



**Clingendael**

Netherlands Institute of International Relations

From the struggle  
for citizenship to the  
fragmentation of justice  
Yemen from 1990 to 2013

**Erwin van Veen**

**CRU Report**

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Yemen from 1990 to 2013

Erwin van Veen

**February 2014**

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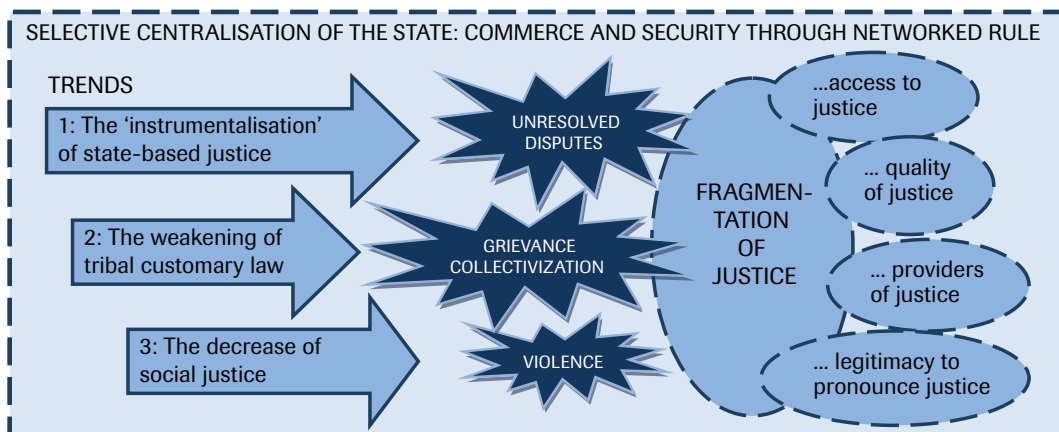
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# Executive summary

Yemen is going through an extended period of negotiation, violence and intimidation in an attempt to redefine its social contract after former President Saleh stepped down in 2011. Its key challenge is whether its leaders can set a course that will enable more inclusive and equitable governance to produce tangible improvements in the day-to-day life of ordinary Yemenis. This challenge needs to be addressed in a context of formidable socio-economic challenges, civil protest and violent conflict. While Yemen's people demonstrate remarkable resilience on a daily basis, the strains and tensions on its society are many and great.

This report analyses the many grievances that underpin these strains and tensions from the perspective of how the ability of legal remedies to resolve disputes peacefully influences the prospects of violence and state formation. It examines, in particular, how the state-based legal system and tribal customary law have developed, who uses them, and to what effect they function. It undertakes this inquiry within the broader framework of Yemen's political economy that is characterised by exclusive governance and declining social justice since the country's unification in 1990. This focus enables the report to contribute a much needed analysis of Yemen's 'state of justice' and what can be done to improve it. Figure 1 below reflects the main strands of the report's narrative.

**Figure 1: Headline overview of the report's narrative**



Over the past two decades, Yemen's – largely northern – ruling elites have selectively centralised the unified Yemeni state's security and commerce for the purpose of regime survival and self-enrichment. In this endeavour, they were greatly aided by: the approximate coincidence in time of a 'remittance bust', which reduced the revenues and autonomy of many communities and individuals: an oil boom, which sharply increased central revenue; and a civil war that provided an opportunity to expand their rule countrywide. The tribal texture of Yemen enabled patronage based co-optation and divide-and-rule strategies to help prevent mobilisation against the regime. A major consequence of this process of selective state capture has been the gradual closure of political and legal avenues that could have been used to peacefully challenge the ruling elite. In turn, this has resulted in an accumulation of

grievances among citizens, groups and regions, and stimulated a slow but sure recourse to violence to resolve disputes. This powder keg exploded in 2011 when the Arab Spring arrived in Yemen and the elite pact that underpinned northern-dominated rule fell apart. Since then, Yemen's social contract has been under pressure to the point of collapse and the provision of justice has further fragmented along several dimensions. The National Dialogue process holds out modest hope for improvement, but only in the medium to long term.

Against this background, the first trend that is clearly discernible in the area of justice is that, since 1990, the state judiciary has incrementally become an extension of the ruling elite on a nationwide scale. This was achieved through three interlinked processes. First, the executive took control of the Supreme Judicial Council – charged with administration of the judiciary. As a result, judicial independence became largely fictional. Second, the judiciary was largely staffed on the basis of party-affiliation and loyalty instead of merit. Third, legal training, civic education and legal infrastructure were, probably purposefully, vastly underfunded in relation to what popular demand for justice required. These developments had three general consequences. To start with, cases that concern interests involving influential individuals are either not prosecuted or judgments are not implemented (an estimated 60%). Moreover, the grand corruption that is practised by major powerbrokers is replicated at micro-scale throughout the state judiciary. Finally, in many places state-based justice is simply absent.

In a way it is fortunate that Yemenis do not bring most of their disputes to the state-based judicial system. In fact, tribal customary law is the main mechanism for the peaceful legal resolution of disputes, as has been the case for centuries. It is estimated that about 70-80% of all disputes that are resolved legally are handled by this system. The second discernible trend is how this system simultaneously demonstrates continuing resilience and is subject to erosion. Co-optation of tribal leaders by the ruling elite-cum-government, growing business interests of sheikhs and the struggle of tribal law to resolve broader collective action problems and to accommodate 21<sup>st</sup> century notions of human rights have caused it to vary significantly in strength and relevance across Yemen today. It remains, however, the default mechanism for peaceful dispute resolution for about half of Yemen's population and must be the starting point for any efforts to improve Yemen's state of justice in the short to medium term. The other approximately half of the population, which mainly lives in areas that neither have a strong state-based legal system nor an effective tribal customary law system, is essentially left without recourse to legal remedies.

A third and final trend is the steady transformation of the resulting array of unresolved disputes into festering grievances, which have initially been partially collectivised and which have subsequently turned violent. The combination of political marginalisation, economic deprivation and limited possibilities for legal redress of grievances has created a strong sense of social injustice, left violence as the only way for many to voice their resentment and, consequentially, ignited a series of civil protests and violent conflicts. The main manifestations of these processes are the decades of willful neglect and abuse of southern grievances, which have led to the current southern issue; a heavy-handed approach to the Al-Houthi movement, which has led to six to seven successive civil wars in north Yemen; and the cynical use of terrorist groups in the south, which has led to increased terrorist activity. These protests and conflicts are radicalizing and fragmenting Yemeni society, raising sectarian profiles and unravelling what is left of its social contract.

A key consequence of these trends is the growing fragmentation of justice in Yemen, especially since 2011. This includes a fragmentation of access to justice, of the quality of legal



outcomes, of the number of justice providers and of the legitimacy to pronounce justice. This fragmentation deepens the divides between the rights and quality of legal outcomes that different groups can obtain across the country. This perpetuates the aforementioned sense of grievance and injustice felt by many, and undermines efforts at dialogue and negotiation.

The challenge for improving the state of justice in Yemen is that any large-scale, direct initiative in the justice area will face major political constraints because the state judiciary, and to a lesser extent tribal justice mechanisms, are nested in the logic of political patronage. The resulting blockages need to be removed before far-reaching judicial improvements can be realised. It is here that the international community has its main role to play by bringing concerted pressure to bear on those Yemeni powerbrokers that resist the necessary political change. At least three initiatives could influence their calculus:

- Increasing the level of political and practical support for the UNSG's Special Envoy to ensure strong and consistent messaging. This will require stronger international activism.
- Insisting on and supporting efforts to recover stolen assets to bring the message home to some of Yemen's elites that their past gains are not necessarily safe. This can create leverage that may enable trade-offs in negotiations about Yemen's future.
- Increasing social capabilities for nonviolent civil resistance to prevent further violent conflict and to harness the power of social mobilisation to press for further change. This means deeper cooperation and stronger support for protest groups that are largely peaceful.

Notwithstanding the political limitations mentioned, small-scale initiatives in the justice area can also contribute to limited improvements in the state of justice, as long as they are designed from a political perspective and benefit from political support. Three options are:

- Stimulating better legal cooperation between state and tribal legal practitioners to infuse each system with some of the strengths of the other. This has the potential for short-term improvements in legal outcomes and initiating a sustainable long-term development of Yemen's legal system.
- Advocating for the local election of legal professionals in a transparent and merit-based manner to improve the quality of local legal outcomes. If the logic of patronage can be broken in some localities, seeds for longer-term change will have been planted.
- Piloting mobile courts to improve the accessibility and speed of local justice. This can be a practical, cost-effective way to meet some of the unmet demand for more justice, but it only makes sense if human resourcing can also be included.

Taken together, these six initiatives can address the political constraints that inhibit significant improvement in the state of justice in Yemen and make a modest contribution towards alleviating the everyday need for better justice. In turn, this can gradually help to break cycles of violence and radicalisation. It will be slow, and it will be hard work.



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# Abbreviations

AAS	Ansar Al-Sharia
AQAP	Al-Qaeda in the Arabian peninsula
b/d	Barrels (of oil) per day
GCC	Gulf Cooperation Council
GDP	Gross Domestic Product
GoY	Government of Yemen
GPC	General People's Congress
IMF	International Monetary Fund
JMP	Joint Meeting Parties
KSA	Kingdom of Saudi Arabia
LDC	Local Development Committees
MDG	Millennium Development Goals
NDC	National Dialogue Conference
PC	Popular Committee
PDRY	People's Democratic Republic of Yemen
SNACC	Supreme National Anti-Corruption Committee
SJC	Supreme Judicial Council
UN	United Nations
UNDP	United Nations Development Programme
UNSC	United Nations Security Council
UNSG	United Nations Secretary General
US	United States of America
WB	World Bank
YAR	Yemen Arab Republic
YECO	Yemen Economic Corporation
YSP	Yemen Socialist Party

# 1 Introduction

In many regards Yemen has been standing at a proverbial crossroads since late 2011. It arrived unexpectedly at this junction when President Saleh decided to resign on 23 November 2011. This decision, in turn, was brought about by a combination of sustained street protests, infighting in his ruling coalition, and concerted international pressure. His departure opened up new space for political contestation of how Yemen is governed: a space that has slowly filled with a crescendo of grievances, forceful debate and emerging directions. Physically, Sana'a's Mövenpick hotel, where Yemen's National Dialogue Conference (NDC) took place, has come to simultaneously symbolise despondency at the prospect of bringing about meaningful change in the way Yemen is governed, perseverance to overcome entrenched resistance, and hope to finally address Yemen's multiplying challenges.<sup>1</sup>

While the resilience of the Yemeni people, their orientation towards consensus, and their ability to keep things going in the face of all odds, gives room for hope, the strains and tensions on Yemeni society are significant.<sup>2</sup> The Yemen of 2013 faces substantial levels of identity politics, conflict, social fragmentation, budgetary pressure and inequality.<sup>3</sup> Unfortunately, although the space for discussing change has increased since 2011, the ability to agree and make change happen has actually decreased. This is because interests have polarised, the government has weakened, and society has fragmented. There are also fewer resources to tackle urgent challenges – with the significant exception of a politically more conscious citizenry that demands change but largely lacks the power and tools to direct it.

A key issue that underpins many of these strains and tensions are the grievances that have accumulated since the country's unification in 1990. They threaten to unravel Yemen's social contract at a pivotal moment in its process of state formation. On the one hand, there are countless unresolved individual grievances that are mainly about land, water and property.<sup>4</sup> They result from corrupt and abusive behaviour on the part of the ruling elite and its clients, as well as from the inability of the mainly state-based, and to a much lesser extent tribal, justice systems to provide adequate and sufficient opportunities for legal redress. On the other hand, there are significant collective grievances about political exclusion and economic marginalisation of entire groups or areas. These largely result from the steep decline in social justice in Yemen over recent decades. Such individual and collective grievances are

- 1 The NDC concluded on 25/01/14. The UN Special Envoy's closing speech can be found here: [https://www.facebook.com/permalink.php?story\\_fbid=259180694244543&id=101605280002086](https://www.facebook.com/permalink.php?story_fbid=259180694244543&id=101605280002086) (consulted 27/1/14). As Iona Craig, a freelance journalist, observed on Twitter: 'The National Dialogue is officially over...on paper that was the easy part of the GCC deal. Now comes the tough bit. #Yemen' (25/1/14).
- 2 Illustrative of these strains are Yemen's plateauing aggregate scores on the Human Development Index for the period 2007–2012, especially in view of its growing population (UNDP, 2013), as well as the 2010 assessment of its prospects for reaching the Millennium Development Goals (UNDP and GoY, 2010). They suggest that day-to-day life for the average Yemeni is deteriorating. After 12 consecutive hours without electricity in Sana'a, @Rooj129 captured the urgency of these issues by observing: "We want water! we want electricity! We want water! We want electricity!" #overheard 5 kids marching in the streets of old #Sana'a #yemen." (Twitter, 09/10/13). Yemen occupies place 145 out of 148 on the World Economic Forum's Global Competitiveness Index (WEF, 2013), which also suggests poor prospects for rapid economic improvement.
- 3 For example, Yemen's scores on the Failed States Index increased from 99.7 (2005) to 107 (2013). See also: IMF, 2013; UNDP, 2013.
- 4 For instance: Clark (2010); Al-Dawsari (2012); several interviews in Sana'a between 28/10/13 and 6/11/13.

connected in at least two major ways. First, individual grievances can turn collective when sufficient numbers of individuals who hold similar grievances engage in processes of group identification and mobilisation. This can slowly turn practical problems of daily life into the politics of identity, a development that has been going on in south Yemen for quite some time. Second, collective grievances that turn violent further increase resentment, and perhaps even radicalise, because violence results in negative imaging, destruction and death. The several rounds of fighting in north Yemen between the Al-Houthi movement, various tribes, Salafists and the central government provide a tragic but compelling example of the vicious spiral this can generate.

As the political arena in Yemen is not a level playing field that allows fair competition, and while legal remedies are often politicised, biased and difficult to access, the possibilities for effective dispute resolution in a peaceful manner are limited. In consequence, grievances have accumulated, views hardened, and violent methods have increasingly been used to resolve grievances when accumulation reached critical levels and patience ran out. This, in turn, influences how people identify themselves, how they view their fellow citizens, and how willing they are to collaborate in pursuit of a collective endeavour such as the NDC. In short, Yemen's challenges go much deeper than either the governance challenges of its transition or its dire socio-economic situation suggest.

It is against this backdrop that the report investigates how justice is organised and delivered in Yemen in order to discover what influence its 'state of justice' has on the prospects for violence and state formation. It examines the state-based judicial system and the tribal customary law system, looking at how each have developed, who uses them, and how effective they are. The inquiry focuses on the period from Yemen's creation as a unitary state in 1990 to the present day.

The report proceeds as follows: Section 2 briefly lays out the main enablers that facilitated the selective centralisation of the unified Yemeni state between 1990 and 2011. It also analyses how the tools applied in this pursuit started to create grievances and reduce the possibilities for legal redress. This creates the broad canvas of the report and connects key political developments with the organisation and delivery of justice in Yemen. Section 3 analyses the first key trend that has led to Yemen's current state of justice, namely the 'instrumentalisation' of the state-based legal system. Section 4 turns to the second key trend: the weakening of tribal customary law. Section 5 subsequently examines the third key trend: the decline of social justice and the slow unravelling of Yemen's social contract. The resulting fragmentation of justice which is occurring as a key consequence of these trends – in particular since 2011 – is the theme of Section 6. Section 7 offers concrete entry points on what the international community can do to help improve Yemen's state of justice.

## 2 Selective centralisation of the state: Commerce and security through networked rule

### Summary

A remarkable process of selective centralisation of the Yemeni state took place between 1990 and 2011 which ensured regime survival and self-enrichment. Yemen's tribal structure unintentionally facilitated this process. Its fragmented nature made it relatively easy to rule by co-optation and division. The local focus of most tribes also ensured that they acted as intermediary governance and socio-economic safety nets, which slowed dissatisfaction from turning into violence in the face of central predation. Yemen's oil boom of the 1980s and 1990s provided the central, mostly northern, ruling elite with the revenue needed to co-opt tribes and expand its security apparatus, while the more or less parallel remittance busts increased the dependency of many of its communities on the state. The 1994 civil war provided the opportunity to expand the rule of northern elites over the entire country at the price of marginalising millions of southerners and the further securitisation of society. Astute use of the tools of violence, business and religion helped the ruling elite to play off its various challengers and to instrumentalise existing judicial mechanisms that could have played a role in challenging its rule throughout the 1990s and 2000s. In the course of time, this helped create vast numbers of individual and collective grievances that remain unresolved. The arrival of the Arab Spring in Yemen in 2011 brought this combustible mixture to explosion point. Since then, the state of security and justice has seriously deteriorated and meaningful improvements in the inclusivity and equitability with which Yemen is governed have remained elusive.

Today's Republic of Yemen (hereafter 'Yemen') was established by the voluntary merger in 1990 of the northern Yemen Arab Republic (YAR) with the southern People's Democratic Republic of Yemen (PDRY). The different histories, power disparities and governance structures of its two constituent parts suggested the need to carefully and inclusively re-craft Yemen's social contract<sup>5</sup> and renew the meaning of the notion of citizenship

5 The term 'social contract' refers to the explicit or implicit agreement of a people on their terms of political association and the principles of justice that regulate the basic institutions governing their society (a constitution is one of its most visible forms). Such an agreement is deemed to be legitimate and sustainable when it is openly arrived at with broad participation and is grounded in a balanced trade-off between the interests of the different groups that any society consists of. The notion of citizenship brings the social contract to life by translating it to the individual level. It is a legal status that confers a set of duties and entitlements to each member of the political community united under a social contract, which includes a minimum set of political, social and economic rights, as well as equal treatment under the law in the pursuit of these rights. It is also the freedom and ability to play a meaningful role as a political agent that individuals can choose to perform in the governance of their society. Finally, it is an identity that individuals derive from being a member of a political community. (Main source: Stanford Encyclopedia of Philosophy, entries for 'citizenship' and 'social contract' (consulted online 21/10/13).



(Dresch, 2000; Blumi, 2010 and Clark, 2011).<sup>6</sup> However, precisely the opposite happened. The early 1990s quickly came to mark the point in time from which rule by a small circle of mainly northern elites<sup>7</sup>, under the leadership of former President Saleh, came to characterise governance in all of Yemen via networks of influence and patronage. These networks were largely financed through self-conferred business advantages and secured by dominating the ability to mobilise violence through the state security apparatus and Yemen's main tribes (Clark, 2010; Salisbury, 2012; Chatham House, 2013). One consequence of this development was growing social division and marginalisation of entire groups and regions. The scope of Yemen's social contract slowly narrowed. Another consequence was the gradual neutralisation or co-optation of safety valves, such as the political and legal mechanisms through which this process could have been peacefully challenged. This fundamentally impaired the ability of many Yemenis to claim their rights as citizens. Tribes, remittance busts, oil booms and civil war are four key enablers that played an important role in enabling this process. They are the topics of the subsections below.

## Enablers: Tribes, remittances, oil and civil war

### Tribes and tribesmen

Much of life in much of Yemen continues to unfold in extended and interlinked rural communities.<sup>8</sup> Contrary to the global trend, Yemen remains a largely rural society. It is estimated that only about 35% of its ca. 25 million inhabitants live in urban zones, which translates into about 16 million people living in more remote rural areas (World Fact Book, consulted 09/08/13). Its rugged and often inaccessible terrain continues to keep many communities relatively isolated and self-dependent, and makes transport and communication difficult.

Estimates of how many Yemenis consider their primary identity to be tribal vary significantly,<sup>9</sup> but most of Yemen (north and south) was and is inhabited by tribes of varying strength and cohesiveness. The main exceptions are the towns of Ibb, Ta'iz and Aden, and their surroundings (Weir, 2007; Clark, 2010). There is considerable variation between tribes. While they are all sedentary and the allegiance of their tribesmen is based less on kinship than on calculations of influence and resources, they vary tremendously in their martial prowess (generally stronger in the north),<sup>10</sup> political influence (generally stronger when closer to oil fields or the capital) and in the range of community functions they undertake (Manea, 1986; Corstange, 2008; Schmitz, 2011). In spite of their differences, Yemen's tribes also have a few important

6 These authors also offer useful historical analysis of the YAR and PDRY as Yemen's predecessor states and of the factors that influenced their unification.

7 Until 2011, these elites largely consisted of an 'inner circle' consisting of the extended family of former President Saleh, selected members of his Sanhan clan, the Al-Ahmar family (in particular sheikh Abdullah bin Hussein al-Ahmar (who died in 2007) as the head of the Hashid tribal federation), and close supporters like Ali Mohsin Al-Ahmar (not related), and an outer circle consisting of selected tribal (Hashid and Bakil) and religious elites. These circles, their interaction and the motivations of their members are coined and analysed in: Phillips (2011a; 2011b).

8 Although the label is contentious, these extended and interlinked communities are often denoted as 'tribes' (Dresch, 2000; Weir, 2007; Blumi, 2011). This report uses the term 'tribes' as a broad label for social communities at the sub-state level that have varying degrees of political awareness, hierarchy and militancy.

9 The answer depends in part on how tribes are conceived of. Defined as political-military structures in which tribesmen mobilise if called to arms, the percentage may be as low as 20%. However, defined as socio-economic structures that provide local governance and services to members with relatively fluid identities, the percentage may be as high as 80% (e.g. Phillips, 2011; Schmitz, 2011).

10 It is estimated that about 10 million weapons circulate among Yemen's ca. 25 million inhabitants, which might just make it the second most heavily armed society in the world. Many of these weapons are in the hands of tribes and tribesmen (Small Arms Survey, 2010).

characteristics in common: they form the social fabric of much of Yemen, offer important markers of identity, and provide a wide range of basic governance functions and services to many Yemenis.

A key consequence of Yemen's tribal structure and the historical absence of a strong central authority is that political life in Yemen has long been, and remains, characterised by the existence of multiple centres of power that have kept any ruler with overtly expansionist ambitions on his toes. Yemen's tribes and its central government have a checkered history of collaboration and competition. This situation places a premium on the need to manage what are best termed 'competing coalitions' and it is for this reason that former President Saleh compared ruling Yemen to 'dancing on the heads of snakes' (Clark, 2010). He failed to mention, however, that this fragmentation of power, allegiance and identity along tribal lines also provides a convenient starting point for anyone with sufficient political skill, acumen, force and riches to divide and rule.<sup>11</sup> It is to the riches that were required to rule that the next two subsections turn.

### Remittance busts

Remittances have played at least two vital functions in Yemeni society from as early as the 1970s. First and foremost, they are a vital source of income at the household level. For example, entire households may get by on the earnings of one Yemeni labouring in, say, Saudi Arabia. They also made individuals, households and communities less dependent on the state and other authority structures. This increased their autonomy and their ability to resist 'external' encroachment, predatory or otherwise. These functions make the reduction of remittances to Yemen as a whole in the 1980s and 1990s a significant development. It made more people financially dependent on others (such as the state) for survival, and decreased the power of both tribes and citizens by muting their ability to protest against the excesses of the central ruling elite (Weir, 2007; Blumi, 2011).

The fall in remittances was triggered by two developments in particular. The first was the oil price shocks of the 1980s. Around 1975–1978, remittances in both the YAR and PDRY amounted to 30–40% of GDP.<sup>12</sup> For example, in 1978 they stood at US\$1.3 billion in the YAR alone, dwarfing government revenue. However, between 1981 and 1986, oil prices went down significantly and with them went the construction boom in the Gulf, which had absorbed so much Yemen migrant labour. By 1989, Yemen migrant remittances were 25% of what they were in 1980 (Dresch, 2000). Remittances were further reduced in 1990 when Yemen had a seat on the UN Security Council and decided not to support the US-led coalition in the first Gulf War. By way of punishment, close to a million Yemenis working in the Gulf States were expelled. This event sealed the decline in remittances as a major source of independent income across north and south Yemen (Forsythe, 2011). A more recent development is the tighter enforcement of labour law in Saudi Arabia. A four-month reprieve period for workers not in possession of valid work permits expired in early November 2013. This was immediately followed by mass round-ups and deportations. It is estimated that between 300,000 and 400,000 Yemeni migrant labourers have since been deported from the country

11 One interviewee illustrated this tactic by narrating how the Al-Alqeel and Al-Abo Taheef tribes in the Mareb governorate had been fighting each other for an extended period of time despite being strongly related by family ties, only to cease hostilities upon finding out that parts of the government provided arms to both sides to keep the conflict going. This dynamic is said to be especially prevalent in oil-rich areas as divided tribes struggle to demand a greater share of revenues from the state (Interview, 04/11/13).

12 UN National Accounts Main Aggregates Database, <http://unstats.un.org/unsd/snaama/introduction.asp> (consulted 10/10/13).

(Yemen Times, 05/11/13; Economist, 10/12/13). The precise impact of the socio-economic shock this will generate in Yemen is hard to predict, but it is bound to be significant.

### **Oil booms**

Major oil discoveries were made in Yemen in 1984 (Marib field, north Yemen) and 1991 (Masila field, south Yemen) (Whittal, 1995).<sup>13</sup> While Yemen's total output at world level was always modest and has been declining to about 180,000 barrels per day (b/d) since its peak of about 450,000 b/d in the early 2000s (BP, 2013), hydrocarbon revenues still averaged around 12–14% of GDP (ca. US\$4.5 billion) over the past few years (IMF, 2013). As oil revenue is easily appropriated by the state, the billions that reliably entered the – initially northern – treasury every year played a large role in underwriting the rule of President Saleh and his inner circle. South Yemen's oil fields offered further resources to extend their patronage style of rule throughout the country after the 1994 civil war. The ruthless post-1994 seizure of critical southern assets must in part be seen as the result of a desire to secure these resources (Blumi, 2011; ICG, 2011).

A more recent development is the discovery of natural gas deposits. A recent US estimate puts the value of the three 20-year contracts that govern its exploration at US\$10 billion each (2009 prices), which would amount to about US\$1.5 billion per year (equivalent to a third of Yemen's current oil revenue) (US cable, 2009a). If exploration proceeds as currently planned, these revenues are likely to smooth the decline in oil revenues over the next few years. Thus, the overall income stream may not change much in the short term, so incentives to maintain elite control of these funds will remain largely as they are.

One of the results of the relative parallel occurrence of the remittance bust and the oil boom is that they helped tilt the balance of power in Yemen from multiple local centres of power to the central government and the elites that commanded it (Chatham House, 2013). While this development was far from absolute, and local power centres remained influential, it turned the tables in terms of who had the upper hand. Although this development was initially strongest in north Yemen, it rapidly expanded throughout southern Yemen on the back of new oil discoveries in 1991 and the 1994 civil war.

### **The opportunity of 1994: Citizenship by passport only?**

Against the background of more structural enablers like tribes, remittances and oil, the 1994 civil war between the former YAR and PDRY provided the opportunity to expand and accelerate the selective centralisation of the Yemeni state by a small part of its elites.

The contrast between the rural, decentralised and tribal-based Yemen Arab Republic (YAR) and the centralised, ideology-driven and party-based People's Democratic Republic of Yemen (PDRY) could not have looked greater at the time of Yemen's unification in 1990. However, in spite of their differences, both states had a fairly viable governance system, a robust support base, strong social texture and significant assets. Yet, between 1990 and 1995, the YAR, and in particular its President Saleh and his General People's Congress (GPC) party, managed to turn the initial voluntary merger that enjoyed a reasonable degree of popular support into what some would call a hostile takeover of south Yemen which arguably still exists today

<sup>13</sup> For a complete timeline overview of oil discoveries in Yemen see: <http://www.pepa.com.ye/Production%20Activities/production%20activities.htm> (consulted 16/09/13); Yemen's geology and prospects are discussed extensively in: Yemen Hunt Oil Company, 1992.

(Clark, 2010).<sup>14</sup> The main immediate consequence was that the original 50-50 power-sharing agreement between the governments of the former YAR and PDRY, despite a vast difference in population,<sup>15</sup> was voided to the benefit of Yemen's northern ruling elites (Dresch, 2000).

The period between unification (1990) and civil war (1994) coincided with the deepening of the remittance bust discussed above. This significantly strengthened President Saleh's relative power position vis-à-vis his southern counterpart, Ali Salim Al-Bid, who had become vice-president of the united Yemen. The client-patron relations and social networking methods of rule in northern Yemen – with their close association between political parties, religious establishments and tribal structures – proved much more adept at providing basic social safety nets for the tens of thousands of Yemeni families who were suddenly without income when remittances dried up than the more centralised government structures of southern Yemen. President Saleh did not hesitate to extend support to receptive southern powerbrokers who were keen to leverage the associated resources to gain local advantage in exchange for a patron-client relationship with the former YAR's ruling elite (Blumi, 2011). This weakened the former PDRY's position in running the united country and became a source of contention that contributed to civil war.

The civil war, in turn, created deep-seated grievances and a mounting sense of social injustice in southern Yemen that still exists today. For example, in the run up to the war, a veritable 'campaign' of political assassinations took place (1991–1993) which killed a significant number of leading members of the PDRY's Yemen Socialist Party (YSP) (Dresch, 2000; Clark, 2010).<sup>16</sup> It has been suggested that these assassinations were (indirectly) carried out by northern security services in a bid to pave the way for establishing control over the south. They may, however, also have occurred as a result of violent feuding between YSP factions. More importantly, responsibility was never established and the episode continues to feed (personal) grievances and a perception of social injustice.

Moreover, the north's victory in the war was enabled in part by support from southern factions defeated in the PDRY's preceding civil war of 1986. Its president at the time, Ali Nasir, was defeated after his men murdered a large number of the PDRY's Politbureau on 13 January 1986 and he fled to the north with about 30,000 followers. Re-armed and re-formed by President Saleh, they returned with a vengeance in 1994 to seal the northern victory (Dresch, 2000). This piece of northern realpolitik created strong resentment in the south. It also helps explain why the southern Al-Hirak movement (see Section 5) is not a unified force today. A number of its leaders, most prominently Ali Salim Al-Bid (PDRY President until 1990 and Vice President of Yemen until 1994) and Ali Nasir (former PDRY President), fought each other in 1986 and 1994 (ICG, 2013b).

After the civil war, large-scale grabs of prime land by members of the northern elite became common<sup>17</sup> and significant parts of the southern bureaucracy (especially its military) were sacked, dismissed or sidelined (ICG, 2011). This created a vast number of disputes over land, positions, status and salaries, in which many southerners have felt unjustly treated and

14 The international and domestic developments that drove both Yemens to attempt unification are well-analysed in: Dresch, 2000; Clark, 2010 and Blumi, 2011.

15 The YAR was estimated to have had ca. 11 million inhabitants at the time, the PDRY, 2 million (Dresch, 2000).

16 Targeted lethal political violence against key elite figures in Yemen is not limited to periods of intense power contestation. For example, key figures of Yemen's current transitional government were recently targeted, including its Minister of Defence (2012) and Prime Minister (2013).

17 Clark (2010) reports Ahmad Al-Fadhli, a member of the ruling family of the Al-Fadhli tribe, as voicing 'the common southern complaint' in a straightforward manner: 'By all I means buy our land if you [northerners] can afford it, but don't just take it.'

marginalised. Two decades of inaction have allowed these grievances to fester and recent efforts to make amends have so far done little to relieve them (see Section 5).

In brief, the ruling elites of north Yemen were largely able to consolidate their hold on the north and to take over south Yemen on their terms and conditions in the course of approximately a decade. These developments were in part enabled by the country's tribal structure, which provided both a key support base and allowed a game of divide and rule, as well as by the more or less parallel occurrence of remittance busts and oil booms that decreased local and increased central revenue. Earlier limits on the possibilities for self-enrichment and patron-client relations decreased, while marginalisation and disenfranchisement increased and grievances started to accumulate.

## Tools: Violence, business and religion

These developments facilitated the creation of an informal power-sharing pact on the basis of which largely northern elites, mostly tribal in origin, ruled Yemen from 1990 to 2011, using state functions and revenues for patronage, self-enrichment<sup>18</sup> and to maximise their power. Initially, something akin to a triumvirate stood at the heart of this pact, consisting of Ali Abdullah Saleh (President and hailing from the Sanhan tribe which is part of the Hashid tribal federation), Abdullah Al-Ahmar (Speaker of the Parliament and paramount sheikh of the Hashid tribal federation) and Ali Mohsin Al-Ahmar (also from the Sanhan tribe and until recently commander of the first armoured division and northwest military region).<sup>19</sup> The pact also enjoyed significant international sponsorship with President Saleh maintaining strong relations with Saudi Arabia and Western countries (the US in particular), and Ali Mohsin reportedly maintaining ties with the Muslim Brotherhood as well as more radical religious groups. Until a few years before President Saleh's resignation, this informal elite pact can be characterised by 'exclusive inclusion', meaning that it included, to varying degrees, most relevant powerbrokers in the north,<sup>20</sup> while excluding most southern elites with the exception of a few symbolic inclusions<sup>21</sup> (Alley, 2010; Clark, 2010; Phillips, 2011a; ICG, 2012; Manea, 2012). While the pact met its nemesis most visibly on 22 March 2011 when Ali Mohsin publicly distanced himself from President Saleh during the Yemen chapter of the Arab Spring, much of its logic and patronage networks remain in place having gradually infiltrated most institutions of state and society over the past decades (e.g. Alley, 2013). However, these networks are now subject to new tensions and competition by actors who have been empowered by the events of 2011 and the NDC (see section 2.3).

This section briefly discusses how the ruling elite utilise(d)s the tools of violence, business and religion to make good use of the enablers previously discussed, further centralise the

18 For example, a quick Google search suggests that former President Saleh's personal fortune is estimated at between US\$25–70 billion (Your Middle East, 29/04/13; Yemen Times, 15/03/12; Investopedia, 21/09/13) (consulted 30/08/13). Even if this is correct, it leaves a vast personal network of relations out of account that can presumably also be mobilised for assistance, favours and cash.

19 See Alley (2010) and Phillips (2011a) for a more detailed analysis of how Yemen's dominant elites were composed during President Saleh's tenure. Clark (2010) offers an interesting account of how some of the key players got to know each other in the early days of the YAR in the 1970s.

20 It is said that the relations between the top players of the pact slowly deteriorated from the mid-2000s onwards. For example, the ICG (2012) argues that the origins of the defection of Ali Mohsin and Hamid al-Ahmar during the 2011 Arab Spring protests dates back to the period 2000–2001, when President Saleh started to put his sons and nephews in prominent positions to the detriment of other important powerbrokers.

21 These hailed in particular from the group of southerners who fled the south after losing its civil war in 1986. The current President Hadi comes from this group.

Yemeni state – especially in the areas of security and commerce – and subvert the judicial mechanisms that might have provided counterweights to its dominance.

## Violence

Yemen's military/security complex greatly expanded in size<sup>22</sup> under President Saleh and became increasingly subject to his personal control.<sup>23</sup> However, under his control, Yemen's central government was typically unable to project force permanently across its entire territory. Instead, it was reasonably able to do so where and when necessary.<sup>24</sup> This made violence a tool that was selectively applied and usually only when patronage could not be dispensed to obtain collaboration or co-optation instead. However, the increase in size and importance of Yemen's military/security apparatus in the service of President Saleh and his inner circle had far more subtle effects on the state of justice in Yemen than the mere application of brute force.

To begin with, the military/security complex developed into a valuable channel for patronage and corruption. In its simplest form, it allowed the reward of supporters by adding thousands of ghost soldiers/officers to the military payroll. For example, a sheikh would request the establishment of a military brigade of 7,000 soldiers to be led by him. Once granted, all these positions would be paid but only 150 would actually serve. As a Yemeni soldier earns about US\$200 a month, this amounts to a monthly profit of about US\$1.37 million (Interview, 29/10/13). Alternatively, high-ranking positions were dished out to sheiks, their sons or other elite members to increase their prestige. Other forms of corruption include selling unit diesel and other supply allocations on the black market for private gain, or the use of military positions to participate in, or gain from, smuggling. Many military officers have sizeable business interests and (ab)use their official position for private gain.

In addition, active-duty military officers run the Yemen Economic Corporation (YECO), a rather opaque para-statal organisation which used to own a lot of the land appropriated from the south in 1994 (now transferred to the Shibam Holding Company) (Chatham House, 2013), has the authority to appropriate land for military use, is a big player in food imports, real estate and construction, and manages a large transportation network. This reportedly makes it an important conduit for practices like the large-scale sale of appropriated land below market prices for private gain, smuggling and unfair business competition (Alley, 2010; Phillips, 2011a; Interview, 19/08/13).

Finally, the military did and does play a major role in the judiciary without necessarily having the relevant qualifications or authority. Interestingly, high-ranking military officers used not only to take both half to two-thirds of the seats of the Supreme Judicial Council, which is basically in charge of the judiciary,<sup>25</sup> but also to sit as judges on, for example, the Supreme Court. While formal appointments of military commanders in the judiciary seem to have

22 Security expenditure is estimated at about a sixth of the government budget but it is hard to pinpoint with precision as it is condensed into a single line item on the national budget (USAID, 2006; ICG, 2013a). The total public wage bill stands at 11% of GDP while, in contrast, tax revenue hovers at around 6–7% of GDP (IMF, 2013).

23 The importance of loyalty was probably not lost on President Saleh given the assassination of his two predecessors, Presidents Hamdi (1977) and Ghashmi (1978).

24 For example, the government usually had/has to negotiate to obtain military access in strong tribal areas.

25 This body was chaired by the president until 2006. Ironically, it was heralded as quite an improvement for the rule of law when he vacated his position, but reportedly the head of the national security office took his place (Interview, 02/11/13).

decreased since 2011, quite a few military commanders simply continue to act as judges (as well as run their own prisons) in their areas of control without much by way of checks and balances. Until 2011, the approval of military intelligence was even required for judges to be promoted – the alignment of their judgments with regime interests being the main criterion (Interview 02/11/13).

In sum, the military-security apparatus has operated above the law and contributed significantly to a climate of corruption and impunity. Despite efforts at reform, many of these practices in and by the military continue today – albeit less directed by the ruling elite-cum-government.<sup>26</sup>

## Business

If control of the military/security apparatus insulated the ruling elite from the threat of violent overthrow, control of strategic aspects of the economy ensured its enrichment. It is estimated that less than ten major groups and families control 80% of Yemen's banking/finance/insurance, telecoms, transport/shipping, construction and engineering services, real estate, manufacturing and import businesses (Salisbury, 2012). It will be no surprise that there appears to be significant overlap and linkage between the ruling and business elites. Control over the economy was established by key elite players and government-associated individuals through a mix of state-owned enterprises that dominate particular sectors of the economy, creating preferential economic positions through exclusive import, export or distribution licences, by establishing de facto private monopolies,<sup>27</sup> and through opaque tender processes.<sup>28</sup>

One of the more ingenious ways to generate vast amounts of illicit income for many elite players (which has continued to exist since 2011) is the government-run diesel subsidy scheme. It is estimated to amount to about two-thirds of the US\$4.5 billion in oil revenues Yemen enjoys every year (IMF, 2013). There are two ways in which it serves as a key mechanism for 'grand corruption' in Yemen (USAID, 2006). First, those entitled to subsidised diesel allocations sell them on the local or regional market at international prices and pocket the difference. One interviewee wondered why the government allocates only 6 million litres of oil per month to Aden, Abyan, Lahij and Ad-Dali (four large governorates), while allocating 5 million litres per month to Al-Mokkah (a small area, but home to one of the Horn of Africa's infamous smuggling ports) (Interview, 05/11/13). Second, the better-connected obtain permission to import fuel at market prices and to reclaim the subsidy from the Central Bank. They subsequently use falsified import bills to claim the subsidy without having imported any fuel, or send the 'imported' shipment on to another market where it can be sold at a further profit (Interview, September 2013). It has been estimated that in 2008 at least 50% of the public funds allocated to diesel subsidies were diverted through such smuggling practices (Phillips, 2011a).

The general intermeshing of public office and business interests has major implications for the state of justice in Yemen. Most importantly, the legal system is essentially powerless

<sup>26</sup> For a detailed treatment of these reforms: ICG (2013a).

<sup>27</sup> For instance, a single private actor was granted the exclusive rights to distribute all oil derivative products to the government – including the Public Electricity Corporation – and private business (Salisbury, 2011). In similar vein, a former Minister of Planning granted the exclusive right to provide generators to the government to one particular company (Interview, 31/10/13).

<sup>28</sup> Major contracts, such as the construction of a power transmission plant in Sana'a worth millions, are often single-sourced without proper justification. A minority of all public works is actually tendered (USAID, 2006).

to uphold and apply commercial law in business disputes when major and politically well-connected business interests are at stake. Given the elite's dominance of the economy, this is often the case. In consequence, most contracts are not enforceable through the formal legal system (also: IMF, 2013; Interview 06/11/13). Instead, commercial disputes tend to be settled informally, with side-payments or through political connections. The party with the better legal case is likely to lose out if the other party is either more powerful or if the matter is time sensitive (a commercial court case will take about seven to eight years to clear). Political resolution tends to take the form of mobilising a key elite figure who can enforce a settlement because of his position. Of course, this creates a debt of favour that will have to be repaid later. As one interviewee astutely observed, 'there are many ways to do so' (Interview, 06/11/13).

In addition, such intermeshing creates significant tension between foreign anti-bribery and anti-corruption legislation with international reach and the conditions for running a successful commercial operation in Yemen. Simply put, the absence of a reliable and enforceable legal framework forces many international companies operating in Yemen to partner with a Yemeni intermediary company to ensure continuous operations that are secure from physical threats, unexpected tax bills and denial of essential permits. Such an intermediary company is likely to be owned by a member of the country's political-economic elite and to charge appreciable fees (see Chatham House, 2013, for an interesting example). More stringent enforcement of the recently adopted Bribery Act (UK, 2010) or the older Foreign Corrupt Practices Act (US, 1977) is likely to increase the risk of prosecution of Western companies.

An ultimate consequence of the marginal role of the judiciary in the regulation of commerce is that the economic playing field remains uneven. This perpetuates a situation in which elites reap windfall profits while ordinary citizens pay a premium on basic goods and services. The fact that about 50% of the Yemeni population is 'food insecure' creates a direct link between the additional costs resulting from the structure of the economy and a growing source of grievance.<sup>29</sup>

## Religion

The final key tool used by the ruling elite to consolidate its political power was religion. President Saleh and his inner circle operated alliances of convenience with different religious powerbrokers for two purposes. Firstly, such alliances prevented the mobilisation of religiously inspired resistance against the regime by allowing selected individuals and groups greater leeway in their criticism and positioning vis-à-vis the state and by loosely connecting them to the ruling elite (e.g. Bonnefoy, 2011; Al-Hamdani and Nasser, 2013). Secondly, these alliances provided convenient tools to give strong-arm politics the occasional measure of legitimacy and popular religious support. Fatwas, for example, played an important role in legitimising and mobilising for the 1994 civil war (Yadav, 2013a).

The composition and strength of these alliances of convenience changed over time. As the former YAR was dominated by its northern tribes prior to Yemen's unification, Zaydi Shia religious thought dominated its socio-religious life (Dresch, 2000; Weir, 2007).<sup>30</sup> While the

<sup>29</sup> World Food Program, <http://www.wfp.org/countries/yemen/food-security> (consulted 01/10/13).

<sup>30</sup> Simply put, Shia Islamic doctrine holds that only descendants of the (wider) family of the prophet Mohammed have the authority, legitimacy and skill to act as authoritative sources of religious guidance for the community of believers. Within Shia doctrine there are three schools of thought: Twelvers, Ismailis and Zaydis. Zaydi Shia's are closest to Sunni doctrine and underwrite a notion of religious leadership that combines merit with descent (Esposito, 1999). Wahabism is a school of Sunni thought that holds a more conservative interpretation of Islam



republic broke with the rule of the Zaydi Imams in 1962, its society and elites nevertheless continued to be inspired by Zaydi teachings (Dresch, 2000; interview, 31/10/13). President Saleh and members of his 'inner circle' also maintained relations with radical conservative Sunni clerics such as Abdul Majeed Al-Zindani as far back as the late 1980s (Al-Hamdani and Nasser, 2013). Moreover, he supported Yemen's Salafi movements and encouraged the gradual increased presence of Salafist/Wahabist religious schools and preachers in Yemen (Meyer, 2009; Clark, 2010).<sup>31</sup> In part, this was probably a quid pro quo for sustained Saudi financial support,<sup>32</sup> in part because such groups supported his hold on power, and in part stimulated by the Al-Islah party being part of the government of Yemen throughout most of the 1990s (see Bonnefoy (2011) for further analysis).<sup>33</sup> The loose regime alliance with radical conservative Sunni clerics influenced the state of justice in Yemen in regard to two issues in particular.

In the first place it enabled these clerics to successfully advocate for a sharia-dominated constitution that increased their own power. The fight about the nature of the relationship between the constitution and sharia (Islamic law) took place in the early 1990s and re-emerged recently in the context of the NDC. At the time of unification, Yemen's 1991 constitution logically reflected the pluralism inherent in the merger of the 'tribal' YAR and the 'socialist' PDRY by stating that 'Islamic jurisprudence is the *main* source of legislation' (article 3). However, directly after the civil war, this wording was modified so that the 1994 constitution stipulated that 'Islamic Shari'ah is the source of *all* legislation'. The change resulted from vigorous lobbying by no other than Al-Zindani himself (Yadav, 2013b) and remained in place during its 2001 revision.<sup>34</sup> The legal effects of this change have been several:

- It provides a legal framework that authorises senior clerics to regulate social life. This happens through the issuance of fatwas against what clerics see as inappropriate social developments (often gauged against a conservative interpretation of Islamic thought). This has included matters such as limiting women's participation in political life (Yadav, 2013b).
- It has provided the ruling elite with a tool to harass its political opponents by utilising such fatwas to suppress dissent and media. In short, this constitutional change enabled a reduction in the level of pluralism in Yemeni society.

than the Sunni mainstream. It underwrites a more individual relation with the divine that does not require a specialist intermediary. Convenient for Yemen's ruling elite, Wahabism also preaches obedience and submission to higher authorities, even if these are unjust. Zaydi Shia thought, by contrast, legitimises rebellion against an unjust ruler (Weir, 2007).

31 One interviewee observed how tribal life in Yemen has become more and more conservative for women over the past decades. Women used to know how to shoot, be able to hunt, swim and dress more colourfully. Today, many of these activities are no longer socially possible and black, body-covering garments have become the norm. This is ascribed to the growing influence of a conservative interpretation of Islam on social attitudes (Interview, 04/11/13).

32 Saudi grants are estimated to amount to ca. US\$1–2 billion per year to the central government with a similar amount estimated to go directly to tribal leaders (Phillips, 2011). This excludes one-off grants such as the US\$2 billion in oil that was shipped to Yemen during the 2011 crisis to supplement the fall in production resulting from pipeline sabotage (IMF, 2013). These figures are ballpark guesses for recent years.

33 Al-Islah is, however, not a Salafist movement but a conglomerate of three groups: The Muslim Brotherhood, headed by Mohammed Qahtan; the Hashid Tribal confederation, led by Sheikh Sadiq al-Ahmar; and the Salafis, led by the cleric Sheikh Abdul-Majid al-Zindani. The Muslim Brotherhood is the largest component of the party. These different factions share an agenda of social conservatism based on the core tenets of Sunni Islamic thought (Interview, 5/11/13; Yadav, 2013a).

34 Wikipedia entry 'Constitution of Yemen', consulted 20/11/13.

- It has made tribal customary law formally subservient to Islamic law. While this is generally unproblematic because sharia law incorporates and provides for the application of customary law (Interview, 05/11/13), it can be used to increase religious power over tribal power when and where religious groups expand or radicalise.

In the second place, it enabled conservative clerics to truly enforce social compliance with a largely conservative interpretation of Islam through their use of the practice of takfir.<sup>35</sup> This amounts to declaring a group or an individual 'apostate' from Islam by a competent religious authority, which gives believers sufficient cause to shame, ostracise or even execute them/him/her. It entirely circumvents normal requirements of due legal process. Yemen has an appreciable history of this phenomenon that clearly shows its use as a political tool to dominate the communicative discourse, create social divides, delegitimise enemies of the ruling elite and suppress dissent. Examples include the use of takfir in the run up to and during the 1994 civil war to delegitimise the Yemen Socialist Party, during the Al-Houthi wars to brand the movement of the same name as heretics (see Section 5), to target journalists, writers and activists in the 1990s and 2000s to suppress dissent and, more recently, during the NDC process to influence its direction. Most were issued by Salafi clerics (Al-Hamdani and Nasser, 2013). However, while the practice seems to have been generally acquiesced to during President Saleh's tenure, its latest use during the NDC triggered strong social debate. In fact, Ahmed bin-Mubarak, the NDC's Secretary-General brought a court case against the instigating individual as his act clearly undermined the attempt to run an inclusive process. It is unclear how this debate will unfold, but it seems to be better recognised that the practice creates social ostracism under legal and religious guises to serve the agenda of particular powerbrokers.<sup>36</sup>

## The year 2011 and the National Dialogue Conference

Yemen's informal power-sharing pact unravelled in 2011 in almost neat sequential fashion with episodes of events triggering each next stage. The fissures that had started to appear years earlier between the main protagonists of the pact – namely former President Saleh, the Al-Ahmar family and Ali Mohsen – provided one critical background factor. These centred on their relative influence in the military, Saleh's succession, and the instrumentalisation of the Al-Houthi wars (see Section 5) (Phillips, 2011a, ICG, 2012). The deteriorating economic situation and increasing dissatisfaction among wide segments of the population with their political marginalisation provided another background element. This powder keg was ignited by the shockwaves of the events in Tunisia and Egypt that triggered the social mobilisation leading to the initial street protests (Lynch, 2012). The repressive response of the government fanned the flames and ensured protests spread rapidly, ultimately causing an open and fatal break between the main powerbrokers. The final pressure factor was the united and forceful stand of the international community – after its show of disunity over Syria and Libya – towards President Saleh (Interview, September 2013; see also Annex 1).

These momentous events of 2011 opened space for serious contestation over how Yemen should be governed, what rights and duties its regions and individuals should have, and how these can be realised. Its peaceful dimension has by and large been filled by the NDC, which

<sup>35</sup> Takfir is basically a coercive measure to contest unwelcome changes in social, political or religious norms and identity (Yadav, 2013; Al-Hamdani and Nasser, 2013). The best known example in the West is probably the fatwa Ayatollah Ruhollah Khomeini issued against Salman Rushdie in 1989 in response to his publication of 'The Satanic Verses'.

<sup>36</sup> See Yadav (2013a) for a more in-depth treatment of the development and discursive effects of takfir.

has enabled new voices to publicly contribute and debate views and proposals (particularly young people, civil society organisations, and various previously marginalised movements and parties) (Interviews, 29/10/13-06/11/13). Symbolically, this has, for example, allowed women's groups to table proposals to improve their political rights and legal position (for example, in respect of underage marriage), organise conferences and engage in direct civic activism such as organising sit-ins during NDC proceedings (Interview, 29/10/13). Such voice and advocacy used to be inconceivable, and the process may have teeth. For example, the criteria discussed in the NDC for holding future political office can potentially rectify the main deficit of the Gulf Cooperation Council (GCC) agreement, namely that it did not bar a number of individuals from political office *in exchange for* immunity (Several interviews, 28/10/13 – 06/11/13). While it is unlikely that the 'immunity law' that was passed on the basis of the GCC agreement will be reversed,<sup>37</sup> the introduction of such criteria may expedite the change of political guard Yemen so desperately needs.

However, there is a much more violent dimension to the space for contestation that opened up in 2011. In this dimension, former ruling elites compete forcefully with groups and movements that have taken advantage of its widening. For example, the Al-Houthi movement, Salafist groups and part of the Al-Ahmar led Hashid tribal federation recently intensified their fight for territorial control in north Yemen, in particular around Dammaj (see Hamidaddin, 2013 for a good analysis). Assassinations, intimidations and sabotage also abound, with several conspiracy theories competing to explain each incident. Groups that are capable of it seem to be hedging their bets by simultaneously engaging in peaceful dialogue and in acts of violence or civil protest.<sup>38</sup>

This parallel occurrence of peaceful and violent contestations has largely paralysed Yemen's government. On the one hand, its ability to take political decisions is constrained by the nature of its coalition cabinet and the drawn-out suspense of the NDC process having to produce and implement a high-level political compromise. On the other hand, its capacity to provide order, justice and services remains limited by the state's 2011 retreat from many areas and is constrained by divided loyalties throughout the civil service, judiciary and military (see, for example, Gaston and Al-Dawsari, 2013). As a result, its room for manoeuvre is extremely narrow.

Meanwhile, the international community has taken more of a backseat compared to 2011 (see for example Annex 1) and seems content to have let the UNSG's Special Envoy facilitate the NDC while pursuing its own security agenda in the fight against terrorism (particularly in the case of the US). In spite of the best efforts of the Friends of Yemen<sup>39</sup> and the UN, it looks like a case of international focus having moved on somewhat after the initial crisis of 2011 was 'resolved' through the GCC agreement. Yet, without sustained and sometimes forceful international attention, it is questionable whether the clearly obstructionist behaviour of some Yemeni stakeholders can be sufficiently curtailed.<sup>40</sup>

37 See for example Human Rights Watch's call to strike down the immunity law: <http://www.hrw.org/news/2013/11/19/yemen-strike-down-immunity-law> (consulted 21/11/13).

38 A number of interviewees voiced the view that the NDC results are likely to lack bite and that the violent struggle is what will really influence the prospects for change (Several interviews 29/10/13 - 06/11/13).

39 The Friends of Yemen is an international grouping that unites countries and international organizations that support Yemen's development.

40 There is reason to believe that international pressure, mostly from the UN and EU in the form of the threat of targeted sanctions, was effective in reaching the GCC deal and initiating the transition (Interviews, September 2013). Mapping UNSC resolutions, presidency conclusions and press statements against the events of 2011-2013 provides some support for this assertion (see Annex 1).

In sum, many of the actors, their interests and power sources have remained the same (e.g. ICG, 2012; Chatham House, 2013). They continue to use the tools discussed above to defend their interests tooth and nail, albeit with less overt government involvement. Tangible benefits of the 2011 popular revolt in day-to-day life unfortunately remain few. What has changed is that the space for power contestation has widened. In this process, however, the country's collective abilities to manage conflict and agree change are eroding and the situation has become more chaotic, insecure and unpredictable.

## The state of justice in 1990 and 2013

The preceding analysis has set out the broader political developments in Yemen over the past two decades and started to outline how they have influenced its state of justice and accumulation of grievances. Table 1 below illustrates and maps key connections between major political and judicial developments. On this basis, it remains to set the scene for a more specific inquiry into the administration of justice in Yemen. This is done by comparing the state of justice in Yemen in 1990 with that of 2013. Its main elements are further discussed in Sections 3 (state judiciary), 4 (tribal justice) and 5 (social justice) and based on interviews conducted.

In **1990**, the state of justice in Yemen featured an appreciable degree of – formally recognised – legal pluralism. British-inspired legislation prevailed in Aden and its surroundings, strong tribal customary law did so throughout most rural parts of the country (north and south) and sharia-inspired state-based law functioned more or less in major urban areas. Prosecution and courts in and around Aden functioned especially well but were limited in geographical scope. Tribal customary law was the most prevalent source of justice. Strong tribal traditions, a perception of fairness and effective enforcement generally resulted in broad acceptance and legitimacy. The state-based legal system had taken the form of a tiered court system with laws grounded in a written, revised constitution. The separation of powers, however, was largely nominal and corruption was already rife. Although the quality of prosecutors and judges varied significantly, the professions were not male preserves (largely due to the socially more emancipated south) and safe to exercise. Legal awareness among Yemenis was low. On the whole, justice mechanisms were more or less available and on average probably of reasonable quality in view of the demands for and issues of justice of the time.

In **2013**, Yemen was still characterised by de facto legal pluralism. However, British influences in south Yemen have largely disappeared. Tribal customary law still prevails throughout much of the country but its ability to deliver accessible justice in an impartial manner is weakened compared to 1990. It remains strong in about half of Yemen (see Figure 1). However, recourse to violence to resolve disputes has become more prevalent. The difficulty in settling disputes peacefully has encouraged a resurgence of tribal identities and tribal protection mechanisms. The state-based judicial system is politicised and corrupted, with a few exceptions. The separation of powers remains largely fictional despite nominal gains in the independence of the Supreme Judicial Council (responsible for managing the judiciary). Prosecutors and judges are now predominantly male and legal awareness among Yemenis remains low. Many judgments are not enforceable. There is a clear social hierarchy in the ability of individuals to obtain 'justice'.

Groups that are capable of it seem to be hedging their bets by simultaneously engaging in peaceful dialogue and in acts of violence or civil protest

The year **2011** had a particularly negative effect on the state of justice in four main ways. To start with, parts of the state – including the judiciary – simply ceased to function at the local level because of the state’s general retreat in the face of protests and upheavals. In addition, an increase in identity politics is making it more and more difficult for judges from the north to function in the south. Growing lawlessness and impunity have multiplied threats against judges, particularly in cases with political overtones or related to Al-Qaeda (AQAP). Finally, the Al-Houthi movement, Popular Committees (PCs) and AQAP have emerged as alternative providers of justice. On the whole, effective justice mechanisms are absent in many places and their quality has deteriorated. Despite its weakening and acknowledgement of its limitations, recourse to tribal law has increased – mostly because little else works.

**Table 1: Storyline of linkages between key political and judicial developments**

1990–1994	2000s	2011	2012–2013
<b>KEY POLITICAL DEVELOPMENTS: THE UNEQUAL AND PRECARIOUS NOTION OF CITIZENSHIP</b>			
<ul style="list-style-type: none"> <li>The ongoing centralisation of oil rents and decrease in remittances strengthens central authority over local communities (contd from 1980s)</li> <li>Campaign of political assassinations against the Yemeni Socialist Party (YSP) in 1991–1992</li> <li>The 'hostile' take-over of the former People's Democratic Republic of Yemen after the 1994 civil war and beyond</li> </ul>	<ul style="list-style-type: none"> <li>The empowerment of the Al-Islah party (co-rule with GPC until end '90s) as well as the continued establishment of Salafi religious / educational establishments (including in the Zaydi Shia north)</li> <li>Co-optation and divide &amp; rule of (parts of) tribal elites through e.g. business advantages, stipends and military positions</li> <li>Growth of the military and security apparatus (continues throughout '00s)</li> </ul>	<ul style="list-style-type: none"> <li>Increasing personalisation of President Saleh's rule by putting more and more relatives in key business and security positions, and grooming his son for succession</li> <li>Increasing use of AQAP as a source of international legitimacy and lever to obtain international funds (especially effective when the Taliban proved hard to defeat and drone use increased)</li> </ul>	<ul style="list-style-type: none"> <li>New political voices and demands unexpectedly enter the scene that lack, however, an organised support base, deep pockets and armed factions</li> <li>Increasing space to discuss political change due to the protests, President Saleh's resignation and the GCC agreement</li> <li>Decreasing space to realise meaningful change because of a caretaker unity government and more veto players</li> </ul>
<b>KEY JUDICIAL DEVELOPMENTS: A DETERIORATING STATE OF JUSTICE</b>			
<ul style="list-style-type: none"> <li>The north features an 'imamate style' legal system in which the judiciary 'represents' the president</li> <li>In addition, much of Yemen features a strong tribal customary law system (not just the north)</li> <li>A British style rule of law system is prevalent in Aden and its immediate vicinity</li> </ul>	<ul style="list-style-type: none"> <li>Politicisation of the state-based legal system through e.g. the political composition of the Supreme Judicial Council, military officers acting as judges, and the intelligence service screening promotions</li> <li>'Tribalisation of justice' by co-opting sheikhs, creating new ones and preferring use of informal dispute resolution mechanisms</li> </ul>	<ul style="list-style-type: none"> <li>Social injustices lead to violent conflict (the 6-7 'Al-Houthi' wars in the north and AQAP activity in the south) and civic resistance (the Al-Hiraak movement in the south after 2007). Whole areas escape government control (e.g. Saada governorate and parts of Abyan/Mareb)</li> <li>Increasing pressure on the effectiveness and perception of fairness of the tribal customary justice system</li> </ul>	<ul style="list-style-type: none"> <li>The provision of justice fragments and new providers emerge, such as the Al-Houthi movement and AQAP</li> <li>An unintended effect of the immunity law is that former President Saleh &amp; Co continue to play political roles in the transition</li> <li>A growing climate of general impunity in which the level of obtainable 'justice' is largely a function of social status</li> </ul>

### 3 Trend 1: The ‘instrumentalisation’ of state-based justice

#### Summary

Since 1990, state-based justice has gradually become an extension of the ruling elite throughout the whole of Yemen. This was achieved through three interlinked processes that are by and large still in place. First, the ruling elite thoroughly politicised the judiciary over time by taking control of the Supreme Judicial Council. As a result, judicial independence is largely fictional. Second, the judiciary was used – like the rest of the civil service – as a source for patronage. In consequence, it was to a large extent staffed on the basis of party-affiliation and loyalty rather than merit. This seems to have worsened since 2011. Third, legal training, civic education and infrastructure were, probably purposefully, vastly underfunded in relation to what popular demand for justice would have necessitated. This state of affairs has had three general consequences. To start with, cases that concern interests involving influential individuals are either not prosecuted or judgments are not implemented. Moreover, the grand corruption as practised by major powerbrokers is replicated at micro-scale throughout the state judiciary. Finally, in many places, state-based justice is simply absent. Paradoxically, many Yemenis – including tribal leaders – would welcome a greater role of the state in providing fair and accessible justice.

‘If you are a high-ranking, light-skinned GPC member, military commander or tribal leader with financial clout, you stand at the pinnacle of Yemen’s hierarchy of ‘justice’. If you are not part of a strong political party or tribe, darker-skinned, a woman or without money, you stand at its bottom. Everybody else is in between’ (Interview, 04/11/13). This description reflects the travesty that state-based justice has become to many ordinary Yemenis. But the purpose of Yemen’s judicial system is not, in general, to serve their interests and they know it: about 50% of all Yemenis consider the state-based judicial system difficult or very difficult to access when their rights have been violated. Moreover, about 60% consider it corrupt and only 5.4% have confidence in its courts (Arab Barometer, 2009; Yemen polling center, 2013).

While a sophisticated state-based judicial system that is constitutionally independent exists on paper,<sup>41</sup> the workings of this system and the results it produces are largely shaped by where it sits within the broader web of power relations between the country’s ruling elite and its political culture. As in so many fragile and developing states, there is a significant difference in Yemen between the formal and informal ‘rules of the game’, with the latter usually dominating the former in matters of importance to dominant powerbrokers.<sup>42</sup> In this context

41 The array of formal institutions that makes up Yemen’s state-based judicial system is extensively described in DCAF (2010) and especially in Al-Zwaini (2012). This analysis is not repeated here.

42 There are, of course, (groups of) legal professionals in Yemen’s state-based system who do a good job and can potentially act as positive forces for change. However, at the moment their hands are largely (politically) tied and their impact does not seem to go far beyond minor issues and local cases.

of the country's political economy,<sup>43</sup> Yemen's state-based judicial system fulfills two overarching purposes.

First and foremost, the state-based judiciary serves to harass political opponents of the ruling elite via trumped up charges and unfair trials. An example of this is how Yemen's Supreme Judicial Council established a special press and publications court in 2009 – illegal in itself according to Yemeni legal professionals – which was used on several occasions for what looks like politically motivated prosecutions.<sup>44</sup> For example, the court found a writer, Munir Al-Mawri, and a journalist, Samir Jubran, guilty of the crime of criticising the president of the republic in 2009 (US cable, 2009b). The verdicts were widely seen as serving the sole purpose of harassment and intimidation.<sup>45</sup> Before this court was established, however, regular courts served the same purpose. For example, charges were filed in 2007 against Mareb Press for reporting on a potential corruption case in which the Ministry of Electricity contracted Powered Corp – a US-registered company owned by a Yemeni/US citizen – for US\$15 billion to research and construct a number of nuclear power stations. The trouble, according to Mareb Press, was that the company was far too small to take on the project. This proved to be unwelcome scrutiny by some (Interview, 05/11/13). Yet, such political use of the judiciary continues today, as is well demonstrated by the Yemeni government's prosecution and jailing of journalist Abdulelah Haider Shaye for his reporting on drone strikes. He was recently prevented from leaving the country to receive his Human Rights Defenders award in Geneva (The Guardian, 06/12/13).

The purpose of Yemen's judicial system is not, in general, to serve the interests of ordinary Yemenis – and they know it

Second, and more recently, the state-based legal system has also increasingly come to provide judicial protection for the political and violent acts of members of the ruling elite which could be legally challenged. The most tragic illustration is Human Rights Watch's account of the events on the 'Friday of Dignity', 18 March 2011. On this day, about 45 protesters in Yemen's Change Square were intentionally shot dead by unidentified, plainclothes gunmen. If not instructed by members of the ruling elite at the time, these gunmen seem to have at least enjoyed their passive support. The subsequent trial proceedings relating to this massacre saw the indictment of 78 people by the prosecution. For unknown reasons, thirty-one of these individuals were never apprehended, while 12 were provisionally released and subsequently disappeared. Moreover, the First Instance Court for the Western Capital District of Sana'a, which dealt with the case, sent a motion of the plaintiff requesting the indictment of a number of government officials to the Supreme Court in 2012 to obtain an interpretation of how the immunity law (passed by Yemen's parliament as part of the GCC deal) might influence its treatment of the motion. This remains unanswered (HRW, 2013b). This example reflects both how the events of 2011 put the ruling elite on the defensive, but also how 'former' practices continue.

43 The term political economy refers to the substructure of the political and economic interests of a country's elites and the relations between them, which explains and informs their day-to-day behaviour. The term political settlement, or elite pact, denotes the informal arrangement between a country's most powerful elites on how to govern, mobilise and allocate its resources.

44 Yemen's constitution stipulates that 'exceptional courts may not be established under any conditions' (article 150). This casts doubts on its legality (Al-Zwaini, 2012; Interview 31/10/13).

45 The favored instrument for such practices remains, however, the country's military and security forces. They have a long track record of unlawful arrests, detention and even torture. A good example is how they have handled the growing discontent and increasing mass protests in southern Yemen with disregard for the country's constitution and several legal codes (HRW, 2009; ICG, 2011). The judicial system is powerless in holding these forces accountable.



## Key strategies in the instrumentalisation of justice

How did the ruling elite succeed in gradually taking control over Yemen’s state-based judiciary to produce such outcomes? Table 2 summarises the key strategies used in the process of the instrumentalisation of justice and their consequences. They are analysed in more detail below.

**Table 2: Schematic overview of the instrumentalisation of justice (1990–2013)**

Strategies	Consequences
Ensuring executive dominance of the Supreme Judicial Council, which is responsible for the management of the judiciary	Cases against influential individuals are not prosecuted or judgments not implemented
Staffing of the judiciary on the basis of the logic of patronage	Endemic corruption
Allocating insufficient human and financial resources to the judiciary	In many places state-based justice is simply absent

Firstly, the Supreme Judicial Council (SJC) – the institution where all key decisions in respect of appointment/removal, promotion, funding and training of the judiciary were taken – was overtly and thoroughly dominated by the executive until at least 2006. It was, in fact, chaired by President Saleh until that time. Interviewees also observed that about two-thirds of its members tended to be high-ranking security officers and that judicial promotions were cleared by the intelligence service (Interviews on 30/10/13 and 02/11/13). Even when President Saleh surrendered his role on the SJC in a bid to make it look more independent, it remained executive-dominated.<sup>46</sup> Also, after 2011, all important personnel, financial and administrative issues remained under the de facto control of the Ministry of Justice and the President. One interviewee pointed to an interesting development, namely that the constitutional chamber of the Supreme Court recently ruled (in 2013) that 34 articles of the ‘Law of the Judiciary’ are unconstitutional because they do not respect the relevant constitutional provisions that guarantee judicial independence. The ruling also included a stipulation to remove the Minister of Justice from the SJC. This created a gaping hole in the management of the judiciary as an institution. While one might have expected the executive to want to plug this and parliament to adjust the existing legislation to transfer the powers and prerogatives for managing the judiciary to a more independent SJC, no corrective action is said to have been taken since the judgment (Interviews on 02/11/13 and 03/11/13). Hence, the general conclusion must be that the judiciary is from top to bottom stacked in favour of the ruling elite.

Secondly, the judiciary was and is used as a vehicle for patronage. In consequence, jobs are largely ways to retain loyalty or rewards for services rendered. Merit, performance and skill play a lesser role.<sup>47</sup> This creates a network of relations that often influence justice outcomes more than the facts of the case at hand. One of the most appalling cases dates from 2012 when a Yemeni woman, Raja al-Hakimi, was sentenced to death for killing an armed man who threatened to rape her in her home. While she was initially sentenced to two years imprison-

<sup>46</sup> The SJC is currently composed of two ministers, the President of the Judicial Inspection Board (a high government official) and the Attorney-General, and the two vice-presidents of the Supreme Court (Al-Zwaini, 2012).

<sup>47</sup> While there have been some personnel changes in the state-based judicial system since the resignation of President Saleh, such as the appointment of a more reform-minded Secretary-General of the Supreme Judicial Council and a new head of the Judicial Inspection Authority, changes at the governorate and municipal level have largely been limited to normal rotations that continue to suffer from the personnel management problems highlighted (Gaston and Al-Dawsari, 2013).

ment, an appeals court raised her punishment to the death penalty. Allegations soon surfaced that family members of the murdered assailant had a close relationship with local authorities in the province of Ibb, where the trial was held (Al-Arabiya, 20/10/12; Yemen Times, 24/10/12).<sup>48</sup> A consequence of the formation of a unity government between the GPC and the JMP in the wake of the GCC agreement has been an increase in the 'politics of appointment' as both the GPC and Islah now compete for patronage and control of the judiciary by parachuting in their own candidates (several interviews between 19/08/13 and 06/11/13; also ICG, 2013a).

Thirdly, human and material resource allocations were and are insufficient compared to a popular demand for justice. While it is difficult to decide where to start describing the main capacity gaps, this is also a largely futile exercise because fixing them is unlikely to produce better justice outcomes. After all, the current state of resource deprivation of the state judiciary is largely a function of the allocation of resources by the central government. However, a few examples will serve to highlight some concrete issues. In terms of staffing, several legal professionals interviewed indicated that Yemen has about 2.8 judges per 100,000 inhabitants and about 3.1 prosecutors per 100,000 inhabitants (Interviews 02/11/13 and 03/11/13). Corresponding figures for the Near and Middle East are respectively 8.2 (judges) and 4.1 (prosecutors). Globally, the means are 11.5 (judges) and 8 (prosecutors) (Harrendorf et al, 2010). While the figures for Yemen could not be verified, this cursory comparison suggests a significant human resource gap. In terms of responsibility, one interviewee observed that primary courts, which are generally staffed by relatively inexperienced judges, are authorised to handle both murder and multi-million dollar cases. In his view, this significantly raises the potential for corruption and increases the scope for political pressure (Interview, 31/10/13). This observation ties in with a broader issue, namely that the absence of on-the-job training in the course of one's professional career leaves many prosecutors and judges under-skilled at some point in time (Interview, 02/11/13).<sup>49</sup>

## Consequences of politicisation and instrumentalisation

This process of the gradual politicisation and instrumentalisation of the state-based judiciary has, by and large, had three consequences.

To start with, cases that concern interests involving influential individuals are either not prosecuted or judgments are not implemented. It is estimated that ca. 60% of court judgments are ultimately not enforced (DCAF, 2010; Al-Zwaini, 2012). A few examples highlight the consequences in terms of the impunity this creates. A recent episode that many interviewees referred to was the cold-blooded shooting in broad daylight of two Adeni men in May 2013 by the bodyguards of sheikh Ali Abd Rabo Al-Awadhi for overtaking or mingling with a wedding convoy associated with him. The police said to have escorted the convoy took no action. While there was a significant public outcry and the parents of these men have started proceedings, to date the case has made no progress in court (Interviews on 31/10/13 and 04/11/13). Presumably this is because the sheikh is a prominent figure who happens to be an Al-Islah, as well as an NDC member. The case against Tofir Abdurhaim, which started in 2009 and was ruled in 2012, is equally instructive. He was found guilty of business malpractice,

<sup>48</sup> A range of corruption cases is discussed here: <http://report.globalintegrity.org/Yemen/2008/notebook> (consulted 12/12/13).

<sup>49</sup> Legal education and training basically comes to an end after a mandatory – but largely theoretical – two years at the High Judicial Institute that follows the completion of a university degree (Interview, 31/10/13).

namely buying oil on a large scale from the government at subsidised prices to subsequently resell back to the government (i.e. electricity plants) at international market prices (with a factor 5–10 difference). His sentence consisted of a year in prison, with no fine, and was never enforced (Interviews on 31/10/13 and 05/11/13).

Moreover, the prosecution and courts are rife with corruption, replicating at micro level what is practised by key powerbrokers at grand scale. In general, it is worth pointing out that only 25 out of 500 complaints made to the Supreme National Authority for Combating Corruption (SNAC) resulted in investigations. Of those, only a handful of minor cases were prosecuted (Al-Zwaini, 2012). None resulted in judgments (Interviews on 31/10/13 and 04/11/13).<sup>50</sup> For example, the Minister of Justice referred nine administrative officers in Taiz to the prosecution on charges of embezzlement and corruption shortly after the 2011 transition. These cases were dropped only two months later without explanation (Gaston and Al-Dawsari, 2013). If a Yemeni requires the police to investigate, he or she will have to pay for police transport as well as a fee of about US\$10–20 for simple cases (Interview, 30/10/13). Given the level of poverty in Yemen (World Bank et al, 2012), this basically bars a substantial number of the population from opening even a preliminary investigation, let alone a court case. Several interviewees noted how corruption has become worse since 2011, including in the judiciary. The political exigencies of the national unity government also seem to have reduced the little scope that existed for removing corrupt or incapable judges and prosecutors (Gaston and Al-Dawsari, 2013).

Finally, in many places, state-based justice is simply either physically or functionally absent. This has several knock-on consequences. One is the increased recourse to tribal customary law (discussed in the next section), another is the emergence of alternative providers of justice, such as the Popular Committees, AQAP and the Al-Houthi movement (covered in Section 5). A third consequence, mentioned by several interviewees, is the increasing role that military commanders play in this 'legal vacuum'. Quite apart from the regular violations of the law that security services commit in the form of unlawful arrests and unduly long detentions, a significant number of army commanders is said to take the law into their own hands. They essentially take it upon themselves to act as judges when individuals in their area come to them with grievances. This results in arrests without any form of warrant and even in spells in military-run prisons, even though the military has no jurisdiction over either civil or criminal cases (Interview, 30/10/13).<sup>51</sup>

These developments and their consequences suggest that Yemen's state judiciary requires a fundamental overhaul before it can start to produce justice outcomes that are more in line with the expectations of ordinary Yemenis. This will not only take a long time, it will also require significant political pressure. It is difficult to imagine technical or administrative legal reform having much effect at the moment given the level of entrenchment of politics and patronage in the sector.

<sup>50</sup> It is in itself illustrative that the transitional government decided to cease all cooperation with the SNACC in 2012. When President Hadi finally appointed a new board, he violated the procedure established for this purpose, while one appointee currently faces the charge of murder (Interviews on 31/10/13 and 05/11/13).

<sup>51</sup> Yemen's constitution prohibits arrests, searches and detentions other than those of a person caught in flag-rante delicto or pursuant to a judge's/public prosecutor's order. It also specifies that the public prosecutor must charge anyone arrested with a crime within 24 hours, and that only a judge may prolong an order of detention beyond an initial seven days (Constitution of the Republic of Yemen, 2001, articles 48(a) and (b)).

The limited ability of the state judiciary to dispense justice was further eroded by the upheavals of 2011 that resulted in widespread closure or dysfunction of state institutions. One interviewee phrased it as follows: ‘We went from a government that had no control over parts of the country to a government with limited control over parts of the urban centres only’ (Interview 30/11/13). A recent study of the state of the delivery of justice services in the Taiz, Marib, Aden and Abyan governorates suggests that even the modest pre-2011 levels have not yet been restored in many areas (Gaston and Al-Dawsari, 2013).

In addition, the post-2011 period has witnessed increased threats against legal professionals, which has influenced the course of justice. Prosecutors or judges who seek to do a professional and impartial job in the service of fair dispute resolution may, in the current context, be confronted quite rapidly by violent threats to their life, family or property. A significant number of threats to the judiciary were reported throughout 2013 by NGOs such as the Sana’a-based Esnaad Center. An important indication of the significance of the problem was the strike by hundreds of Sana’a-based judges in March–April 2013 in protest at the poor protection they receive from the security forces (Yemen Times, 7 and 22 April).<sup>52</sup> If this is the case in Sana’a, one can only imagine conditions further afield. A scan of online news sources suggests that some of these threats emanate from (convicted) Islamists and are related to court cases against alleged AQAP militants (e.g. Global Post, 23/04/13). The result of the combination of threats and poor protection is that a number of judges have become reluctant to render verdicts in certain cases, especially pertaining to AQAP (Interview, 05/11/13).

A second matter for concern, observed by several interviewees, is the growing relevance of sub-national identities throughout Yemen as alternative sources of power and identification (see also Section 5). This phenomenon is particularly associated with Yemen’s southern question and echoes in the judiciary. As the rhetoric of the Al-Hirak movement heats up and calls for secession grow louder, it is reportedly becoming harder for northern citizens to claim their rights and more difficult for northern judges to function in southern Yemen. One interviewee gave an example of a judge working in south Yemen who stopped pronouncing verdicts in cases with political overtones because his sons were threatened. Another judge found himself under siege in court because the relatives of the accused (of murder) wanted to see him released from prison and used his northern origin to delegitimise the ruling. He was threatened with assassination and the siege reportedly had to be lifted through negotiation (Interview, 30/10/13).

There is, however, modest cause for optimism in the form of some recent reformist appointments and the existence of a reformist minded group of Yemeni judges (the ‘judges club’) which works to improve current practices. Moreover, judges were ‘early adopters’ in joining the anti-regime student protests in 2011 with demands for higher wages and more independence. These protests continued into 2012 and peaked during the so-called ‘judges

‘We went from a government that had no control over parts of the country to a government with limited control over parts of the urban centers only’

Interview 30/11/13

<sup>52</sup> The Esnaad Center for Enhancing an Independent Judiciary and the Rule of Law (a local NGO based in Sana’a) reported 59 violations against judiciary staff (including judges, prosecutors, lawyers and administrators) over the period January–August 2013 (Yemen Times, 20/08/13). These figures are likely to understate the problem because many cases are either not brought forward or are not recorded (e.g. in remote areas).

revolution' from March to May of that year, with a majority of the capital's judges said to be participating. Unsurprisingly, transitional justice and reforms for the justice system were topics of lively debate during the Third Judicial Forum in the context of the NDC in 2013 (Sources: Al-Motamar, Yemenat, Yemen Times). In consequence, change-oriented individuals and currents exist within the state judiciary which can potentially be tapped into. The key challenge will be to influence the political parameters in which they have to operate.

If the preceding analysis of the state judiciary sounds disconcerting, it might be a relief to know that it does not actually handle most cases. Instead, these are dealt with by Yemen's tribal customary law system, the topic of the next section. Yet, tribal law is facing a range of stresses of its own and the paradoxical consequence is that a good many interviewees – including tribal leaders – indicated that they would welcome a greater role of the state in providing fair and accessible justice, especially in violent and intertribal disputes (several interviews between 29/10/13 and 06/11/13; NDI (2007) offers a larger quantitative sample of opinions amongst sheikhs).

## 4 Trend 2: The weakening of tribal customary law

### Summary

Tribal customary law is the default mechanism for peaceful, legal dispute resolution for most Yemenis. It is generally seen as effective, fair, affordable and accessible. Tribal leaders and tribesmen, however, would welcome a stronger role of the state in the provision of justice. Over the course of time, tribal law has proven to be surprisingly resilient. It often represents the only legal remedy available. Yet, while it remains a strong system, it is weakening. Co-optation of many tribal leaders by the ruling elite-cum-government, the growing business interests of sheikhs, and the struggle that tribal law has with modernity have caused tribal law to vary significantly in strength across Yemen today. This has caused disputes to be increasingly resolved in a violent manner and reduced the acceptance of tribal law. Despite its erosion, tribal law remains the starting point for efforts to improve the state of justice in the short to medium term. As it is finely intermeshed with the state-based legal system through legal, political and informal points of connection, there are dual entry points for such efforts.

It is estimated that ca. 70–80% of disputes in Yemen are dealt with through tribal customary law (hereafter tribal law) (Al-Zwaini, 2012; Al-Dawsari, 2012; several interviews between 29/10/13 and 06/11/13). In consequence, as a legal system it is vastly more relevant to most Yemenis than the state judiciary and must be the starting point for any efforts that seek to improve the state of justice in Yemen in the short to medium term. It is important that any such endeavour is based on a sound understanding of why tribal law dominates the legal scene. Two reasons, in particular, are worth highlighting.

The first is the fact that tribes in Yemen have so far proved themselves to be remarkably constant structures of collective identity and action. They formed in Yemen's pre-Islamic period, largely as local responses to collective governance challenges, and have since been a surprisingly stable feature (Weir, 2007; Egel, 2010). In fact, many 'basic services', including the provision of justice, have traditionally been organised by communities at the local level. This has created strong consultative traditions of self-regulation and independence in many parts of Yemen, which have been reinforced over time.<sup>53</sup> The resilience of this system should not be underestimated. For example, the 'tribal republic' (north Yemen) easily outlasted 'Marx' (south Yemen), as evidenced by the process of 're-tribalisation' of the south after the 1994 civil war (Interview, 30/10/13). While the ruling elite played its part in stimulating this development, it is unlikely to have happened to such an extent if there had not been strong, pre-existing layers of tribal identity and culture that were only temporarily suppressed by Marxist thought and socialist rule.

<sup>53</sup> Efforts to encroach on local autonomy have historically been strongly resisted and tended to meet with failure, as the Ottomans, British, Egyptians and Saudis discovered to their detriment at various stages of Yemen's history (Dresch, 2000; Clark, 2010; Phillips, 2011).

The second reason for the predominance of tribal law is simply the continued weakness of the state-based judicial system which is, as demonstrated in the previous section, little trusted, thoroughly politicised and largely ineffective. In other words, Yemenis have little else to turn to if they want to have their disputes legally resolved. This makes the question as to whether tribal leaders, tribesmen and citizens would welcome a strong role for state-based law over tribal law a relevant inquiry.<sup>54</sup> After all, it can be argued that customary tribal law provides a form of justice that is inferior to state-provided justice in its idealised form, but superior to the chronic undersupply of justice when state institutions do not function (Corstange, 2008). The answer seems to be a qualified 'yes'. There does not seem to be any principled resistance among tribes or Yemenis in general to the state having a greater role in the provision of justice, with the caveat that it needs to be much more accessible, affordable and transparent than it is today. In fact, the contrary that seems to hold: there is great demand, including prominently among tribal leaders, for a larger and better supply of justice, especially in cases of violence and intertribal disputes (NDI, 2007; Corstange, 2008; Al-Dawsari, 2012; Yemen Polling Center, 2013; Gaston and Al-Dawsari, 2013; several interviews between 28/10/13 – 06/11/13).<sup>55</sup> Paradoxically, this squares well with the strong appreciation that most interviewees expressed for the presence, functioning and resilience of tribal law. Such views mainly result from the fact that, without tribal law, the legal situation would be much worse. However, interviewees also recognised the strain that tribal law is under and that it does not necessarily produce equitable outcomes (discussed below).

A note of caution must be inserted here lest state-based and tribal law come to be seen as a 'black and white' schemata between which an 'either/or' choice must be made. The Yemeni state and its tribes are interwoven in many subtle ways when it comes to the provision of justice. For example, judges and police officers often perform informal, mediating roles in their communities to help resolve disputes (DCAF, 2010). In reverse, the state often calls on tribal mediators to resolve disputes to which it is a party. Such linkages are discussed more fully at the end of this chapter.

In summary, while efforts to increase the presence and improve the quality of the state-based legal system would not necessarily meet resistance from Yemen's tribes, such efforts would need to take account of the competitive advantages of both systems and build on existing points of connection. They will also need to take a gradual, consultative approach if they are to have a chance of being successful.<sup>56</sup> This is because the current situation of legal pluralism means that there is a large number of critical stakeholders who need to be involved to truly improve legal outcomes. It is also because there will be serious limitations on the type and level of state-based justice that even a benign, well-resourced central government is able to provide in the foreseeable future. With such conditions, tribal law can be a stepping stone rather than an impediment to state formation in Yemen.

54 Corstange (2008) frames this as follows: do 'tribes cause [justice provision by] the state to weaken, or, inversely, persist when the state is weak?'

55 Interviews conducted by Partners for Democratic Change in four governorates also suggest that many Yemenis, including of tribal affiliation, would welcome a stronger state-based judicial system (Al-Dawsari, Kolarova and Pedersen, 2011). It is interesting to note that the support among Zaydi Shiites for tribal law is only marginally stronger than that of Shafai Sunnis (Corstange, 2008), which contradicts the notion held by some analysts that tribal affiliation is largely a northern phenomenon.

56 This resonates with the finding of the 2011 World Development Report, which points out that transitions towards the rule of law are the longest institutional transformations that countries make when developing towards higher levels of income (World Bank, 2011).

Against this as backdrop, a brief introduction to the functions and characteristics of tribal law is necessary before turning to an analysis of the key trends that have led to a weakening of tribal law and the resulting consequences.

## Functions and characteristics of tribal law

The primary function of tribal law is to regulate two sets of relations. First, it regulates the relation between an individual and his/her tribe in terms of their respective rights and responsibilities. Because tribes are sources of identity, mechanisms for local governance and vehicles for service delivery, such rights and responsibilities have symbolic, governance and legal aspects. Second, it regulates relations between tribes. Because there are many tribes, most of which compete for loyalty, influence, power and resources in an environment that is relatively anarchic, tribal law places a premium on maintaining stability and avoiding the escalation of violence.<sup>57</sup> Naturally, some tribes are more powerful than others. In tribal law, it is therefore perfectly acceptable for less powerful tribes to seek the protection of more powerful tribes in exchange for their loyalty, usually on the basis of pre-existing ties or historical connections, and to appeal to them in the case of a dispute with a more powerful rival. This creates an informal hierarchy of tribes and a system for dispute resolution with different levels of escalation. It also puts stronger tribes in a state-like position – for want of a functioning real state – in which they play a protector-type role in the adjudication of lesser disputes. However, if powerful tribes have a dispute they cannot resolve through mediation, violence will often result as there is no party that has the weight and authority to act as ultimate arbiter between them (Interview, 30/10/13; also see Weir, 2007; Al-Dawsari, 2012). In fact, it is in the area of inter-tribal affairs in particular that a number of interviewees said they would welcome a much stronger role for the state as arbiter of last resort (Several interviews on 30/10/13).

As a result, restoring relationships, balance and honour are important objectives of tribal law, which make consensus building, collective responsibility and symbolism key principles of its legal process (Al-Dawsari, 2012; Al-Zwaini, 2012). These aspects are covered in detail in the ‘code’ of tribal governance (‘urf’) that sets out, for example, sophisticated procedures for conflict management.<sup>58</sup> Urf, however, is not a single, codified body of law but rather an assortment of sheikhly jurisprudence that is unevenly codified and multi-interpretable (Weir, 2007; Interview, 30/10/13). This creates a situation in which sheiks have ample discretion of judgment and in which a certain measure of legal uncertainty exists.

Tribal law has a few further characteristics that help to understand how it works and why it is the preferred method of dispute resolution by most Yemenis.<sup>59</sup> First, it is close to the common issues many people face because it finds its origins in the need to regulate their daily interactions. The most common disputes in Yemen are about land, water, property and domestic matters.<sup>60</sup> Tribal law has long experience in resolving such issues quickly and fairly. Second,

57 Weir’s description of the process of inter-tribal litigation in the Qullat Hajar dispute brilliantly highlights how notions of avoiding violence, restoring the relationship and balanced, conditional punishment take precedence over establishing the truth of the case (pp. 194 and beyond).

58 See Al-Dawsari, Kolarova and Pedersen (2011) for an extensive description of tribal protocols for dealing with conflict prevention and resolution.

59 This paragraph is based on a combination of several interviews on 30/10/13, 04/11/13 and 06/11/13; NDI, 2007; Weir, 2007; Corstange, 2008; Al-Zwaini, 2012 and Al-Dawsari, 2012.

60 Crime is emerging as an increasingly prominent issue, especially since 2011. In some areas it has already become the most dominant ‘justiciable problem’ (Hague Institute for the Internationalisation of Law, forthcoming).



tribal law is accessible because it is, to paraphrase, 'of and by the people'. Every tribal community knows who to turn to when disputes need resolving. Third, it is generally affordable, although this is now under some pressure as larger tribal disputes tend to be increasingly expensive, in part because there are more and larger business interests at stake (discussed below). Fourth, tribal law is well known and, in consequence, enjoys broad acceptance (in contrast to the general level of legal awareness of state-based law, which is minimal). Fifth, tribal judgments generally enjoy good enforceability. This is in part due to the requirement that parties to a dispute provide upfront 'guarantees' (for example, arms or cars) and in part because tribes are collectively responsible for the implementation of judgments once they have agreed to mediation. Sixth, tribal law has fairly sophisticated accountability standards and legal procedures, including possibilities for appeal, both of which increase the perception of its fairness. For example, if people are not satisfied with a sheikh's judgment, they can appeal to another sheikh higher up the tribal hierarchy (guarantees are also transferred).

Many of these strengths are the result of tribal law having developed more or less organically from the rich texture of relatively small communities over the course of centuries. This makes tribal law resilient and influential, but also, arguably, more traditional, uneven and static. This is not to say that tribal law does not develop. By way of example, one interviewee noted that while it used to be acceptable in revenge killings to kill any member of the offending tribe in retaliation for an act of murder once guilt was established, this is now shifting towards the norm that it is only permitted to kill the actual murderer (Interview, 30/10/13). This illustrates both how tribal law slowly adjusts to prevailing social views and how collective interests and rights can dominate their individual cousins.

Finally, in legal terms, the relation between tribal customary law ('urf') and religious law ('sharia') seems relatively unclear. Some interviewees pointed out that sharia law makes provision for customary law and simply incorporates those parts that are not contradictory to its key tenets. Others suggested that these systems are deeply intermeshed on a more equal footing. Yet others saw a conservative interpretation of Islamic thought as negatively influencing tribal customs and law through the sharia – in particular in

relation to the position of women (Interviews, 03/11/13, 04/11/13 and 05/11/13). Fortunately, since most Yemenis have both a tribal affiliation and are Muslim, establishing the precise relation between these sources of law does not seem to be critical in arriving at legal outcomes that are perceived as fair.<sup>61</sup>

Many of the strengths of tribal law have developed more or less organically from the rich texture of relatively small communities in the course of centuries

Instead, their relation appears to be more of a political than a legal issue because its nature suggests who is competent to judge disputes. If sharia law is the dominant factor, the focus shifts to religious leaders; if tribal law is the dominant factor, the focus shifts to tribal leaders. It must be borne in mind, however, that these sources of law have a different focus, which in theory offers a rough division of labour between tribal and religious

leaders. Urf sets out a complex system of rules on rights and responsibilities that largely pertain to economic activity in sedentary agrarian communities. It lays out collective obligations for individuals, clans and tribes and contains procedures for conflict prevention and resolution (Weir, 2007). Sharia law focuses more strongly on family affairs (including inheritance issues); religious behaviour, duties (including economic issues such as the zakat – the

61 It also offers possibilities for 'legal shopping', i.e. individuals take their claim to the authority where they believe they have the highest chance of obtaining a favourable decision. This does not have to be problematic.

giving of alms) and appearance (Al-Zwaini, 2012). Regardless of this approximate differentiation, tribal leaders unsurprisingly dominate the legal scene and this faces challenges from, for example, Shia sayyids (religious leaders) in north Yemen as well as from more conservative Sunni elements.

### Key factors that have weakened tribal law

As has become clear from the preceding analysis, Yemen’s tribal law has deep roots and great strength. So how and why did this system weaken over the past two decades? Table 3 summarises some of the key developments that played a role in this process, and outlines some of their consequences. They are discussed in more detail below.

**Table 3: Schematic overview of the weakening of tribal law (1990–2013)**

Developments	Consequences
Co-optation by the ruling elite-cum-government of many tribal leaders	The strength of tribal law varies significantly across Yemen
Growing business interests of sheikhs complicate the absence of a separation of powers in tribal governance and undermine their impartiality	Disputes are increasingly resolved in a violent manner
Tribal law struggles with ‘modernity’ on two counts: addressing broader collective action problems and stronger recognition of individual rights and responsibilities	The acceptance of tribal law is under pressure

As a first development it must be pointed out that the ruling elite-cum-government deliberately co-opted many sheikhs in a bid to secure tribal loyalty. While there is ample historical precedent for tribes accepting the state as a higher level of authority as long as their rights are respected and their interests are taken into account (e.g. Weir, 2007; Clark, 2010), this relation turned from co-existence to co-optation under the rule of former President Saleh as an unprecedented array of material rewards, high-level positions (for example in parliament, the civil service and the military-security apparatus) and business advantages were used to secure tribal support (in part financed by the oil revenue discussed in Section 2). He went as far as creating ‘new’ sheikhs in areas where tribal structures and traditions were weaker in order to create further opportunities for patronage and establish a measure of control (Alley, 2010; Al-Dawsari, Kolarova and Pedersen, 2011; Phillips, 2011a; Gaston and Al-Dawsari, 2013).

This policy of co-optation finds visible expression in the existence of a Department for Tribal Affairs in the Ministry of the Interior. Its name might conjure up a vague notion of a unit tasked with coordinating policy and action by central and local governance actors in a consultative process. This would be rather far from reality as it seems to act more as a clearing house for patronage by bestowing stipends and privileges on selected tribal leaders (Phillips, 2010; Al-Zwaini, 2012, Interview, 29/10/13).<sup>62</sup> Such co-optation has intentionally increased the level of dependency of sheikhs on the government, decreased their level of dependency on

<sup>62</sup> The manner in which it does so is opaque and the department sits firmly in the patronage system discussed in section 2. The ministries of education and health function as additional market places for negotiation between the central government and tribes on loyalty and patronage. They are central to how development resources, such as schools and (ghost) teachers, are allocated to tribal areas. Smaller tribes appear to be generally more effective in securing such development resources through political action (Egel 2010; 2011).

their tribal constituencies and, in consequence, weakened the social contract between tribal leaders and tribesmen/-women. The closer association of tribal leaders with the regime has by and large diminished sheikhs' standing and moral authority – which in turn has weakened Yemen's customary law system – because they play key roles as mediators and arbiters in local conflict prevention and the provision of justice (NDI, 2007; Al-Dawsari, 2012). In turn, this has contributed to an increase in the frequency of local conflicts.

The second development is closely connected to the first and in part even a consequence of it. Where it used to be shameful for tribal leaders and tribesmen alike to engage in business, over the past decades their business interests have mushroomed (Interview, 30/10/13). A good example is the production of qat, a mildly narcotic plant. Its production was limited but has sharply increased over recent decades, with a current estimated production value that hovers around 6% of GDP.<sup>63</sup> Smuggling reportedly accounts for another US\$1 billion in annual revenue. Tribes play an increasingly significant role in its production and trade. Interestingly, the tax on qat was reduced from 30% to 10% when former President Saleh came to power and certain tribal areas are exempt from taxation altogether (for example, the Sanhan area where he hails from, the Hamdan area which is home to many military officers, and the Khamir-Amran area belonging to the Al-Ahmar family (Gatter, 2013).

The increasing business interests of sheikhs and tribes represent a normative/cultural shift with important governance and judicial consequences. In the area of governance, it is useful to realise that there is more or less no separation of powers in tribal law: sheikhs and their councils govern their tribes as well as adjudicate disputes. This helps in understanding why, in tribal law, legal action rapidly acquires political meaning and, equally, why political aims are pursued through legal means (Weir, 2007).<sup>64</sup> To this mix, business is now added as a third element with an obviously destabilising influence. In the judicial area, the impartiality of many sheikhs in dispute resolution has decreased because of their increased business interests. The example of the qat business serves well if one recalls that its production requires plenty of land and water, both of which are often controlled or owned by sheikhs. These resources are also the stuff of Yemen's most common types of dispute, so conflicts of interest easily arise. Where tribal law is strong, its accountability mechanisms might curb excesses (Weir, 2007; Al-Dawsari, Kolarova and Pedersen, 2011). Where it is not, however, the quality of legal redress through tribal law may well suffer.

A third development is the struggle of tribal law with modernity, and the subsequent consequences for popular adherence to it. This struggle has at least two dimensions. To start with, tribes in Yemen can be conceptualised as Medieval 'mini-sovereigns' (e.g. Weir, 2007; Schmitz, 2011), made up of a patchwork of overlapping layers of authority and identity in which all patches have limited territorial reach. As tribes are local solutions to what used to be local problems, their interests are also largely local. Today, however, food and water scarcity, fluctuating electricity provision and unemployment are no longer local in nature. They represent broader collective problems that cannot be resolved at the tribal level, although tribes are a vital part of their resolution. Given largely defunct central governance, these types of issues remain unresolved and 'tragedies of the commons' occur frequently. The second dimension of the tribal struggle with modernity is the tension it features between collective and individual rights. As tribes are units of collective identity and action, collective rights

<sup>63</sup> Yet, consumption tax generated only a meager US\$16 million for the treasury in 2010 (Gatter, 2013).

<sup>64</sup> Echoed in the words often attributed to Óscar Benavides, a former Peruvian president: 'For my friends, anything, for my enemies, the law.'

tend to prevail while individual rights tend to be viewed through a male prism.<sup>65</sup> For example, women can face substantial social constraints in bringing a claim under tribal law (let alone go to a state-based court) (Interviews on 28/10/13 and 02/11/13). In similar vein, murder cases are largely seen through the prism of collective responsibility and the legal process only vaguely seeks to establish individual guilt and punishment.

## Consequences of weakened tribal law

These developments have gradually weakened tribal law with three broad consequences. To start with, the strength of tribal law has come to vary significantly across Yemen. Its potency is a function of the historical density and strength of tribes (e.g. Egel, 2010), as well as of the impact of recent developments. While some tribes are strong and enjoy a living tradition of tribal law that is adhered to and developing, others are weaker or have decreased in relevance. In consequence, Yemenis enjoy unequal coverage and protection by tribal law. Figure 2 below provides a rough but telling overview of how this works out geographically.<sup>66</sup> The figure gains even more relevance when it is overlaid with the UN's Office for the Coordination of Humanitarian Affairs (OCHA)'s 2009 map of Yemen's population density, which illustrates that tribal law is strong in approximately half of Yemen's densely and most densely populated governorates, while it is weak in the other half.<sup>67</sup> This suggests, very roughly, that half the people living in Yemen's most densely populated areas have neither access to a well-functioning state-based legal system nor to a strong tribal customary law system, while the other half does have access to the latter.

A second consequence is that disputes are increasingly resolved in a violent manner. While there are no reliable statistics to support this assertion, existing research, newspaper reporting and most interviews suggest an increased use of violence to resolve disputes, especially since 2011. Apart from the wealth of anecdotal evidence, it is well documented that Yemen's tribes are autonomous and well-armed – often better than government forces (SAS, 2010a and 2010b). It is also well documented that most disputes are about land and water and that these are especially difficult to resolve when they are inter-tribal in nature – as they often are (Ward, 2005; NDI, 2007; Al-Dawsari, Kolarova and Pedersen, 2011).<sup>68</sup> Tribal law has held much of the violence that such disputes could have caused in check.<sup>69</sup> However, its weakening has plausibly allowed for an increase in previously contained violence.

The combination of grievances, the undersupply of legal remedies and a rising level of social injustice make it likely that individuals or groups will take recourse to violence at some point

65 It is a matter for further investigation how problematic Yemenis consider this to be, what they see as the main issues, and what improvements would look like. It would obviously be critical to disaggregate responses by gender. For example, legal interpretivism (associated with Ronald Dworkin) suggests that rights and duties need to be determined by the best interpretation of the customs and practices of a local community.

66 The strength of tribal law also varies within governorates but it was not possible to obtain this level of detail.

67 To be found at: <http://reliefweb.int/map/yemen/yemen-population-density-2009> (consulted 04/12/13).

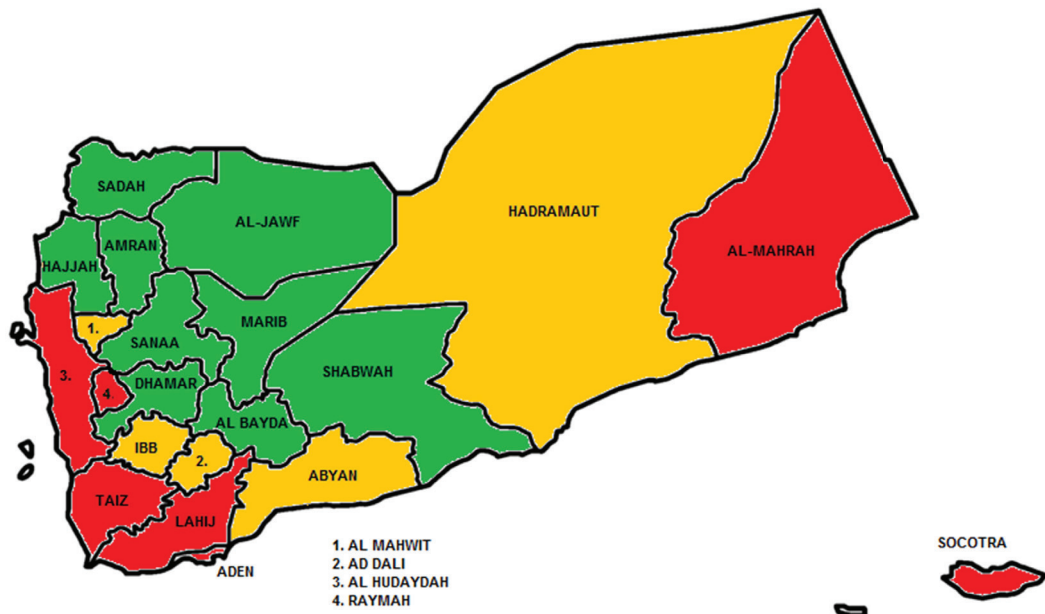
68 The Yemen Armed Violence Survey estimates land/water-related conflicts to result in an annual 4,000 deaths, which is likely to be more than the Houthi conflict, AQAP activities and southern strife combined (SAS, 2010a).

69 It must be noted that low levels of violence are not unusual in Yemen, including prior to 2011. The symbolic use of violence is well accepted in disputes (e.g. Weir, 2007).

A final consequence is that the acceptance of tribal law is under pressure. While the difficulty tribal law has in resolving larger collective action problems has had few direct consequences, it does have an indirect impact on its popular acceptance. Simply put, the combination of deteriorating standards of living and the limited ability of tribes to help their members secure a livelihood undermines the authority of tribal governance. This ultimately also affects the acceptance of tribal law. The matter is not helped by the tendency on the part of some sheikhs to pull cases their way – away from the regular courts – because they benefit from the associated mediation fees. If they are subsequently unable to resolve the case to satisfaction, their standing is reduced (Interview, 02/11/13). The same goes for the tension between collective and individual human rights under tribal law. This has not affected the system as such, but leads people to ‘vote with their feet’. There are numerous reports of decreasing levels of acceptance of tribal rules and authority among young people (e.g. Clark, 2010; Al-Dawsari, 2012, Interview, 30/10/13). From a judicial perspective, the trouble is, of course, that there is nowhere else to go. On paper, individuals can go to the state courts but, in practice, this is not possible for many due to distance, time and cost. As the next section will argue, the combination of grievances, the undersupply of legal remedies and a rising level of social injustice make it likely that individuals or groups will take recourse to violence at some point.

On a final note, the foregoing should neither be interpreted as diminishing the importance of tribal law in large parts of Yemen nor as barriers to engagement. Rather, these observations and insights need to be taken into account and worked with to inform engagement on the understanding that tribal law is Yemen’s dominant legal system today and critical to improvements of the state of justice.

**Figure 2: The varying strength of tribal law across Yemen**



Legend: tribal law is weak in red areas, moderate in yellow areas and strong in green areas

Source: Several interviews between 28/10/13 and 06/11/13

## Points of connection between the state-based and tribal judicial system

A final topic that must be addressed is how the state-based and tribal judicial systems are connected. This is the area where legal pluralism in Yemen really comes into its own. While the research was not able to go into much depth on this point, three main connectors can be briefly highlighted. They are respectively legal, political and informal in nature.

The legal connection between state-based and tribal law takes the form of the successive versions of Yemen's 'arbitration law', which brings tribal law into the state-based system as a legitimate legal source of dispute resolution in its own right (Al-Zwaini, 2012). Tribal customary mechanisms are equated with primary courts in the state's judicial system (which has three tiers: primary courts, courts of appeal and a Supreme Court), but legal decisions reached through tribal justice must be confirmed by a court of appeal (Al-Zwaini, 2012; several interviews between 28/10/13 and 06/11/13). Interviewees differed in their opinion as to whether such confirmations are actually sought and granted but, given the significant backlog in state courts, one would suspect that they are a paper or rubber stamp procedure. The purpose of such confirmations is, among other things, to bring more traditional elements of tribal law in line with today's understanding of human rights. For example, tribal law features certain 'punishment multipliers' that vary with the nature and gravity of the offence. According to tribal customs, murdering a guest of the tribe is, for instance, considered a graver crime than murdering another tribesman. Hence, the corresponding penalty is several times higher than the normal punishment for murder.<sup>70</sup> Such practices are illegal under state-based law (Interview, 02/11/13).

The political connection resides in the extent to which national politics are permeated by sheikhs and tribal tradition. Two elements are particularly worthy of note. First, a good half of all members of parliament are said to be sheikhs (Interview, 03/11/13). This reflects the creation and co-optation of many sheikhs under former President Saleh and presumably ensures that tribal interests are well looked after in Yemen's legislative process. Second, the state itself regularly resorts to tribal mediation as a way to resolve disputes between the state and tribes, between tribes, and between/with the state and other actors. This practice continues today. For instance, sheikh Ahmed Al-Qarda'e mediated an agreement between the government, AQAP and tribal forces that ended AQAP's occupation of Rada in 2012 with the informal consent of former President Saleh (Interview, 06/11/13). In similar vein, the current government appointed a tribal mediation committee in mid-2013 to prevent the murder of a doctor in Taiz – who was a brother of a sheikh in Taiz's Sharab district – from escalating into open conflict between tribes from Taiz and tribes from Mareb (Interview, 03/11/13). An even more recent example is the appointment of a committee by President Hadi in November 2013, while field work for this report was being carried out, to mediate the fighting in and around Dammaj (north Yemen) between the Al-Houthi movement and Salafist groups. Such examples make it clear that tribal custom is a critical element in the state's toolkit to maintain peace, especially when viewed in the context of an historic absence of a state monopoly on violence and a weak state judiciary.

The informal connection between state and tribal law lies in the practice whereby officials – who are formally part of the state-based system, such as police officers and judges – double-hat as informal mediators. One of the judges interviewed for this report provides

<sup>70</sup> One interviewee mentioned a factor of 44 (!) but it was not possible to verify this.

a good example, as he is both a senior member of the formal legal system and a respected tribal mediator. Interestingly, the reception area in his home held both tribal judgment scrolls (court approved) and a number of guns (guarantees) (Interview, 02/11/13). Even more intriguing is this example. In 2012, in a political dispute in Hajja, a few individuals fired shots at the office of the security chief – a state official. In response, the Ministry of Interior started proceedings against the suspects. Soon after, the alleged perpetrators slaughtered an ox in front of the security chief’s house. The Ministry subsequently accepted the offering – which, in tribal law, serves as an admission of guilt and as compensation – and dropped the case (Yemen Times, 29/07/13). Recognition of tribal custom by the state could not be clearer.

In consequence, it makes little sense to strictly separate Yemen’s state-based and tribal judicial systems. They are finely intermeshed. This is not to say, however, that their connections cannot be improved. Interviewees pointed to three sets of challenges. Firstly, there is a knowledge challenge in that mutual awareness of the strengths, weaknesses and methods of operation of both systems among legal practitioners on either side is generally weak. Secondly, there is an attitude challenge in that some practitioners on either side demonstrate a sense of superiority towards the other system which inhibits exchange and learning. Thirdly, the limited recording of judgments puts a premium on regular deliberations between state and tribal legal practitioners to ensure a more or less similar interpretation of the law. Such events seem to be rare, which creates an issue of coherence (Interviews on 30/10/13). Together, these challenges suggest that there is scope for practical improvement in how state and tribal law work together to raise the quality of legal outcomes, even within the constraints discussed (and further discussed in Section 7).

## 5 Trend 3: The decline in social justice

### Summary

The large and growing sense of social injustice that pervades Yemen is both a cause and a consequence of Yemen's minor and major conflicts. It is a cause of conflict because the limited possibilities for obtaining legal redress of grievances have contributed to the creation of significant levels of disenfranchisement and left violence as the only way for many to voice their resentment. It is a consequence of conflict because the ruling elites utilise Yemen's violent disputes to advance their own agendas. Decades of willful neglect and abuse of southern grievances, a heavy-handed approach by the Al-Houthi movement in the north, and cynical manipulation of terrorist groups in the south were typical of the rule of former President Saleh. These developments took place against a backdrop of growing deprivation throughout the country while elites compete for influence in Sana'a and siphon off billions. Such dynamics do not seem to have changed much over the past few years. The result is the gradual unravelling of Yemen's social contract, a corresponding increase in the fragmentation of its society, and growing sectarian profiling.

In most countries, most disputes are settled out of court. Yemen is no exception and has an elaborate, cheap and accessible mechanism for doing so in the form of tribal law. Yet, as the preceding two sections have made clear, the tribal system is under strain and there is no reliable state judiciary that fulfills a function of last resort. This situation results in unevenness and inequality of legal outcomes. It also increases the importance of social status to the justice that can be obtained, as well as the likelihood of violence. In essence, many disputes that could be resolved peacefully and legally are not. Instead, they have accumulated and festered. In three cases in particular, their collective aspects have contributed to civil protest and large-scale violence.<sup>71</sup>

This section examines these cases – the northern or 'Al-Houthi' conflict, the southern or Al-Hirak conflict, and the rise of Ansar Al-Sharia (AAS) and AQAP – as manifestations of the decrease in social justice<sup>72</sup> and the unravelling of Yemen's social contract that they embody.<sup>73</sup> It describes the report's third trend in the area of justice, which is closely related to the previous two and in part originates from them. From the perspective of social justice, it focuses on the collective grievances these cases reflect and why they have escalated into violence.

71 In addition, there are many lower-intensity conflicts that unfold in parallel, such as the clashes between government and tribal forces in Hadramaut in December 2013 – January 2014.

72 Social justice is understood as the extent to which the distribution of wealth, opportunities and privileges within a society are considered as fair by its population, as well as whether collective grievances are resolved in a broadly acceptable manner.

73 The Al-Houthi movement is named after Husein Al-Houthi who laid out a peaceful vision for restoring the vitality and self-rule of the northern Zaydi tribal communities in the late 1990s. Its activities, as well as the various 'Al-Houthi wars', are centred on the Saada governorate and spread into the Hajjah, Amran and Al-Jawf governorates. The Al-Hirak movement was created in 2007 and advocates for redress of a set of collective grievances of south Yemenis. AQAP originates from the merger of the Saudi and Yemeni branches of Al-Qaeda in 2009 under the leadership of Nasir Al-Wuhayshi.



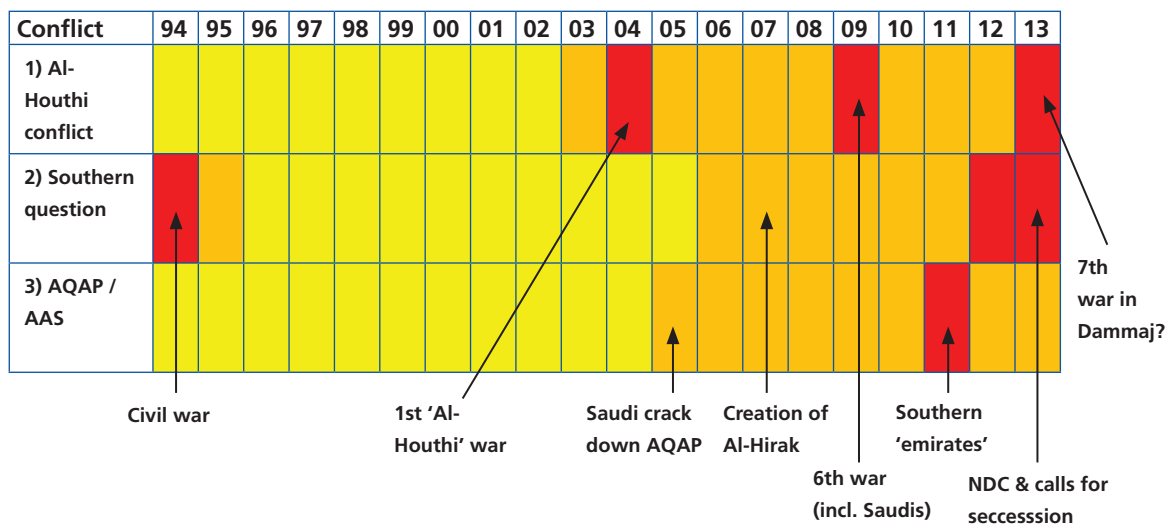
In a nutshell, southern Yemenis by and large feel marginalised, disadvantaged and exploited. Northern Yemenis in the Saada governorate and beyond experience a threat to their identity and livelihoods, and political manipulation. Yemenis in the south and east of the country suffer a rising level of AAS and AQAP activity, to which some contribute, as well as frequent US (drone) strikes targeting the AAS and AQAP leadership. The narrative of at least two of these conflicts (the 'Al-Houthi' conflict in the north and the 'Al-Hirak' conflict in the south) shows a radicalisation that suggests they have transformed beyond the issues that originally created them, which has influenced motivations and complicates the possibilities for conflict resolution (e.g. Phillips, 2010; ICG, 2011; Winter, 2011; Blumi, 2011; ICG, 2013b). The general sense emerging from the interviews is that the Al-Houthi conflict matters most to Yemen's elites, the southern conflict most to the Yemeni people and AQAP to the international community (Interviews between 28/10/13 and 06/11/13).<sup>74</sup>

From a legal perspective, it is worth noting that these conflicts have enabled the appearance of alternative justice providers, mostly the Al-Houthi movement, the Popular Committees and AQAP (see below), and further lowered expectations of the state. They are also playing their part in turning Yemen more and more into a 'get your own justice' type of environment, slowly perverting the meaning of justice and morphing it into the right of the strongest. Mapping the intensity of these three conflicts in time (Figure 3, below) shows an increase in their combined intensity in the mid-2000s, with a further increase after 2011. This suggests that the disenfranchising and marginalising effects of former President Saleh's rule, reinforced by the previous two trends, started to take their toll about 15 years after unification. They increased the level of dissatisfaction and reduced Yemen's capabilities for conflict management in such a way that the events of 2011 were able to act as a trigger that further worsened the situation.<sup>75</sup>

74 The international community tends to focus solely on the threat of AQAP. This interview with journalist Iona Craig is enlightening in this regard: <http://pri.org/stories/2013-09-26/al-qaeda-least-yemens-problems> (consulted 27/09/13).

75 For example, the co-optation of the JMP throughout the 1990s and early 2000s by the GPC has created a situation in which there are few political parties left that are not perceived by most Yemenis as tainted and part of the problem rather than the solution (Phillips, 2011). Hence, the conflict management ability of the 'old parties' is limited, even if they wanted to play such a role.

**Figure 3: Yemen's social contract unravels**



Legend: Red denotes a very high level of conflict intensity, orange a high and yellow a medium level of conflict intensity

The National Dialogue Conference (NDC) provided a forum for more open discussion on the frustration and grievances underpinning these three conflicts. Yet, this seems to have resulted more in acrimonious debate than in a cathartic experience. As the NDC was viewed by many as a power struggle between the Sana'a-based elite, which is far removed from local realities in much of Yemen, it is unlikely to stop these conflicts from intensifying. In fact, the recent increase in fighting in Dammaj (Saada governorate) can be seen as precisely such an escalation.

### 2004: Igniting the northern conflict

An increasingly common representation of the 'Al-Houthi conflict'<sup>76</sup> in northern Yemen is that of a religious conflict in which the Al-Houthi, Shia-oriented, movement – possibly backed by Iran or even Hezbollah – seeks to carve out its own state and restore the religious rule of the Imamate (Winter, 2011). While this admirable simplification of reality may suit a number of agendas, including that of the central Yemeni government, the Saudis, and possibly even Iran, it is also fundamentally incorrect. From the perspective of social justice, the conflict is probably best understood as a gradual collision of local material discontent and religiously inspired Zaydi authority and identity claims with former President Saleh's way of governing Yemen (Salmoni, Loidolt and Wells, 2010). However, tribal and religious overtones have steadily increased in the rhetoric surrounding the conflict.

In terms of material discontent, it is important to note that the north of Yemen is historically intimately connected with the south of Saudi Arabia, rich in trade (licit and illicit), strong in tribal structure and with a long tradition of relative autonomy (Blumi, 2011). It is over these border areas that both the Yemeni and Saudi states have sought to strengthen their control

<sup>76</sup> The Al-Houthi movement / war is named after Husein Al-Houthi who laid out a peaceful vision for restoring the vitality and self-rule of the northern Zaydi tribal communities in the late 1990s. There have been six successive Al-Houthi wars since 2004. For an in-depth analysis: Salmoni, Loidolt and Wells (2010).

## The Al-Houthi conflict matters most to Yemen's elites, the southern conflict most to the Yemeni people and AQAP to the international community

Several interviews

over the past decades. Their efforts have led to a more rigid delineation of the border,<sup>77</sup> more regulation and increased state interference. This, in turn, has reduced the mobility, trade and autonomy of the communities that straddle the frontier without providing much in return. In

consequence, both the livelihoods of communities and powerful commercial interests<sup>78</sup> have been negatively affected (Blumi, 2011; Chatham House, 2013). While this increasing level of control caused economic harm, the region has otherwise been largely neglected, politically and economically, by its respective states. Unsurprisingly, this has led to a sense of marginalisation.

In terms of religiously inspired identity and authority claims, the region is largely Zaydi Shia (a moderate form of Shia religious thought that is reasonably close to mainstream Sunni schools) (Esposito, 1999; Hourani, 2013) but has witnessed a growing Salafi movement and presence since 1980.<sup>79</sup> This originally centred on the personality of Muqbil ibn Hadi Al-Wadi and his Dar-Al-Hadith religious institute in Dammaj<sup>80</sup> (Meyers, 2009; Wells, 2012). Over time, Salafi establishments (for example, mosques and schools) have multiplied. This was facilitated by the return of Yemenis who fought as mujahideen, migrants who returned from the Gulf (where they were exposed to Salafi thought and practice), extensive social welfare programmes, and the attractive clarity of Salafi doctrine – which is easy to understand, more egalitarian than Zaydi Shia doctrine and morally powerful in its call for purity<sup>81</sup> (Weir, 2005; Meyers, 2009; Winter, 2011; Interview, 04/11/13).<sup>82</sup> Apart from the incompatibility of the core tenets of Zaydi Shia doctrine and Salafism, this expansion mostly threatened local structures of authority and political interests as it started to subtly reweave the socio-cultural texture of an area with strong tribal traditions. Three characteristics of this process especially have fuelled local grievances and resentment:

- The egalitarian nature of Salafi thought appealed in particular to the poor and lower social classes in north Yemen, whose social standing had always been fairly marginal. However, it could also count on sympathy from a number of sheiks because of their long-standing competition with Zaydi religious scholars ('sayyid/sadah') for authority (including in the

77 The construction of a border fence by Saudi Arabia, which is planned to run for 1,800 km from the Red Sea to Oman, is the most visible manifestation of this (BBC, 09/04/13). It is similar in philosophy and purpose to its Israeli and US counterparts.

78 This includes profitable smuggling to Saudi Arabia of which qat alone is estimated at US\$1 billion a year.

79 Wahhabism can be seen as a revivalist movement of much older Salafi doctrine (Meyers, 2009).

80 Dammaj was also the site of the violent clashes between the Al-Houthi movement and Salafi groups in November 2013. The Al-Houthi movement justified the hostilities in part in reference to the presence of many foreign students at the institute who are allegedly armed and who undertake subversive activities (Interview, 04/11/13).

81 Salafism accepts only the Qu'ran and hadiths (the deeds and sayings of the Prophet) as valid sources of religious guidance (and rejects the four canonical Sunni law schools). It interprets these sources literally, which gives them an identical meaning across time and place. This gives Salafism a universal appeal (Meyers, 2009).

82 Zaydi Shia doctrine, for example, holds that religious scholars (sayyids – individuals who can claim religious and worldly authority through the legitimacy they derive from descending from the Prophet) are the authoritative sources of religious guidance for the community of belief. Salafism underwrites a more individual relation with the divine that does not require a specialist intermediary (Weir 2005; Salmoni, Loidolt and Wells, 2010). Convenient for Yemen's central government, Salafism also preaches obedience and submission to higher authorities, even if these are unjust (Meyers, 2009). It would seem that the Saudi and Yemeni governments therefore have a shared interest in spreading this school of thought.

tribal judicial system) (Weir, 2005). In short, important elements of a class struggle and of competition for power and legitimacy are hidden in religious disputes (Weir, 2007; Blumi, 2011).

- While Salafism is a transnational movement and not purely a Saudi export (Bonnefoy, 2009), Saudi Arabia is one of the key sponsors of the Salafist-inspired Wahhabi movement in Yemen. However, Saudi Arabia is not well regarded in large parts of Yemen because of what is seen as its backstage political interference, its contribution to the economic decline of north Yemen and its direct intervention in the sixth Al-Houthi war (2009).<sup>83</sup>
- As discussed, the Salafi movement was supported and encouraged by former President Saleh, who is also seen as responsible for growing state control, political exclusion and economic marginalisation of the north (Interview, 29/10/13).

Together, these long-term processes – an open zone becoming a delineated border, economic deterioration, political marginalization, and religious as well as class-based strife – made for a heady mix of grievances. However, it was the Yemini government’s heavy-handed approach to protests that built up in the late 1990s and early 2000s that provided the proverbial spark. As it happens, Zaydi Shiism already disposes of a latent rally call for protest in the form of the doctrinal notion of ‘khuruj’, which grants the community of belief the right to rise up against an unjust ruler (Winter, 2011). It is not difficult to imagine how the spark fell on highly ignitable tribal powder with a high mobilisation potential because of the underlying sets of grievances.

Two further factors played a role in turning the initial conflict into a violent downwards spiral of *successive* conflicts. To start with, rivalry between parts of the Sana’a-based elite prolonged the conflict by instrumentalising it for a ‘palace’ type power struggle by proxy. President Saleh reportedly used the conflict to weaken his general and ally Ali Al-Mohsen who was rumoured to be next in line for the presidency and whose troops were doing most of the fighting. Failure on his part to decide the conflict militarily would have increased President Saleh’s chances of having his son become the next president despite widespread popular resistance (Phillips, 2011a; ICG, 2012). In addition, the conflict absorbed pre-existing tribal conflicts, triggered new ones, and infused them with religious elements. For example, the recent fighting in Amran reportedly pitted Al-Houthi supporters against tribesmen affiliated with the Al-Ahmar family in a dispute over Jamih Mountain (Yemen Times, 09/09/13).<sup>84</sup>

As both former President Saleh and the Al-Ahmars have their power base in areas near or adjacent to Al-Houthi-controlled territory, they have a strong interest in halting its advance. In fact, the growing popularity and strength of the Al-Houthi movement post-2011 now poses a direct threat to their interests since they no longer have full control over state security forces.

<sup>83</sup> Continued Saudi support for the central government of Yemen in the Al-Houthi conflict arguably became more likely with the death of Crown Prince Nayef bin Abdul-Aziz al-Saud (The Guardian, 16/06/12). Saudi Arabia’s policy towards Yemen has long been characterised by differences of opinion between proponents of more direct intervention coupled with more active support for Yemen’s central government, and proponents of a more hands-off approach with more of a focus on selected tribes. King Abdullah is said to belong to the first camp; Crown Prince Nayef belonged to the second. The latter’s illness and ultimate death reportedly enabled direct Saudi intervention in the sixth round of fighting in 2009 (see also: Chatham House, 2013).

<sup>84</sup> This acquires real salience when one realises that the Al-Ahmar family plays a leading role in the Islah party, is sympathetic to the Muslim Brotherhood, and is said to maintain close relations with the house of Saud (see e.g. US cable, 2009e).

This explains in part why the conflict has escalated, turned nastier, and is likely to continue (Interviews on 29/10/13 and 01/11/13). In a way, the Al-Houthi conflict is the epicentre of the violent part of the current power struggle. It must be noted, however, that the broader popularity currently enjoyed by the Al-Houthi movement probably results more from the fact that it offers a visible, moderate and successful focal point around which the many grievances against the central government can galvanise than from its ideological appeal beyond northern Yemen. This is especially so since it is fairly unclear, at least to outsiders, what the movement actually seeks to achieve (US cable, 2009c and 2009d; Wells, 2012; Zyck, 2013; Interview, 04/11/13).

What is clear, however, is that the Saada governorate and parts of adjacent governorates are under de facto rule by the Al-Houthi movement. As the proto-government, it has restored basic services such as electricity and also established itself as a key provider of justice, alongside tribal customary mechanisms (Interview, 04/11/13). It is also clear that collective grievances centreing on political neglect, regional identity, religious competition and economic marginalisation will have to be addressed before peace can return to northern Yemen. Improving the region's economic prospects must happen in parallel with the peaceful neutralisation of the violent tensions between different religious/political interests. The cooperation of Saudi Arabia is probably essential to realise both. It is likely that only subsequently will a measure of central governance be legitimately restored and the state-based justice system able to establish a light footprint in this area, with its longstanding tribal traditions.

## 2007: Lighting the slow fuse of the southern conflict

As the 1994 civil war was discussed extensively in Section 2, the focus of this subsection lies on the Al-Hirak movement which was established in 2007 as the embodiment of the perceived and real collective grievances of south Yemen.<sup>85</sup> Two characteristics of the Al-Hirak

**Figure 4: Graffiti on a wall in Mukalla, Hadhramaut**



Translation: Leave, leave, northerner

Source: [pic.twitter.com/nc6dpLodVB](http://pic.twitter.com/nc6dpLodVB)

movement are relevant for understanding it as a political force bent on the restoration of social justice. First, it is not a unified movement but rather a set of factions that share a 'north vs. south', 'us vs. them', type narrative (see Figure 4), which frames the problem, but leaves scope for different solutions. Some factions clamour for outright independence, others for a temporary arrangement with a referendum after a number of years (like Sudan's comprehensive peace agreement) while yet others advocate a permanent two-region federation (like Belgium, perhaps) (Manea, 2012; Al-Monitor, 01/03/13). The combination of internal divisions within an 'us vs. them' framework makes the Al-Hirak movement both relatively weak and unpredictable. As a movement, it remains in flux and it is unclear which factions may come to dominate it. Second, its campaign has so far been largely peaceful and taken the form of civil disobedience (closure of schools,

<sup>85</sup> The ICG (2013b) covers the role that the Al-Hirak movement plays in the NDC in detail. While there are indeed grievances that are specific to the south, many are suffered in equal measure throughout Yemen as a whole. Moreover, serious injustices were equally common in the former PDRY. Yet, the different Al-Hirak factions use a framework that depicts northerners as 'oppressors' at whose hands the southerners have 'suffered'.

strikes, demonstrations, etc).<sup>86</sup> This seems to have had two main effects, namely, disruption of regular life in the south and a rise in the temperature on the street. It does not seem to have improved its political leverage much.

Despite these tactical limitations, Al-Hirak does embody a set of collective and relatively southern-specific grievances that result from the region having been marginalised and exploited after the civil war by ruling northern elites. Three sets of issues in particular remain unresolved and feed a strong sense of social injustice. These were discussed in Section 2 and centre on large-scale grabs by northern military commanders and business elites, as well as dismissals of members of the southern bureaucracy (especially its military). This has resulted in, among other things, the discontinuation of pension payments to many former PDRY civil servants. In addition, a good part of Yemen's oil is produced in the south but the south sees little of its revenue. While it is debatable whether more revenue should accrue to the south simply because that is where the oil deposits are, the self-serving nature of Yemen's ruling elite makes it problematic that the south sees little benefit from its natural resources.

During the NDC process, symbolic efforts have been made by the Yemeni government to address these grievances. These include the creation of a fund of US\$1.2 billion to compensate southern civil servants and soldiers who were dismissed post-1994 (Reuters, 11/09/13), the reinstatement of around 900 such individuals in their previous jobs, and a formal apology from the current government for the 1994 civil war (Reuters, 21/08/13).<sup>87</sup> Reactions to these efforts have largely been along the lines of 'too little, too late'<sup>88</sup> (see, for example, Figure 5) and they seem to have been fairly ineffective in terms of reconciliation. They did, however, prevent the moderate Al-Hirak faction which participated in the NDC from walking out, which saved the process from failure on the count of inclusiveness.

More generally, however, restoring social justice in south Yemen will require the establishment of a longer-term process of reconciliation that combines dialogue, symbolic gestures and southern empowerment with concrete improvements in the desperate economic situation that many face. Such a process will require new and dedicated mechanisms to support it as both the state-based judiciary and tribal customary law (which is relatively weak in the south) have proven largely ineffective in addressing the region's accumulated individual and collective grievances. For such mechanisms to have a chance of success, radical changes in the way Yemen is run are required. Egocentric power politics will have to be tamed. Developments to date suggest that this is likely to require significant external pressure.

### Figure 5: Illustrative tweets

**Hussain Al-Yafai**@crazyyafai

04:23 AM - 12 Sep 13

Did you know that the 900 or so South Yemenis that Hadi announced to return to their jobs represent less than 1% of the ppl sacked in 94!

**Yemen Peace Project**@YemenPeaceNews

12:43 AM - 12 Sep 13

Reinstating southern officers into active duty positions is asking for trouble. Hadi's heart is in right place, but decisions questionable

<sup>86</sup> This is probably just as well since the central government and Yemen's tribes are militarily much more powerful and unlikely to relinquish control of the southern oil fields without a fight at this point in time.

<sup>87</sup> The apology also covered the various Al-Houthi conflicts.

<sup>88</sup> The fund lacks, for instance, much further thought on reconciliation and, worse, is to be funded by donors. This suggests the issue is not really owned by Yemen's political elites.

## 2009: Creating the 'Western' conflict

The rise of AAS and AQAP activity in south Yemen is neither as overtly territorial as the Al-Houthi conflict in the north, nor as relatively peaceful as the Al-Hirak conflict in the south. Instead, it is much more fluid and confusing. What it has in common with the two other conflicts, however, is the role that deprivation, accumulated and unresolved grievances, and a sense of social injustice play in fuelling it. Such sentiments are used by AAS and AQAP to position themselves as alternative sources of governance and service provision to the state. While they are vastly different on many other accounts, this is a characteristic AAS and AQAP share with the Al-Houthi and Al-Hirak movements, albeit to different degrees.

The drivers and prospects of the efforts of AAS and AQAP to establish a conservative Islamic state in south Yemen are difficult to understand because enabling and disabling factors compete for pre-eminence.<sup>89</sup> However, the starting point must be the displacement of Al-Qaeda from Saudi Arabia to Yemen after the Saudi crackdown in 2003–2004, when terrorist attacks on its oil installations and government facilities shook it into action, and the subsequent merger of Al-Qaeda in Saudi Arabia and Yemen to form AQAP in 2009 under the leadership of Nasir Al-Wuhayshi. In an attempt to tackle this complexity, this section starts by outlining two general elements – economic deprivation and the poor functioning of both tribal and state-based law – which provide part of the enabling context for AQAP success. It subsequently turns to the more political machinations that have facilitated AQAP's fast rise since 2011. It closes in suggesting that Yemen's tribes are more likely to be a critical limitation to longer-term AAS/AQAP success than an enabler.

In terms of background, the increasing deprivation of over 50% of the Yemeni population of basic services and income/employment plays a big role in creating a reservoir of the destitute.<sup>90</sup> Yemen's young people, especially, face poor economic prospects.<sup>91</sup> In fact, there are few ways open to those who are not politically connected to gain status and earn a decent income. Seen in this light, AAS/AQAP recruitment packages – reportedly consisting of a rifle, US\$400 a month and a new car – can be economically attractive (Swift, 2012).

Also in terms of background, tribal traditions are relatively weak in the Abyan and Lahij governorates, where much AQAP activity takes place (see Figure 2). The state-based judicial system is in a much worse condition. This has generated many unresolved grievances that create opportunities for AAS and AQAP to step into the space left void by state and tribes. For example, during their temporary occupation of Jaar, Zinjibar and five other southern towns in 2011, they rapidly established crude but effective judicial systems that dispensed justice swiftly and impartially (Gaston and Al-Dawsari, 2013). By bringing in a significant number of sharia judges, they were able to clear years of backlogged cases in a matter of weeks in a manner that was perceived as fair and transparent (Simcox, 2013; Interview, 04/11/13). While this did not immediately increase local support for their ideological agenda, it did earn them appreciation for improving access to justice. In consequence, their presence was not unpopular with the local population (Coombs, 2012; Simcox, 2013). A similar story

<sup>89</sup> Opinion is divided as to whether these organisations are synonymous, family (whereby AAS is the younger cousin of AQAP) or unrelated. Their key similarity, however, is that both propagate violent strife against the Yemeni state and the West, in particular the US, as a way to establish a pan-Islamic state based on a radical and conservative interpretation of Sunni Islamic thought and practice.

<sup>90</sup> Formal unemployment stands at ca. 25% (general) and 40% (youth) (IMF, 2013). Also: World Bank et al, 2012.

<sup>91</sup> Over 60% of Yemen's population is below 24 years of age. The median age in 2011 was 17.6. Yemen also has a high fertility rate (UN, 2011).

can be told for the provision of electricity. Instead of learning from this episode, governmental neglect continued after the 2012 ousting of both groups, compounded by the damage wrought by the fighting over infrastructure, housing and the local economy (Gaston and Al-Dawsari, 2013). Worse, the Popular Committees – essentially state-sponsored militias – which were created in Abyan to fight AQAP seem to be developing into informal governance mechanisms that also dispense justice (Coombs, 2013; Gordon, 2013). Hence, the area’s potential for staging AAS and AQAP activity probably remains undiminished.

However, these general background elements fall short of explaining the rise in AQAP activity. After all, there are plenty of areas in the world that combine poor economic prospects, youth bulges and injustice without hosting radical religious terrorist movements. A closer look at the machinations and tactics of the ruling elite, particularly under former President Saleh, helps to explain how potential could turn into capacity.

To begin with, a number of individuals within Yemen’s ruling elite are said to have longstanding and close ties with radical religious groups that date back to the days when Yemen contributed thousands of fighters to the Afghan mujahedeen. Reportedly, Ali Mohsin is one of the most prominent of these figures (Clark, 2010). If this sounds relatively innocent, the long-held positions of such individuals at the pinnacle of Yemen’s military-security complex and bureaucracy – combined with the use of these organisations for patronage purposes – mean that such ties can easily lead to the creation of informal networks of radical elements throughout the very organisations that are supposed to contain them.<sup>92</sup> In other words, the capacity of the Yemeni government to counteract AQAP activity might in fact be limited.

Second, it is abundantly clear that former President Saleh used the threat of AQAP as a bargaining chip to obtain international support and resources in the context of the war on terror (Clark, 2010; Phillips, 2011a).<sup>93</sup> The US experiences in Iraq/Afghanistan increased his leverage. Hence, his objective was probably not the elimination of these groups. A certain level and manner of support seems more likely.<sup>94</sup> Publicly, of course, full cooperation with intensifying US drone strikes stood and stands centre stage.<sup>95</sup> The frequency and collateral damage caused by these strikes is, however, generating significant resentment against both the Yemeni and US governments that feeds into the stock of unresolved grievances and adds

### Figure 6: Illustrative tweets

**Hussain Al-Yafai@crazyyafai**

01:46 PM - 02 Sep 13

In Yafe #Yemen: checkpoints & heavily armed tribal men in every road, town & village to prevent any AlQaeda fighters from entering!

10:44 AM - 29 Sep 13

#Yemen : Suicide bomber strikes at tribal gathering in Marib discussing ways to counter Al Qaeda. Bomber killed, 3 tribesmen injured.

92 For example, the Political Security Office (PSO) is reported to be staffed by many Afghan war veterans whose loyalty to the central government, and hence in combating AQAP, might be in doubt. If true, it helps explain why former President Saleh created the parallel National Security Bureau (Clark, 2010; ICG, 2013a).

93 The risks of supporting weak or fragile governments to achieve counter-terrorism objectives are, for example, discussed in: Van Veen and Hutton (2013).

94 There are suspicious incidents, such as two spectacular jail breaks by arrested jihadists in 2003, which hint in this direction (Clark, 2010).

95 For a while, former President Saleh even upheld the fiction that US drone attacks were anti-terrorist attacks conducted by the Yemeni armed forces (US cable, 2010). President Hadi’s recent support for the practice can be found at Reuters (22/08/13), for example.



another dimension to the sense of social injustice in south Yemen.<sup>96</sup> It is also nearly impossible to obtain compensation, let alone justice, for strikes that violate international human rights law, or the laws of war (HRW, 2013a).

Add the chaos, violence and retreat of the state since 2011 to the combination of these elements and one can see that AAS and AQAP could grow stronger than ever intended. Two factors, however, seem to limit the potential of AAS and AQAP in Yemen: tribes, and the tension between leveraging local grievances and advancing a global agenda. The more important of the two is probably Yemen's tribes. Several commentators have underlined that, if push comes to shove, Yemen's tribes will constrain AQAP more than enable it because core tribal values of autonomy and honour mitigate against tribes surrendering autonomy or territory to establishing a radical Islamic state (Phillips, 2010; Koehler-Derrick, 2011).<sup>97</sup> While there are plenty of episodes of cooperation between tribes and AQAP, there is reason to believe that these are marriages of convenience rather than strategic alliances. A good example is the event that appeared in the Western media as the AQAP occupation of the strategic town of Radaa in 2012 (situated between Sana'a and Aden). On closer inspection, this event turned out to bear more similarity to a tribal succession issue than to a territorial gain by a terrorist group. What seems to have happened is that one of the sons of the first wife of a deceased sheikh of the Kaifa tribe, Tareq Al-Dahab, felt slighted by having been passed over for succession in favour of a younger son of the sheikh's second wife and mobilised AQAP support to oust him (Gordon, 2013; Interview, 06/11/13).

The second factor constraining the longer-term success of AAS and AQAP is that both organisations utilise local grievances to advance a global agenda. While this has been effective in avoiding Iraq-style sectarian violence, it ultimately raises an identity issue. If AQAP is about local issues, it competes with existing Yemeni organisations like Al-Hirak and this is likely to prove an uphill struggle for affiliation and support. If it is about global issues, it may lose part of its following when it starts to actively pursue a more doctrinal tack (Phillips, 2010).<sup>98</sup>

By way of overall conclusion, all three conflicts intensified in the second half of the 2000s and are having three main effects: they erode Yemen's institutions of governance and mediation; they increase the relevance of local and religious identities over a largely fictional – but national – sense of citizenship; and they are fragmenting the organisation and delivery of justice (see Section 6). If unchecked, these effects may well stimulate a slow slide towards a much more chaotic Somali- or Democratic Republic of Congo-type situation.

96 See, for example, New York Times, 11/08/13, Al-Monitor, 11/08/13, Al-Muslimi's testimony to the US Senate Judiciary Committee of 23/04/13: [http://www.youtube.com/watch?v=fXiW\\_\\_TCVaE&feature=youtu.be](http://www.youtube.com/watch?v=fXiW__TCVaE&feature=youtu.be) (consulted 11/08/13) and the Time World edition of 27/10/11.

97 One strategy that AAS/AQAP applies to reduce tribal resistance is to deploy members of one tribe as part of its forces on the territory of another, thus ensuring that violence against its forces brings retaliation by the victims' own tribesmen (Swift, 2012). This is particularly effective if there are substantial power disparities between tribes.

98 Some evidence of this tension becoming more apparent started to emerge after AAS/AQAP's temporary occupation of Ja'ar and Zinjibar in 2011 (Simcox, 2013).

## 6 The consequence: Fragmenting justice

### Summary

The instrumentalisation of the state judiciary, the weakening of tribal law and the decline of social justice are fragmenting the organisation and delivery of justice in Yemen in four important dimensions: access to justice; the quality of legal outcomes; the number of providers of justice; and the legitimacy to pronounce justice. This fragmentation occurs at a time when the country's social contract is under significant strain and contributes to this strain. The poor state of justice makes acts of political violence and violent dispute settlement more attractive. This context suggests four principles to guide advocacy and programming initiatives to improve the state of justice in Yemen: 1) focus on the broader political issues pertaining to the inclusivity of Yemen's social contract (this includes the NDC and its aftermath but is far from limited to it); 2) ensure initiatives have a high risk tolerance to deal with inevitable political interference; 3) only work with the state judiciary on the basis of a sound political strategy; 4) engage with tribal customary law to realise short- to medium-term improvements that matter to ordinary Yemenis.

A key consequence of the trends analysed in previous sections – the instrumentalisation of the state judiciary, the weakening of tribal law and the decline of social justice – is the further fragmentation of the organisation, delivery and quality of justice in Yemen. Little recourse to justice is available for ordinary Yemenis who seek to address their grievances peacefully. This heightens the appreciable strain that the country's social contract is already under – as evidenced by frequent acts of violence like political assassinations, car bombings, terrorist attacks, drone strikes and open fighting. The current climate of lawlessness and impunity also makes continued use of acts of political violence attractive. Those who engage in such actions need not fear much by way of legal repercussions, a perception that was unintentionally strengthened by the immunity provision of the GCC agreement (Interviews on 29/10/13 and 30/10/13). The current stream of violence not only creates additional grievances, but also makes it more difficult to get the political process to agree positive outcomes, let alone implement them. Even if it is eventually successful, the current fragmentation of justice in Yemen will make its restoration long and hard work, with plenty of scope for undermining implementation of agreed outcomes. Understanding the different aspects of this fragmentation can inform interventions that seek to improve Yemen's state of justice as a key enabler in this phase of its process of state formation. Four such aspects are discussed below, followed by four principles that can inform interventions in more operational terms.

*Fragmented access to justice.* It is safe to assume that, even in the 1990s and early 2000s, many Yemenis had little access to justice because of the socio-economic cost of using either the state or tribal legal system. The deteriorating economic situation and increase in poverty have further decreased access in recent years. The retreat of the state after 2011 limits the state-based legal system to selected urban areas. Even in cities like Taiz, which used to have a more or less functional judiciary, informal dispute settlement mechanisms have multiplied (Gaston and Al-Dawsari, 2013). Moreover, the uneven strength of tribal law

throughout Yemen suggests that about half the population, predominantly located in the western part of the west of the country, can neither avail itself of reliable state-based justice nor of effective tribal justice mechanisms. Access to justice is therefore largely limited to selected urban areas in the main cities (for those who can afford it) and to areas where tribal law remains strong (see Figure 2). Informal mediation and arbitration mechanisms, beyond the remit of both state and tribe, are likely to increase outside these areas in response to unmet justice needs, as are violent methods to resolve disputes.

*Fragmented quality of legal outcomes.* Irrespective of whether a person has access to justice, its quality in terms of perceived fairness depends more on that person's social status than it used to. In many places, justice is a commodity that can be obtained by coercion, money or relations. Those who are part of the (former) ruling political elite, who have tools of violence or wealth at their disposal, who enjoy protection from networks of patronage, or who occupy positions of significant social/religious authority have the highest chance of obtaining 'justice'. In most regards, these privileged elites are above the law and can undertake illicit activities with impunity if they wish to do so.

*Fragmented providers of justice.* Alternative providers of justice have emerged as the territorial control of the central government has decreased, tribal law has weakened and justice needs have gone unmet. This is particularly the case in northern areas controlled by the Al-Houthi movement and in the southern areas dominated by AQAP and the newly-established Popular Committees. While this is not necessarily a bad development in the short term from a legal perspective – it may actually have improved access to justice and the quality of legal outcomes – it does fragment governance and identity. This in turn increases the risk of violence and makes political negotiations more difficult.

*Fragmenting legitimacy?* The current fragmentation of justice and authority in Yemen also raises the question as to who is considered legitimate to dispense justice. The issue is most relevant in south Yemen where northerners, including members of the state judiciary, are increasingly seen as aliens and oppressors. The ability of citizens from the north to claim their legal rights in the south is similarly being eroded. Although, as elsewhere, identity is a multilayered construct, its local dimension is growing fast. While this should be no surprise in a country with strong tribal traditions and a selectively centralised state – in which life for many is becoming more and more a matter of survival – it does represent a triumph of geography with ominous implications for unity and citizenship.

This fragmented state of justice creates de facto different rights for different groups across the country, as well as possibilities for different strength and ability to legally contest violations of these rights. In this context of fragmentation, initiatives that seek to improve the state of justice in Yemen would do well to heed four principles:<sup>99</sup>

1. *Engage politically at the national level to improve the state of justice by strengthening the inclusivity and equitability of Yemen's social contract* As an issue, justice is firmly nested in a set of political constraints that make true improvements in the justice 'sector' impossible without first addressing these constraints. Hence, in a case of limited resources, it is worth considering whether these should not be devoted strategically to influencing and supporting the political dimension of Yemen's transition process with a view to removing critical political blockages instead of sector-specific programming.

<sup>99</sup> More general sets of principles for engagement in fragile situations can be found in: OECD (2007) and International Dialogue on Peacebuilding and Statebuilding (2011).

2. *Initiatives that seek to improve the state of justice (state or tribal) must have a high tolerance for risk and be able to deal with political interference.* This is because engagement in the justice arena is a politically sensitive undertaking which is likely to negatively affect the interests of powerful people who may block such change with whatever means at their disposal. Advance thought on how to deal with the ensuing dynamics is essential, not least to protect Yemeni individuals and organisations who might be involved.
3. *Initiatives that seek to strengthen the state-based judiciary must have a political component or strategy to succeed, including a solid assessment of stakeholder interests.* While the analysis suggests there is little point in engaging in institution or capacity building of the state-based judiciary at this point in time, any efforts to do so must have a political element. There are no such things as simply technical interventions in Yemen's politicised judiciary. However small the initiative, political engagement at the highest level will be necessary for its success.
4. *Initiatives that seek to improve the state of justice for ordinary Yemenis in the short to medium term must engage the tribal justice system.* This is because the tribal legal system currently works best for most Yemenis, despite its limitations. It does not have perfect answers to a number of important legal issues (see Section 4), but it has the highest potential for development and for making a practical difference for ordinary people in the short to medium term.

On a final note, it will probably be prudent to not start any formal programming initiatives that involve the state prior to the elections, originally scheduled for February 2014.

## 7 What might be done: Entry points for international action

### Summary

The best way to improve the state of justice in Yemen is to work on the issues encapsulated in its current political conundrum. This is because many of the constraints on how the provision of justice can be improved are firmly embedded in higher-level politics. However, a number of Yemeni stakeholders are resisting political change tooth and nail. This is likely to continue after the NDC. The international community can play a modest role in influencing their incentives. Three entry points can be considered from this perspective: 1) increasing the level of political and practical support for the UNSG's Special Envoy; 2) insisting on and supporting efforts to recover stolen assets and 3) increasing social capabilities for nonviolent civil resistance. In addition, small-scale initiatives can be identified that may improve local justice outcomes. However, such initiatives will have to reflect very clearly the political constraints they operate under and how the associated risks will be managed. None are likely to succeed without active political/diplomatic support. On this basis, three further entry points can be identified: 1) stimulating better legal cooperation between state and tribal legal practitioners; 2) advocating for local election of legal professionals in a transparent and merit-based manner; 3) piloting mobile courts to improve the accessibility and speed of local justice.

The fluid, partially violent and unpredictable nature of the current situation in Yemen makes it difficult for international actors to provide meaningful support. This is particularly the case because the motives and interests of key Yemeni stakeholders are difficult to understand in the detail necessary to initiate efforts that will actually help. Nevertheless, the preceding analysis suggests that focusing on Yemen's current political conundrum is likely to be the best way to improve the state of justice because many of the constraints on how justice functions are political. This is especially so because the process of political dialogue, irrespective of the final NDC outcomes, will continue to hang in the balance. Sustained pressure will be required to ensure negotiated agreements change realities on the ground. It may, nevertheless, be desirable to engage with the judicial issue itself. Any such engagement will have to reflect very clearly the political constraints it is operating under and how the associated risks will be managed to avoid making the situation worse or wasting funds. One way of accomplishing this is to ensure that programming initiatives take the form of problem-based pilots that are iterative and bottom-up in nature, with modest ambitions.

The six entry points below reflect these twin starting points. The first three have potential to improve the quality of Yemen's social contract. The second three can improve the quality of legal outcomes at the local level. Each is explicitly grounded in the analysis and flags key political constraints that will have to be explored in greater detail. None of these entry points are fully-fledged programming suggestions.

## Rebuilding the social contract

Since 2011, increased volatility, deteriorated security and the stalling of change have combined to create a political situation that is relatively deadlocked. Neither necessary political breakthroughs nor their implementation will happen easily given vested interests, the number of players who are likely to veto any initiative, and the use of strategies of violence and intimidation in addition to strategies of dialogue. Instead, a number of Yemeni stakeholders will need to be nudged and incentivised. The international community can play a modest role in increasing pressure on such stakeholders. There are two ways to go about this. First, preventing progress has to become more painful for those who resist it. Currently there is no real price to pay for blockage. Second, more support is needed to strengthen the hands of those who are willing to move ahead in a peaceful manner on the basis of dialogue. Yemeni stakeholders will naturally have to do most of the work themselves, but the international community as a whole can play a stronger role in the current process of contestation and change.<sup>100</sup>

### 1. Increase the level of political and practical support for the UNSG's Special Envoy

Purpose. The purpose of doing so is to increase the pressure on a number of Yemeni stakeholders to make the changes necessary to increase the inclusiveness and equitability of governance in Yemen.

Issue. In the medium term, this amounts to ensuring that any NDC-brokered agreement is meaningfully implemented. Political dialogue is far from over now that the NDC has concluded, and sustained international pressure and attention will remain necessary. The UN is the most legitimate and credible organisation to act as the fulcrum for such support, but it is only as strong as it is empowered to be by its members, in this case members of the Security Council. The current level of support can be improved upon as the attention of the international community – excepting the UN's Special Envoy – seems to have wandered in the wake of the GCC agreement.

Action. Two initiatives may be contemplated. First, key partners of Yemen – such as the UK, Germany, Oman and the Netherlands – should engage in a diplomatic lobby in New York to create a shared understanding and a more activist profile vis-à-vis Yemen between members of the UN Security Council to generate pressure and attention. This may include travel bans or the freezing of assets. Second, they should also make sure that the good offices of the UNSG's Special Envoy are adequately staffed, financed and strongly supported politically in-country by their national representatives. Both efforts are key to shifting the emphasis from international acquiescence to something that looks more like international activism.

### 2. Insist on and support efforts to recover stolen assets

Purpose. The purpose of this entry point is similarly to increase pressure on those Yemeni stakeholders who are resisting the process of transition by making it clear that they should

<sup>100</sup> For example, the recent UN Security Council press statement flags concern with the NDC progress and condemns attempts to detail the process (UNSC/11195, 27/11/13). However, it contains no corresponding international response or action to act upon its observations, which makes it fairly toothless. This may reflect underlying differences between UNSC members.

be content to escape prosecution and retain some of the assets they acquired over the last decade rather than holding out for a role in Yemen's future governance.

Issue. It is highly likely that assets in the order of billions of US dollars which belong to the people of Yemen were stolen under former President Saleh's tenure. Much of the current resistance against change results from the fact that (formerly) ruling elites are trying to safeguard their future interests on the assumption that their past interests are already well protected. Increased pressure to recover stolen assets may help create the political leverage that can overcome elements of this resistance.<sup>101</sup> It is interesting to note that former President Saleh reportedly signed the GCC deal in part because of the threat of UN and EU financial and travel sanctions, including asset freezes (Interviews in August-October, 2013). It is certainly well established that vast amounts of cash have been leaving Yemen in dubious ways, especially since 2011 (Chatham House, 2013).

Action. This entry point has three potential components. First, the international community can put pressure on the Yemeni government to follow through on its stated intentions to pursue stolen asset recovery. Although Yemen is a signatory to the UN Convention on Corruption (UNCAC, per 07/11/05), it is not likely that its government will pursue concrete initiatives given its current composition. Nevertheless, such diplomatic signals at the right level are important. Second, the international community can help build the capacity of Yemeni civil society organisations to advocate for and pursue this agenda domestically, leveraging the ongoing work of the Arab Forum on Asset Recovery (Touq, 2013). This may raise domestic attention that can increase the social pressure on those suspected. Third, destination countries of stolen assets can initiate international investigations into key suspects, similar to DFID's and the Metropolitan Police's investigation of James Ibor, a former Nigerian state governor, who was found guilty of laundering over £50 million worth of state funds and who recently received a 13-year sentence (Guardian, 17/04/12).

### **3. Increase social capacities for nonviolent civil resistance**

Purpose. The purpose of this entry point is to strengthen those actors who have proven willing and able to engage in non-violent resistance, such as civil society organisations (for example, young people and women), but also moderate elements of the Al-Hirak movement.

Issue. Yemen is rife with violent strife and awash with weapons. Yet, 2011 showed the power of peaceful protest to make change happen. Unfortunately, acts of violence have dominated the headlines since then. Assassinations, car bombings and shootings have become frequent events. This increases the symbolic and practical need to reinforce collective capabilities to engage in peaceful protest. Social mobilisation and pressure can offer valuable tools to contest the issues that underlie the diplomatic label of 'dialogue', and even counter strategies of violence. There is good reason to take this seriously. Research suggests that nonviolent campaigns of civil action are far likelier to achieve their aims than violent campaigns – unless the aim is secession (Chenoweth and Stephan, 2011).<sup>102</sup> The Al-Hirak movement stands out in this respect because some of its factions pursue a campaign of civil resistance most of the

<sup>101</sup> However modest, the recent success of the Tunisian government in recovering about US\$29 million of funds looted by President Zine el-Abidine Ben Ali and his family demonstrate that this is actually possible (New York Times, 11/04/13).

<sup>102</sup> This is largely because the moral, physical, information and communication barriers to participation are much lower than in violent resistance campaigns, which raises the cost of maintaining the status quo to the regime (Chenoweth and Stephan (2011)).

time. Irrespective of the (de)merits of its case, its largely peaceful approach has been a blessing for Yemen. But, it risks turning violent if it does not generate results. Capacities for peaceful resistance can be strengthened under the banner of democratisation and human rights, and make use of the openings offered by the NDC.

Action. Initiatives under this entry point would seek to increase the ability of movements to engage in peaceful social mobilisation. This includes the ability to garner mass popular support that is diverse in its composition, ways to maintain resilience in the face of pressure and ways to co-opt armed opposition peacefully. Activities can be envisaged that strengthen capacities for coalition formation and for organising peaceful protests (including learning from the experience in other Arab Spring countries). This can also help counter radicalisation processes by offering a more moderate (but viable) way to address existing grievances outside of the legal sphere (see also Barrett and Knoope, 2013).

## Improving the state of justice

As illustrated in previous chapters, the state of justice in Yemen leaves much to be desired. Currently, there is not much by way of large-scale, direct interventions that can be undertaken by the international community to improve this situation because the main challenges are political rather than technical – and must be resolved accordingly. However, as long as there is an awareness of the limited room for manoeuvre, there is potential for a number of relatively small-scale initiatives. Importantly, none is likely to succeed without active political support.

### 4. Stimulate better legal cooperation between state and tribal legal practitioners

Purpose. The aim of this entry point is to infuse both systems with a measure of strength from the other to improve legal outcomes in selected areas.

Issue. Tribal customary law has proven to be a resilient system for many Yemenis seeking legal redress. It has much to teach the state-based legal system on issues like access to justice, affordability and enforceability. However, it also has its limitations. These lie, for example, in its lack of resonance with modern principles of human rights, and the quality of its proceedings and recordings. This is where the state judiciary has, in principle, better structures and more experience. Unfortunately, mutual awareness between legal practitioners of either system is low, exchange of experience scant and formal cooperation limited. As a result, there is much to gain from improving cooperation between legal practitioners in both spheres as this can stimulate reflection on legal practice, improve turnaround time of cases, and ensure a better recording of judgments. The key challenge will be to identify judges and sheikhs with a good reputation to avoid further entrenchment of the patronage logic by linking both systems.

Action. A concrete initiative would need to start as a pilot in an area where tribal and state-based legal mechanisms are of approximately equal strength so that a true partnership can be built. A first step should be to conduct an inclusive mapping of appropriate judges and sheikhs (several interviewees indicated that reputations are generally well known so this should be relatively straightforward). Next, there would need to be an extended period to set up a conversation to help identify key issues and establish formats for consultation. This might work best if done on the basis of a concrete problem that ranks high with ordinary



Yemenis. Earlier activities suggest that several years are needed to enable initial network and confidence building to mature into practical cooperation, and that results should be measured in improvements in relations and awareness.

## **5. Advocate for local 'election' of legal professionals**

Purpose. The purpose of this entry point is to improve the quality of local justice outcomes by replacing central appointments with decentralised elections of legal professionals while ensuring such a process is as transparent and merit-based as possible.

Issue. The central appointment of the state's legal professionals is often abused for patronage and control purposes. The legal qualifications of the individual are generally not a central consideration. While political appointments for central positions are likely to remain, there might be more flexibility to make local legal professionals more directly accountable to their communities. Local elections are one way to accomplish this. However, simply introducing such elections might merely replicate the currently problematic appointment logic at local level. Hence, any process for direct or staged elections would need to be designed in such a way that it is transparent, merit-based and gives communities a real say in the matter. If this cannot be ensured, this entry point should not be pursued.

Action. This entry point likely has two components. The first is a conversation with the Ministries of Justice and Legal Affairs to explore what it would take to get them to authorise such an initiative in the form of a pilot framed as innovation or professionalisation of the judiciary. Next, further comparative research is required to identify the conditions under which local elections can escape, at least in part, the logic of patronage and what forms they should take to achieve this. It is vital that such an initiative is owned by a more reformist individual or element of Yemen's judiciary.

## **6. Pilot mobile courts to improve the accessibility and speed of local justice**

Purpose. The purpose of the entry point is to improve access to justice for Yemenis who live outside of areas where tribal law is still strong. It only makes sense in conjunction with a change in the appointment logic of state legal professionals away from patronage considerations (see previous entry point).

Issue. The analysis has demonstrated that access to justice is poor in many areas of Yemen, legal infrastructure decrepit and the quality of legal proceedings variable. This makes initiatives that can provide cheap and accessible forms of justice – such as mobile courts – attractive.<sup>103</sup> A major challenge here, however, is that this is a capacity-focused intervention in the context of political appointments. It can quickly turn into a mobile path towards self-enrichment. Hence, it must not only address the capacity dimension, but also face the question of how legal staff are appointed. One way is to combine this entry point with the previous one to ensure that local communities have a decisive say in the transparent appointment or election of legal officials, and in subsequent monitoring efforts.

<sup>103</sup> UNDP defines mobile courts as 'formal courts that conduct proceedings in locations other than their home offices, usually in remote areas where no justice services are available' (UNDP, forthcoming).

An alternative for more urban settings is the creation of mediation centres, i.e. physical locations where disputes are informally settled on the basis of consensus building aided by expert facilitation. Earlier experiences in Yemen with initiatives of this kind suggest that they require substantial political backing as at least one such centre had to close its doors prematurely because it ran into opposition from powerful political/tribal figures. As it happened, the centre's existence reduced the fees tribal leaders received under tribal customary law and this led them to mobilise against it (Interview, 31/10/13).

**Action.** An initiative can take the form of a pilot with one or several 'mobile courts', similar to those in Somaliland, the Democratic Republic of Congo and Pakistan.<sup>104</sup> Programmatic interventions have often supported allowances and transport (e.g. The Express Tribune, 29/08/13; The Nation (Pakistan), 09/12/13), which would need to be complemented by attention to human resourcing. A combination of political advocacy, legal expertise and funds are key ingredients for success.

**Table 4: Entry point requirements in terms of resources, risks and time**

Initiative	Purpose	Resources	Relative risk	Engagement period
<b>REBUILDING THE SOCIAL CONTRACT</b>				
1 Increase the level of political/practical support for the UNSG's Special Envoy	Sustain pressure on elites	Diplomatic (in New York and Sana'a), financial	Low	1–2 years
2 Insist on and support efforts to recover stolen assets	Create leverage	Political, diplomatic, technical expertise, financial	High	3–4 years
#3 Increase social capabilities for nonviolent civil resistance	Prevent violent conflict and increase pressure	Political, international CSO network, financial	High	2–4 years
<b>IMPROVING THE STATE OF JUSTICE</b>				
4 Stimulate better legal cooperation between state and tribal legal practitioners	Infuse each system with strengths of the other	Yemeni champion, implementation capacity, financial	Medium	4–6 years (+)
5 Advocate for transparent and merit-based local election of legal professionals	Improve local legal outcomes	Political, diplomatic, technical expertise	High	2–3 years
6 Pilot mobile courts to improve the accessibility and speed of local justice	Improve local legal outcomes	Diplomatic, technical expertise, financial	High	4–6 years (+)

<sup>104</sup> Existing pilots have generally resulted in a significant improvement in the availability of legal services to the population and particularly increased the number of cases heard. However, adjournment rates are also high and many experiences are too recent to assess their ultimate impact. Lessons identified include the need to pay attention to financial sustainability from the outset and the need for parallel initiatives to raise awareness among the population of their rights and the existence of mobile courts. Legal frameworks may also require adaptation (UNDP, forthcoming).

## Prospects

The report has taken a close look at the many grievances that underpin the strains and tensions Yemeni society currently faces from the perspective of how the ability of legal remedies to resolve disputes peacefully influences the prospects of violence and state formation. This inquiry can be answered in three main ways.

First, the legal remedies available to the Yemeni people to resolve their disputes are limited in scope and quality. The state judiciary has been largely corrupted through the logic of political instrumentalisation and patronage. It is not a vehicle to challenge the interests of the ruling elite and at best provides slow and expensive legal solutions for local issues. The tribal customary system has proven to be resilient. While it retains strength, it has also weakened as a result of regime co-optation, growing business interests and the need to accommodate modern notions of human rights.

Second, this poor state of justice has created a vast number of unresolved disputes that have turned into grievances and fuelled discontentment. This situation allows for relatively easy collectivisation of issues on the basis of a growing sense of injustice. In turn, this facilitates processes of identity politics and radicalisation. Yemen's capacity to resolve disputes peacefully needs to be significantly strengthened to counter such developments. Unfortunately, its existing mechanisms are, to various extents, restricted by political constraints that make direct improvement a difficult undertaking.

Third, lacking other escape valves, violent dispute resolution has followed collectivisation of grievances in a number of cases. These conflicts have created new sets of grievances, contributed to a further unravelling of Yemen's social contract and are fragmenting the state of justice even further. They will need to be brought to a negotiated halt in order to prevent further grievances accumulating and to create the space to address the issues that drive these conflicts.

## Annex 1: Timeline of UN statements and the GCC plan

	2011			
	Jan-March	April-June	July-Sept	Oct-Dec
UNSC press releases (key topics)		<b>24/6</b> GCC initiative	<b>9/8</b> Humanitarian, rejects violence, GCC plan  <b>24/9</b> Reject violence, GCC plan	<b>28/11</b> Signing and implementation GCC plan  <b>22/12</b> Implementation GCC agreement, accountability
UNSC presidential statements (ps) and resolutions (r) (key topics)				<b>21/10</b> Human rights abuses, GCC initiative (r)
GCC plan (milestones)		<b>25/4</b> Launch GCC initiative  <b>23/4 - 1/5 - 22/5</b> Saleh promises to sign GCC plan	<b>14/8</b> 6 <sup>th</sup> version GCC plan	<b>23/11</b> Saleh signs GCC agreement
Other events of influence	<b>3/2</b> Start social protest  <b>18/3</b> 'Friday of dignity'	<b>3/6</b> Attack on presidential compound and wounding of Saleh	<b>23/9</b> Saleh returns to Yemen	

## Annex 1: (Continued)

	2012			2013	
	Jan-March	April-June	July-Sept	Oct-Dec	Jan-April
<b>UNSC press releases (key topics)</b>	<p><b>26/1</b> Progress GCC agreement, gov national unity</p> <p><b>22/2</b> Presidential elections</p> <p><b>7/3</b> Terrorist attacks Abyan</p>	<p><b>21/5</b> Terrorist attacks Sana'a</p>	<p><b>13/9</b> Terrorist attacks Sana'a</p> <p><b>28/9</b> Friends of Yemen, NDC, possible sanctions (ref. art. 41 UN charter)</p>		<p><b>15/4</b> Re-organisation armed forces</p>
<b>UNSC presidential statements (ps) and resolutions (r) (key topics)</b>	<p><b>29/3</b> Transfer of power to Hadi, NDC prep, Friends of Yemen (ps)</p>	<p><b>12/6</b> Implementation GCC agreement, NDC (r)</p>			<p><b>15/2</b> NDC launch, sanctions (art. 41), naming Saleh and Al-Beidh (ps)</p>
<b>GCC plan (milestones)</b>					
<b>Other events of influence</b>	<p><b>21/1</b> Parliament approves immunity law</p> <p><b>21/2</b> Presidential elections</p>	<p><b>23/5</b> Friends of Yemen meeting</p>			

## Annex 2: Methodology

This report represents a qualitative research effort that was conducted over a five-month period from August to December 2013. Its aim was to weave existing research, policy perspectives, socio-economic data, expert views, news and ‘stories from the street’ together into a plausible, compelling and focused analysis of how justice is organised and delivered in Yemen, and what influence this has on the prospects of violence and state formation. In short, a report that is policy relevant and based on sufficient evidence. To this end, four different research methods were combined:

- Desk-based research of academic literature and ‘grey’ literature such as reports from international organisations and think tanks (see Annex 3). The desk-based research generated the overall analysis.
- Desk-based virtual expert interviews (six conducted between August and October 2013). The virtual interviews facilitated the scoping of the analysis and helped to explore particular points in more depth.
- Face-to-face expert interviews in Yemen (Sana’a) (23 conducted between 29/11/13 and 06/11/13). The field interviews were used to validate the desk-based research, explore outstanding issues and uncover new perspectives and interpretations.
- Research and tracking of twitter, selected online newspapers and blogs over the period of research (see Annex 3). The social media suggested pointers for further inquiry, provided new evidence, a sense of what the issues were at particular points in time and how people felt about them.

As with any piece of research, there are obvious limitations and a few of these are worth mentioning to help in reading the report for what it is. First, Yemen is a complex society with many interlocking and overlapping conflicts, and political, tribal and religious questions that are difficult to understand in great detail over just a few months. There is room for further deepening and nuancing of many of the issues broached. Second, the period actually spent in Yemen was limited in time (9 days) and location (Sana’a – for security reasons). A longer period, including visits to different places, would have enabled a more comprehensive approach to the number and affiliation of experts interviewed. Third, most of the interviews in Sana’a were translated simultaneously from Arabic to English. This can always result in misunderstandings on more detailed issues. Finally, while a number of Arab media were tracked during the research period, an extensive review of relevant literature in Arabic was beyond the means of the project. This may have resulted in valuable and legitimate perspectives having been missed.

Having said this, every effort has been made to be as accurate and nuanced as the issues merit and the confidence level in respect of the evidence for most of the report is solid. Remaining errors are, of course, the author’s responsibility.

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## Social media (followed from early August to mid-December)

Twitter	Newspapers (region)
Abdullah Hamidaddin @amiQ1	Al-Monitor
Baraa Shiban @BShtwtr	Yemen Times
Sama'a Al-Hamdani @Yemeniaty	Al-Motamar (Arabic)
Abubakr Al-Shamahi @abubakrabdullah	Yemenat (Arabic)
@abdelbariatwan	Mareb Press (Arabic)
Hussain Al-Yafai @crazyyafai	Yemen Post
Jamal Benomar @Jamal_Benomar	Saba News
Haykal Bafana @BaFana3	The National
Yemen Peace Project @YemenPeaceNews	Yemen Observer
Atiaf Alwazir @WomanfromYemen	The Gulf Online
Farea Al-muslimi @almuslimi	Gulf News
	The Majalla
<b>International</b>	
Iona Craig @ionacraig	Foreign Policy
Casey L Coombs @Maccoombs	Al Jazeera (English)
Jane Novak @JNovak_Yemen	Reuters
Adam Baron @adammbaron	BBC
	Open Democracy
	Bloomberg
	The Guardian
	Carnegie Endowment
	Bureau of Investigative Journalism
<b>Blogs</b>	
	<a href="http://yemeni-motamen.blogspot.be/">http://yemeni-motamen.blogspot.be/</a>
	<a href="http://narrabyee-e.blogspot.nl/">http://narrabyee-e.blogspot.nl/</a>

## Interviews

The individuals listed below were kind enough to make time available in support of the research underpinning this report from 29 October to 6 November 2013 in Yemen. Most interviews averaged between one and two hours and were conducted in Arabic with simultaneous translation. For security reasons, all of them took place in Sana'a. Some interviews took place at people's homes, most did so in office-type settings. All interviews were characterised by a hospitable welcome and relatively frank conversation.

#	Name	Position
1	Dr. Shafiq Abdo Saleh	Chairperson of the Women's National Committee
2	Sheikh Abdulrahman Al-Marwani	Head and founder of Dar-As-Salaam (NGO)
3	Ali Al-Bokhaiti	Spokesperson for the Al-Houthi movement
4	Sheikh Mufarreh Beheibeh	Sheikh of the Murad tribe (Mareb governorate)
5	Abdul-Hakeem Al-Ofairi	Deputy director of Partners-Yemen (NGO)
6	Fahd Abdul Momein Saif	Program manager Partners-Yemen (NGO)
7	Faisal Al-Majeedi	Head of the Esnaad Legal Center (NGO)
8	Dr. Bilqis Abo Asba	Former vice chairperson of the Supreme National Anti-Corruption Committee
9	Nasser Arabyee	Journalist and blogger
10	Judge Najib Abdullah Shamiri	Former member of the Supreme Judicial Council, member of the Supreme Court
11	Nabila Al-Zubair	Writer, political activist and lead of the National Dialogue Conference's 'Saada issues team'
12	Judge Yehya Almwari	Member of the Supreme Court and tribal arbiter
13	Judges Al-Jarrah Baleed and Jamal Al-Fuhaidi	Chairman and vice-chairman of the 'Judges Club'
14	Asil Sidahmed	International Development Consultant with Pursue
15	Fatimah Dawood Shajerah	Development and conflict specialist (Mareb governorate)
16	Jamila Raja	Woman activist and member of the National Dialogue Conference's 'Saada Issue Team'
17	Nadia Abdulaziz Al-Sakkaf	Publisher and editor-in-chief of the Yemen Times
18	Shaikhan Al-Dubae and Saeed Shmsan	Assistant Secretary-General and head of the political department of the Al-Islah party
19	Mohamed Al-Absi	Journalist (Al Oula newspaper) and anti-corruption blogger
20	Mohammed Al-Salhi and Fuad Al-Maktari	Editor-in-chief and Editor of the Mareb Press (Arabic newspaper)
21	Dr. Ahmed Awad bin Mubarak	Secretary-General of the National Dialogue Conference
22	Ahmed Bazara	Vice chairman of the Automotive and Machinery Trading Centre, Chairman of the Shamil Bank of Yemen/Bahrein
23	Sheikh Ahmed Al-Qarda'e	Sheikh of the Murad tribe (Al-Bayda governorate)

The individuals mentioned below were similarly kind enough to make time available in support of the research underpinning this report, but in the period August – October 2013. Interviews averaged between 45 to 60 minutes. All these interviews were conducted in

English and took place by phone or over Skype. Their primary purpose was to scope the research and to explore particular points of inquiry.

#	Name	Position
1	Dr. Sarah Phillips	Senior Lecturer at the University of Sydney
2	Nadwa Al-Dawsari	Freelance consultant
3	Peter Salisbury	Independent journalist, researcher and consultant
4	Saleem Hadded and Kate Nevens	Programme officer Yemen and Head of the Middle East and North Africa programme at Saferworld
5	Steve Zyck	Research Fellow, Humanitarian Policy Group at the Overseas Development Institute (ODI)
6	Marc Jacquand	Former strategic planning advisor in the team of the United Nation's Special Envoy to Yemen

The report does not necessarily represent the views of those interviewed. Sources have not been attributed throughout the report for reasons of confidentiality.