71).

²⁰¹ See for instance <http://www.state.gov/documents/organization/160081.pdf>, p. 15.

²⁰² Amnesty International, *Yemen: Cracking Down Under Pressure* (2010), p. 25.

²⁰³ *Report of the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions, Study on Targeted Killings*, UN Doc. A/HRC/14/24/Add.6 (28 May 2010), at <http://www2.ohchr.org/english/bodies/hrcouncil/docs/14session/A.HRC.14.24.Add6.pdf>

4.2 Arbitrary Arrests and Detention

Hundreds of people in Yemen have been detained on security grounds in recent years.²⁰⁴ Various reports assert that these arrests were arbitrary, in that the suspects were neither presented with an arrest warrant nor apprehended while committing a criminal act. Arrests pursuant to an arrest warrant and apprehension during a criminal act are the two scenarios that constitute a lawful arrest in the Yemeni *Code of Criminal Procedure* (CCP) and the Yemeni *Constitution*.²⁰⁵ The CCP also requires that people are informed of the reasons for their arrest, and have access to a lawyer upon arrest.²⁰⁶

Civilians are commonly detained as 'security suspects' or 'government critics', and held for weeks or months - sometimes even years - by the Political Security, National Security and/or the CID, without their detention being notified to, or approved by, the judicial authorities. For such arrests, often no notice is given to relatives (so-called 'incommunicado' detentions). Others are charged with specific offences and handed over to the justice system, often to face trial before the Special Criminal Court.

In other cases, detainees are released without charge. It is also reported that relatives of suspects whom the authorities seek to arrest have been taken hostage by security officials in order to force the suspects to turn themselves in. These innocent 'substitutes' have been detained for months and even years.

While arbitrary arrests were carried out in Yemen before 9/11, the scale has increased dramatically since 9/11. Many arbitrary arrests occurred during the Sa`dah conflicts and the southern movement protests, and those who were prosecuted - including human rights activists and journalists - have mostly been charged with state security offences, offences related to endangering the public, or endangering territorial unity (Arts. 121-136 and 137-146 *Criminal Code*).²⁰⁷ Arrested 'Al-Qaeda suspects' also face charges such as participating in "an armed gang" and "lighting a fire or causing explosion [...] likely to expose people's lives or property to danger" (Arts. 212-219).²⁰⁸

Multiple sources, including victims' relatives, reported hundreds of cases of unlawful detention and disappearances during the uprisings. Many cases are a continuation of the previously-mentioned unlawful practices, including the operation of private detention facilities by armed opponents, which continues to affect people throughout Yemen.²⁰⁹

4.3 Torture and Other Forms of Ill-Treatment

Torture is prohibited by the Yemeni *Constitution* (Art. 48 sub b and e). Yet, various security bodies, and those who operate private (unlawful) detention facilities, frequently use torture and cruel, inhuman or degrading treatment against civilians.²¹⁰ An argument often heard is that the lack of technical means (forensics), or awareness of other means of gathering evidence, makes torture appear to be the only instrument to extract confessions, which are then used as evidence for the suspects' prosecution.

²⁰⁴ Amnesty International, *Yemen: Cracking Down Under Pressure* (2010), p. 12.

²⁰⁵ Art. 172 of the *Code of Criminal Procedures* (CCP) and Art. 47(b) of the *Constitution*.

Art. 9(1) of the ICCPR states: "Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law."

²⁰⁶ Art. 73 CCP. The CCP further states that within 24 hours of being detained, a detainee must be brought before a judge or prosecutor, who can extend the detention for seven days or order their release (Art. 76). A court order is required to prolong the detention, which must be periodically reviewed by a judge or court, up to a total of six months, after which the detainee must be released if not charged (Art. 48(c) of the *Constitution* and Arts. 189-191 CCP). Detainees can refuse to respond to questioning in the absence of a lawyer (Article 48(b) of the *Constitution*).

²⁰⁷ Hundreds of suspected Huthi fighters or supporters, it appears, were held in the main prisons in Sa`dah and San`a, and in other detention centres. Some disappeared for weeks or months after capture or arrest. Many were said to have been tortured or otherwise ill-treated. Amnesty International, *Annual Report 2011: Yemen*, at <http://www.amnesty.org/en/region/yemen/report-2011>.

²⁰⁸ Amnesty International, *Yemen: Cracking Down Under Pressure* (2010), p. 14.

²⁰⁹ Human Rights Council, *OHCHR's Visit to Yemen* (2011), p. 10 (33-35)

²¹⁰ *Idem*, p. 10 (37).

When detainees are handed over to the prosecuting authorities, the authorities are obliged to examine and assess the evidence that has been compiled, and to decide whether to bring formal charges against the detainee. In practice, detainees say that prosecutors only record complaints of torture and other ill treatment, but do not investigate the complaints.²¹¹

Acts of torture also appear to have been committed by opposition supporters in the recent demonstrations. An example was a young poet whose tongue was cut out by anti-government supporters in May 2011, for having praised President Saleh. Similar accounts report that some clerics or members of minority groups who spoke in favour of the former president faced harassment, threats, assaults, and/or damage to their property.²¹²

4.4 Unfair Trials

It is reported that the recently-created special courts in particular do not systematically follow lawfully-prescribed procedures, which amounts to an unfair trial as defined by international standards.²¹³ For example, a court should investigate a defendant's claim that a confession made during pre-trial detention was false, because it was extracted under torture or duress. A number of defendants have reportedly been convicted by the Special Criminal Court (SCC) solely or largely on the basis of such contested confessions.

Although the death penalty is not explicitly forbidden by international law and allowed by Yemeni law, in some cases the death penalty has been imposed after an unfair trial, which constitutes a violation of the right to life.²¹⁴ In other reported cases before the SCC, and also before the Special Press and Publication Court, detainees complained that prosecutors failed to investigate their allegations of torture and ill-treatment, withheld essential documents from the case-files, prevented them from accessing their lawyers, and claimed that the court held closed sessions when the law prescribed open sessions.²¹⁵

Many victims of serious human rights violations committed during the Spring revolution complained that they had no recourse for fair justice. In many cases, victims, family members, and their lawyers also indicated that they distrusted the country's judicial institutions so deeply, that they altogether avoided filing complaints, or co-operating with investigations.²¹⁶ Overall, multiple reports seem to confirm the already noted lack of independence and professionalism of the Yemeni judiciary, and the non-compliance with judicial and prosecutorial rulings.

Court rulings against security forces are especially frequently ignored. Internal disciplinary actions taken against Central Security Forces personnel over the last seven years seem to address mostly minor offences rather than major violations like arbitrary detention, torture, and excessive use of force. Information on internal disciplinary procedures by the offices of National Security and Political Security seem to be non-existent or classified.

4.5 Cruel Punishments, Death Penalty, and Amnesty

The *Constitution of 1991*, issued shortly after the unification, declared that the use of cruel or degrading forms of punishment was forbidden, and that no laws permitting such acts may be enacted (Art. 33). The civil war in 1994 led to the abolition of this constitutional provision, and thereafter, the newly-issued *Criminal Code of 1994* allowed for execution by stoning, amputation of body parts, and crucifixion as punishment methods for the so-called *hudûd* or Quranic crimes (Art. 38 CC).

²¹¹ Amnesty International, *Yemen: Cracking Down Under Pressure* (2010), p. 17.

²¹² Human Rights Council, *OHCHR's Visit to Yemen* (2011), p. 10 (38).

²¹³ E.g. Article 14 ICCPR.

²¹⁴ Article 5 *Universal Declaration of Human Rights*; Amnesty International, *Yemen: Cracking Down Under Pressure* (2010), pp. 19-20.

²¹⁵ Amnesty International, *Yemen: Cracking Down Under Pressure* (2010), pp. 17-22.

²¹⁶ Human Rights Council, *OHCHR's Visit to Yemen* (2011), p. 10 (39).

For many years, however, Yemeni judges exercised extreme restraint with these punishments, and classified otherwise-eligible cases as other types of offences involving non-corporal, discretionary punishment. However, in 2006 and 2007 several cases were reported in which women were convicted of adultery and sentenced to death by stoning.²¹⁷ Similar cases in subsequent years were apparently successfully appealed. Still, other highly contested legal amendments (e.g. on lowering the marriage age, and the 'house of obedience', *bayt al-tâ`a*) suggest a growing tension between moderate and more extremist Islamic currents in Yemen.²¹⁸

The death penalty in Yemen is imposed for various offences, mostly after conviction of homicide. According to the *Criminal Code* (based on shari`a), the victim's relatives have the right of *qisâs* (retaliation), which means that they - and not the state - exclusively hold the right to halt the execution and demand *dîya* (blood money) instead. It is not unusual that such a pardon is given at the very last moment, just before the execution. The law prescribes that executions are to be carried out by shooting at close range.

Under Yemeni law, the President, as head of state, may pardon or grant amnesty to convicts in cases where the Minister of Justice has proposed to reverse all or part of a sentence (Art. 539 *Criminal Procedure Code*). Under Article 48 CC, the President may delay or annul a *hadd* (Qur'anic) punishment, but may not interfere in cases affecting the rights of other people, such as *qisâs*. Article 123 of the *Constitution* states that no death sentence may be carried out without the President's ratification.

While Amnesty International reported that many of those sentenced to death have not received fair trials, the organisation also observed that until recently, defendants convicted of security-related offences were rarely sentenced to death. This even included people accused of having links to Al-Qaeda or the Huthis, or who allegedly had engaged in offences such as participation in an armed gang with lethal consequences. Moreover, such death sentences were generally reversed by the appeal court, or overruled by presidential amnesty.²¹⁹

President Saleh often used his prerogative to repeal death sentences and grant amnesty. Although this could be a potentially positive intervention, Saleh often used it for political purposes and somewhat arbitrarily, rather than based on clear and transparent criteria. This may explain why during the last two years of countrywide unrest there was a significant increase in the number of death sentences in Yemen.

4.6 Freedom of Expression and Opinion

Compared to neighbouring countries in the Middle East and North Africa (MENA) region, Yemen used to have a relatively free media environment until the 1990s.²²⁰ Apart from the usual state-controlled media outlets and the strict prescription of official licences for all media, a large number of independent and/or party-affiliated newspapers and magazines were allowed, expressing a wide spectrum of opinions. Between 1990 and 1994, just after unification, Yemen even experienced a few years of 'media euphoria', when the new government conducted a policy of non-censorship and allowed the spread of many different political, social, and economic opinions.

²¹⁷ Manea, "Yemen", in Kelly and Breslin (eds.), *Women's Rights* (Freedom House, 2010), p. 11.

²¹⁸ Würth, "Mobilizing Islam and Custom" (2005).

²¹⁹ Amnesty International, *Yemen: Cracking Down Under Pressure* (2010), p. 22. Amnesty International does not give an explanation for this. Perhaps it is for the same pragmatic and political motivations by Saleh (and the courts?) as the opposite trend that followed.

²²⁰ Amnesty International, *Yemen: Cracking Down Under Pressure* (2010), p. 73ff; Patrice Chevalier, *The Yemeni Law and How To Use It Against Journalists* (16 Feb 2009), (accessed 15 January 2011), at http://hal.archives-ouvertes.fr/docs/00/36/17/00/PDF/Chevalier_The_Yemeni_Law_and_How_to_Use_it_Against_Journ_.pdf (accessed 23 May 2012).

However, the civil war of 1994 marked a turning point. During the fighting, several southern newspaper agencies were bombed and then later shut down due to their alleged support for secessionists. Saleh's regime quickly put in place several 'unofficial red lines' of censorship, including press statements discussing corruption, nepotism, illegitimate wealth-acquisition, and criticism of friendly states such as Saudi Arabia.²²¹

Another major turning point were the 9/11 attacks in the USA in 2001. When President Saleh decided to join the 'War on Terror', journalists criticising his pro-US policy were silenced under the pretext of 'endangering national security interests'. Similar allegations were used against journalists and human rights defenders reporting on the Huthi wars and the southern protest movement. Measures against them included harassment campaigns, attacks, (arbitrary) detention, and prosecution, closing down newspapers, filtering or suspending news websites, raiding of offices and confiscation of computer equipment, and so forth. Reporters without Borders ranked Yemen in the early 2000s in the bottom 20 percent of the annual index of press freedom in the world. In 2009, Yemen fell to the lowest 5 percent.

The Spring uprisings have intensified the battle for freedom of speech. Many journalists of state-run media saw their contracts terminated after participating in anti-government protests. Foreign correspondents (like Al-Jazeera) were also targeted. Apart from journalists, students and teachers, human rights defenders, lawyers, and civil society activists faced sanctions, threats, harassment, raiding and looting of their homes, or expulsion for expressing anti-government views.

The authorities began to bolster their repressive practices by introducing increasingly restrictive laws. Under the general constitutional guarantee of freedom of expression (Art. 42), the first *Press and Publication Law* (25/1990, hereafter *Press Law*) imposed relatively mild restrictions and penalties, for acts such as for criticising the President, defamation, intentional publication of false data, or incitement to use violence. However, the *Press Law* nevertheless left open the possibility to prosecute journalists under the *Criminal Code*.²²²

The *Criminal Code* deals with "crimes of publicity and publications" (*jarâ'im al-`alanîya wa-l-nashr*) in Articles 192-202. It includes restrictions that are broader than those in the *Press Law*. For example, Article 197 criminalises "anyone who publicly insults the President by anything that offends him or undermines his personal status in society", or "anyone who publicly insults the Presidency or Council of Ministers or others from the prosecutorial or public institutions, the army or the courts, or the public authorities or agencies".

A new *Press Law* was enacted in 2005. While retaining the prohibitions of the former law, it additionally bans the publication of materials about "any activity considered a crime by law". It further mandates that journalists reveal their sources in certain circumstances, and significantly raises start-up costs for newspapers and websites.

A draft law on the *Organisation of Private Audiovisual Media and Electronic Media Law* (*Audiovisual Media Law*) was announced on 10 March 2010. It allows private broadcasters and websites to operate, but also provides the government with legal tools to maintain a grip on them. The draft *Audiovisual Media Law* subjects employees of radio and television companies and of websites to the *Press Law*, thus imposing broad restrictions on freedom of expression.

The Minister of Justice in April 2010 introduced draft amendments to the *Criminal Code*, stating that the aim was to criminalise and punish "breaches of fixed national values, incitement to violence, unrest, destruction, and disrespect for religions, Prophets, and other crimes".²²³ He argued that harsher punishments "would form an element of deterrence and consequently prevent commission of crimes".²²⁴

²²¹ Chevalier, *The Yemeni Law and How To Use It Against Journalists* (2009), pp. 2-3.

²²² Amnesty International, *Yemen: Cracking Down Under Pressure* (2010), pp. 76-80.

²²³ The use of the word 'Prophets' in plural form is from the original quotation.

²²⁴ Amnesty International, *Yemen: Cracking Down Under Pressure* (2010), pp. 78-79.

Yemeni civil society organisations en masse criticised these laws. While the GoY maintained that the harsher provisions were needed to confront the serious security challenges it was facing, these draft laws are not consistent with international standards. An important critique is that the laws employ vague and ambivalent legal formulations such as “constructive criticism”, “in the interest of national security”, or “breaches of fixed national values”, placing critics in a very difficult position when defending themselves in court. Problems for the media further increased, as said, with the establishment in May 2009 of the Special Press and Publications Court (see above).

It has been noted earlier that although the *Constitution* stipulates that the state shall guarantee freedom of thought and expression of opinion in speech, it does not specifically mention freedom of religion or belief as a basic right of Yemeni citizens. While Christian immigrants and the Yemeni Jewish communities are allowed by law to practice their religion publicly, the *Criminal Code* classifies intentional conversion from Islam to another religion as apostasy, a *hadd* crime for which the death-penalty is prescribed (Art. 259). In 2008, nine Christian converts and a number of Baha’is were arrested for proselytising Muslims, which is punishable as apostasy.²²⁵ Notably, twenty years earlier in a striking case in the 1980s, an academic scholar was accused and convicted of apostasy. However, he was eventually acquitted by the Supreme Court.²²⁶

²²⁵ Kate Washington, *State of the World’s Minorities and Indigenous Peoples 2009: Middle East* (Minority Rights Group International), p. 213.

²²⁶ Chibli Mallat, “Three Recent Decisions of the Yemeni Supreme Court”, 2(1) *Islamic Law and Society* (1995), pp. 71-91.

5. Citizens or Subjects?

5.1 Minorities

Religious and ethnic minorities in Yemen have generally enjoyed reasonable levels of protection by the state.²²⁷ Yemen's smallest minority are the Jews, who remained after the majority immigrated to Israel. They consist of a few tiny communities comprising little more than 300 members altogether in the Sa`dah and Amran governorates. Until the recent past, they have generally been well integrated with the population, have enjoyed government protection, and have been regarded positively by the public and in the media. However, as a consequence of the Huthi wars, they were subjected to a series of threats, destruction of their homes, and even killings by extremist Huthis. When the government relocated them to San`a for their protection, their absence from their homes resulted in the loss of their property in Sa`dah.

The *muhâ mashîn* (the 'disenfranchised'), also known as *akhdâm* ('servants') are probably Yemen's largest ethnic minority, making up around 2 to 5 percent of Yemen's population. Commonly believed to be descendants from Ethiopian soldiers who came to Yemen in pre-Islamic times, they live in the absolute margins of Yemeni society. Although they are theoretically equal before the law, in practice they generally face severe social, economic, and political discrimination, such as being barred from education, professional jobs, and state services. Most end up as street cleaners without legal benefits or protection. They often endure verbal harassment and attacks on their property and person, yet the police frequently fail to take action on their behalf. During the recent uprisings, members of the *muhâ mashîn* community in Ta`izz were threatened with destruction of their homes and businesses if they did not participate in demonstrations.²²⁸

A little-known linguistic minority of about 45,000 people lives on the Yemeni island of Socotra. Local families are concerned that their children are losing their distinct identity and language because many teachers at their schools are Saudi Arabian Wahhabis, who do not speak the local language and do not understand, nor are likely to encourage, the local customs.²²⁹

5.2 Refugees and Internally Displaced Persons

Despite enduring poverty and other internal troubles, the GoY for decades conducted a generous policy of hosting refugees from Somalia, who were granted refugee status. However, non-Somali refugees were treated as irregular migrants, merely based on their nationality, not on the persecution they faced 'at home'. Yemen does not have a law on refugees and asylum, but has obligations under the *Refugee Convention*.²³⁰

The 2011 uprisings have also changed the situation for refugees. In July 2011, reports indicated that more than 4,000 long-settled refugees from the Horn of Africa were displaced following confrontations in San`a, Ta`izz, Abyan, and Lahj.²³¹ These refugees, many no longer able to support themselves, were later taken in by a UNHCR-operated camp.

²²⁷ Washington, *State of the World's Minorities* (2009).

²²⁸ Human Rights Council, *OHCHR's Visit to Yemen* (2011), p. 14 (61).

²²⁹ Washington, *State of the World's Minorities* (2009), p. 213.

²³⁰ Human Rights Watch, *Hostile Shores: Abuse and Refoulement of Asylum Seekers and Refugees in Yemen* (20 December 2009), p. 7, at <http://www.hrw.org/en/reports/2009/12/21/hostile-shores-0>.

²³¹ Human Rights Council, *OHCHR's Visit to Yemen* (2011), p. 15 (63).

According to recent estimates, there are about 500,000 Internally Displaced Persons (IDPs) in Yemen.²³² More than 350,000 people are refugees from Sa`dah, who during the recurring Huthi wars had to flee their homes repeatedly. Only a fraction found refuge in special camps. The scale of the destruction and unexploded munitions and landmines obstructed the early return of the displaced families. In 2010, the authorities announced that compensation would be paid to families affected by the destruction. This was just before a peace deal was signed in Qatar in August 2010 between the Government and the Huthis.

The OHCHR and UNHCR report that since May 2011 on a daily basis hundreds of IDPs arrive in Aden. Approximately 9,500 persons have been displaced in Arhab (south Yemen), some now even residing in caves. Fighting between government troops and militants in the south have led to the forced displacement of more than 150,000 people, a number that is growing every week.²³³ Violent clashes in the capital San`a reportedly displaced around 9,000 persons. Many IDPs, including women and children, tell observers that army, air force and naval units are attacking them during their flight.²³⁴

5.3 Women

The status and position of Yemeni women is primarily defined by patriarchal structures, tribal traditions, local cultural attitudes, and Islamic conservatism (or even stricter forms of Islam).²³⁵ All these 'informal' or non-state norms and values are overlapping and intertwined, and also greatly determine a woman's legal status in the statutory laws, most notably in the personal status and family law and criminal law, which are largely derived from classical shari`a. This is not to say that shari`a-based laws per definition deprive women of equal rights. In the former southern PDRY, women enjoyed significantly more legal equality in family affairs, as the laws in that period had adopted a more 'contemporary' (at that time: socialist) interpretation of shari`a.²³⁶

Within these prevailing traditional structures, a Yemeni woman has very limited participation or individual freedom in the family and society, as she is strictly subjected to various forms of guardianship (*wilâya*) by her male relatives. This system of guardianship deeply affects most life matters, such as her physical mobility, choice in marriage, access to education, jobs, and healthcare, interactions with 'strangers' (such as police, judges, doctors), physical integrity (early marriage, domestic violence, FGM), economic independence, possibility to attain decision-making positions, and so forth.

A Freedom House study notes that the past five years have been marked by both positive and negative developments for women's status in Yemen.²³⁷ On the positive side, Yemeni NGOs and activists have been vigorously advocating for gender equality, fostering awareness of gender-based violence, and demanding more gender equality under Yemen law, especially family law. Some educational and executive institutions have allowed women to enrol in their ranks for the first time. In 2007, the High Judicial Institute began admitted their first female candidate-judges. Whereas the ruling party GPC refrained from supporting female candidates during the 2006 local elections, the Islamist Islah Party made internal changes that led to the election of women to its higher decision-making bodies for the first time. Tawakkol Karman, for instance, the first Arab Nobel Peace Prize laureate, is an active member of the Islah Party, while at the same time director of the NGO Women Reporters Without Chains.

²³² Edward Leposky, "Tens of Thousands Flee Tribal Clashes in Yemen in Past Three Months", *UNHCR News Stories* (9 March 2012), at <http://www.unhcr.org/4f59e0ca9.html> (accessed 25 April 2012); Cf. UNHCR's country operations profile: Yemen, listing 310,000 IDPs in January 2012, at <http://www.unhcr.org/pages/49e486ba6.html>.

²³³ *Idem*.

²³⁴ Human Rights Council, *OHCHR's Visit to Yemen* (2011), p. 15 (62).

²³⁵ This section has drawn especially from Elham Manea, "Yemen", in Sanja Kelly and Julia Breslin (eds.), *Women's Rights in the Middle East and North Africa* (New York, NY: Freedom House, 2010) at http://old.freedomhouse.org/uploads/special_report/section/268.pdf.

²³⁶ Susanne Dahlgren, *Contesting Realities: The Public Sphere and Morality in Southern Yemen*, (Syracuse University Press, 2011).

²³⁷ Manea, "Yemen" (Freedom House, 2010), p. 2ff.

On the negative side, the 1990 unification - and especially the civil war in 1994 - marked a clear shift toward more conservative, 'patriarchal' provisions in the Yemeni *Constitution* and family laws, primarily under the influence of the Islah Party and their tribal allies, but also due to rising Salafism and the still influential conservative religious scholars. Women's rights activists have, not only been targeted by security forces over the past decades, but also by religious clerics through mosques and by a number of media outlets, often by means of slander campaigns, with a view to silencing women's voices.²³⁸

5.3.1 Legal Status

Whereas the unification *Constitution of 1990* declared shari`a as "the principal source of legislation", the *1994 Constitution* was amended to denote shari`a as "the source of all legislation" (Art. 3, italics mine). All other Yemeni laws have since been interpreted by the legislator and the judiciary in light of this provision, whilst following the dominant (mostly ultra-conservative) interpretation of shari`a. As noted before, this affects especially personal status and family law matters (marriage, divorce, inheritance) and criminal law (blood-money, rape, adultery), but also citizenship law, evidence law, labour law, and other areas. In most, if not all, cases, the provisions effectively legalise gender inequality.

Some provisions in the *1994 Constitution* seem contradictory. Article 41 declares that citizens are all equal in rights and duties; however, Article 31 declares that "[w]omen are the sisters of men. They have rights and duties, which are guaranteed and assigned by shari`a and stipulated by law." In the traditional Yemeni context, as said, being "sisters of men" indicates a status where women are under guardianship of their male relatives. This stands in clear contrast with the *Constitution of 1990* which guaranteed equal treatment to "all citizens who are equal in rights and duties, and no discrimination shall be practised due to sex, colour, racial origin, language, occupation, social status, or religious beliefs" (Art. 27).²³⁹

The PDRY's treaty obligations were transferred to the unified Republic of Yemen in 1990. However, the CEDAW convention, among others, has not yet been fully implemented and incorporated into the legislative and institutional framework. Below are some of the explicit provisions in Yemeni law that differentiate between men and women:

Law of Evidence (21/1992)

Article 45 of the *Law of Evidence* states that a woman's testimony is not accepted in cases of adultery and retribution, nor in cases that could involve corporal punishment. This article further explicates that a woman's testimony is given half the weight of a man's in financial cases. Her testimony has full weight in instances where only women are involved, or when the legal act in question took place in women's segregated places (Art. 30).

Law of Nationality (6/1991) amended in 2003 (Law 24/2003) and 2008

In 2003, an amendment in the *Nationality Law of 1991* granted a Yemeni woman the right to transfer her nationality to her children if she is divorced, widowed, or abandoned by a non-Yemeni husband (Art. 10). This was a step forward compared to the previous law, although women still did not enjoy the unconditional right to pass on their nationality, as did Yemeni men. After active lobbying by several NGOs, another amendment in 2008 gave women the right to transfer her nationality to her child whenever the father is unknown or if he has no nationality.

²³⁸ Semi-official newspapers, such as Al-Dustûr, Al-Bilâd, and Akhbâr al-Yawm, have published slanderous articles about female journalists and civil society activists, which provoked traditional segments of the community against them. Victims include well-known women activists, such as Rahma Hugira and Amal Basha, director of Sisters Arab Forum. Manea, "Yemen" (Freedom House, 2010), p. 26.

²³⁹ *Idem*, p. 3.

Criminal Code (12/1994)

According to Article 42, the financial compensation owed to the family of a murdered or wrongfully killed woman (*díya*, or blood money) is half the amount owed to the family of a male victim. The same article mandates that the compensation (*arsh*) owed to a woman who has been permanently injured is one third compared to that for an injured man. Article 232 stipulates that a husband who kills his wife and her adulterous partner upon witnessing them in the act of adultery is subject to fines or up to one year in prison. This rather mild punishment also applies to killings committed by men who find a female relative in an adulterous situation.

Article 273 of the *Criminal Code* criminalises 'shameful' or 'immoral' acts, loosely defined as "any act that violates public discipline or public decency, including nudity or exposing oneself." Violations are punishable by fines of up to 1,000 Yemeni riyals or up to one year in prison. The terms 'public discipline' and 'public decency' are left to the interpretation of police officers and judges, and are usually subject to the various local customs and traditions. Consequently, several women and girls have been detained simply for being seen alone with men who are not their relatives. Women of marginalised groups, such as the akhdâm or Somali and Ethiopian refugees, are more likely to be detained or arbitrarily arrested on such grounds. This clause is also reportedly invoked to arrest female human rights activists.²⁴⁰

Personal Status Law (20/1992) amended by *Law 27/1998* and *Law 24/1999*

The *Personal Status Law* in particular contains a number of controversial provisions that differentiate between men's and women's rights in fundamental life matters such as marriage, divorce, child custody, and inheritance. The most controversial provisions have been already briefly explained above.²⁴¹

5.3.2 Physical Integrity

Though reliable data are scarce, the maternal mortality rate in Yemen is one of the highest in the MENA region (estimates range from 268 to 430 per 100,000 live births). Several factors contribute to this, including early marriage and teenage pregnancy, short birth intervals, high fertility rates (5.5 births per woman as of 2007), malnutrition, anaemia, and possibly female genital mutilation (FGM).²⁴²

FGM is mainly prevalent among the refugee communities, especially Somalis, but is also widely practiced among Yemenis living in the coastal and southern areas of the country.²⁴³ There is no evidence that it is practiced among Yemen's Zaydi and Ismaili Shi'i communities. FGM is not prohibited by law, although a ministerial decree that took effect on 9 January 2001 banned the practice in both government and private health facilities. Campaigns to eliminate the practice have since been carried out across the country. The National Council of Women together with the Ministry of Endowments and Religious Guidance provided a manual for religious leaders on women's health issues, including the negative health consequences of FGM.

²⁴⁰ Several Yemeni women NGOs, like the Sisters Arab Forum and the National Organisation for Defending Rights and Freedoms, have worked together with the National Committee on Women, a governmental body for women's affairs established in 1996, to advocate for amendments to the *Criminal Code*. One example of their advocacy concerned the matter of the unequal blood money (Art. 42). So far, however, their recommendations have not been addressed by the government.

²⁴¹ See also Würth, "Stalled Reform", *Islamic Law and Society* (2003), and Würth, "Mobilizing Islam and Custom", *Le shaykh et le procureur* (2005).

²⁴² Manea, "Yemen" (Freedom House, 2010), p. 24.

²⁴³ Manea, "Yemen" (Freedom House, 2010), p. 25: "While national figures hide regional variations, the 1997 Demographic Health Survey reported that FGM prevalence among newborn girls was as high as 97.3 percent in Hodeida, 96.6 percent in Hadramout, 96.5 percent in Al-Mahra, 82.2 percent in Aden, and 45.5 percent in the capital, San'a."

Domestic violence is not penalised in Yemeni law. Considered a major social taboo, there are little reliable data on its prevalence, and shelters for victims of domestic abuse do not (or hardly) exist. The phenomenon is compounded by the fact that 'violence' as defined by international standards, is considered among many conservative Muslims - including many women - as legitimate 'disciplining' on religious grounds.²⁴⁴ For these reasons, abused women are reluctant to turn to the police or other formal structures for help. Muslim women scholars and activist groups in Yemen and worldwide are responding more frequently with more progressive religious (and rights-based) arguments - rather than only secular legal arguments - in order to counter traditionalist Islamic interpretations.²⁴⁵

Cases related to so-called 'honour crimes' are also seldom reported. Women who are maltreated, threatened, or killed by their male relatives upon suspicion of extramarital sex are often left without any legal protection. Such incidents, it should be noted, are not justified by shari`a or the law, but based on deeply-engrained traditional convictions of 'honourable behaviour' of women. According to police officers cited in a study on 'honour crimes' in Yemen, women who turn to the police for help are typically brought back to their male relatives.²⁴⁶

The destitute conditions under which many Yemenis live, have led impoverished families to sell their young daughters to rich men from the Gulf as a source of income. The young 'brides' of these unions, referred to as 'tourist marriages' (*misyâr*) or 'temporary marriages' (*mut`a*) are sexually exploited for several months and then divorced, and left traumatised (and often with unrecognised children).²⁴⁷ Another form of sexual exploitation in Yemen is human trafficking, of which female refugees from the Horn of Africa in particular are victims.

As noted, rape, sexual abuse/exploitation, sexual harassment, human trafficking, and forced prostitution are all crimes under Yemeni law (Arts. 269ff *Criminal Code*).

5.3.3 Economic Rights

Yemeni laws allow women to own and make full and independent use of her land and property, and of her income and assets. According to the *Labor Law* (5/1995) and the *Civil Service Law* (19/1991), women have the same right as men to work and to assume public office.²⁴⁸ The laws also permit women to freely enter into business contracts and activities at all levels.

²⁴⁴ The Quranic verse mostly cited to support this argument is the multi-interpretable Surat Al-Nisa' (The Women) 4:34: "Men are the protectors and maintainers of women, because God has given the one more (strength) than the other, and because they support them from their means. Therefore the righteous women are devoutly obedient, and guard in (the husband's) absence what God would have them guard. As to those women on whose part ye fear disloyalty and ill-conduct, admonish them (first), (next) refuse to share their beds, (and last) beat them (lightly). But if they return to obedience, seek not against them means (of annoyance). For God is Most High, Great (above you all)."

²⁴⁵ For instance, the Yemeni Network for Combating Violence against Women (SHIMA) and the Higher Council for Motherhood and Childhood sensitised Yemeni lawmakers on violence-related topics in May 2009. International women's networks active in this field are WISE Global Muslim Women's Shura Council, see for instance their statement *Jihad Against Violence. Muslim Women's Struggle for Peace*, (2009), at [http://www.wisemuslimwomen.org/images/uploads/Jihad_against_Violence_Digest\(color\).pdf](http://www.wisemuslimwomen.org/images/uploads/Jihad_against_Violence_Digest(color).pdf); the global network Musawah at <http://www.musawah.org>, and in Ziba Mir-Hosseini and Zainah Anwar, "Decoding the 'DNA of Patriarchy' in Muslim Family Laws, *Open Democracy* 50.50 (21 May 2012), at <http://www.opendemocracy.net/5050/ziba-mir-hosseini-zainah-anwar/decoding-dna-of-patriarchy-in-muslim-family-laws>; and the network Women Living Under Muslim Laws, at www.wluml.org.

²⁴⁶ Yemeni NGO Sisters Arab Forum, *Crimes of Honor in Yemen* (in Arabic, 2005). See Manea, "Yemen" (Freedom House, 2010), p. 5 and note 5.

²⁴⁷ Manea, "Yemen" (Freedom House, 2010), p. 11 and note 16.

²⁴⁸ In 2007, the High Judicial Institute accepted the first female candidate-judge. In March 2009, the previously closed male domain of the Central Security Agency, which deals with matters such as ensuring the safety of property and persons, border security, and counterterrorism, announced that it would open its doors for female applicants to be trained as part of women's police units.

In recent years, the government had taken some positive steps to encourage education for girls, and to protect women from gender-based employment discrimination.²⁴⁹

Yet, in practice only few women are able to exercise these rights. According to 2010 World Bank figures, women aged 15 to 64 make up only 25 percent of the workforce.²⁵⁰ Again, this is due mostly to patriarchal social customs, which, simply put, envisage a woman's (work) place at home. Thus, in actual practice, without the consent of her guardian, a woman cannot obtain a personal identity card or passport. A personal identity card is essential to enter into the workforce and to access various state services. This practice goes against statutory laws and rights, but is not often contested by women, as they generally lack awareness of their (economic) rights. Therefore, women typically transfer the administration of their property and income to their male relatives, thereby effectively compromising their independence.

Inheritance rights of women are formally regulated by religious prescriptions (interpretations) founded on the Qur'an.²⁵¹ The *1994 Constitution* provides that "the right of inheritance is guaranteed in accordance with Islamic tenets (shari`a)" (Art. 23). Among beneficiaries who have the same degree of familial proximity to a deceased person (such as a brother and a sister), shari`a prescribes that a man is generally entitled to twice the share as a woman. The dominant religious argument for such division is that the woman is entitled to use her share for her own expenses, whereas the man is mandated to use his share for household expenditures. In practice, however, a woman typically transfers her share in real estate or land rights to her male relatives, in exchange for their economic support in the event of widowhood. Alternatively, she can make claims to movable items such as jewellery.

Such formal and informal arrangements with regard to property rights, whether by marriage or inheritance, or by own earnings, demonstrate that not only Islamic rules are in force, but that limits on the economic rights of women are moreover enforced through Yemen's patrilineal social and tribal structures. It follows that upholding agnate (male) kinship affiliations is still the social *leitmotiv* in Yemen, rather than pursuing gender equality.²⁵²

5.3.4 Political Rights

Yemeni women have enjoyed political rights to varying degrees for several decades. Women from South Yemen won the right to vote and stand for election under the *1970 Constitution*, while women from North Yemen gained these rights in the country's first local elections in 1983. In 2006, 42 percent of registered voters were women, and for the first time in Yemen's recent history, three women ran in the presidential election. Even so, since unification, women have held no more than 2 out of 301 seats in Yemen's House of Representatives. Only two women have been appointed to Yemen's Consultative (Shura) Council since its establishment in 2001. Women's representation in local councils was 0.5 percent in 2006.²⁵³

²⁴⁹ *Decree 191/2007* dictates the abolition of such discrimination, although it is restricted to Yemenis and does not improve conditions for non-citizen residents. A technical cooperation project entitled "Promoting Decent Work and Gender Equality in Yemen" (2004-2008), with funding from the Netherlands, focused on enhancing the capacities of MOSAL and other institutions in coordinating the implementation of the National Strategy on Women's Employment. It also encouraged positive perceptions of female employees among policymakers, employers, workers, media, and other stakeholders. See Manea, "Yemen" (Freedom House 2010), p. 17-18 and note 39.

²⁵⁰ <http://data.worldbank.org/indicator/SL.TLF.CACT.FE.ZS>

²⁵¹ Especially Surat Al-Nisâ' (The Women) 4:11-12, and 4:176.

²⁵² This patriarchal *leitmotiv* is - and remains - replicated in fairly all national structures and schemes (state, political, legal, economic) as well.

²⁵³ Human Rights Watch, "How Come You Allow Little Girls to Get Married?" *Child Marriage in Yemen* (December 2011), p. 10, at http://www.hrw.org/sites/default/files/reports/yemen1211ForUpload_0.pdf.

Neither the *Constitution* nor the *Election Law* (13/2001) set restrictions on women's voting and nomination rights. Still, within the ruling GPC party, women continue to face great difficulties (harassment, verbal intimidation) in obtaining full and equal party membership, and attaining leadership positions. Female members of the Islamist Islah party, in contrast, witnessed a historical transformation of the party's internal hierarchy in 2006. Women were elected for the first time to Islah's General Secretariat, the highest leadership body, and Shura Council.

In March 2009, the 5,000-member assembly of Islah unanimously voted against a Salafi fatwa (religious opinion) denying women the right to political participation in these decision-making bodies. Salafi religious shaykhs had issued a small handbook in June 2008 petitioning against quotas for women's political participation, arguing that "opening the door for women to leave their houses and mix with men will lead to sexual chaos."²⁵⁴

Women reportedly now represent about 38 percent of the General Secretariat, the top leadership body in the Islah party. Yet, despite this internal revolution, Islah still firmly rejects nominating women for parliamentary seats.²⁵⁵ All in all, the Yemeni Socialist Party (YSP) remains the only party in the opposition coalition JMP that supports female candidates.

As noted earlier, Yemeni women and women's organisations (and other NGOs, such as HOOD)²⁵⁶, have begun challenging more conservative Islamic interpretations regarding the proper role for women in society, and actively campaigning against gender-based violence practiced in the name of tradition and custom. Women have also taken active roles in demonstrations since the beginning of the uprisings in Yemen in January 2011, both as anti- as well as pro-government advocates. Tawakkol Karman became the international face of Yemeni (Arab) women's advocacy, when she received the (shared) Nobel Peace Prize of 2012 for her leadership involvement in the Yemeni uprisings.

In previous decades, Yemen had already brought forward a good number of outspoken women leaders and activists. Women's active participation in the Yemeni uprisings and their massive presence in the public domain has in itself generated a significant increase of their political and legal awareness, and awakened their potential to effect change. As in other Arab Spring countries, however, their 'coming out' has not yet translated into formal political influence, as the transitional process is still very much dominated by traditionalists, former political leaders, and military forces.²⁵⁷

5.4 Children

Yemen ratified the *Convention on the Rights of the Child* (CRC) with no reservations on 1 May 1991. The Yemeni *Constitution* provides that "[t]he state shall protect mothers and children, and shall sponsor the young" (Art. 30). Yemen's *Law on the Rights of the Child* (45/2002) criminalises child abuse and child neglect and prescribes imprisonment between one month and two years for violations. Article 6 ensures that "protection of the child and his or her interests shall take priority in all decisions and measures that are promulgated or applied by any authority involving children, mothers, the family, and the environment." Child labour and child trafficking are addressed by other laws (see hereafter).

²⁵⁴ Manea, "Yemen" (Freedom House, 2010), p. 21 and note 50.

²⁵⁵ On women's participation in Islah, see Janine Astrid Clark and Jillian Schwedler, "Who Opened the Window? Women's Activism in Islamist Parties", 35(3) *Comparative Politics* (April 2003), pp. 293-312, at <http://www.jstor.org/stable/4150178>.

²⁵⁶ This long-active NGO Defending Rights and Freedoms, headed by the determined shaykh and lawyer Mohammed Naji `Alaw, was a driving force in curbing the draft law on the 'house of obedience' (*bayt al-tâ`a*), and is known abroad for his activism regarding Yemeni detainees in Guantanamo Bay. See <http://www.hoodonline.org>.

²⁵⁷ See Sudarsan Raghavan, "For Yemeni Women, the Future Looks Uncertain", *Washington Post* (26 December 2011), at http://www.washingtonpost.com/world/middle_east/for-yemeni-women-the-future-looks-uncertain/2011/12/20/gIQAE4GtHP_story.html.

These legal instruments notwithstanding, many forms of child right abuses exist throughout Yemen, and the government seems unable to adequately address these. In the multiple conflicts that have plagued Yemen for many decades, children have faced sexual abuse, trafficking, forced labour, injuries, and killings. During the recent uprisings, it was reported that children also underwent arbitrary detention, displacement, and even torture. The following headings will highlight some of the major issues at stake.²⁵⁸

5.4.1 Child Marriage

Perhaps the most reported and indeed widespread child rights phenomenon in Yemen is child marriage. According to a survey conducted by the GoY and UNICEF in 2006, 14 percent of girls in Yemen are married before reaching age 15, and almost 52 percent are married before age 18. A 2005 study by San`a University found that, in some rural areas, girls as young as eight are married.²⁵⁹

Yemeni law currently does not prescribe a minimum age for marriage. Prior to unification in 1990, North Yemen's *Personal Status Law* set the minimum age for marriage at fifteen. In South Yemen, it previous was sixteen years of age. After unification, fifteen became the age of marriage for all of Yemen, for both girls and boys (Art. 15 *Personal Status Law of 1992*). However, in 1999, this provision was abolished altogether by a powerful group of conservative parliamentarians, arguing that setting a minimum age would lead to "the spreading of immorality", undermine "family values," and would be "contrary to shari`a" (see above).

Article 15 of the current *Personal Status Law* provides two pre-conditions before early marriage is permitted. First, that there is "an interest" in such a union. The law does not clarify what it means by this, nor does it specify whose interest should be taken into account -- that of the husband-to-be, the in-laws, or the child. The second condition prohibits sexual intercourse until the female child reaches puberty. Again, no legal definition of "puberty" is provided.

In actual practice, many cases are reported (and, likely, many go unreported) which indicate that both conditions fail to guarantee protection for the child. The case of Nujood Ali, an eight-year-old Yemeni girl who was married to a 32-year-old neighbour against her will, caused local and international outcry in 2008. After consummation of the marriage at the age of 10, the child went to court alone to demand a divorce.²⁶⁰ The ensuing public uproar in Yemen drove women's rights activists to introduce a draft law to set the minimum age for marriage at 17. Large rallies were held for and against the proposed reform. Although the parliament initially approved the draft in February 2009, opposition from Islamist factions led to a postponement of its enactment "for further deliberation".²⁶¹

The consequences of child marriage are far-reaching, yet beyond the scope of this report. Girls are removed from school, many become pregnant at a very early age, and are exposed to serious reproductive health problems. Child marriages especially contribute to the very high rate of maternal mortality in Yemen. Child marriages further exposes young girls and women to higher incidences of domestic violence and sexual abuse.

²⁵⁸ Human Rights Council, *OHCHR's Visit to Yemen* (2011), p. 12 (56-60).

²⁵⁹ Human Rights Watch, *Child Marriage in Yemen* (2011), p. 16. This would mean that 34 percent of women would marry after 18, which seems unlikely in the Yemeni context, but other verifiable data were unavailable to the author.

²⁶⁰ Nujood Ali even published a book on her story, with Delphine Minoui, *I am Nujood Ali, Age 10 and Divorced*, (New York: Three Rivers Press, 2010).

²⁶¹ Manea, "Yemen" (Freedom House, 2010), pp. 12 and 14.

5.4.2 Child Soldiers

Although Yemeni law forbids the use of underage soldiers, local and international human rights organisations (Seyaj, Save the Children) have reported that both Huthis and government-affiliated tribes - who fought alongside the army - deployed child soldiers between 2004 and 2010.²⁶² The Huthis were accused of using children as runners between groups of fighters and to carry supplies and explosives. Children were also used both sides in direct combat. According to local tribal customary practices, married boys are considered adults and, like every tribesman, expected to carry arms and defend their tribe, even if they are 12 to 15 years old. According to the NGO Small Arms Survey, direct involvement in combat kills or injures hundreds of Yemeni children annually.²⁶³

5.4.3 Child Labour

Child labour in Yemen is widespread, especially in the poorer rural areas. Most children work in Yemen's agriculture sector, most commonly in the production of qat, where they are exposed to pesticides and heavy equipment. Others work in mines, construction, auto shops, and waste dumps. In urban areas, children work in stores and workshops, as street vendors, as beggars, and in domestic services. Additionally, children are trafficked within Yemen, or to Saudi Arabia for commercial sexual exploitation.²⁶⁴

Labor Law 5/1995 defines a working child as a person younger than 15 years old, but does not specify any minimum age for employment. The maximum working hours per day for children is set at seven hours. In 2002, the government passed the *Law on the Rights of the Child*. This Law sets the minimum age for employment at 14 years, and requires that all working children have a formal contract and medical coverage, and should not work more than six hours a day. This law was amended in 2004 by *Ministerial Decree No. 56 on the Worst Forms of Child Labor*. The decree identifies 57 types of work for which persons below 18 years are ineligible. It is evident that the three laws contradict each other, and are also rarely enforced, especially in areas remote from state control.²⁶⁵

The National Steering Committee to Combat Child Labor coordinates child labour issues in Yemen. The Ministry of Social Affairs and Labour (MOSAL) has a Child Labor Unit (CLU) that conducts inspections and informs the Ministry of Interior of any violations. However, the government curtailed much funding from all ministries in order to fund its suppression of the many uprisings against it.

For all reasons mentioned, and despite several National Action Plans and legal measures to address children's issues, the challenges in this field remain enormous.

²⁶² See www.seyaj.org; www.safethechildren.org.

²⁶³ It should be noted that such findings are not conclusive, as the lack of birth certificates and other reliable records makes it extremely difficult to establish the actual age of soldiers. Also, international organisations like Amnesty International were barred from entering Sa`dah governorate to verify these data.

²⁶⁴ United States Department of Labor, *2010 Findings on the Worst Forms of Child Labor - Yemen*, (3 October 2011), available at <http://www.unhcr.org/refworld/docid/4e8c39950.html> (accessed 23 January 2012), pp. 807-808.

²⁶⁵ *Idem*, at p. 808.

Conclusions

About one year after the Yemeni uprisings, an event at Chatham House brought together a number of young Yemeni activists under the captive title, "Yemen, The Way Forward".²⁶⁶ This event captured in a nutshell the one most visible and potentially enduring positive change in Yemen's recent history, namely the awakening of an empowered youth movement.

At Yemen's Change Square, where the political revolution started (and is still being continued by many), a second, social revolution took place, often escaping foreign attention. Here, protesters found each other in a true 'national dialogue'. Men were discussing with women, Huthis with tribesmen, peasants with city dwellers, Salafis with moderate Muslims, leftists with clerics, and so forth. All topics were on the table, and new topics came up for the first time, like federalism, secularism, and other sensitive issues. Tents on the square were given specific names and functions -- for instance, "Academic Tents" gave daily seminars at 7 pm on topical issues. In another tent, a women's group gave literacy classes.²⁶⁷

As symbolic reminders of the revolution, many protesters of the first hour have rebuilt their tents with more durable materials, and remain on the square as critical watchdogs until actual reforms (military, constitutional, political, economical) will take place. Others have left the square only to design new ways to protest and initiate change, like video advocacy, monitoring the government's budget, or promoting democratic values such as tolerance and political participation. Again other groups are reshaping themselves from mass street movements into institutionalised frameworks, such as political parties, NGOs, advocacy groups, and providers of humanitarian aid. Civil society in Yemen, as a young female blogger-activist observed, is not only NGOs anymore, but also the organic groups that developed during the protests.²⁶⁸

The aftermath of the revolution has brought not only immense expectations from the people, but also an acute insight in the multiple problems facing Yemen. It was quickly realised that the demise of President Saleh did not make his system disappear with him, nor that Yemen's many other structural problems will be solved overnight.

Most Yemenis saw the signature of the GCC initiative as the only realistic solution on the table that time.²⁶⁹ This initiative launched two phases. The first stage involved the transfer of power and the reduction in violence between the different competing factions. This phase was concluded with the inauguration of `Abd Rabbuh Mansour Al-Hadi as the 'consensus President'. Al-Hadi is now to guide the country through the second phase, which focuses on restructuring the military-security apparatus, addressing transitional justice, and organising an inclusive National Dialogue Conference. This conference should lead to the installation of a committee to draft a new constitution before new elections in February 2014.

²⁶⁶ Transcript of the Chatham House event *Yemen: The Way Forward*, a Yemen forum activity at <http://www.chathamhouse.org/events/view/182304> (with video and podcast).

²⁶⁷ Atiaf Alwazir (blogger, activist, consultant in Yemen) in Chatham House, *The Way Forward*, pp. 4-5.

²⁶⁸ *Idem*; Rafat Al Akhali (Executive Director of Resonate!, Yemen), *idem*, p. 14. Sheila Carapico in her seminal study on civil society in Yemen, demonstrated that an immense variety of civil institutions and civic activism had already emerged in North and South Yemen in the second half of the 20th century. Sheila Carapico, *Civil Society in Yemen: A Political Economy of Activism in Modern Arabia* (Cambridge University Press, 1998). See also Laurent Bonnefoy and Marine Poirier, *Civil Society and Democratization in Contemporary Yemen: Enhancing the Role of Intermediate Bodies*, Knowledge Programme Civil Society in West Asia, Working Paper 3 (University of Amsterdam and Hivos, 2009).

²⁶⁹ Husam Al Sharjabi (co-founder, first chair, and spokesperson for the Civic Coalition of Revolutionary Youth, Yemen), *idem*, pp. 2-3.

Yet, the stipulations of the GCC agreement were left quite vague, and do not clarify any mechanism, committee, or timetable to organise and coordinate the envisioned national dialogue, nor the issues to be discussed. It also does not include implementation mechanisms or guarantees, except for international pressure (which, one youth reflected, could easily turn into international meddling). The GCC negotiators, moreover, did not involve the Southern Movement, the Huthis, or the independent revolutionaries in the political arrangement. Nor, for that matter, a single woman.²⁷⁰

There was a strong agreement among the youth representatives at the Chatham House forum that the national dialogue, if effectuated, is to be transparent (not behind closed doors, and covered by the media), inclusive (especially for women and youth, also to avoid radicalisation), and without redlines or preconditions. Everything should be on the table, and everyone around the table, they insisted, as the process itself is as crucial to a successful transition as are the outcomes. The participants also agreed that more youth should be in government posts, given that most politicians are aged above 70.²⁷¹

Along with this political track, the youth panel identified as the second urgent track the stabilisation of the country by intensified security measures, preferably through the total restructuring of military and security forces and the re-establishing of state control over the whole territory. The present security situation also obstructs the acute need for humanitarian aid, especially to relieve children from malnutrition and to assist displaced people.²⁷²

The third priority is the economy. Unemployment reportedly increased from 35% in January 2012 to a staggering 50 to 60 percent three months later. Typical economic challenges include the excessive budgets spent on civil servants and military personnel, and fuel subsidies. In 2010, these items reportedly absorbed fifty-three percent of the total budget.²⁷³ On a positive note, Aden port could create many new jobs, and is said to have great potential to attract (capital) investment from local and international investors and to become an economic nucleus for Yemen.

These young Yemenis articulated some major issues which Yemen faces at the crossroads of a new era, and proposed some possible solutions. It is hoped that the planned national dialogue will adopt their, and others', legitimate concerns, and insist on tailored rule of law reforms. Both are key to shaping and legitimising Yemen's way forward.²⁷⁴

²⁷⁰ Sharjabi and Alwazir, *idem*, pp. 3, 15. These, and other serious shortcomings of the GCC initiative, prompted a Yemeni expert to call it "a 'patchwork' solution that will fail to defuse the crisis both in the short and in the long term." Elham Manea, "The Gulf Initiative and the Yemeni Conflict: Putting the Cart before the Horse", *Qantara*, 29 November 2011, at <http://en.qantara.de/Putting-the-Cart-before-the-Horse/17854c18473i0p39>. Yemeni lawyer Jamal Adimi adds that the GCC agreement and all its ensuing effects (including Saleh's immunity and Al-Hadi's election) are deemed unconstitutional by several prominent Yemeni lawyers (interview on 25 August 2012).

²⁷¹ Maysaa Shuja al Deen (journalist), *idem*, pp. 6, 18.

²⁷² Sharjabi, *idem*, pp. 2-3.

²⁷³ Al-Akhlali, *idem*, p. 8.

²⁷⁴ The latest International Crisis Group (ICG) Report on Yemen expounds the prospects and pitfalls of Yemen's transition roadmap, see ICG, *Yemen: Enduring Conflicts, Threatened Transition* (Middle East Report No. 125, 3 July 2012), at <http://www.crisisgroup.org/en/regions/middle-east-north-africa/iraq-iran-gulf/yemen/125-yemen-enduring-conflicts-threatened-transition.aspx>.

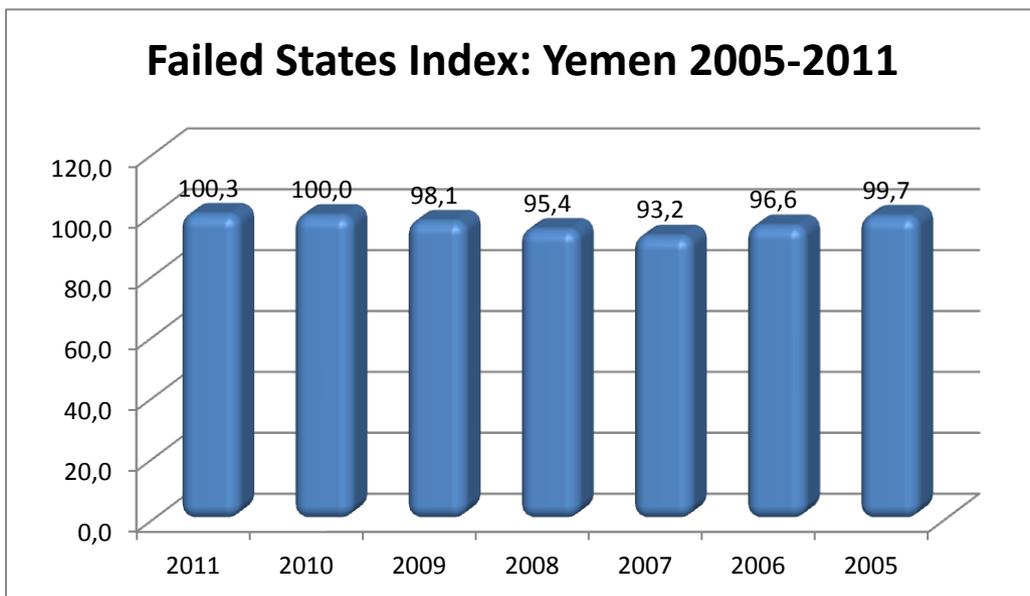
Part C: Relevant Indicators in Rule of Law



1. Failed States Index²⁷⁵

The Failed States Index is composed of twelve indicators over 3 distinct dimensions (social, political and economic). On the basis of computer based quantitative analysis of a vast amount of publications and newspaper articles, a score from 0-120 (0 indicates a very high degree of stability, 120 meaning least stable) on a total of 12 indicators is awarded.

Data for Yemen are available for years 2005-2011. Since its strongest result 2007 (93.2), the index has shown a steady decline in the country's performance, with a score of 100.3 in 2011. The score on Human Rights and the Rule of Law has followed the same pattern already since 2005. The data indicate clearly that the writ of the Yemeni state was not in good shape at the time of the first report, and has not improved since. The potential for acute state failure and all the risks associated with it, such as large scale strife, refugee streams and terrorism, is therefore considered to be particularly high.



²⁷⁵ Part C is an updated and expanded version of "Rule of Law Indicators concerning Yemen", in: *Overview Study on the State of the Rule of Law and Justice Sector in Yemen* (Hague Institute for the Internationalisation of Law, April 2010), pp. 19-31.

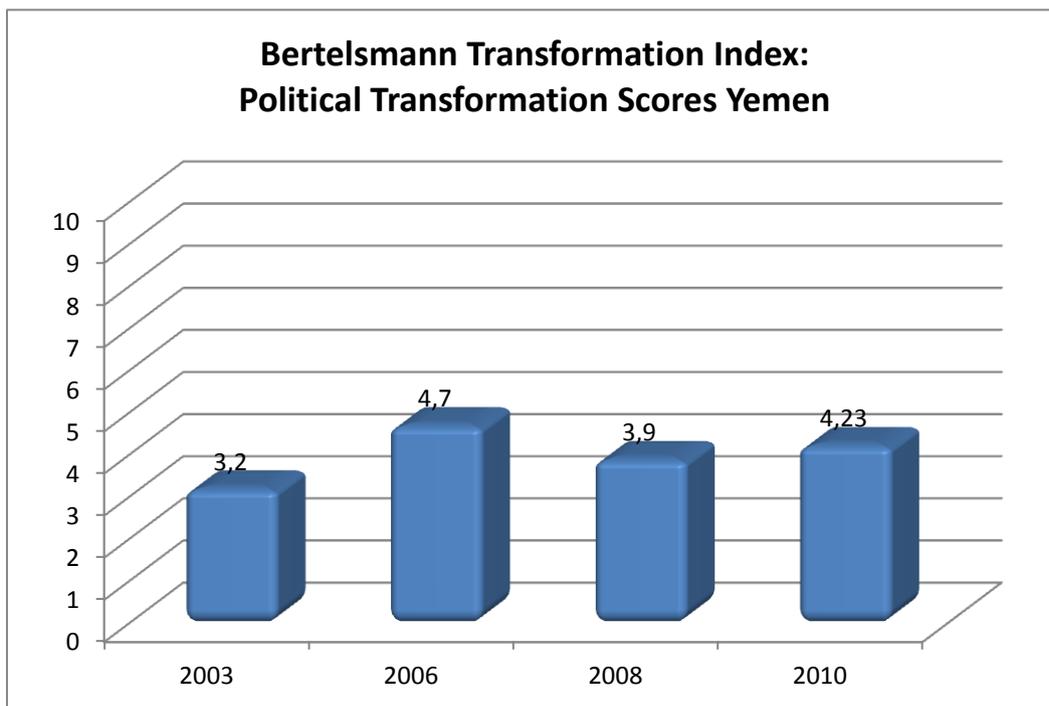
2. Bertelsmann Transformation Index

The Bertelsmann Transformation Index measures the progress of countries which have yet to become fully democratic, rule of law abiding states. It focuses on 3 dimensions: democracy, market economy and political management. The composite index relates to both a description of their democratic and market economic state and the country's leadership management performance to steer it on a course of solid transformation.

For 128 states, individual reports are written by a country expert, which is then subject to peer review by another expert. This narrative report deals with the whole chain of issues mentioned above.

Subsequently scores (1-10) are given by the country experts on the 49 questions asked. The political transformation or democracy dimension of the index is particularly useful, as it also details the degree of "stateness", separation of power and institutional stability.

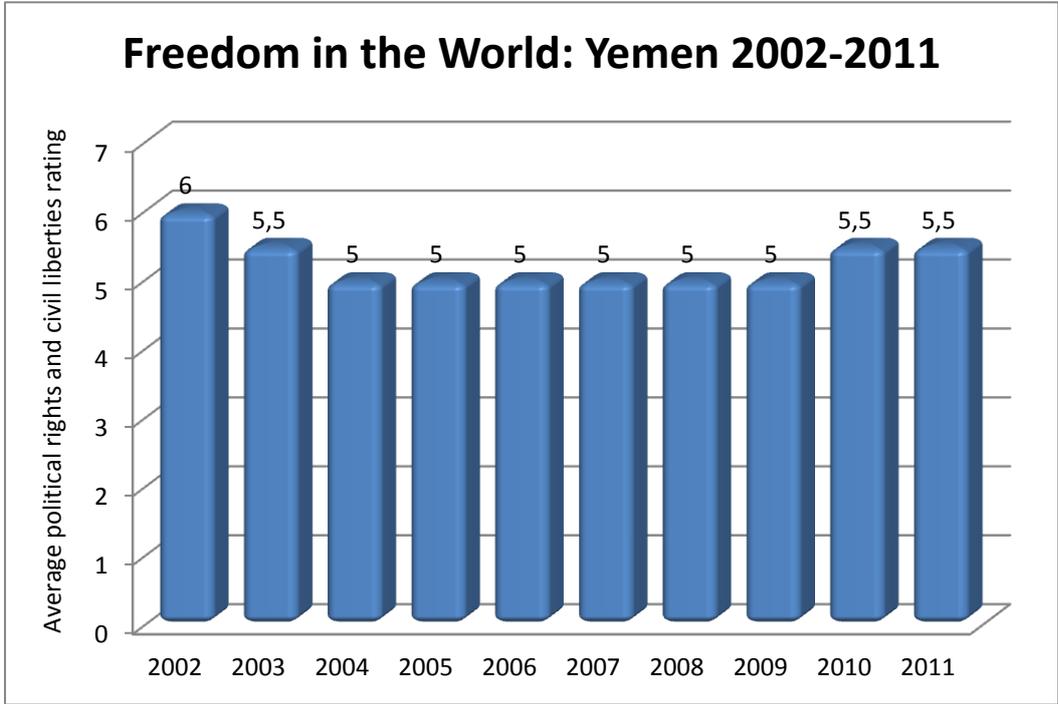
In 2003, scores were measured on a 5-point scale as opposed to the 10-point scale used in later studies for the political transformation index. Correcting for this difference, Yemen scored a 3.2 (or 1.6) in 2003 on this dimension. In 2006 it scored a 4.07 indicating a steady improvement. In 2008 the country scored a 3.9, while in 2010 it was up again to a 4.23. Even though this is indicative of a slight general improvement, according to this indicator it is a weak country where a lot of work is still to be done.



3. Freedom House

Each country and territory is assigned a numerical rating, on a scale of 1 to 7. A score of 1 indicates a free society and 7 the least amount of political and civil freedoms. The Freedom House index, often used in academic and political debates, is composed by experts who review an extensive collection of data, primarily newspaper reports as well as analysis by think-tanks and NGOs. On the basis of this information, separate reports are written for individual countries, which subsequently lead to a score on the Freedom House indicators.

Two separate ratings are given; a political rights and a civil liberties rating. On each dimension, scores range from 1 to 7. Yemen has been assessed as of 2002, receiving consistently poor scores. After a period of slight improvement, since 2010 the ratings again declined to 5.5. The scores below are an average of the two composite scales produced by the Freedom House from 2002 onwards.



4. Transparency International: Corruption Perceptions Index

The Corruption Perceptions Index (CPI) indicates the perceived level of public-sector corruption in a country or territory. The CPI table indicates a country's ranking compared to other countries in the index. The index is based on data from 13 sources and 10 independent institutions. These sources measure the prevalence of corruption in the public and political domains. This assessment is carried out for virtually all of the world's countries. Scores range between 1 to 10, with 1 indicating the worst possible perception of corruption and 10 indicating the lowest perception of corruption.

Yemen has been assessed since 2003. As in other indices, the country has scored consistently poor, with a strong popular perception of corruption in public and political life. From the assembled data, one can conclude an overall slight deterioration in the public perception of corruption, from 2.7 in 2005 to 2.2 in 2010, reflecting the ineffectiveness of government-initiated series of anticorruption reforms introduced in 2006.

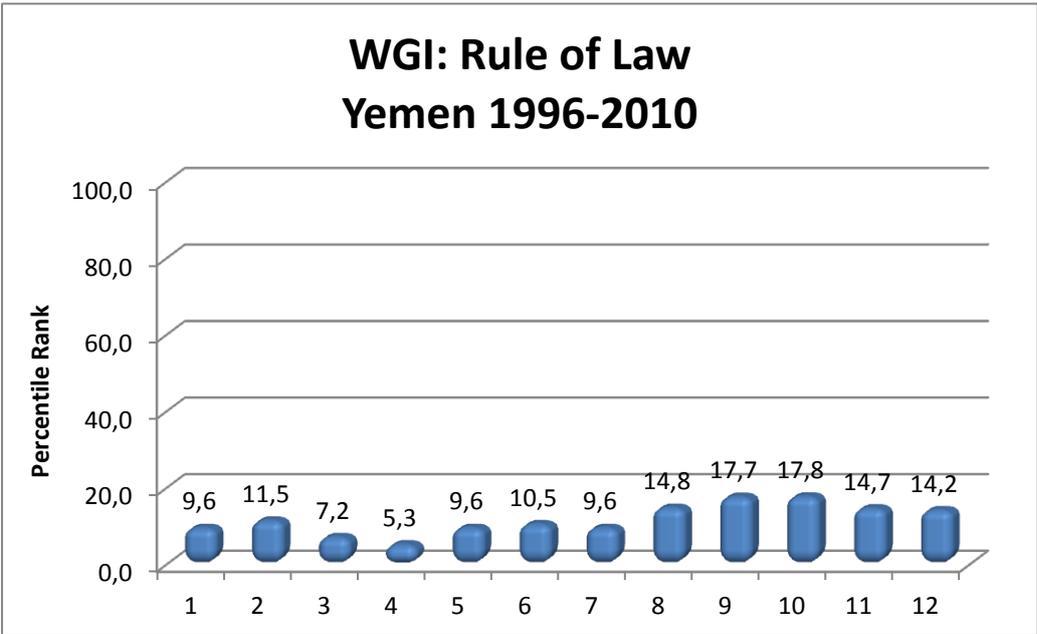


5. World Bank Governance Indicators

The World Bank Governance Indicators Project is an authoritative compilation of scientific indicators in the field of law and governance for 213 economies. The WGI brings together statistics from various other indices (among which are some of the indicators used in this study). Data are statistically rescaled to a score from 0 to 100, with a score of 0 indicating a bad result on a particular variable. Six different dimensions are measured; (1) voice & accountability, (2) political stability and lack of violence/terrorism, (3) government effectiveness, (4) regulatory quality, (5) rule of law, (6) control of corruption.

The World Bank Governance indicators result in a percentile rank on each of the six dimensions. Thus, a percentile rank of 20 on any certain dimension entails that only 20% of the world's countries have a worse score. However, a state which scores 90 means that only 10% of the world's countries do better. Consequently, a high percentile rank indicates better government performance.

Overall, Yemen's governance performance on all six dimensions has ranged between 10 and 30 (notwithstanding the margins of error indicated). Although, from a governance perspective, Yemen's overall results have been consistently weak, the rule of law dimension indicates improvement, interrupted only by minor fluctuations. The 2010 percentile rank of 14.2, however, shows that over 85 percent of all states performed better than Yemen. These observations fall within the defined margin of error for the statistical instruments used.

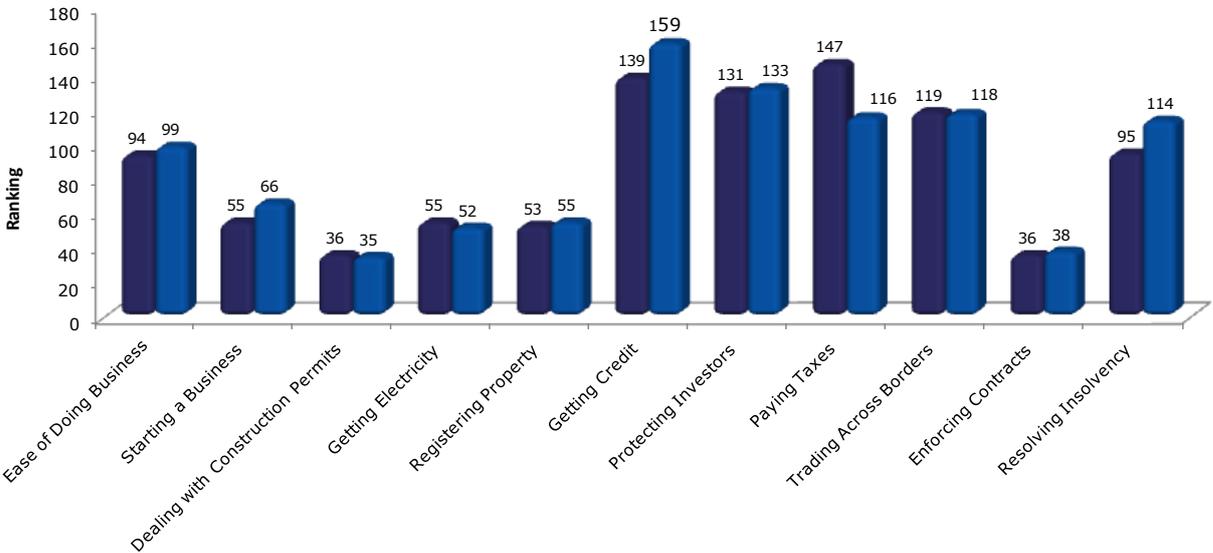


6. World Bank (Doing Business)

The World Bank’s “Ease of Doing Business” index ranks 183 economies on 10 categories: starting a business; dealing with construction permits; registering property; getting credit; protecting investors; paying taxes; trading across borders; enforcing contracts; resolving insolvency; and getting electricity. Each country’s ranking is calculated as the simple average of the percentile ranking on each of the categories. The higher the country’s ranking, the simpler its regulations and the stronger its protection of property rights, which results in a more favourable business climate. Although the index has no immediate bearing on the rule of law, transparent and efficient regulations as well as effective implementation enable businesses to operate within the rule of law and benefit from protections and opportunities provided by the law.²⁷⁶

Yemen has been ranked in 2011 and 2012, its performance across the 11 categories ranging from relatively poor to strong. Among the latter were the ease of starting a business, dealing with construction permits, getting electricity, registering property and enforcing contracts. With middling ranking for resolving insolvency and the overall ease of doing business, Yemen was close to the bottom end of the ladder for the ease of getting credit, protecting investors and paying taxes. Over two years, the country’s scores showed hardly any change. On the whole, Yemen’s business regulatory environment is only partly conducive to the rule of law.

Ease of Doing Business: Yemen 2011 v. 2012



²⁷⁶ World Bank Group, “Doing Business 2011 – Making a Difference for entrepreneurs”, World Bank Publications, 2010, at www.doingbusiness.org (last visited on November 14, 2011).

7. Cingranelli-Richards (CIRI) Human Rights Dataset

One of the largest human rights data sets in the world, the CIRI consists of standards-based quantitative data for years 1981-2009 on government respect for 15 internationally recognised human rights in 195 countries. The covered human rights are categorised into 3 sets.

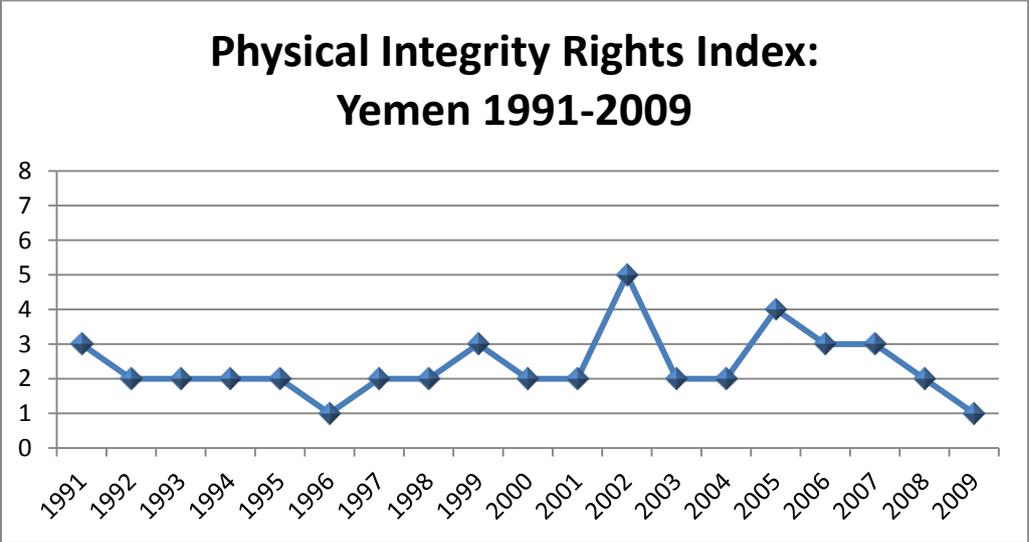
The first set, physical integrity rights, included the rights not to be tortured, summarily executed, disappeared, or imprisoned for political beliefs. Country performance is measured for each of these on a scale 0-2 (where 0 signifies the least observance and 2 virtually no violation of a right in a given year), and for the overall respect for the set of rights on scale 0-8 (where 0 represents no government respect for the four rights and 8 stands for high level of government respect for the four rights).

The second set, empowerment rights, include that to free speech, freedom of association and assembly, freedom of movement, freedom of religion, and the right to participate in the selection of government leaders. As in the previous category, countries score on each separate right on a scale 0-2, as well as on the entire set of rights – here a scale ranges from 0 (no government respect for these seven rights) to 14 (full government respect for these seven rights).

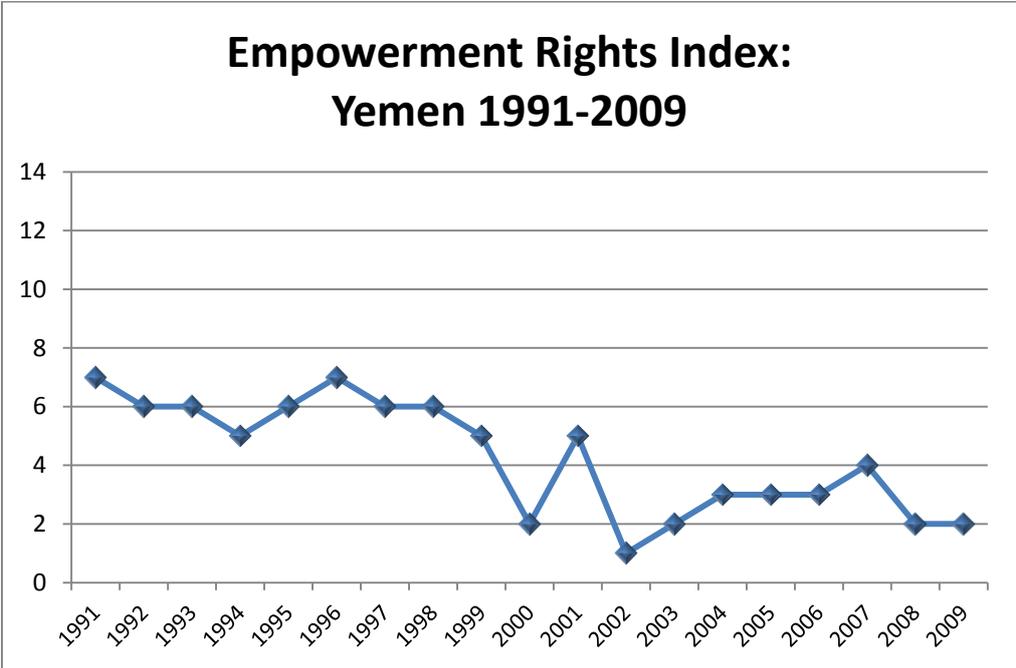
Another set includes women’s rights to equal political, economic, and social treatment, evaluated on a scale from 0 to 3. A score of 0 indicates that a given women’s right was not enshrined in the law or that the law was characterised by discrimination based on sex. A score of 1 means that while recognised in the law, a given right lacked effective enforcement. A score of 2 indicates that although the government effectively enforced a given women’s right recognised under law, women would continue to experience a low level of discrimination. Lastly, a score of 3 stands for a full realisation of a given right, protected by law and enforced by the government in practice, by nearly all women.

Finally, like the rights included in the first two sets, the remaining workers’ rights and independence of the judiciary are measured with scores 0-2.

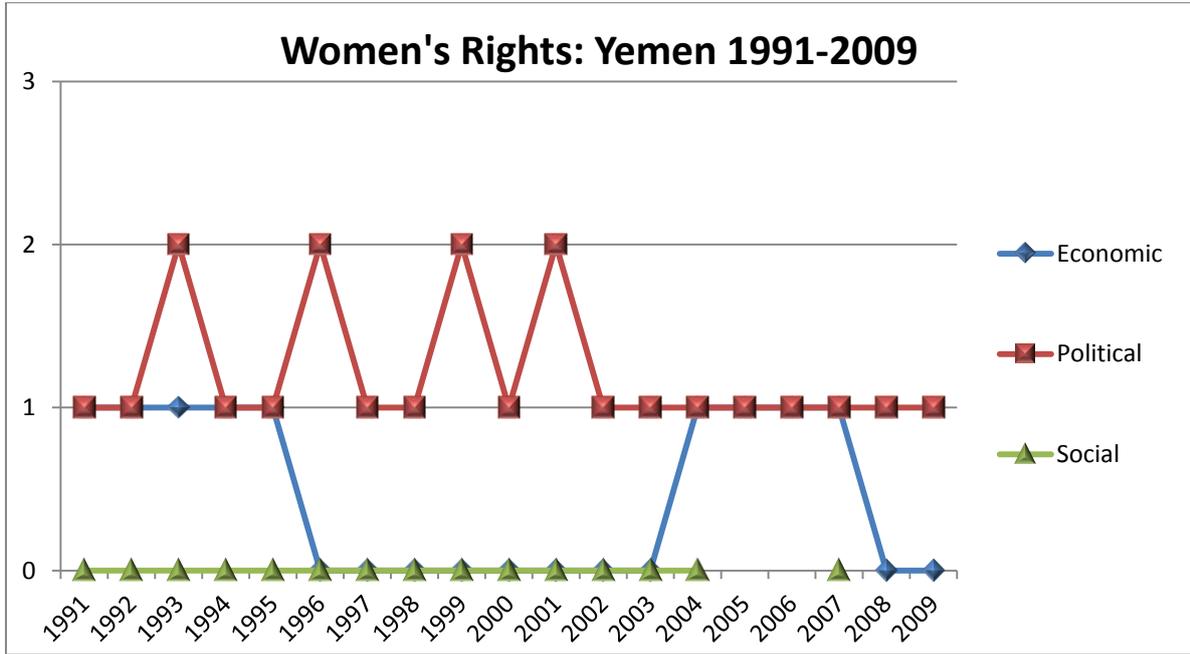
Yemen’s score on Physical Integrity Rights was consistently among the lowest in the world, reaching a mere 1.0 in 2009, and averaging 2.36. The particularly poor performance reflects the abusive practices of the security services that continue with impunity to systematically carry out arbitrary arrests, torture, extra-judicial killings, and enforced disappearances. Such abuses were perpetuated by the global war on terror, demanding the country to step up its means of counteracting terrorist threats.



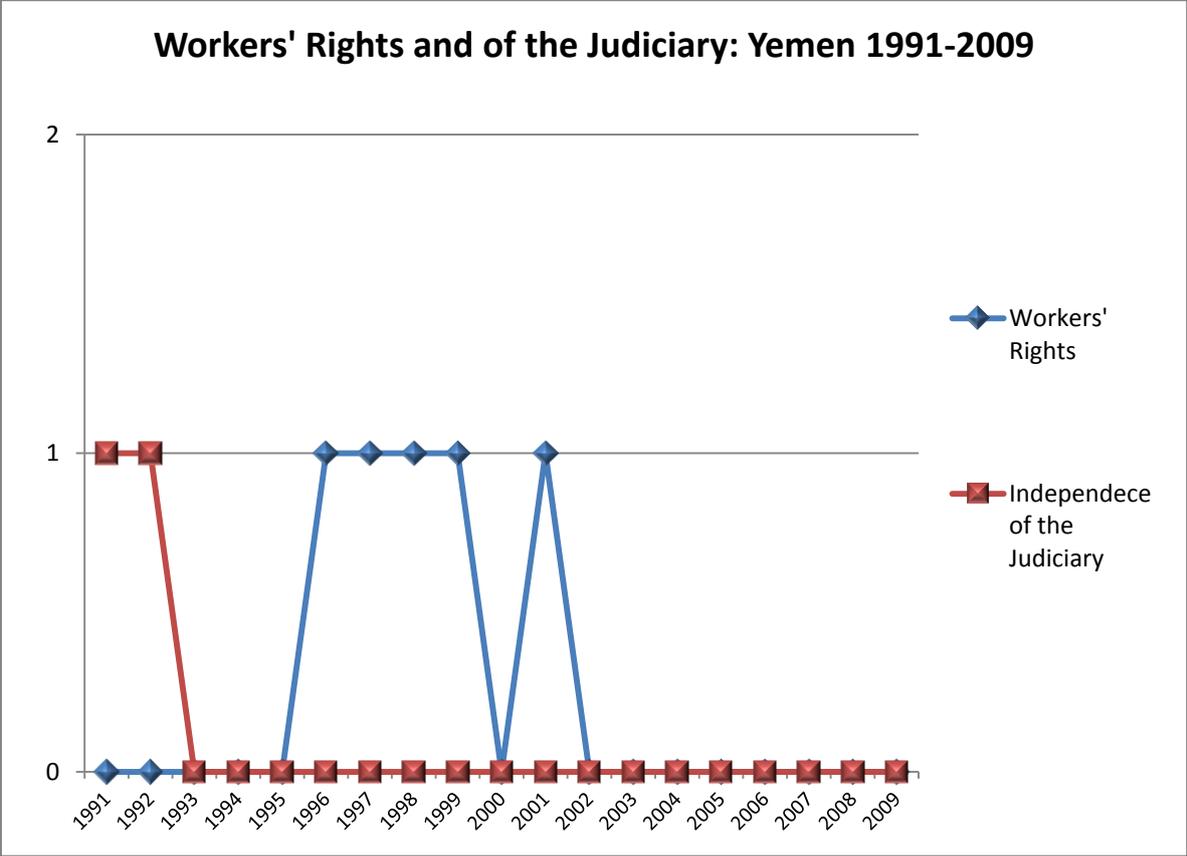
There was a significant decline in empowerment rights from 7.0 in 1991, though 1.0 in 2002, up to 2.0 in 2009. The tremendously poor scores are a consequence of, among others, severe restrictions on the freedom of expression and association, and the government’s grip on the media.



Despite Yemen’s ratification of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) in 1984, women’s economic and social rights received consistently the lowest score. Among the causes are the illiteracy rate of approximately 80 percent, ineffective enforcement of the minimum legal marriage age, high rate of “honour killings”, systematic arbitrary detentions for “moral offences”, pervasive discrimination in the workplace, or restricted freedom of movement. Political rights were assessed as lacking effective enforcement despite recognition in the law.



Both workers' rights and independence of the judiciary were evaluated as severely restricted. The lowest score reflects the situation of Yemeni workers who receive only a limited protection under the law, whose right to strike is suppressed and whose labour unions are controlled by the government. Likewise, the independence of the judiciary is hampered by frequent government's influence and its reluctance to enforce sentences.



HiiL is an independent research and advisory institute devoted to promoting a deeper understanding and more transparent and effective implementation of justice and the rule of law, worldwide. It pursues this mission in several ways. First, it conducts both fundamental research and empirical evidence-based research. Second, it serves as a knowledge and networking hub for organisations and individuals in both the public and the private sector. And third, it facilitates experimentation and the development of innovative solutions for improving legal systems and resolving conflicts at any level. HiiL aims to achieve solutions that all participants in the process perceive as just. In line with its evidence-based approach, HiiL is non-judgemental with regard to the legal systems it studies.

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