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Yemen's Federal Alternative: A Path to an Enduring Peace?

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Yemeni protesters shout slogans during a protest against the government in Sana'a, Yemen, January 2011 © EPA



The potential federalization of Yemen raises several questions related to the structure of the state in Yemen's constitution, the possible need to change it, and the reasons that prevented political parties from adopting a proposed model of federalism prior to the February 2011 Revolution. It also raises questions about the degree of national consensus on federalism, whether the proposal of the federal constitution was a direct cause of the conflict, and how to address points of contention.

This paper seeks to address these questions by reviewing the conditions that led to conflict over a decentralized state. It explores the negotiations and agreements that followed the establishment of the Republic of Yemen but whose implementation was impeded by the 1994 war. After the war, dialogue resumed among opposition parties and with the government to undertake constitutional reforms that would ensure a decentralized state. Subsequently, political parties and civil society actors agreed on the principles of a new constitution in the Comprehensive National Dialogue Conference. This was again stalled with the outbreak of war in 2014, which was ongoing at the time of writing.

The paper addresses the above questions by examining federalism and changes to state structure; federalism in the draft constitution; and the constitutional process and mechanisms for adopting a new constitution.

Decentralization to Prevent Power Monopoly

Ever since the establishment of the Republic of Yemen on 22 May 1990 and the unification of North Yemen and South Yemen, decentralized governance has been an important element in ending the legacy of dominance of the North – characterized by the concentration of power in the hands of the president -- and to limit monopoly over development decisions and administrative and service institutions, and amongst central government officials. In this context, the 1991 constitution adopted administrative and financial decentralization in the framework of “the simple state”, ordered the election of local councils, including governors and heads of directorates, and granted them the mandate to run local affairs as independent authorities.



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Despite this, one party to the governing coalition – the president of the Republic and the General People’s Congress party (GPC) – blocked the issuing of the Local Government Act and sought to amend the constitution to cancel all provisions related to decentralization and local government.¹ Consequently, the Yemeni Socialist party (YSP), as the other party to the governing coalition, reacted by adopting an amendment of the constitution to further decentralization. This was one source of conflict between the two sides and led the YSP to propose federalism as a solution. Disagreement on this and other governance matters resulted in a severe political crisis in 1993, which compelled both parties to seek a solution through dialogue with the support of the international community. This resulted in a new accord signed by all political parties.

This new accord resolved the dispute over governance via administrative and financial decentralization, granted elected local councils extensive powers and broadened participation in development-related decision-making. It also consolidated the power of the legislative branch of government by introducing an elected “Shura Council” as an upper parliamentary chamber and specified the tasks and powers allowed to local councils in the areas of development, service provision, administration, and finances.²

While the government was preparing legislative procedures to enact the agreement, a “coup” was carried out against the Accord and national consensus with the 1994 war against the YSP and South Yemen. The conflict undermined the constitutional reform project which the YSP and most other parties were able to imbed in the agreement. This left the door open for the president, his party, and his allies to amend the constitution – in both 1994 and 2001 – against the trend for a decentralized government system.

These amendments increased the concentration of power in the capital Sanaa, and in the hands of the president. The war and these constitutional changes led to sharp political, social, and geographic divisions nationwide. The Southern secessionist movement became more vocal, with some demanding termination of the union. With the foundation of the voluntary union and national cohesion being progressively undermined, the danger of the disintegration of the state and society emerged, and work on replacing the constitution became an urgent national priority.



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Central state authorities took steps to quarantine the divisions; these, however, proved inadequate. For instance, it issued the Local Government Act of 2000, which granted the executive branch the option to appoint heads of local councils (governors and heads of directorates) or allow them to stand for local election, in order to be granted – alongside ministry offices in the governorates – the constitutionally designated powers of local councils. The opposition filed a case against the Local Government Act before the Constitutional Chamber of the High Court, but this was dismissed. The court decision was clearly biased to the governing central authority, and the central government then amended the constitution in 2011 so it would conform with the 2000 law.

Voices opposing centralized governance increased as central government agencies struggled to manage development, service provision deteriorated, and corruption became widespread. At that time, the central authorities attempted a “patchwork” approach to fix whatever possible, but this proved unsuccessful. In 2008, the central authorities decided that the election of governors would be done by members of the local councils, when most council members were loyal to the central authority, which meant governors were appointed according to the president’s preference.

The “Joint Meeting” parties (the Islah party and the YSP, al-Haq, the Unionist party, and the Popular Forces Union party) objected to this procedure and their members boycotted the elections. Consequently, the results were compatible with the presidential will and the role of many local councils was limited to endorsing the president’s choice.³ This led to increased protests and demands for separation by the South. This in turn rendered administrative and financial decentralization, in the form of local government with full mandate, an inadequate solution to the crisis – a solution that was also rejected by citizens of southern governorates.

The Comprehensive National Dialogue Document : A Possible Consensus

In light of the threats to territorial integrity, political parties came to a unified vision on two main points: amend the constitution in order to protect national unity and restore stability; and achieve a decentralized government system.⁴ The

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parties could not agree, however, on the extent of decentralization nor on the need to keep the “simple state” or move to a fully federal one. Except for the YSP, most parties welcomed decentralized rule in the framework of a “simple state”, meaning they settled for administrative and financial decentralization. The YSP, for its part, considered administrative and financial decentralization insufficient to end the crisis and thwart the threats to territorial integrity. They considered that the final answer lay in a federal state that ensures political, administrative, and financial decentralization.

The divide among political parties required the search for a formula that would secure an agreement. In 2009, the Joint Meeting and its partners reached an agreement under the “Draft Vision for National Salvation”. It presented two options to achieve decentralization: adopt a federal system or keep the “simple state” framework while working to establish a local government system with full powers based on greater regions.⁵

The reforms were pushed along by the popular youth movement of 11 February 2011, which contained demands for a political settlement according to the Gulf Initiative and an agreement on the implementation mechanism for a transitional government.⁶ It was this mechanism that facilitated the Comprehensive National Dialogue Conference,⁷ in which a social contract was reached that aimed to bring about peaceful change and a national consensus. This social contract resulted in the Comprehensive National Dialogue Document which laid down the foundations and principles of a new constitution, including the principles of a federal state.

Based on the Comprehensive National Dialogue Document, a committee made of political parties and political and social participants in the conference prepared a draft federal constitution. Discussions over this draft halted soon after the break-up of the coalition between former president Ali Abdullah Saleh and the Houthis on 21 September 2014. This breakdown led Yemen to further civil war, foreign intervention, and ongoing conflict that is preventing a return to the political process to finalize a new constitution and hold a referendum.

A Draft Constitution that Approves a Decentralized State

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Prior to the breakdown in talks, political and social actors had agreed on establishing a federal state. In creating the draft constitution, the committee relied on the principles of the Comprehensive National Dialogue Document. This draft embodied consensual will and drew on international models deemed successful and similar to the Yemeni case. It was also to be subject to a review by the national regulatory authority in charge of implementing the outcomes of the Comprehensive National Dialogue to ensure compatibility with the document and correct any possible departures from the foundations and principles developed therein. The draft constitution was also to be subject to public discussion prior to its submission for a popular referendum.

The draft constitution included a single contentious issue: the number of regions in Yemen and their delimitation. This could have been corrected through the national committee and public discussions but was instead used as a pretext for the “coup” that was being prepared before the draft constitution was even made public.

The draft constitution divided the federal state into four levels of governance: the federation, regions, provinces, and local councils. It also followed a globally common system for the distribution of competencies.⁸ The draft distributed concurrent competencies over three levels of governance: the national-federal level, the regions, and the provinces and local directorates. It also determined that directorate competencies would concur to the law of each region and fall within the competencies assigned to provinces and local councils.⁹ It also specified the shared competencies of the national-federal level and the regional level. The competencies not assigned to any governance level fall under regional competencies.¹⁰

Competencies of the Four Governance Levels

The draft constitution defined exclusive powers for each of the three governance levels (regions, provinces, and directorates) as well as the federal powers.¹¹ There were also to be regulations exclusive to federal competencies. As for shared legislative powers, federal ones were to be limited to setting standards and



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general policies to guarantee service quality nationwide.¹²

The draft constitution created a unique status for Sanaa, the political capital, and Aden, the economic capital. Sanaa was regarded as a federal city, whereas Aden was given powers related to the region, province, and directorate, including passing laws on the economic and monetary systems,¹³ within the framework of a region.

For national security, the draft constitution specified two security apparatuses: Police and General Intelligence. General Intelligence is a federal apparatus that is equally supervised by all regions through representatives in the Federal Council (the second parliamentary chamber). As for the police force, it was to be split into a federal police and a regional police. Federal police were to handle five main competences: citizenship and entry of foreigners and their residency, the operations room and joint information, land, sea, and air ports, public relations and Interpol, and combatting terrorism and organized crime. The rest of the powers were given to the police authority of each region.

The draft also set standards for the distribution of national income across the governance levels as per the national income distribution law. Additionally, it specified the taxes and duties imposed by federal law but collected by the regions. Due to the sensitivity of natural resources, the draft shared their management across the federation, the regions, and the provinces. Moreover, it referred the distribution of national income, and natural resources, including oil and gas, to the relevant laws.

Regions have their share in federal decision-making through the Federal Council (or the second parliamentary chamber), whose members are elected from all regions on an equal basis. These divisions of authority and competencies across the different governance levels largely achieve the purpose of establishing a federal system. It also leads to a fair distribution of authority and resources and prevents their concentration in the hands of the executive authority in the political capital. This, however, does not mean that the draft is exempt from necessary amendments of content and wording. The document will first be subject to a formal and popular review once the conflict ends, the state restores its legitimacy, and the political process resumes.¹⁴



Adopting the Constitution: A Path Pending Peace

The process of building a constitution for a decentralized state began in 1993, offering opportunities for negotiations and agreements between the central authorities and the opposition, until the central authorities withdrew from the process. The uprising of February 2011 put domestic and international pressure on Yemen to change and build a federalized state. This began with the constitutional process that the executive branch of the transitional period undertook before it was interrupted by conflict.

The mechanisms of the transitional period determined a path for a federal constitution and transformation of the state's structure and political system. Furthermore, the process relied on consensus-building within the Comprehensive National Dialogue Conference as a tool to comprise all political actors, including youth, the Southern Movement, the Houthis, political parties, civil society, and women's representatives.

The Comprehensive National Dialogue Conference Document laid the foundations and principles of the constitution, including the parameters of the federal state and the criteria for forming the legislative committee. The trajectory of the reform process was also planned along several steps, including creating a committee that would be involved in drafting, formulating, overlooking, and adopting the constitution, as well as preparing for and holding a referendum on the draft constitution. As part of this, the Comprehensive National Dialogue Document approved, within the guarantees, the creation of a national committee for supervising and following up with the implementation of the outcomes of the dialogue. This included supervision and follow-up by the constitution drafting committee, ensuring proper wording, and approving the draft before submission for a popular referendum.

The Number of Regions: A Major Point of Contention



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The Comprehensive National Dialogue Conference led to agreement on establishing a federalized state based on constitutionally grounded principles and related laws. However, the number of regions remained a point of contention. Two options were presented. The first envisioned a state consisting of six regions. This option was supported by major political parties such as the GPC and the Yemeni Congregation for Reform, among others. The second option was for the federal state to be split into northern and southern regions. This option was supported by the YSP and some sectors of the Southern Movement that were present in the conference, as well as some political and social actors. Due to the disagreement over the two options, the Comprehensive National Dialogue Conference authorized the president to form a committee with the final say in determining the number of regions.¹⁵

On 27 January 2014 a presidential decision created such a committee under the president's leadership. Two weeks later, on 10 February 2014, the committee then issued a report opting for six regions.¹⁶ This quick outcome meant the committee did not make its decision based on significant research and deliberations. It was clear that the scales were tipped in favour of the president's preferred federal formula. Consequently, the committee's biased decision became another point of contention that was used to justify a "coup" by the GPC, which fully supported the six-region option, and the Houthis, who did not have a particular position on the number of regions. Both parties had participated in the constitutional committee and constitutional draft preparation.

Once the working mechanism for the constitutional committee was determined,¹⁷ the committee was created alongside the national regulatory authority in charge of monitoring the implementing the outcome of the Comprehensive National Dialogue Conference.¹⁸ In an unwise move, presidential decisions required both committees to adhere to the decisions made by the committee that had determined the number of regions and had also defined the borders of each region based on the governorates in each region.¹⁹

In order to resolve this issue, an agreement was reached within the National Committee to amend this decision through the work of the committee, an amendment that would be ratified by the president. This would address the points of contention in the previous decision.



However, the ongoing insurgency, the takeover of power in the capital, and the war launched on the rest of the country by the Saleh-Houthi coalition, have all blocked further action.

Steps towards Federalism

A federal state would be automatically realized through recognition of the constitution, which requires three further steps.

The first is a discussion of the draft constitution by the national regulatory authority in charge of monitoring the implementation of the outcomes of the Comprehensive National Dialogue Conference. It received the draft on 17 January 2015 so that it could assess it against the Conference outcomes and send it with its final report to the constitution drafting committee.

The second step is a publication of the draft constitution and the launch of a public consultation campaign to explain its content and collect citizen input under the supervision of the National Committee and the constitution drafting committee.

The third is to review of the draft by the constitution drafting committee according to the results of public consultation and the National Committee's report. The final draft would then be handed to the committee for any final adjustment with the outcomes of national dialogue. If further issues arise that require review, they will be ear-marked for a second review by the constitution drafting committee. The committee would then present its final version to the president before submitting it for a popular referendum.

The draft constitution specified two further steps in moving toward a federal state once the constitution becomes effective:

- The first is legislative, and requires the passing of an election law, a law for regions, a judicial authority act, a constitutional court act, and a transitional justice law.
- The second is holding general elections to simultaneously elect a federal parliament, the federal council, and representatives of regional parliaments. This must take place within one year of approving the



constitution. Local council elections and presidential elections must be held within six months of the results of legislative elections. This would represent the end of the transitional period and the establishment of the federal state. There is, however, contention over the form of government in the interim period and the entity that can decide on the number of regions and their borders. This raises questions about the need for a possible third phase in the transitional period where the constitution may again become subject to amendment and further contestation.

On the number of regions and their borders, a solution may lie in a peace agreement. This would be possible if an agreement to establish a federal state made of two regions (the north and the south) was reached, as their borders are known and well defined and do not require further delimitation according to international standards. If, however, an agreement on a larger number of regions was reached, the process of delimiting these regions would require further examination in accordance with international standards. This would require a long period of time that might hinder the immediate prospects for a peace deal.

If no agreement can be reached on a federal state of two regions, a middle ground could be found in a peace deal stating that South Yemen constitutes one federal region, and that all other governorates would have new regions created in accordance with the constitution, on the condition that they would not form more than two regions.

Extending the transitional period into a third phase threatens to undermine the constitution and perpetuate conflict over the system of government. This is particularly the case because the draft constitution mentions reconsidering the presidential system after two legislative terms via amendment of the constitution and a transition to a parliamentary system.

In this regard, the draft constitution complied with the outcomes of the Comprehensive National Dialogue as a baseline. These outcomes include transitioning into a parliamentary system for the regions as soon as a federal state is established. Moving from a federal rule to a parliamentary system would require introducing another transitional period. This would lead to the continuation of contention over the constitution and extend the transitional period through a third



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phase, affecting the stability of state institutions.

It would be better to reach a peace agreement able to resolve the problem of the number regions without essentially violating the outcomes of the Comprehensive National Dialogue Conference. This would require activating a general principle of an immediate move to a parliamentary system, as approved by the Comprehensive National Dialogue Conference, on both the regional and federal levels.



Endnotes

1. See Mohammad Al Mekhlafi, *The Question of the Law State in the Yemen Crisis, Volume I, Some Conflict-related Facts Before the 1994 War*, (in Arabic) Dar al-Kunuz al-Adabiyah, Beirut, First Edition, 1994.
2. See Article 2(2) of the Accord, “Document of Commitment and Agreement” (wathiqat al-‘ahd wa al-itifaq). A modern state was established along with its institutions, declared on 18 January 1994, and signed by political parties in Amman on 20 February 1994.
3. Mohammad Al Mikhlaifi, *Change (Democratic Reform in Yemen): The Necessities and Impediments*, (in Arabic) Sanaa, 2011, p. 52-53.
4. *ibid.*
5. The document was issued in Sanaa on 20-21 May 2009, with the participation of NGOs, syndicates, women and youth representatives, and social figures in addition to the Joint Meeting parties.
6. The Gulf Initiative and the implementation mechanism of the transition process were signed on 21 April 2011, by the GPC, the Preparatory Committee for National Dialogue, the Joint Meeting parties, the National Democratic Coalition Council, the Solidarity Council, and the Freeman Block. Preparations then commenced to implement the functions of the transition period.
7. The Comprehensive National Dialogue Conference was held between 18 March 2013 and 25 January 2014. It included all political parties that signed the Gulf Initiative and the agreement on the implementation mechanism of the transition process, as well as representatives of the Houthis, the Southern Movement, women, youth, marginalized classes, and non-governmental civil society organizations.
8. See Markus Böckenförde, *A Practical Guide for Constitution Building: Patterns of Decentralized Governance, the International Institution for Democracy and Election*, 2011, p. 29.
9. Article 262 of the draft constitution states that “a regional law will determine the exclusive competencies of directorates within the framework of powers assigned to provinces and local councils in this constitution in a way that guarantees the provision of services to citizens with proficiency and efficacy”.
10. Article No 341 of the draft constitution states that “competencies unassigned to any of the governance levels are to follow regional authorities”.
11. Federal powers were restricted to international relations, defense, currency, foreign debt, immigration and citizenship, general standards and measurements, customs, export fees, foreign trade, national statistics, national population census, air navigation, civil aviation, weather forecasting, maritime navigation, national infrastructure, intercity and international highways, electricity, national energy policies, radio and television broadcast, managing cyberspace and intellectual property, national fisheries policies and standards, national agriculture and food security, the health sector and national health services, education, environmental protection and climate change, drinking water, culture and national heritage and relevant issues, and general and major laws and regulations including objective, procedural, and organizational civil, trade, financial, and monetary fields.
12. Article 339 of the draft constitution states: “In the area of shared legislative competences, the federation powers are limited to setting standards and general policies to guarantee the service quality on the national level. Regional authorities practice their full power in the absence of a federal law or regulation”. Article 340 states: “In cases where federal authorities enjoy their exclusive competence in setting the policies regarding a certain issue, such competence would be limited to developing the policies necessary to ensure a sound implementation of this constitution, adopting uniform standards of services on the federal level, achieving a comprehensive economic development, and maintaining public health or national security”.



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- handles the legislative authority in accordance with the proportional system. 2- The term of the city council is four years, its members do not exceed 40, and it is regulated by a relevant law. 3- A city council candidate must, in addition to what is stated in the membership conditions of the Federal Parliament, be registered in the voters' register in the city and have a permanent residential address in it or have been a resident for a period no less than three years".
13. Article 273 of the draft constitution states: "The city of Aden has a unique economic and administrative status in the framework of the Aden Region, as a city with independent legislative and executive powers" Article 275 states the following: "1- The city council in the city of Aden, which is elected through direct, secret, free, and general ballot,
 14. The authorization was finalized in the third plenary meeting held on 1 December 2014.
 15. Presidential decree No 2 of 27 January 2014 concerning the creation of a committee to determine the number of regions was issued.
 16. Presidential decree No 26 was issued on 8 March 2014 with regards to determining the working mechanism of the constitution drafting committee.
 17. Presidential decree No 30 was issued on 24 April 2014 regarding the national regulatory authority in charge of monitoring the implementation of the Comprehensive National Dialogue Conference outcomes.
 18. Article 2 of Presidential Decree No 26, 2014 concerning the definition of the working mechanism of the constitution drafting committee stated: "The constitution drafting process should lead to the preparation of a new constitution for the Republic of Yemen as a federal state consisting of six regions in accordance to the report of the committee that determines the number of regions...". Article 6 of Presidential Decree No 30, 2014 regarding the creation of a national regulatory authority in charge of monitoring the implementation of the Comprehensive National Dialogue Conference outcomes stated: "The committee handles the following tasks and competences: 1- Supervising and following the implementation of the outcomes of the Comprehensive National Dialogue Conference leading to the creation of a new constitution for the Republic of Yemen as a federal state consisting of six regions according to the decision of the committee that determines the number of regions and as reflected in the recommendations and decisions of the conference in the final report of the conference...".



About the author

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