



ISSUE BRIEF

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The Challenge of Federalism in Yemen

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The 2011 protests against corruption, lack of accountability, limited access to basic services, and the extreme centralization of power transformed Yemen. In November of that year, the main political parties signed a transition plan, brokered by the Gulf Cooperation Council, which provided the framework and process to achieve a peaceful transfer of power. Two of the key steps agreed upon in the transition plan were the convening of the National Dialogue Conference (NDC), followed by drafting a new constitution based on the outcomes of the National Dialogue.

Given the shared suffering of the majority of Yemenis from centralized decision making in Sana'a, and further concentration of power by former President Ali Abdullah Saleh and his circle, there was widespread consensus on the need for decentralization. In addition, the secessionist demands of the Southern movement, known as Southern Herak, meant that a radical solution to the centralization of power in Yemen had to be reached. The Southern Herak started as a rights-based movement in 2007 calling for justice and compensation for Southerners affected by the 1994 civil war, and quickly transformed into a political movement calling for secession of the South. Therefore, the issue of state structure was one of the main issues discussed at the NDC under both the State Building and the Southern Issue working groups.

One of the options for decentralization was to provide local administration bodies (at the level of governorates and districts in Yemen) with wider authorities and powers. However, Saleh's regime gutted the Local Authority Law—issued in 2000 to decentralize authority by establishing locally elected district and governorate councils—and its application from any real meaning. Promises of improving the current system of local authority were no longer seen as credible or legitimate, especially by the Southern Herak representatives in the NDC. Eventually, however, a federal system came to be seen as the only politically acceptable solution on which the NDC delegates could reach consensus.

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After months of intensive negotiations, the Southern Issue working group reached an agreement in December 2013 to transform Yemen from a unitary state to a federal state. In January 2014, the delegates of the NDC ratified the final NDC document stipulating the transformation of Yemen into a federal state, yet they were unable to come to agreement regarding the number of states and their specific boundaries before the close of the NDC. The delegates authorized President Abdrabo Mansour Hadi to form a committee to define the regions of the upcoming federal state. Shortly after the conclusion of the NDC, Hadi issued a decree naming the members of the committee. In February 2014, the committee published its final report, transforming Yemen into a federal state with six regions (four regions in what used to be North Yemen and two regions in what used to be South Yemen prior to the 1990 unification of North and South Yemen). The committee also announced which “states” are to be included in each region. States are the equivalent of governorates in the current administrative structure of the Republic of Yemen.¹

The next step toward the transformation of Yemen to a federal system is establishing the spheres of authority between the national and local levels, defining fiscal responsibilities, and determining how decisions should be made among the various levels of the new system. This level of detail was not delineated in the NDC final report and will be enshrined in the new constitution, which is

¹ Rafat Al-Akhali, “Will Decentralization in Yemen Marginalize Citizens?,” *MENASource* (blog), Atlantic Council, January 29, 2014, <http://www.atlanticcouncil.org/blogs/menasource/will-decentralization-in-yemen-marginalize-citizens>.

currently being drafted. In March 2014, Hadi appointed the members of the Constitution Drafting Committee (CDC).

The move toward federalism could be the solution to Yemen's numerous challenges by devolving power and enhancing accountability, oversight, and citizen engagement. It could thus help reduce corruption and create an environment of constructive competition between regions on issues of development. But federalism could also be the first step toward further conflict and breakdown of the country along regional divisions. To ensure that Yemen's transition to federalism benefits the Yemeni people, the government must take into account a host of major political, economic, and social issues not only during the drafting of the new constitution but throughout the transitional period of implementing the new state structure.

Federalism in the History of Yemen

Yemen has a long history of administrative and fiscal decentralization, with documented proof of different administrative units dating back to the first millennium BC.² These administrative units were called *makhaleef*. During the early Islamic era, Yemen was divided into three regions with a ruler appointed for each region. When the Ottomans ruled parts of Northern Yemen in the nineteenth century and early twentieth century, they divided the parts of Yemen that they ruled into four administrative regions.³ The Mutawakelite Kingdom of Yemen ruled the northern part of the country from 1918 until 1962, when a revolution succeeded in overthrowing the Imam and created the Yemen Arab Republic in the northern and western parts of today's Yemen.

The British first colonized South Yemen in 1839, then established the Federation of South Arabia, comprising fifteen states, in 1962. However, this federation did not last long: a revolution started in 1963 in the South. The Federation of South Arabia was abolished in 1967, the year People's Republic of South Yemen gained independence.

Since the 1962 revolution in North Yemen and the independence of 1967 in South Yemen, both states moved into a more centralized form of governance. In 1990, the two states united and became known as the Republic of Yemen. The then-presidents of the two states—the North's Ali Abdullah Saleh and the South's Ali Salem Al-Beedh—ushered their countries into a unity agreement that was not carefully thought-out. Instability in the early years of the new unitary state was followed by a short war between the former North and South Yemen armies in 1994. A few months prior to the war, a compact known

as *Watheeqat al-Ahd wa al-Itifaq* (Document of Pledge and Accord) was signed in Amman, Jordan, between the political elites including the leadership of the North's General People's Congress and the South's Socialist Party. One of the major pillars of the compact was instituting administrative and fiscal decentralization as the foundation of the new governance system in Yemen, and dividing Yemen into new administrative units to be called *makhaleef*, a nod to the country's history.⁴

Unfortunately, the compact was not implemented and armed confrontations erupted between the North and South armies. After Saleh and his allies won the war of 1994 in the North's favor, they had little incentive to restructure the state and institute decentralization. The period starting 1994 saw increased centralization of powers in the hands of a small elite group in Sana'a. Although a Local Administration Law was passed in 2000, its application remained inconsistent and most administrative decisions continued to be taken in the capital, leading citizens to lose trust in the whole concept of local administration. In 2009, the Joint Meeting Parties (JMP), a coalition of opposition parties, listed federalism as one of the options for reforming the situation in Yemen.⁵

Clearly, the concept of decentralization and federalism has long been part of Yemen's history and the collective memory of Yemenis. Due to the deep tribalism of many areas of Yemen, even in periods when centralization was the *de jure* form of government, decentralized governance, local tribal heads, and customary laws were the *de facto* form of government. The federal system agreed upon in the National Dialogue, if properly implemented, could be a chance to finally empower more localized decision-making structures that better represent Yemeni citizens, and provide the necessary environment for development across the country.

Political and Administrative Considerations

The key challenge that the Constitution Drafting Committee (CDC) will face is the issue of dividing power and authority across the agreed three levels of government—federal, regional, and state. The NDC outcomes did not go into the details of the division of power among these levels and did not define the specific authorities and responsibilities of each level.⁶ Therefore, the CDC will carry the task of articulating the details of this division of power using legislative lists that will be part of the constitution and will specify the legislative

2 I. Al-Akwa'a, *Makhaleef Al-Yemen*, 3rd ed. (Sana'a, Yemen: Al-Jeel Al-Jadeed Library, 2009).

3 Ibid.

4 *Watheeqat Al-Ahd Wal Ittifaq* (Document of Pledge and Accord), Amman, Jordan, February 20, 1994, http://www.algomhoriah.net/news_details.php?sid=39117.

5 "Summary: Vision for National Salvation," *Yemen's Vision for National Salvation* (blog), March 21, 2010, <http://yemenvision.wordpress.com/>.

6 "Southern Issue Just Solution Document" [in Arabic], National Dialogue Conference, December 23, 2013, http://www.ndc.ye/ndcdoc/Southern_Question.pdf.

authorities of each level of government. Three separate legislative lists will need to be developed for each level of government, as well as a concurrent list to specify areas in which federal, regional, and state governments share the power to legislate.

The NDC outcomes specified that the legislative authority at the federal level will consist of two houses: one elected under a closed list proportional representation system across Yemen with the number of representatives reflective of the population size and one with equal number of representatives from each region, also elected under a closed list proportional representation. However, there NDC made no decisions on how to divide the regional legislative authorities. Therefore, in addition to the division of powers, the CDC will also have to decide how to divide representatives to ensure states are represented equally in Regional Legislative Assemblies.

The definition of the new regions and states of the federal state of Yemen was decided in a top-down manner and not through popular consultations or referendum. Unsurprisingly, there were a number of objections to the boundaries from the local representatives in the different regions. For example, the dignitaries of the Thamar governorate are openly refusing to be part of the Azal region to which they were assigned. In its final report, the committee for defining regions of the new federal state included two important provisions: one that the Federal Regions Law should allow for the adjustment of internal borders within each region after one or more election cycles, and another provision that the Federal Regions Law should allow for the adjustment of regions' borders after one or more election cycles. It is critical to put in place constitutional mechanisms that clearly regulate these two provisions in a way that ensures both stability as well as people's right to decide under which regions they fall.

Another political dimension that the CDC will need to address is whether or not to include the "fourth level of government" in the constitution and grant it constitutional powers. Under the current NDC-proposed three-tiered structure, the "third level of government" became the state-level (previously known as governorate level) due to the addition of the "regions" level. Therefore, local councils and their structure/authorities can either be left to each region to decide, or they can be defined through constitutional provisions that would become mandatory for all regions.⁷

After the constitution drafting and referendum, the real

challenge that will face the implementation of the new constitution and the transformation of Yemen into a federal state is the long-standing issue of limited capacity in the public sector and ineffective government.⁸ Given this situation at the central government level, it seems likely that the new levels of government will face even greater capacity challenges. Therefore, capacity building at the regional and state levels should be a priority to ensure a successful transition into the new federal system.

Transforming into the new federal structure will not be challenging only to the government of Yemen, but also to the political parties that have been mirroring the government in their mostly centralized structures and decision-making processes. The political parties will need to adapt to the new federal structure and redesign themselves to be able to operate at the regional and state levels and under the new closed list proportional representation system. Political parties that are able to begin the process of transformation early will likely be rewarded by the voters in the scheduled 2015 elections and will position themselves to do well in future elections.

Economic Considerations

One of the most contentious issues during the negotiations at the NDC was the management of natural resources and the allocation of their revenues. Again, the agreement reached by NDC delegates did not elaborate on the details and will need to be further articulated in the constitution. The NDC delegates agreed that "Natural Resources belong to the people of Yemen, and the management and development of natural resources, including oil and gas, and granting exploration and development contracts is the responsibility of the authorities in the producing States *in participation* with the authorities in the Region and the Federal Authorities." They also agreed that "the management of local service contracts is the responsibility of the authorities in the producing State *in coordination* with the Region." It was decided that the specifics of these authorities across the three levels shall be detailed by a Federal Regions Law.

Natural resources revenue sharing and fiscal transfers between the different levels of government was also mentioned only in generic terms in the NDC outcomes. The NDC outcomes state that "a Federal law, to be drafted in consultation with the regions and states, shall set the criteria and equation for distribution of natural resource revenues, including oil and gas, in a transparent and fair way for all the people of Yemen, taking into special consideration the needs of the producing states and regions, and allocating a percentage of the revenues for the federal government."

7 Rafat Al-Akhali, "Will Decentralization in Yemen Marginalize Citizens?," *MENASource* (blog), Atlantic Council, January 29, 2014, <http://www.atlanticcouncil.org/blogs/menasource/will-decentralization-in-yemen-marginalize-citizens>.

8 "Worldwide Governance Indicators," World Bank Group, 2013, <http://govindicators.org/>.

The issue of the division of tax and non-tax revenue generation powers among the different levels of government also was not resolved by the NDC. This will now need to be decided by the CDC and included in the constitution or relevant federal laws. A study conducted by United Nations Development Program is one of the rare studies that looked into options for dividing these revenues.⁹

Another major challenge facing the transformation of Yemen into a federal state is the increased pressure on the public budget to fund the new levels of government and build their capacities. Public wages already make up a whopping 31 percent of Yemen's budget (over 10 percent of GDP).¹⁰ Yemen will face a critical challenge in financing the additional regional and state governments, as well as the new legislative and representative authorities at the three levels.

Social Considerations

In a recent poll conducted by the Arab Center for Research and Policy Studies, 25 percent of respondents opposed the outcomes of the National Dialogue Conference. The top reason cited for their opposition is that the adoption of a federal system will lead to the partition of Yemen.¹¹ This is indeed a real risk especially given the existing grievances in the South. This is why it is important that in parallel with its move toward federalism, the Yemeni government designs a program to maintain and strengthen national identity and ensure social cohesion.

The strengthening of the Yemeni national identity needs to be balanced with providing enough space for regional identities. For example, one of the main grievances of the Houthi rebels in the North was that the Saleh regime did not give them enough space to preach their Zaidi beliefs (the oldest of the Shia sects of Islam and closest to Sunni Islam in terms of ideology) in their areas.

The constitution and federal laws will need to give enough space for the varying customs, traditions, and social realities of the different regions and states. For example, some regions and states have a stronger tribal culture and might prefer to include customary law or a "council of elders" in their governance structures and processes.

9 Farrukh Moriani, Mohammed Al-Hammadi, and Adel Al-Zawm, *Options for Future Form of Government and Decentralization in Yemen*, (United Nations Development Program in Yemen, April 2013), http://www.ye.undp.org/content/yemen/en/home/library/democratic_governance/options-for-future-form-of-government-and-decentralization-in-ye/.

10 International Monetary Fund, *Republic of Yemen 2013 Article IV Consultation country report no. 13/246* (Washington, DC: IMF, July 2013), <http://www.imf.org/external/pubs/ft/scr/2013/cr13246.pdf>.

11 "Trends in Yemeni Public Opinion: Attitudes toward the National Dialogue Conference Document and the Second Transitional Period," Arab Center for Research and Policy Studies, April 2014, <http://english.dohainstitute.org/release/1bac2bd0-7d7a-4b0f-8b30-53dbd3737328>.

Finally, the delivery of social services, such as health, education, water, and sanitation should follow the principle of subsidiarity, devolving powers over these services as far as possible to lower levels of government to more effectively meet the needs of local communities.

Recommendations

The move toward federalism in Yemen could be the step required to end decades of lost development, but it needs to be a careful and gradual move to ensure a smooth transition and avoid the risk of slipping into chaos. The following recommendations may help address the main challenges facing the transition to federalism.

Focus on public engagement and consultations:

One of the criticisms of the NDC was that it failed to create meaningful channels for citizen engagement and consultations. This can be rectified during the constitution-drafting process by designing engagement and consultation processes such as polling, debates, and public deliberations that take the input of citizens across Yemen to decide on the division of powers and other critical aspects of the new constitution. Proper engagement and consultations will pave the way for adoption of the constitution in the upcoming referendum.

Use innovative technologies for citizen engagement:

The use of mobile phones is almost ubiquitous in Yemen now. SMS text messages can be used for polling citizens on their views and opinions in the different aspects of the constitution.

Leave room for adaptation going forward: No one should expect that Yemen can get everything right from the first round. Therefore, clauses in the NDC outcomes that allow for changes after one or more election cycles should be reflected in the constitution and/or federal and regional laws to ensure the ability to adapt depending on lessons learned.

Focus on capacity building at the local level: It is estimated that Yemen has between one-and-a-half to two years to finish drafting the constitution, hold a referendum, and prepare for elections. This period provides an excellent opportunity to begin building capacity at the regional and state levels, as well as local levels, especially in fields of public policy and public administration. An assessment of current capacity of public workers at the regional and state levels is needed to understand where each stands and what gaps need to be filled. A detailed capacity-building plan can then be developed and implemented.

Redeploy existing public sector employees: Yemen suffers from a bloated civil service and the majority of government departments are overstaffed. The new levels of government could be seen as an opportunity

to utilize the existing civil service employees and redeploy them to the regions and states. Existing local authority infrastructure and assets (buildings, offices, etc.) at the governorate and district levels can also be redeployed where possible to serve as regional and state infrastructure. This would help in containing the cost of transforming into a federal state.

Focus on restructuring political parties: The new federal system in Yemen will require new structures and processes in the political parties as well. The transition period from now until the parliamentary and local elections planned for 2015 should be used wisely by political parties to begin the internal restructuring process.

Design a program to promote social cohesion and national identity: One of the key success factors for the new federal system is maintaining a sense of national identity and social cohesion among the citizens of Yemen. This needs to be done through a carefully designed and executed program that first identifies the elements of the national identity in Yemen and then promotes these elements through different campaigns and initiatives. Schools, the media, and civil society will all be important to the program's success.

Account for local realities in governance: Given the cultural differences among the regions and states of the new federal state, and the varying levels of development in these regions and states, Yemen needs to avoid a one-size-fits-all approach when it comes to designing governance structures and processes. A certain level of flexibility should be given to each state to incorporate local culture and traditions if needed into their governance structures and processes.

Continue constructive engagement with the international community: Given Yemen's strategic importance regionally and internationally, it is critical that the international development partners of Yemen continue to be engaged in the transition process. The international community can assist Yemen not only through financial aid but also by providing technical assistance and capacity building, especially from countries that went through a similar transition to a federal system.

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