

# **Building Democracy in Yemen:**

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Women's Political Participation

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Political Party Life and

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Democratic Elections

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Democratic Elections

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# Preface

Internal pressures and advocacy for change have raised awareness and precipitated debates about the nature and need for reform processes in many Arab countries. Such debates have drawn in a diverse range of groups articulating interests and defining their own political programmes. In this context, electoral processes, women's participation and political parties have emerged as central issues in political reform agendas in the Arab world.

The establishment in the mid-1990s of pan-Arab and transnational satellite television and radio channels widened space for debate that was not subject to national-level restrictions and censorship. In addition, the ratification by many Arab governments of international conventions related to political and economic reforms and the abolition of all forms of discrimination against women has offered new leverage for change. Demographic trends (60 per cent of the population in these countries is under adult age) are giving added impetus to demands for further economic and political reform.

As a result, many reforms have been introduced in countries like Bahrain, the United Arab Emirates, Qatar and Kuwait, while political openness has been developing in Yemen. Advances continue in Jordan and Morocco, where reforms were already in progress.

The first United Nations Development Programme (UNDP) *Arab Human Development Report* (AHDR) (2002), prepared by Arab scholars and experts, identified the three most important development challenges facing the Arab world as deficits in knowledge, freedom, and women's empowerment. In the conclusions of the AHDR—echoed in the declarations of many Arab reformers and regional networks—the way forward in Arab countries is seen as lying through 'promoting good governance' and 'reforming the state institutions, and activating the voice of the people'. Emphasis was placed on:

- comprehensive political representation in effective legislatures that are based on free, honest, efficient and regular elections;
- legal and administrative procedures which guarantee citizens' rights and are compatible with fundamental human rights, particularly the rights to freedom of expression and freedom of association for all; and
- women's participation in political, economic and other societal institutions.

By focusing on electoral systems and processes, women's participation and political parties, IDEA's project on Democracy in the Arab World, as defined in the second half of 2002, was directly related to these themes and to the reform agendas

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being elaborated in the three focus countries, Egypt, Yemen and Jordan.

The second AHDR (2003) has since focused on one of the three challenges identified in 2002—the building of a knowledge society. It acknowledges that since 2002 there has been some progress in the advancement of women and in some aspects of popular participation, ‘yet these bright spots, accompanied briefly by dawning awareness of the need for reform, were partly eclipsed by new setbacks in the area of freedom of opinion, expression and association’. The need for extensive dialogue and consensus building around agendas for political reform is more important than ever. It is hoped that the IDEA project can contribute to this process.

This report—*Building Democracy in Yemen*—is one of the most important outcomes of a project carried out by International IDEA, in cooperation with the Arab NGO Network for Development (ANND), aimed at discussing democratic reform in Egypt, Jordan and Yemen. The aim of the project has been to contribute comparative analysis and information on good practice so as to enrich debate on democratic reform in the three countries.

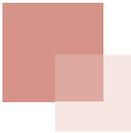
The project focused on three interconnected themes seen as entry points to help establish a reform-oriented agenda: electoral system reform, the political participation of women and the development of political parties. The challenges, opportunities and recommendations identified in the report are the result of the work of research teams in each of the three countries together with the contributions made during the regional meetings organized by the project.

At national level in the three focus countries, teams of experts were set up representing different viewpoints who carried out in-depth studies of electoral reform, gender in politics and the functioning of political parties, consulting various local stakeholders. The three expert teams were brought together at a workshop in Beirut in October 2003 to review the preliminary conclusions and help in drawing up the country reports.

The critical challenges facing democratization in the Arab world reflect themes that are central to IDEA’s work in general—the conduct of free and fair elections, the political inclusion of women, and the functioning of political parties. A regional perspective is crucial to understanding the trends in democracy in the Arab world. IDEA’s efforts aim to provide a forum for dialogue within and between Arab countries, seeking to identify and establish good democratic practice in the region. In this context, this report on *Building Democracy in Yemen* should be seen as a reflective contribution to the ongoing discussions about democracy, a basis for further dialogue.

We hope that this project contributes comparative analysis of and information on good practice in democratization in order to enrich debate about democratic reform in Egypt, Jordan, Yemen and beyond. The project has aimed to identify the main challenges and opportunities for reform that may also be valid for other Arab countries engaged in democratic transition or for the international community that is interested in supporting the process of reform in the Arab world.

Regarding **electoral processes**, the findings of the project seem to suggest



that government and national stakeholders promote greater independence and professionalism in election administration, systematic authorization for domestic election observation, the establishment of mechanisms for the resolution of electoral disputes, equal access to the media for political parties and some regulation of campaign financing. On electoral system design, the introduction of mixed electoral systems is suggested so as to improve representation and legitimacy. Continued broad national debate on electoral reform is an important way to achieve consensus on this and other matters.

To enhance the **political participation of women**, the report is proposing to government and national stakeholders that more serious consideration be given to the potential of electoral systems, as well as to affirmative measures and gender quotas for political parties and other institutions. Gender issues are best promoted through specific structures inside government as well as specific public institutions such as an ombudsperson on discrimination against women. Civil society should gender-mainstream its programmes and regional networks and alliances built to support the gender dimension in democratization agendas.

On the **development of political parties** as effective actors in democratization, it is suggested that political party law should be modernized and stronger guarantees of freedom of association should be established. In the short term, parties should move to democratize themselves, whether or not legislation is used. Inter-party dialogue should be facilitated at regional and national levels.

Country studies prepared during the course of the project indicate three levels of engagement to create change and implement reforms.

- *The legal environment*: the amendment of or creation of new legislation that can promote women's participation, strengthen political parties and reform electoral processes. This level concerns mainly governments and parliaments, but it also concerns political parties, research centres and other civil society organizations that should create a dialogue space with governments in order to reach consensus on new laws and measures.
- *Internal governance and capacity*: political parties and women's organizations should develop strategies for change and create alliances in order to give an example that governments could follow. They need to be democratic and representative in order to gain credibility, build confidence and construct a strong public opinion base to support lobbying efforts.
- *The social, cultural and economic environment*: reforming and opening economic sectors in order to enable more women to join in productive activities; and changing educational curricula to raise awareness of women roles, the importance of political parties, a citizenship culture, and freedom of choice and election. This level also concerns the media and information sectors. The media play a

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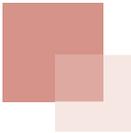
major role in shaping people's minds. Any reform plan should be mirrored by independent and free media where different stakeholders present their views and people choose those who best reflect their interests and values.

IDEA and ANND consider that there are distinct opportunities for democratization in the region, but recognize that each country needs sufficient space and time to develop its own reform agenda and democratization strategy and to craft its own democratic institutions according to its particular cultural, political and historical circumstances. For a successful engagement in support of democratization, international actors need to develop credibility by establishing collaboration based on genuine dialogue and long-term commitment. Both IDEA and ANND hope to build on this first project and contribute in this way to a reform process that is nurtured and shaped by internal debate and dialogue with all interested parties.

Finally, we would like to extend our deepest gratitude to Ziad Majed, Martin Ängeby and Nadia Handal Zander for coordinating this ambitious and rewarding project, along with Huriya Mashhur, Abd al-Aziz Muhammad al-Kamim, Mohammad Ahmad al-Mikhlaflafi and all other writers and thinkers that have helped in developing these reflections on building democracy in the Arab world.

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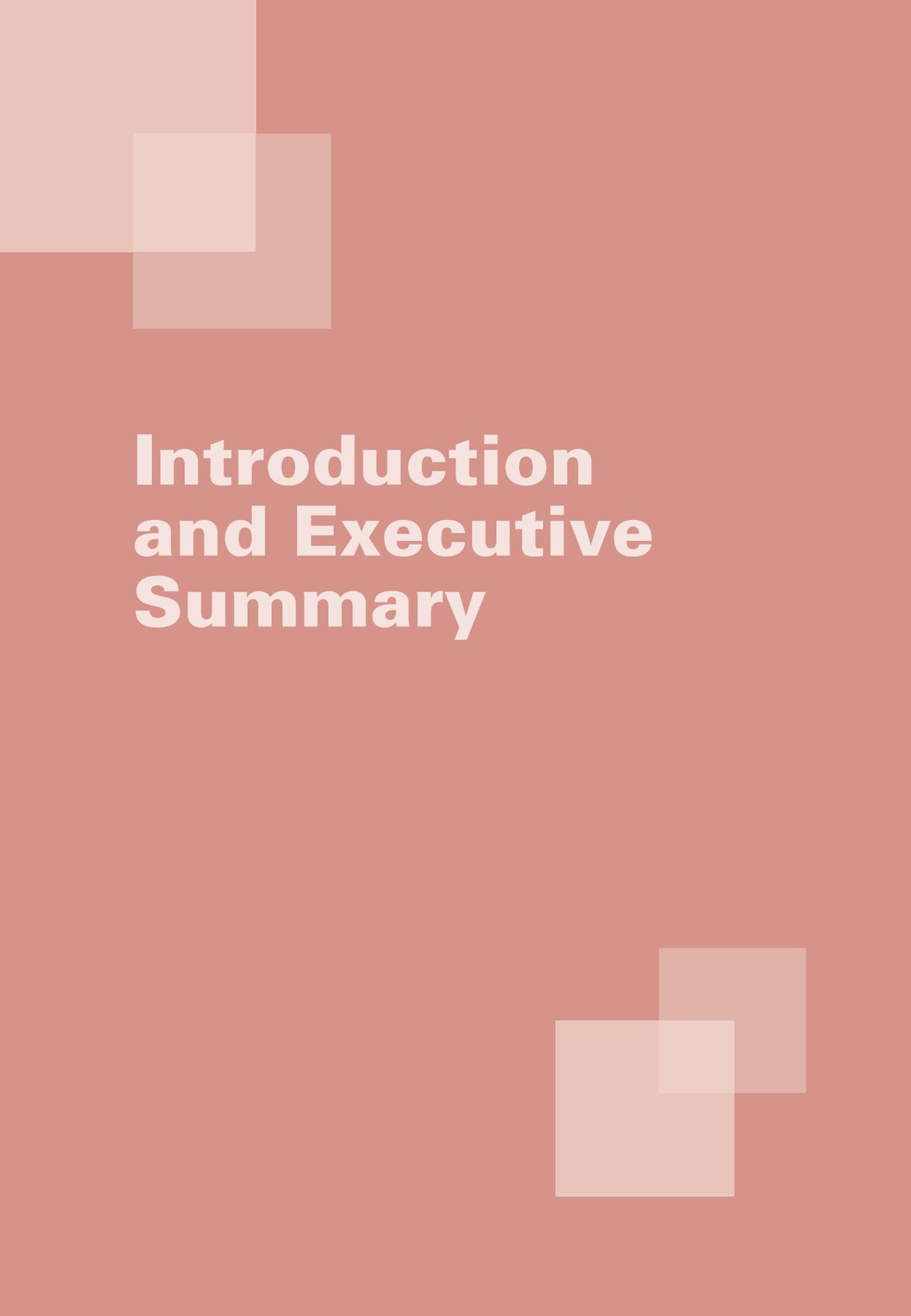
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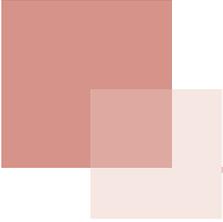
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# **Introduction and Executive Summary**



# Introduction and Executive Summary

Ziad Majed\*

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## 1. Political Conditions in Yemen

Yemen has seen a number of economic, political and social changes over the past four decades. The most important of these were the revolution of September 1962 against the imamate in North Yemen, and that of October 1973 against British colonial rule in South Yemen. The 1970s and 1980s involved periods of conflict between the North and the South. Regional and international factors and national dialogue, which continued even during the fiercest phases of the conflict, led to the unification of Yemen in May 1990 and the creation of the Republic of Yemen. In May 1994 a separatist movement led to two months of fighting between the North and the South, which ended in July with victory for the unified country. The difficulties of unification were compounded by political and economic difficulties resulting from the Gulf War of 1991. The most important direct result of unification was the commitment to democracy as a form of government, which saw the promulgation of a constitution for a unified Yemen, ratified by referendum in 1991. Yemeni society is characterized by tribalism, especially in the northern and eastern parts of the country. It is against this backdrop that the following research themes are now examined.

### *1.1. Political Participation by Yemeni Women*

The issue of women's political participation has been a lively one in Yemen, particularly after the April 2003 parliamentary election when, as a result of a campaign, the number of female registered voters reached 42 per cent of the total but produced very disappointing results: only 11 female candidates stood and one was elected. This pointed to the gap between fairly 'progressive' legislation, supported by the work of the women's movements, and the reality of Yemeni society's very negative view of women, consecrated by the tribe and its value system.

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\* Mr Ziad Majed, a Lebanese political and social researcher, was the coordinator for IDEA's Programme on Democracy in the Arab World (2003–2004).

### 1.1.1. *Good Theory, Bad Practices*

From the institutional standpoint, the Yemeni constitution expresses the idea of full rights for all citizens, without discrimination. It contains articles specifically addressed to women, mentioning the social roles they are required to play and their protection, and contains nothing that discriminates against women in their political rights. Additionally, Yemen has ratified a large number of international agreements, including in particular the 1979 Convention on the Elimination of All Forms of Discrimination against Women, the 1953 Convention on the Political Rights of Women, and the 1962 Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages. The constitution also provides legal cover for civil society organizations, giving people the right to organize politically, culturally and professionally. All in all, although there is room for improvement, the legal framework governing public life is sound and favourable to increasing women's participation in public life.

In practice, however, much remains to be done. This report mentions the trend in Islamic jurisprudence to oppose a woman's holding any public position. The Supreme Commission for Elections and Referendum (SCER), for instance, although it has taken measures to bolster women's participation in the election process, has no women among its seven members. At the end of 2000, the Women National Committee, set up in 1996 by the government in response to the call of the 1995 Fourth International Conference on Women in Beijing for national institutional mechanisms to be set up to improve the position of women, studied the country's laws and concluded that most of them guaranteed equal rights in general while some contained discriminatory provisions. It proposed 20 amendments to the Cabinet and the Chamber of Deputies. Of these only five were accepted, after difficult negotiations with deputies by the committee.

Women in the executive branch are very few. At the time of writing, there is only one woman minister (of human rights), and the 111-member Shura Council (Consultative Council) has only two women nominated to it. In the media, eight women are editors-in-chief of newspapers (compared to 55 men), and the presence of women in executive positions in the workplace is largely symbolic and does not reflect the true scope of the qualifications and expertise Yemeni women have. Although the Judiciary Authority Law does not distinguish between men and women, the requirement of a degree from the Higher Judicial Institute has effectively barred women from the judiciary: the Institute is dominated by hardliners who are opposed to women's advancement and has not yet accepted any women. As for civil society organizations, a survey covering 1,692 associations, 87 of which were specialized in women's issues, showed that the proportion of women on their administrative boards was negligible (see table 1.5). Finally, the labour unions and political parties do no better: for the political parties, the founding members of the five major parties totalled 12,975 individuals, of whom 259 were women.

Among the reasons adduced for the poor results of a basically positive institutional framework are extreme poverty, which affects women, and in particular lack of education (the illiteracy rate among women is 76 per cent) and of the most basic services, all of which makes political participation for women a luxury; almost non-existent female political representation; and the character of the women's movement, which is institutional as opposed to grassroots-based.

This report argues that the Yemeni legal framework, which is based on Sharia, or Islamic law, is not in question, since proper implementation of Sharia is fully sufficient to guarantee women's rights because Islam honours men and women equally, and that attempts to link the failure to improve the position of women to Sharia are mistaken. The problem lies above all in the tribe-based socio-cultural legacy, which seriously obstructs progress for women.

## **1.2. Political Parties in Yemen**

To understand the current situation of political parties in Yemen, the conditions prevailing prior to the unification of the country have to be taken into account.

### **1.2.1. A One-Party-System Legacy on Both Sides**

In North Yemen, after the 1962 revolution against royal rule and the declaration of a republican regime, the first, temporary constitutional statements were silent on the question of the freedom of political parties to establish themselves and operate, while the first permanent constitution, of 1964, limited the freedom of political activity to the creation of a single political organization guided by the authorities. The next constitution, of 1970, clearly stipulated that party activity in all forms was prohibited, so that the evolution of political party activity went from none, to limited, to forbidden. Playing the role of a single party, the General People's Congress (GPC) was set up in the early 1980s, comprising political and tribal authorities and members of the army and of various security organizations. South Yemen's constitution adopted Marxist socialism, which was opposed to party pluralism. The 1978 constitution clearly declared the adoption of a one-party system under the Yemeni Socialist Party (YSP), following the model applied in socialist countries. The members of the Constitutional Committee, which was formed in 1972 to draft a 'unity constitution' before the fact, declared that, for unification to succeed, the various political forces (North and South, and other forces outside that framework) had to be absorbed in a unified state that would guarantee their right to operate.

### **1.2.2. The Birth and Evolution of Party Pluralism**

In January 1990, the Committee on a Unified Political Regime defined the future political framework for Yemen as a multiparty system, authorizing the GPC and the

YSP to operate as independent political parties alongside others. Keeping the GPC and the YSP instead of merging or dissolving them (which had also been considered) was a way of setting up the new system with the existing ingredients, so to speak, rather than starting from scratch, but it also laid the foundations for a political party map with two ‘ruling’ parties.

Other political forces, by announcing that they had set up parties and insisting on their political rights, made pluralism a reality. The first amendment to the constitution in 1994 stated that: ‘The political regime . . . is based on political and party pluralism in order to see the peaceful transfer of power’. The amendment was locked in by a provision that ensures that it could only be amended through complicated procedures ending with a popular referendum, thus guarding against any future government being tempted to impair political party activity simply through a three-quarters majority of the legislature, while the guarantee of the ‘peaceful transfer of power’ forbade the taking of power through a coup, conspiracy, or the use of force in any form.

It is interesting to observe that the constitutional provisions for establishing political parties state that they cannot be based on regional, tribal, sectarian, family or vocational affiliation. They also state that a party’s principles, goals, programmes and means cannot contravene the Islamic faith. Similarly, party activity must not contradict the doctrine of an Islamic people. Thus the rather enlightened Yemeni constitution not only does not stipulate the separation of state and religion, but actually imposes their association.

### *1.2.3. Establishing Political Parties*

A law on political parties was issued in October 1991, and a Committee on Political Party Affairs was formed six months later to approve the formation of political parties. However, a dispute between the GPC and the YSP regarding the working programme of the committee led to the political parties law being effectively frozen until 1995. Meanwhile, although the law was not being implemented, the freedom to engage in political activity was not hindered. However, when the committee was revived in 1995, many of the small parties that had been active were unable to satisfy the conditions for licensing and disappeared.

The Committee on Political Party Affairs is made up of three members of the executive branch and four from the judicial branch. Although its composition and method of selection were considered relatively advanced at the time, and seen as guaranteeing fairness, the presence of government officials on the committee is seen as influencing its activities to the advantage of the party in power. Its mandate is a broad one: among other things, it decides whether a party is to be allowed to exist or not, and it monitors party activities and financing, which is provided by the state. Some articles of the law can in fact be interpreted in such a way as to support the committee’s deciding to dissolve a party or suspend its activities, although this has not yet happened.

By the time of the April 1997 election, 17 parties had been licensed, and in 2003 22 had received the committee's approval. The licensing criteria effectively eliminated a number of parties that had begun their political activity prior to the committee's beginning to be active, when there were over 45.

The most restrictive condition for a party to be established is believed to be the requirement that it must have 75 founding members and 2,500 members—the highest such figure required in any of the Arab countries that have adopted party pluralism. The idea behind this is to reduce the number of parties and improve their effectiveness.

#### *1.2.4. Moving Away from Relative Balance*

Although Yemen has only seen a dozen years of constitutional party pluralism, which is too short a period to judge by, the course of development over the three parliamentary elections that have taken place (in 1993, 1997 and 2003) provides some indications of the trend.

In 1993, 46 parties had announced their existence under the conditions described above (before the procedures for licensing parties were in place), but only about half of those took part in the election: the GPC took 40.53 per cent of the seats in the legislature, followed by Islah, an Islamist reformist party associated with the former North Yemen, with 20.93 per cent, and the YSP with 18.6 per cent of the seats. The Baath party secured 2.33 per cent of the seats, and three small parties obtained up to one seat each, while independents obtained 15.95 per cent of the total. Thus, the first three parties entered a coalition government, four opposition parties had some participation in the legislature, 15 other opposition parties participated in the election unsuccessfully, and the rest of the parties were not able to put up candidates.

In 1997, after the political parties law came into effect, 17 parties were licensed. Of these, 12 took part in the election. The rest boycotted it, including the YSP. As a result, the GPC received 62.54 per cent of seats in the Chamber and formed a government by itself, and Islah moved into the opposition camp with 18.06 per cent of the seats. Two women won seats.

In 2003, 22 parties had legal status and all took part in the election. The GPC remained in power after winning about 75 per cent of the total seats (thus monopolizing the three-quarters majority needed in the legislature and able to act effectively as it pleases), Islah slid back to 18 per cent, and the YSP, back in the competition, did not obtain more than 2.33 per cent of seats. The four opposition parties in Parliament together won 20 per cent of the seats, and the number of female deputies fell to one.

The overall trend is thus towards the concentration of power in a single party—the GPC. The reasons for this are partly to be found in the evolution of the electoral law, as will be seen below.

### **1.3. The Electoral System in Yemen**

The Yemeni constitution guarantees party and political pluralism, the explicit goal being the peaceful transfer of power through free and competitive elections run by an independent and neutral administration. Yemen's priorities include moving away from conflict, violence, authoritarianism and a one-party system towards peace, pluralistic democracy, modernization and progress. This involves setting up a parliament which is produced by elections that are recognized as legitimate, accommodates different ideologies and interests, comprises both men and women and rich and poor, is effective, and influences the formation of governments and their policies. The current electoral system in Yemen is the subject of some dispute and is believed to be one of the main obstacles to the democratic transformation.

#### **1.3.1. An Electoral System Off to a Good Start**

The electoral system for the Chamber of Deputies is a First Past the Post (FPTP) system, a candidate-centred system in single-member districts, in each of which one successful candidate is elected according to the plurality (or relative majority) rule: the candidate who wins the largest number of votes cast is the winner, even if he or she has not won an absolute majority (i.e. over 50 per cent of the vote). The advantage of this system is that it is simple, and therefore accessible to a population that is largely illiterate, and does not involve huge financial costs, as there is no need for a second round to produce an absolute majority. The constitution guarantees all Yemeni citizens the right to vote and stand in elections to the Chamber of Deputies without discrimination based on gender, colour, religion, politics, language, ethnic affiliation or residence. It also considers multiparty democracy to be a means for the peaceful transfer of power, through regular elections that are direct, open and secret.

The election laws specify the manner in which elections are to be held and set down the equal rights parties and political organizations should enjoy. They stipulate that both presidential and local elections should also be competitive.

Recognizing the need to strengthen the multiparty system, the authorities set up a Supreme Commission for Elections and Referendum after the Republic of Yemen was established. In 1992, a law was issued to specify the number of members of the commission in order to allow all the parties in existence at the time to participate. Local election committees were also formed to draw up the voter lists and administer the first multiparty parliamentary elections, in 1993. On the basis of dialogue and earlier provisions, the GPC, the YSP and the opposition parties agreed that the SCER would be independent of the government but not independent of the parties, which had to consolidate their role in order to strengthen pluralism. The membership of the commission included representatives of all the political parties, independents, and one woman. The independence of the commission and the local subcommittees had a great impact on the 1993 election, which was considered to be the fairest election held in

Yemen's history.

The SCER is responsible for administration, supervision and monitoring of elections, as well as for demarcating the electoral districts, registering voters, overseeing candidacies, regulating election advertising and the use of the media, administering the voting and the vote count, and announcing the winners. This body is unique in the Arab Mashreq and its existence would lead one to assume that elections in Yemen are free and fair.

### *1.3.2. Growing Control of the Executive Branch*

However, when these supervisory bodies (the SCER and local committees) were set up in 1996 the near-absence of representatives from parties other than the GPC meant that the committees were representative of the government and its party, the GPC, which is inextricably involved with the institutions of state. This meant that the executive branch really ran the elections, to the benefit of the government and its party. Thus the GPC obtained a huge majority at the next election, in 1997, robbing the Chamber of Deputies of its effectiveness and the parliamentary and presidential elections of the element of competition. In effect the GPC controlled the results. The government later introduced an amendment to the election law of 2001 to abolish the independence of the SCER and the immunity of its members, turning it into a body tied to the executive authority, namely the president, who is also the head of the GPC.

Later, thanks to dialogue between the government and the opposition, a compromise was reached by which the government and the GPC were obliged to observe the principle of balance of party members in the composition of the SCER and the local committees, without this being specified in the law. However, subsequent rounds of dialogue failed to achieve this balance in the committees that prepared the voter lists for the 2003 election and administered it. The GPC maintained a two-thirds majority on each committee, so that the 2003 election did not satisfy the criteria for free and fair elections specified by the legislation.

### *1.3.3. Violations of the Law*

According to the constitution, the republic is to be divided into electoral districts that are equal in terms of population size. This provision was present in the Election Law, no. 13 of 2001. In 2002 amendments were made to the law in an attempt to deal with serious problems such as the definition of electoral domicile, but failed to do so. This led to tampering and cheating in the voter records in many ways. Other provisions, such as the constitutional prohibition on the exploitation of public-sector positions, public money or the state media in the interests of a political party, are also widely violated.

In sum, the electoral legislation was neither unified nor respected, the electoral

body was not neutral as it lacked political balance, and government policies were not implemented. The list of observed electoral abuses is a long one and, not surprisingly, the GPC has benefited from this situation.

#### *1.3.4. An Unfair Electoral System*

The FPTP system with single-member districts and victory through a plurality of votes, whatever the share of the total votes won, leads to an imbalance. This imbalance is increased by tampering with the demarcation of electoral districts, ignoring the population figures, in order to spoil the chances of political parties.

Despite the existence of a constitution and laws on elections and political parties designed for free and fair elections, and the development of political pluralism, the electoral system that was established to realize these objectives was not carefully chosen. It has many loopholes and does not produce legitimate results, thus obstructing democratic transformation and the achievement of society's priorities. Where the greatest benefit of democracy—change through the ballot box—is concerned, it has only produced frustration.

## **2. Obstacles to and Recommendations for a Political Reform Agenda for Yemen**

This report on these three aspects of political life in Yemen highlights a number of general problems. The first and most important of these is the historical legacy of the tribe-based culture, which puts a few rich men in absolute authority over all women and most other men. The idea of equal rights and duties for all members of society comes up against a culture in which some sections of society have rights that are not enjoyed by others, each group having its own social role to perform, meaning different rights and duties. The force of this culture, combined with the newness of the culture of pluralism and democracy, makes it difficult for people to believe that the laws can work to change it. A large percentage of Yemenis, for instance, are thus prepared for extreme solutions, which usually involve force, to resolve party disputes or resolve political crises, and will be less amenable to compromise or consensus.

Women can register as voters on a huge scale but their high rates of illiteracy, low social status and inability to take personal decisions mean that they will be forced by men to vote for men. In the Yemeni culture, acceptance of female education and work is very limited. The political parties, for their part, show little or no commitment to women and are in fact seen as taking a negative stance on the issue of female candidates.

The opposition parties view the various laws and regulations as methods used by the authorities to keep them in check. This culture is also reflected within the party structures themselves: the parties do not practise internal democracy or dialogue. Leadership decisions are 'sacred' for the rank and file, and high-ranking

party members believe that they deserve privileges. The behaviour of the rank and file therefore becomes mechanical and lacking in creativity. Along the same line of thinking, the tribes' loyalties will be based not on party programmes but on clan. In fact, tribal and clan leaders have become party leaders; and one of the side effects of this is that the political parties have increasingly tended to exacerbate regional and other conflicts.

### ***2.1. Tribes on the Rise***

The dominant GPC has developed a policy of 'mixing' tribal sheikhs with the political authorities. These traditional forces have come to dominate Parliament through the GPC, which, in turn, because of the loopholes in the current electoral system, continues to strengthen tribal ties and to move, from one election to the next, towards a one-party system. In such a system, the members of the single party compete against each other. As in other countries where a one-party system is in place in reality but not officially, the electoral process is violated under the very eyes of international observers. Intimidation, threats, coercion and sometimes violence are used. The GPC even feels free to act in violation of the constitution: presidential elections have not been held as scheduled, the president has been allowed to serve more than the maximum two terms allowed, there has been illegal redistricting and so on. In other words, this is a culture of power which accepts pluralism in form and in legislation but rejects it in practice.

### ***2.2. The Need for Improvement of the Institutional, Constitutional and Legal Framework***

Another obstacle this report points out is the inadequacy of the existing laws, and in particular the electoral laws. Although most of Yemen's laws guarantee equal rights, there are still 15 that contain discriminatory provisions against women and detract from their citizenship and humanity, such as the one (later repealed) which permitted a judge to issue a decision allowing the use of force to return a woman to her husband's home if she left it. In the law on political parties and organizations, the stipulation that a party seeking legal status must have at least 2,500 members is a huge hurdle to the formation of parties and therefore an obstacle to pluralism.

The constitution itself stipulates single-member electoral districts, which means that the voter votes for an individual candidate rather than a party list, and this, combined with other factors, has helped to kill pluralism before it has had a chance to develop. This also does not meet the requirement for unity, which means getting rid of regional and local oppositions and promoting national political cohesion.

### ***2.3. A System That Leads to Imbalance Even When Properly Applied***

Furthermore, the electoral system, by determining that candidates are elected with only a plurality of the votes (which is not specified in the constitution) in single-member districts, leads to a situation where the share of seats gained by the government party is greater than the percentage of votes it obtains, while the opposite is true for other parties: the government party currently holds some four-fifths of the seats in the Chamber of Deputies, having received little over half of the votes cast at the 2003 elections (regardless of the question whether these votes were secured by legal and proper means). This trend has grown with successive elections, and hope for change through democratic means is waning, while Parliament is all the time losing its ability to hold the government accountable. This again strengthens the executive branch at the expense of the legislature.

The single-member district election based on FPTP discourages party alliances, leads instead to splits and, naturally, has not helped but has hindered women candidates, who cannot mobilize the traditional solidarities in order to win a district's single seat. The electoral legislation also suffers from other shortcomings, such as the absence of mechanisms for protecting public money and the state bureaucracy from being used by a political party.

### ***2.4. Negative Consequences Feeding a Vicious Circle***

There are two other, cross-cutting negative factors, although they seem to be consequences and manifestations of the tribal culture. These are (a) a strong trend towards divisions in society and (b) the conditions of the majority of the population, who are poor and illiterate.

The women's movement suffers from being weak, fragmented and unable to form alliances in order to put pressure, for instance, on the political parties, through which the movement could conceivably gain influence in Parliament and direct its attention to women's issues. Divisions were also reinforced by the 1994 civil war which followed the first parliamentary election. The imposition of systems that are based on tribalism, regionalism and family-dominated politics has led to fragmentation, wars, revolutions and coups which have set Yemen apart from other countries in the Arabian Peninsula. Apart from these, poverty, lack of education (more than half of the Yemeni population is illiterate) and lack of infrastructure are hardly conducive to political participation.

From all this it follows that the main objective in Yemen today, if it wishes to advance in its determination to become a democratic, pluralistic country, is to overcome and change tribal culture. But how can a deep-rooted, age-old culture be transformed? How does a society move from tribalism and clannishness to a civil society and citizenship based on equality?

## **2.5. Waging the Battle on Two Fronts**

One of the fronts of this battle is gaining a better understanding of political activists, especially women activists, and of their role; greater commitment on the part of the activists through a comprehensive view of how to improve the conditions of the people (their health, education and general standard of living) and of women in particular; and not relying on symbolic solutions (such as voter registration) and positive policies that do not change the reality very much. This includes increasing the enrolment of women in education, limiting the proportion of women who drop out of public and higher education, opportunities for training and advancement, and securing resources to let women improve their status in society. To achieve this, the women's movements would do well to bring about cooperation and coordination among themselves in order to create effective pressure groups for women's causes. Political parties also have a role to play, not only in elections but also in educating society in democratic values and human rights.

The second important front is continuing the legal battle. Much has been achieved both constitutionally and legally, but there is more to be done. Legislative steps should be taken to guarantee positive and effective participation by women. The creation of a Ministry of Women's Development is recommended. So is affirmative action, including quotas for women in the Chamber of Deputies, local councils, the Shura Council, other government bodies and the diplomatic corps. This is seen as the only way to oppose the existing extremist culture.

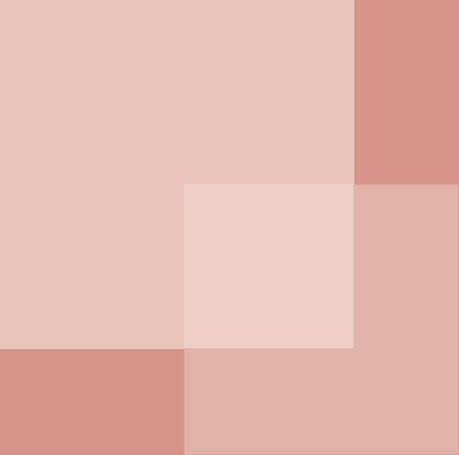
Amendment of the constitution is also recommended in order to ensure that there is no room for interpretation regarding the establishment of the political regime on the basis of party pluralism. The Committee on Political Party Affairs should become a completely neutral judicial body. Parties themselves should be obliged to hold regular internal elections if they are to be allowed to continue their activity. This should be done in such a way as to guarantee equal rights for their members, men and women, in debating and participating in decision making and external representation.

The most important recommendation, however, is that the electoral law should be reformed and the single-member district replaced by a system that strengthens party pluralism—that is, a system of proportional representation and closed lists, with a minimum level of women's slots to fill (a quota of 10 per cent is recommended), with these names appearing in positions on the party lists that are likely to win election.

In addition, re-districting is necessary in order to reduce the number of governorates. The SCER and other election committees should include in their membership representatives of all the parties that received 1 per cent of the total votes in previous elections, with no party having more than one member per committee.

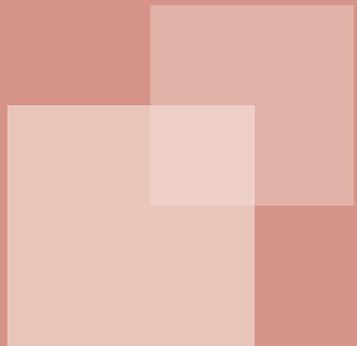
Among other imperatives, a strict definition of electoral domicile is needed.

Finally, measures to ensure the correct conduct of elections and prevent violations of the electoral law should be stronger and more strictly applied.



# **Chapter 1**

## **Political Participation by Yemeni Women**



# Political Participation by Yemeni Women

## 1. Introduction

The issue of female political participation has been raised vigorously in Yemen, particularly after the April 2003 parliamentary election, when the number of registered women voters topped 3.4 million—over 43 per cent of the total voting population. Whether people supported or opposed the full involvement of women in politics, there was a general feeling that the votes of Yemeni women now had to be taken into consideration, as they could upset electoral calculations and tip the balance in elections. This is despite the fact that some continue to argue that the situation has not reached this level of ‘danger’, since women are still dependent on men, who direct them to vote in a certain way.

This latter point is partly true. In the 2003 election, the women’s movement was clearly seen to stand by and watch as men mobilized women, even putting them into vehicles to get them to the polling stations to support and guarantee the victory of a (male) candidate from a particular party or tribe. Men exploited women’s ignorance, illiteracy and low social status, as well as their inability to take the simplest of personal decisions, not to speak of decisions affecting public life.

Today’s women’s movement, which is weak and fragmented and lacks creative means of competing, as well as any strategic vision, is trying to benefit from the lessons of the election. It is trying to improve its performance and methods of coordination, as well as to create alliances and networks; at least, this is the goal expressed by some

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of the movement's leaders and activists, who are trying to overcome the problems of weak representation of women.

Perhaps the National Gender Strategy prepared by the Women National Committee is one response to the problem. The strategy is making poverty and female political participation into issues, strategic goals and priorities. The Second National Conference on Women, which took place from 8 to 10 March 2003, unanimously approved the strategy as preparations for the parliamentary election of that year were under way. Perhaps women wanted the conference to be a political demonstration that would draw the attention of highly placed decision makers to the size of the women's movement and its impact on women. They may have been hoping to raise their level of political commitment, which could be expressed by increasing the number of female candidates and supporting them in the elections, which in turn would boost their representation in the government formed after the election. However, the election results shocked not only women but also supporters of democratic development in general; rather than reflecting a democratic direction, they spoke of a reversal of the gains achieved so capably by Yemeni women.

Women are aware that society's negative stance towards their situation has been consecrated by the tribe, its value system and its negative view of women. Even the political parties, which society would normally depend on to promote enlightenment and change and which should be forces for renewal, supporting the building of a modern state, were also extensions of the tribe and of the tribal mentality that resists improvement in the situation of women, not only in political life but in general. This is no surprise, because there is an overlap between the institutions of civil society and the tribe: some civil society groups have even come to represent tribal relations on a smaller scale, even if they do not themselves represent a tribe or tribes.

The tribe is without doubt a fundamental part of the social fabric, if not the principal component in the social and political make-up of the modern Yemeni state. It makes internal changes in order to accommodate to the contemporary situation, but these changes affect men for the most part, and only rarely women.

Experience has shown that legislation is not enough when it comes to improving the role of women in the political process, seen within the framework of the comprehensive development of Yemeni women and civil society. The situation must be changed by female leaders understanding their role and increasing their political commitment through a comprehensive view of how their situation can be improved, not just by symbolic solutions that may be an expression of good intentions and positive policies but do not change much in reality.

The study on which this chapter is based was carried out as part of cooperation between the Yemeni Women National Committee and International IDEA. It is a modest contribution to analysing women's political participation in the Republic of Yemen, focusing on the unification charter, which opened up horizons for democratic action which include women, although only to a limited extent. The chapter discusses the difficulties and challenges, and seeks to ascertain the hidden strengths that can be

built on in order to help expand the basis of female participation. Finally, it sets out a supportive and encouraging vision for bringing Yemeni women into public life in order to achieve sustainable development, the fruits of which can be enjoyed by the whole of the society, both men and women.

### **1.1. Summary of the Political Situation**

Yemen has seen a number of economic, political and social changes over the past four decades. Perhaps the most important were the revolution of 26 September 1962 against the imamate in North Yemen, and that of 14 October 1973 against British colonial rule in South Yemen. The struggle of the Yemeni people led to its liberation from these regimes, which had obstructed its growth and progress.

The 1970s and 1980s involved periods of conflict between the North and the South, amounting to armed confrontation in September 1972, February 1979 and April 1988. Patriotic forces were able to contain and limit the effects of these clashes and handle them through dialogue; this was the correct approach, and the higher national interest prevailed as a result. Regional and international factors and national dialogue, which continued even during the fiercest phases of the conflict, led to the unification of Yemen on 22 May 1990. This was a historic turning point in the life of the two Yemens. Unity was an urgent demand and a noble goal which the patriotic forces had demanded.

Naturally, unification was not an easy process, whether in form, in content or in approach. Some social and political forces that were hostile to the idea of unification or were encouraged by foreign forces sought to prevent it, to cause crises between the partners in unity, and to encourage the separatist movement in May 1994. This led to two months of fighting between the North and the South, which cost the economy an estimated 11–13 billion USD (Colburn 2002: 23); the fighting ended on 7 July with victory for the unified country.

The difficulties that accompanied unification were compounded by political and economic difficulties resulting from the second Gulf War of 1991. However, the most important direct result of unification was the commitment to democracy as a form of rule. This saw the promulgation of a constitution for a unified Yemen, ratified by a referendum in 1991; this referendum was boycotted by conservatives and hardliners who opposed a unification with those whom they regarded as ‘infidels’ and ‘atheists’.

The first amendment to the constitution following unification came in 1994, after the end of the civil war; and in 2001 the constitution was amended again, the following being the most important changes:

- the formation of the Shura Council;
- the creation of the post of vice-president;
- the direct election of the president and the extension of his term of office to seven years; and

- the extension of the mandate of the Chamber of Deputies from four years to six years.

Although opinions differ as to these referendums and the many amendments to the constitution over a short period of time (which some saw as an attempt by the executive branch to increase its powers and reduce those of the legislative branch), the move towards democracy was inevitable. This was the view expressed by President Ali Abdullah Salih in an interview on the eve of the local elections in February 2001, when he said: ‘Democracy might be a bitter thing, but the lack of democracy and retreating from it is even more bitter’.

Article 5 of the constitution states that Yemen’s political system is based on party and political pluralism in order to ensure the peaceful transfer of power; the law sets down the provisions and other measures for the setting up of political parties and organizations and the conduct of their activities.

Article 41 grants each citizen the right to participate in political, economic, social and cultural life; the state guarantees the freedom of thought, expression, speech, writing and artistic expression within the limits of the law.

Although in reality there has been no profound or qualitative transformation, these democratic constitutional principles are still a considerable accomplishment—at least in theory, since there is a political commitment to their foundations and principles. Thirteen years of democratic practice is too short a time to allow us to draw conclusions; nonetheless, all these measures—a referendum on the constitution and the holding of local, parliamentary and presidential elections—were, despite their shortcomings, positive achievements both locally and in the Arab world.

Yemeni women were directly affected by this positive political atmosphere. This chapter discusses this in detail by analysing female participation in public life, especially political participation. It will analyse the main difficulties and obstacles that prevent women from attaining decision-making positions. Women have held such high positions in the past: examples are Balqis, the Queen of Sheba, who ruled in the 10th century BC, and Asmaa Bint Shihab and Arwa Bint Ahmad al-Salhiyya, who ruled in the 12th century AD. Yemen saw prosperity during the rule of women: dams, temples and places of learning were built, roads were repaired and agriculture was improved.

Even in contemporary times, Yemeni women have been pioneers in obtaining political rights, such as the right to vote and stand for office, while their sisters in the Arabian Peninsula and the Gulf are struggling to secure the most basic of rights, such as the right to drive a car. However, conditions in the surrounding countries and the interactions between them may have had an effect on the situation of women in each of these countries. For example, although Kuwaiti women enjoy considerable status in the education sector and the workplace, they continue to lack political rights, despite an edict by the emir issued in May 1999. The United Nations Development Programme’s *Human Development Report 2002* ranked Bahrain in 39th place out of

173 countries, but according to another source it drops to 56th when it comes to the empowerment of women (Shihab 2002). Bahraini women were unable to make any gains in the local elections of May 2002, and in Qatar women also made no gains in the March 1999 local elections.

The winds of change in the region will inevitably affect women and will lead to greater social development—a development that is needed not for external reasons but rather in response to internal needs and requirements and within the framework of the special social and cultural characteristics of the Arab–Islamic environment. This broader process of change will also improve human development and the situation of Arabs in general, and boost participation in public life. It is difficult to speak of public participation by Arab women, and particularly political participation, while Arab men also remain oppressed and deprived of their rights.

In addition to identifying sources of weakness, this chapter aims to identify sources of strength in order to improve female public participation and empower women in a number of areas of development. Development has become an issue of life and death for many developing countries, including Yemen. This is clear from the human development indicators on Yemen in areas such as education, health, the environment, labour and political participation. It is hoped that this report will provide a modest contribution to creating a vision that improves public participation by women.

## 2. Yemeni Women and Democracy

### 2.1. *Women and the Constitution*

Women have been affected both positively and negatively by all the changes that have taken place in the extent of democracy, which expands or contracts depending on local, regional and international conditions. The Yemeni constitution expresses the idea of full rights for all citizens, without discrimination, even if some radical feminists prefer to debate the impact of the lack of feminine forms of address in the various texts. In fact, the Arabic language is rich and much of its forms of address are general in nature, covering men and women, such as the words for citizens (*al-muwatinun*) or all (*al-jami'*) or each citizen (*li-kull al-muwatin*), although there are exceptions where it is necessary for the language to be directed specifically at men or women.

For example, article 24 of the constitution states that: 'The state guarantees equal opportunities for all citizens, politically, economically, socially and culturally, and issues laws to achieve this'. The words 'all citizens' obviously mean men and women. Article 41 says that all citizens are equal in their rights and duties, while article 43 states: 'The citizen has the right to vote, stand for office, express an opinion in a referendum, and the law sets down the provisions connected to the exercise of this right'. These provisions address 'all citizens', meaning men and women. Articles 30

and 31, meanwhile, address women specifically, mentioning their requirements or social roles.

Article 30 addresses the state's protection of mothers and children, and caring for young people, which gives women a distinguished role, namely motherhood, which is intrinsic to the very nature of women; and half of children and young people are of course female. Article 31 has provoked considerable debate; it is derived from a hadith (saying) of the Prophet Muhammad. The article states: 'Women are the sisters of men and have rights and duties that are guaranteed and required by Sharia and stipulated by the law'. Examination of this constitutional text, derived from a hadith, confirms that women's rights and duties are equal to those of men. In Arabic, the term sisters (*shaqa'iq*, siblings) means taking care of their brothers, which does not imply a second-class status but bestows a great honour for a woman, as the sister of the man, who supports him and stands by his side

The end of this sentence mentions women's rights and duties guaranteed by Sharia and the law. The correct implementation of Sharia is in fact a quite sufficient guarantee of women's rights, because Islam honours men and women, as demonstrated by the Quranic phrase 'We have honoured the tribe of Adam (mankind)'. Women are especially honoured, having been humiliated and demeaned in many cultures and civilizations at the time when Islam appeared and since. Islam prohibited the killing of infant girls, saying that females needed to be raised, educated, and consulted in private and public matters.

The constitutional text that has sparked debate supports women and safeguards their rights. The real issue, however, involves *implementation* in Islamic countries, where customs and traditions are mixed with Sharia principles, the former usually working against the essence of the latter. Women are forbidden from inheriting, learning or selecting a spouse, although all these things are permitted by Sharia.

To conclude, the constitution is free of any articles that discriminate against women's political rights—with one exception. Article 107, paragraph E, involves candidacy for the presidency of the republic: 'The candidate must not be married to a foreign woman or marry a foreign woman during his term'. This, however, is clearly addressed to men. The lawmaker obviously assumed that a woman would not stand for president or reach this office. Perhaps this is attributable to the trend in Islamic jurisprudence that opposes a woman holding any public position: the presidency is one of the most important such posts. This is especially true in a country in which the extent of democracy is limited and in which most authority is concentrated in the hands of a single person.

In 1999 there was talk of a female candidate, Ibtisam al-Hamdi, standing for president, but this came to nothing as no initiative was taken to complete the formalities for candidacy. Nonetheless, the raising of this issue was meant to establish that women have the right to stand for president.

Yemeni women have many concerns, not the least of which are poverty, illiteracy, and female and reproductive health. Reaching decision-making positions is a

legitimate aspiration for them, but there are other positions women are struggling to attain, such as membership of the Chamber of Deputies, local councils and the Shura Council. This is not in order to gain social prestige but for the sake of the interests of Yemen women broadly interpreted and of socio-economic development in general.

The principle of full equality of rights and duties is a human right that should be reflected in the constitution. Although this chapter will seek to avoid such 'elastic' topics, it will touch on relevant issues as women's organizations, such as the Women National Committee, along with its partners in civil society, should be demanding the removal of all discrimination from the constitution and the laws so that full rights are guaranteed for women. Moreover, affirmative action should be demanded so that women can overcome the social and cultural obstacles that prevent them from enjoying the rights that the constitution and various laws guarantee for them. There should be quotas for women on elected councils, such as the Chamber of Deputies and local councils, as well as quotas in the Shura Council, other government bodies and the diplomatic corps. Developing countries like Morocco, Jordan and Uganda have implemented quota systems, and some older democracies, such as some of the European Union countries, have sought to increase parliamentary representation for women beyond the goal set by the United Nations, namely 30 per cent of parliamentary seats, which is considered one of the basic indicators of democracy.

## ***2.2. Women and Law No. 13 of 2001 on Parliamentary Elections and Referendums***

The affirmative action that is advocated here is similar to that applied in many countries in order to provide fairness for one-half of the society. This action becomes even more imperative in societies that are ruled by very conservative cultures verging on extremism in issues relating to women, for instance, tribal societies, which fiercely resist such things as modernization and urbanization. Yemen, as Dr Fu'ad al-Salahi points out, is 'one of the countries that are characterized by tribalism, since tribal structures constitute the most important social formations and are not a mere sign of the past but continue to be effective and decisive institutions in various domains, including that of the role of women in politics' (al-Salahi 2000).

Article 7 of Law no. 13 of 2001 on Parliamentary Elections and Referendums sets down all the conditions for women to participate effectively as voters, making allowances for socio-cultural conditions (especially in rural areas, where it is not acceptable for men and women to mix). It states that: 'The Supreme Commission for Elections and Referendum (SCER) takes steps that encourage women to exercise their voting rights, by forming committees of women to register voters' names on voter lists and verify their identity at voting time, within specified polling stations in each electoral district'. The law could just as easily have supported women standing for election. In reality, however, the law supports candidacies by men: the provisions made in order to accommodate customs and traditions and remove the difficulties

that discouraged women from registering to vote allowed competing political forces to benefit from the votes of women. At some 40 polling stations, more women were registered than men, according to an official election spokesperson from the SCER. To encourage women to vote, political forces helped to facilitate voting and registration procedures and organized means of transport for female voters.

This raises the question whether it would be difficult to introduce legal provisions that will encourage women to stand, such as special women's districts, the adoption of the proportional list system, or quotas for female candidates who are unsuccessful in the electoral contest, as was done in the most recent parliamentary election in Jordan. The make-up of the SCER itself is not encouraging: there are currently no women among its seven members. In 1993, there was one female member out of 17, but no women were nominated to the body for the 1997 election (which also saw a reduction in the number of members). The seven members are appointed by the president from a list of 15 names approved by the Chamber of Deputies. The presence of one woman to represent the now 3.4 million registered women voters would reflect the importance of female political representation in political posts and institutions overall.

### **2.3. Other Laws and Their Impact on Women**

At the end of 2000, the Women National Committee formed a team that was well versed in the law and Sharia and tasked it with examining the country's laws, producing suggestions for amendments to the laws and regulations related to women, and participating in drafting this legislation (Prime Minister, Decision no. 68 of 2000). The team studied 57 laws and 11 international agreements ratified by Yemen and connected to women, and concluded that most of the laws guaranteed equal rights in general, while some, such as the Citizenship Law, the Personal Status Law, the Penal Code and the Civil Registration Law, contained discriminatory provisions. It sent its proposals to the Cabinet and the Chamber of Deputies for discussion and approval, and then to the president for approval. Five amendments out of 20 proposed were accepted, and the task was not easy, since the Women National Committee was obliged to hold a series of meetings with deputies in order to gain their support for the amendments, and to open channels of dialogue with certain decision makers in order to gain acceptance for the minimum number of these proposals.

#### **2.3.1. Suggested Amendments That Were Approved**

1. *The Personal Status Law.* Article 47 of the Personal Status Law (no. 20 of 1992), issued in a presidential decision and amended by Law no. 27 of 1998, gives a woman the right to divorce if she discovers in her husband a repulsive defect, whether this was present when or after the marriage contract was concluded; the previous law discussed the defects of wives only.

The Personal Status Law was considered to contain one of the most discriminatory provisions against women. Article 2 implies that women are a source of pleasure for men, and that one of the main purposes of marriages is to legitimize (*halal*) the woman to the man. According to Ali and al-Nusayri (1992), the drafters of this law used centuries-old terms and concepts that are no longer understood today, while some no longer have any legal meaning or were designed for problems for which science has found solutions, so that article 47 is no longer needed. This article lists madness and leprosy as possible defects in one of the spouses, and a series of sexually-related terms for a possible defect in the wife which are no longer used or even widely understood.

Article 11 is derived from the Quranic text which says that a man may have up to four wives, as long as they are treated justly, but it does not specify the means for determining whether this justice exists.

According to al-Susuwa (2000), articles 9–12, 14–15, 22, 42, 71, 136–137, 149–150, 157 and 159 of the Personal Status Law should be amended. Al-Susuwa, the former chair of the Women National Committee and the current minister for human rights, writes that these articles must be made to conform with women's changing needs and conditions, which affect their situation and that of their families and of society. Meanwhile the legal team formed by the Women National Committee suggested amending articles 7–9, 11–12, 15 and 47, and only the last of these was approved.

2. *The Civil Status and Register Law*. Article 2, paragraph A of the law (no. 48 of 1991) specifies who is allowed to register the birth of a child with the authorities. The mother is not one of these authorized to do so.

3. *The Law Regulating Prisons* (no. 48 of 1991). The amendment stipulated care for pregnant prisoners and their newborn children; they should not be deprived of food as a punishment for rioting.

4. *The Citizenship Law* (no. 6 of 1990). This law still discriminates against women who marry foreigners: their children cannot obtain Yemeni citizenship. Most Arab countries follow this custom as well and, except for Yemen and Tunisia, they have reservations about article 9 of the 1979 Convention on the Elimination of All Forms of Discrimination against Women. However, some Arab countries have taken steps to guarantee the rights of children, such as the amendment that was approved in Yemen giving the child of a *divorced* woman who has married a foreigner his or her full rights, as if both of the parents were Yemeni. If the child chooses, he or she can take Yemeni citizenship at the age of 18.

5. *The Labour Law*. An amendment (no. 45 bis) was added to the Labour Law (no. 5 of 1995) requiring employers of 50 or more women in the same place to provide a nursery for their children, according to conditions set down in a decision by the minister.

In fairness, some laws, such as the Labour Law and the Civil Service Law (no.

19 of 1999), do give rights to women in their roles as mothers and wives, such as a five-hour working day beginning in the sixth month of pregnancy, and 60 days of maternity leave (90 days in the case of Caesarian section or multiple births); women also benefit from reduced working days for six months after they return to their jobs. The law forbids the employment of women at night, except during Ramadan, or in professions that involve dangerous or hard labour.

Legal adjustments of this kind, taking into account maternity-related issues, women's practical needs or the basic needs of the family, could have been extended to women's strategic needs, such as opportunities to achieve positions of authority and decision making. This could be done by providing opportunities in public and higher education, training and advancement, securing resources to let women improve their status in the family and society, and taking steps to incorporate women in public life.

Women do not in fact benefit fully from the rights that are stipulated by the constitution and guaranteed by other laws. According to al-Salahi (2003: 2), 'Yemen's socio-political structures have a negative legacy that prevents women from taking advantage of laws and international agreements Yemen has ratified'. He believes that most of the injustice is due not to the lack of laws but to the general socio-economic and cultural conditions; the empowerment of women will only succeed in an integrated, development-oriented and modernizing context that takes into consideration educating and training women in the necessary skills and improving their health situation and general standard of living.

This is helped by a political commitment, as another study by the same author points out:

In South Yemen, which became independent in 1967, the state had an effective, interventionist role; it was committed to radical transformations in the situation of women. The state (according to its philosophy) committed itself to this and saw the law as one of the most important and effective mechanisms for bringing about social and political transformation. In other words, we can say that the state viewed the laws as an important mechanism for advancing development. The Family Law of 1974, which granted women outstanding rights that went beyond the social situation of the time, was considered a bold, unprecedented step in Yemen and the Arabian Peninsula.

In North Yemen, where a traditional elite dominated the state, the state set down a number of legal texts, from the constitution to a number of other laws granting women a number of rights and expanding the scope of their public activity. These laws sought to absorb women into the workforce through political and administrative state posts; however, the traditional elite fashioned a cautious discourse aimed at women, as the traditional culture continued to limit their role and movement in various ways, such as the limited acceptance of women's receiving an education or working (al-Salahi 2002).

Table 1.1: The Most Important International Agreements on Women Ratified by Yemen

Agreement	Date ratified by Yemen
The Universal Declaration on Human Rights	29 September 1994
The International Covenant on Economic, Social and Cultural Rights	9 February 1987
The International Covenant on Civil and Political Rights	9 February 1987
The Convention on the Elimination of All Forms of Discrimination against Women	30 May 1984
The Convention on the Elimination of All Forms of Racial Discrimination	18 October 1972
The Convention on the Political Rights of Women	9 February 1987
The Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages	9 February 1987
The Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others	6 April 1989
Commitment to the Beijing Declaration and Platform of Action	September 1995

#### 2.4. Female Participation in Local and Parliamentary Elections

In 1993, registered women voters numbered 478,790, or just 18 per cent of the electorate. This figure grew to 1,272,073, or 27 per cent of registered voters, in 1997. The increase continued and in 2003 the figures stood at 3.4 million women voters, or 42 per cent of the electorate. Tables 1.2, 1.3 and 1.4 provide details.

Table 1.2: Numbers of Registered Voters in Yemen, 1993 and 1997

1993				1997			
Men	Percentage	Women	Percentage	Men	Percentage	Women	Percentage
2,209,944	82%	478,790	18%	3,364,786	73%	1,272,073	27%
<b>Total 2,688,734</b>				<b>Total 4,636,796</b>			

Source: *Al-Taqrir al-Watani Hawla Tanfith Itifaqiat al-Qada' 'ala Kafat Ashkal al-Tamyeez Didh al-Mar'ah* [National report on implementing the International Convention on the Elimination of All Forms of Discrimination against Women] (Sana'a, 2002).

Table 1.3: Number of Registered Voters in Yemen, 2003

Men	Percentage	Women	Percentage
4,682,048	58%	3,415,114	42%
<b>Total: 8,097,162</b>			

Source: Yemeni Higher National Committee on Human Rights, [National report on Human Rights] (Sana'a, 2003).

Table 1.4: Female Participation in Different Elections in Yemen

Elections	Candidates			Winners		
	Women	Men	Percentage of Women (%)	Women	Men	Percentage of Women (%)
Parliamentary election, 1993	42	3,140	1.3	2	299	0.7
Parliamentary election, 1997	19	2,096	1.3	2	299	0.7
Local Elections, 2001	147	24,864	0.6	35	7,032	0.4
Parliamentary election, 2003	11	1,644	0.6	1	300	0.3

Source: Yemeni Supreme Commission for Elections and Referendum, 1993, 1997, 2001, 2001.

Three observations can be made after this analysis of women's participation in three parliamentary elections:

1. The steady increase in the numbers of female voters was not matched by an increase in the number of women candidates; on the contrary, that number dropped from 42 in 1993 to 19 in 1997, and then to 11 in the April 2003 elections. Two women won election in 1993 and 1997 but only one in 2003.

2. The number of male candidates also fell, but not sharply. The drop in the number of female candidates can be attributed to the negative stance of the political parties on this issue.

3. Of the 11 female candidates in 2003, five were nominated by political parties, and six stood as independents. All faced difficulties at different stages of the electoral process.

The percentages of female candidates in the local elections of February 2001 were also small, which does not give a positive image of female participation in Yemeni politics.

The following sections of this chapter will deal with the obstacles to women's reaching decision-making positions, and specifically in the Chamber of Deputies, but it is worthwhile to mention here that the overall drop in the number of candidates and the negative correlation between the number of voters and of candidates, especially independent candidates, is mainly due to the restrictions imposed by Law no. 13 of 2001 on Parliamentary Elections and Referendums. Article 85, paragraph B of the law states that 'for an independent candidacy to be accepted for the Chamber of Deputies, it must be supported by at least 300 voters, representing most polling stations in the electoral district'. Although in theory the number of 300 supporters does not appear to be large, in practical terms it is very difficult for many prospective independent candidates to achieve. (The requirement was a necessary organizational measure at the time and was due to the sharp increase in the numbers of candidates standing between 1993 and 1997. Some were not serious candidates, as they were seeking rewards for dropping out of the race in favour of others.)

The presence of women in the Chamber of Deputies is necessary to secure the interests of half of the population, since women are better able to respond to the concerns and needs of fellow women than men are. Otherwise, how are we to explain the Chamber of Deputies' passing laws that discriminate against women and detract from their citizenship and humanity, for instance, the Citizenship Law, and the Personal Status Law, or the provision on the 'submission to the marital home' in the Appeals Law, which gave a judge the right to issue a decision that allowed the use of force to return a woman if she leaves her husband's home? (This law was later abolished after pressure from the women's movement.)

## ***2.5. Female Participation in Government***

One woman was named to the Cabinet appointed in April 2001, as minister of human rights. The first female ambassador was appointed, and a female permanent delegate for Yemen was selected for the Islamic Organization for Education, Science and Culture in Morocco. In the Cabinet formed in May 2003, after the most recent parliamentary election, the media covered the rise in the number of government posts for women after their defeat at the election; the results were unsatisfactory for women, despite the line taken by the media. The female minister was replaced by another woman, who had been the only female Yemeni ambassador abroad.

According to the Foreign Ministry, there are 105 women in the diplomatic corps, two who have the rank of ambassador but do not actually hold posts, two with the rank of chargé d'affaires, seven consuls, three first secretaries, four second secretaries, two third secretaries, 83 with the rank of administrative attaché and two with the rank of press attaché.

Forty-six women work in the Office of the President, of whom some are advisers; seven have the rank of deputy minister and seven have the rank of ministry director; four have the rank of assistant director, and there are heads of departments and

specialized employees, and 14 directors general.

In the media, eight women work as editors-in-chief in newspapers, compared to 55 men; most of them are in regional newspapers. A critical look at the work of women in executive positions shows that their presence is largely symbolic and does not reflect the true scope of the qualifications and expertise of Yemeni women. Thus, there are increasing calls from representatives of the women's movement and advocates of modernization for the representation of women to be increased in all political institutions to match their presence in society (in both quantitative and qualitative terms) and their history of struggle, side by side with Yemeni men.

Two women have been nominated to the Shura Council out of 111 members (1.8 per cent of the total); and during the preparation of this study (in 2003) three men were appointed to the council.

## ***2.6. Women in the Judiciary***

The Judicial Authority Law (no. 1 of 1991) does not distinguish between men and women when it comes to the conditions for the appointment of judges to courts or public prosecutors' positions. Article 75 sets down general conditions for these appointments, such as age, citizenship and a university degree in Sharia or law. In practical terms, however, there are many difficulties, such as the need to obtain a degree from the Higher Judicial Institute. Although nothing prevents women from being accepted here, there are many administrative complications and the institute is dominated by hardliners, making it difficult for women to enrol. No woman has yet been accepted into the institute for training in judicial practice. Before unification, South Yemen was a leader in the Arabian Peninsula in appointing female judges; one woman was an Appeals Court judge and others were named to Courts of First Instance, as well as a few female assistant judges. Currently, there are some 32 women in different positions in the judiciary, compared to 1,200 men; there are 53 female lawyers and 650 male lawyers in this profession, according to the Bar Association.

In 2000, a female police force was established, and the first group of trainees comprised 500 women carrying out peacekeeping duties (United Nations Human Development Programme 2002). Prior to unification, women had served in South Yemen's military, as well as the security organizations, the defence establishment and the police, and some of them held high rank.

## ***2.7. Women and Civil Society***

The 1940s and 1950s saw the beginnings of Yemen civil society in the shape of associations that represented the interests of certain groups, and of charitable organizations, whose activities centred on charitable projects to serve the people of certain regions. This was followed by the emergence of national organizations that opposed the rule of the imam in the North and the colonial regime in the South.

They were illegal and their activities were clandestine. The real emergence of civil society began with unification, which provided a legal and legitimate cover for civil society organizations: article 58 of the constitution gave people the right to organize politically, culturally and professionally. The state guaranteed this right and was obliged to take all necessary measures to allow citizens to exercise it.

The Law on Civil Institutions and Associations (no. 1 of 2001) was issued. A survey in 2001 by the Ministry of Labour and Social Affairs, covering 1,692 associations, showed that female representation on their administrative boards was very small. Of these associations, 87 were specialized in women's issues.

### *2.7.1. Women's Membership in Non-governmental Organizations and Associations*

Table 1.5: Female Membership in Non-governmental Organizations and Associations

Position	Men	Women	Total	Percentage of women (%)
Members of general assemblies	132,550	25,865	158,415	16.3
Members of administrative boards	6,865	991	7,856	12.6
Members of monitoring and supervisory committees	2590	332	2,992	11.1
Heads of administrative boards	743	101	844	11.9
General secretaries	739	105	844	12.4
Financial officers	738	106	844	12.5

Source: Yemeni Ministry of Labour and Social Affairs, [Field survey of civil organizations 2001].

### *2.7.2. Women in the Labour Unions*

Because the level of industrial activity in Yemen is low and an effective labour movement is lacking, even in the services sector and education, it has been difficult for labour unions to do a better job when it comes to defending the rights of their members. They are accused of being divided and politicized. Women's participation in labour unions is limited; they hold only 15 per cent of leadership positions. On the Central Council of the Labour Federation of the republic (the lowest leadership body in the Yemeni labour movement), only 10 per cent of the members (11 out of

115) are women. There are no women on the Executive Board, the highest leadership body. This is not really a surprise if we bear in mind that women make up only 23 per cent of the workforce, and about 80 per cent of them are in agriculture and outside a regulated sector; they are often unpaid because the work involves a family enterprise working to meet the family's needs. In the agricultural sector, the Cooperative Federation makes only modest efforts to organize female peasants so that they can benefit from services such as training, credit and marketing—from which men benefit, because women here do not work on a cash or money basis and because they do not belong to the Cooperative Federation.

### 2.7.3. Women in Political Parties

Political parties are concerned with the size of their memberships because this is a basic indicator of their influence and political weight, and they are even more concerned with female members. Article 14, paragraph B of Law no. 66 of 1991 on Political Parties and Organizations says that a party or organization must have at least 2,500 members in order to apply for licensing. The founding memberships of five major parties had a total of 12,975 individuals. Of these, 259 were women: 37 of them are in the General People's Congress (GPC), 20 in the Yemeni Gathering for Reform (Islah), 78 in the Arab Baath Socialist Party, 48 in the Nasserite Unionist Organization (NUO) and 30 in the Democratic Nasserite Party. Women hold between 5 and 14 per cent of higher party leadership positions in four major parties, as table 1.6 shows.

Table 1.6: Women in Political Party Leadership Positions, 2000

Party	Governing Body	Men	Women	Total	Percentage of Women (%)
General Popular Congress	General Committee Political	19	1	20	5
Yemeni Socialist Party	Bureau	25	4	29	14
Nasserite Unionist Organization	General Secretariat	14	1	15	7
Rabita Party	Executive Committee	20	2	22	9
Total		78	8	86	9

Source: Republic of Yemen, *Annual Strategic Report for Yemen*, 2000.

The number of women in lower leadership bodies increases in absolute terms, but their percentage drops because the number of men at this level is greater, as table 1.7 shows.

Table 1.7: Women in Political Party Leadership Positions, 2003

Party	Governing Body	Men	Women	Total	Percentage of Women (%)
General Popular Congress	Permanent Committee	665	35	700	5
Yemeni Gathering for Reform (Islah)	Shura Council	153	7	160	4
Yemeni Socialist Party	Central Committee	150	33	183	18
Nasserite Unionist Organization	Central Committee	70	4	74	5
Total		1,145	79	1,224	6.4

Source: Women National Committee, *Annual Report on the Situation of Women in Yemen, 2003*.

One of the reasons for the low share of women members in political parties may be that women themselves and society in general view political work as a purely male domain, fraught with dangers. Moreover, women may feel that their presence in parties is useless because they are not entrusted with important duties, except for mobilizing other women and other work that comes up at election time. Parties also try to improve their democratic image by having women members. As noted above, women are effective when it comes to reaching a wide base of female voters, especially in a society that does not permit the free mixing of the sexes.

Women, including those in political parties, complained about the lack of financial or moral support for them in the most recent parliamentary election in April 2003. These complaints were aired at the Second National Conference on Women (8–10 March 2003). The complaints continued; leading members of society, such as sheikhs, notables, relatives and family, fiercely opposed activity by women. There was also opposition to a stronger female role from the political parties, although in hidden form, since to express this opposition openly would damage their credibility with voters. Instead, the parties used indirect methods to pressure female candidates or failed to support them. The position of the parties was clearly reflected in the

preparations for the election; they did not nominate female members for main supervisory committees, under the pretext that it would be difficult for women to move between different polling stations.

Moreover, only five female candidates were put forward by political parties. The GPC (the ruling party and the country's biggest) had only one female candidate in 2003. In the People's Democratic Republic of Yemen (South Yemen) before unification, in the 1983 election, the ruling Yemen Socialist Party (YPS) had 34 women out of 305 local council members (11 per cent). In 1986, ten women were selected for the Higher People's Council out of 111 members, or 9 per cent. By contrast, in the 2003 election, the YSP' position retreated significantly: it only put forward two women candidates and opposed the candidacy of one of its female members in Aden. She resigned and stood as an independent.

In northern areas (the former Yemen Arab Republic), the 1982 National Covenant affirmed the right of women to vote and stand for office. A number of women ran in elections, but all unsuccessfully. In elections for the 159-member Shura Council in 1988, women were allowed to vote but not to stand.

Most parties' political platforms included no specific positions or commitments to help women enter Parliament. Some included only vague expressions that did not express true political commitment and were designed only to avoid losing women's votes, women voters having become a key electoral consideration as they numbered nearly as many as men voters (women now account for 43 per cent of the electorate). The proof of this is the number of female candidates put up by the parties and the lack of support for women in leadership positions. In fairness some smaller parties did take up the cause of nominating women, but they were not strong enough to effect any change.

Seven political parties, in response to a request by the president for a national effort to respect democracy and prevent any type of violence, signed an agreement pledging to ensure a peaceful election process. The 32-point agreement amounted to a code of honour and included a general expression of support for women's candidacy. The parties, however, were not interested in the issue of support for female candidates. The weakness and fragmented nature of the women's movement, which was unable to form alliances and put pressure on the parties, was partly the cause of this. The Women National Committee was unable to achieve much, despite the considerable efforts made by the media and the heroic efforts made to open channels of dialogue with key figures that have the power to effect change, such as the president, the prime minister and the leaderships of influential political parties.

This document reflected the vagueness of the parties' political programmes and failed to make much impact, even though the candidacy of women was a highly topical issue. The statement of support expressed political commitment and the credibility of these parties in dealing with one of the goals and aspirations of Yemeni women, namely to reach the most important centre of decision making. It mentioned support for the candidacy of Yemeni women and their right to exercise their constitutional,

political and social rights fully and without discrimination, according to the statutes of Sharia. Yet Yemeni women did not need this fine expression, repeated so often, on the eve of the election; it was expected that the parties would issue a clearer position of support for the candidacy of women in this election.

The women's movement has yet to recover from the disastrous results for women of the 2003 election. It is now trying to benefit from the lessons of the election, to draft a new, coherent strategy and to build alliances for the coming years, in preparation for the next parliamentary election in 2009. Prior to this, local elections will take place in early 2006, and proper preparation is needed in order to increase the representation of women.

### **3. The Most Important Institutional Mechanisms for Women's Development**

#### ***3.1. The Yemeni Women National Committee***

This body, set up by Cabinet Decision no. 97 of 1996, expressed the government's commitment in direct response to the call of the 1995 Fourth International Conference on Women in Beijing for national institutional mechanisms to be created to improve the condition of women. To improve its effectiveness, it was later reconstituted by a decision of the prime minister (no. 68 of 2000). A Higher Committee for Women, chaired by the prime minister, was created, with all the directors of women-related government institutions as members. Some representatives of civil society groups active in the field of women's development were also included on the committee. These include the Women's Studies Center at the University of Sana'a, the Federation of Yemeni Women, the Educational Research and Development Center, the General Organization for Insurance and Salaries, the Bar Association, the National Development Fund, the Yemeni Association of Family Care, the Association for Challenging Disabilities, the Popular Charitable Association, the Charitable Association of Social Reform, the Scouting Association, the Association of Businesswomen, the General Federation of Workers' Unions, and the Agricultural Cooperative Federation.

The committee has branches in all the governorates, run by female coordinators, in order to follow up women's development issues at the level of the governorate and represent the committee in the governorates' executive bureaus. Its work involves cooperation with national and regional government institutions, international intergovernmental organizations, and non-governmental organizations (NGOs) working for the development of women and improving their conditions in different political, economic, educational and health areas.

The most important tasks of the Women National Committee are:

- to propose development policies and strategies to improve the situation of

Yemeni women;

- to coordinate with national government and non-governmental bodies to guarantee that these development policies are reflected in their plans and programmes;
- to prepare the necessary proposals to amend laws, policies and regulations connected to women and participate in drafting these items;
- to universalize legislation connected to women and women's rights;
- to work to spread awareness of the law;
- to coordinate with government and non-governmental bodies and donors on women's issues;
- to produce studies, research, surveys and statistics connected with women's issues;
- to prepare reports on the progress made in improving the situation of women;
- to prepare and organize conferences, seminars and discussion sessions about women; and
- to publish bulletins and periodicals on women's issues.

The National Gender Strategy endorsed by the Cabinet was one of the committee's most important achievements. It represents a development tool and a vision for women which could bring together partners for development in government, civil society and the donor community, and on the basis of which they could adopt plans and programmes. In addition, the Second National Conference on Women of March 2003 produced recommendations that expressed a consensus by Yemeni women from all parts of the political and social spectrum regarding increasing female participation in public life in general and politics in particular.

## **4. The Most Important Challenges**

From the above, it can be seen that there are still many difficulties and obstacles in the way of the inclusion of women in public life, and especially politics, in Yemen. The following are the most important.

### **4.1. Poverty**

Some 27 per cent of Yemeni families live in severe poverty (as regards nutrition), while absolute poverty affects 47 per cent. Poverty in Yemen is a rural, female phenomenon. Most rural dwellers suffer from poverty in the form of poor infrastructure, lack of water, electricity, and transport and communication networks, and lack of educational, health and sewage services, but women suffer more from poverty because they lack the necessary skills and abilities to deal with the burdens of ordinary life.

## **4.2. Education**

Illiteracy is particularly prevalent among women: 76 per cent are illiterate, while the school enrolment rate for girls stands at a poor 37.4 per cent, compared to 68 per cent for boys. Only 27 per cent of girls complete the basic education stage, and the proportion of girls drops off at the stage of the technical and vocational institutes: there were 774 graduates of such institutions in 2001, but only 3.7 per cent (29) were girls. In university education, the University of Sana'a, the country's biggest such institution, had 39 per cent female enrolment in academic year 2000/2001, followed by Taiz University (20 per cent) and Aden University (18 per cent).

## **4.3. Political Representation**

Female political representation is weak, as seen in the Chamber of Deputies, the local councils, the Shura Council, the Cabinet, the diplomatic corps and the judiciary. Female membership is low in civil society groups, while political parties employ double standards in their dealings with women, reflecting their weak political commitment to women.

## **4.4. The Social and Cultural Value System**

The socio-cultural legacy that obstructs progress for women continues to be perpetuated; there are attempts to link this to Islamic Sharia.

## **4.5. The Institutional Structure of the Women's Movement**

The women's movement is weak and fragmented. It fails to coordinate positions among its constituent members and to unify their vision. This is despite the coordinating efforts of the Women National Committee and the creation of a network of women's organizations, which have had limited success in working together to combat violence against women. There is a lack of effective strategies to coordinate and cooperate among women's groups and those advocates of democracy who support the inclusion of women in political life.

## **4.6. Infrastructure in Rural Areas**

The poor situation here adds to the sufferings of rural women, particularly their lack of access to the most basic requirements and services; rural women suffer from a double burden that makes political participation a luxury.

## 5. Recommendations

- Comprehensive programmes should be adopted to combat female illiteracy, increase female enrolment in education and limit the rate at which they drop out of general education.
- The level of political commitment to involving women in public affairs, and particularly to their political participation, should be increased.
- Legal steps should be taken to guarantee positive and effective participation by women.
- A Ministry of Women's Development should be created that would make women's issues a permanent item on the agenda of Cabinet meetings.
- Comprehensive strategies should be adopted for women's development in all economic, social, political and cultural domains.
- Women's organizations should coordinate and cooperate in order to create effective pressure groups for women's just causes.
- The level of awareness in society as a whole of the importance of women in public affairs, such as development, should be increased.
- Women should be involved on a comprehensive basis in the whole process of development, and mechanisms should be created to identify the work of women outside the formal, regulated sectors, especially in agriculture.
- Advantage should be taken of the cultural make-up of society so that full participation for men and women is achieved.
- A network should be created of alliances of women's and other organizations that are democratic and support the incorporation of women into public life.
- Women's trust in themselves and in their ability to assume leadership positions and perform well in them should be strengthened.
- The government should show concern with improving the situation of rural women through improving their access to opportunities, services and resources.

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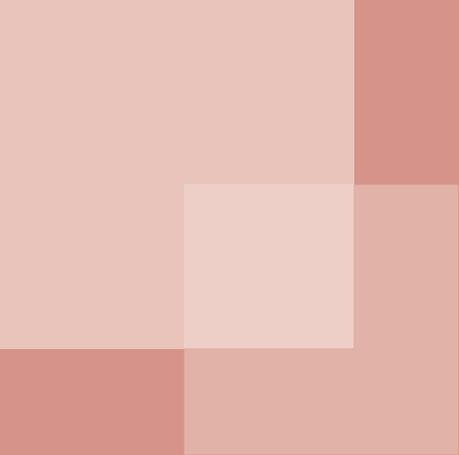
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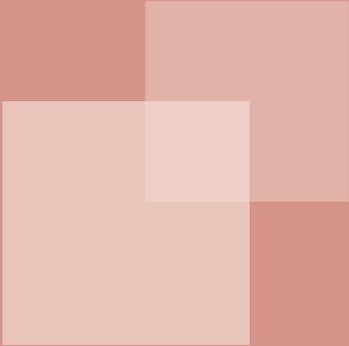
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# Chapter 2

**The Constitutional and Legal  
Bases of Party Pluralism in  
Yemen and the Impact of their  
Implementation**



# **The Constitutional and Legal Bases of Party Pluralism in Yemen and the Impact of their Implementation**

## **1. Introduction: General Framework**

Political parties are currently receiving a great deal of attention in view of the potential effect their success or failure may have on the stability of institutions and society in regimes where parties are a part of the political landscape. At the same time, the transition to a multiparty system has become a sort of criterion that measures how developing countries relate to the international environment surrounding them, especially as calls for pluralism have increased, organizations that defend public freedoms have become widespread, and human rights have become a fixed topic on the agendas of regional and international organizations. The current era has been characterized by the appearance of a new vocabulary in the international political rhetoric, reflecting the fact that the adoption of political party pluralism has become a concern of both local and international civil society organizations.

This chapter, which has been prepared for the Arab NGO Network for Development (ANND), presents a study of the legal and constitutional foundations of the Yemeni political parties.

### ***1.1. The Subject and Scope of this Study***

The legal and constitutional foundations of political parties in the Republic of Yemen are the subject of this study, and the chapter will deal with other aspects depending on their relevance to this subject. It covers the period from the beginning of the transition

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to party pluralism in mid-May 1990 up to the amendments to the constitution in 2001.

### **1.2. Importance and Goals**

- To present a brief history of constitutional legislation related to the multiparty system and its impact on organizing the legal basis for parties during the current era of political pluralism;
- to define the legal and constitutional foundations that organize political and party life, and to follow their evolution and the impact of their implementation on political practice;
- to analyse the nature of internal party relations and the degree to which parties adhere to democratic principles; and
- to identify the legal obstacles to parties' freedom and effective political performance, and discuss the measures that can be taken to safeguard the future of pluralism.

### **1.3. Assumptions**

The basic assumption made in this chapter is that there is a causal relationship between the level of parties' commitment to implementing democracy in their internal relationships and their relationships with each other, on the one hand, and the stability and organizational cohesiveness of each party and the political regime as a whole, on the other.

### **1.4. Contents**

The sections that follow deal with four main concerns. Section 2 considers the constitutional foundations of the Yemeni political parties. Section 3 examines the legal framework of pluralism in Yemen; section 4 the authorities' implementation of the legislation; and section 5 the most prominent features of the Yemeni parties and the factors that affect their performance. Section 6 draws conclusions and makes recommendations.

## **2. The Constitutional Foundations of Political Parties in Yemen**

Legal and constitutional guarantees are fundamental to guaranteeing political freedoms and rights in general, and the right to form political parties in particular. It is the constitutional foundations of party pluralism which give political parties the legitimacy to set up their organizational structure; to be active politically; to organize their members, represent them politically, and champion their demands; and to compete for power, participate in government and have an impact on the country's political authorities. This is because the constitution is the highest of the

laws on which the system of the modern rule-of-law state is based (al-'Azzi 1994: 68). It is the basic law that defines the form of a state and its power, and specifies the relationship between official institutions and civil society, as well as the duties of individuals. It is assumed here that the constitutions of democratic regimes guarantee political freedoms on the basis of the principle of separation of powers and balance between the judicial, legislative and executive branches, which prevents one branch from dominating the others (Abu Zayd 1996: 69).

Although there is a disparity in many regimes between the constitutional provisions governing political activity and the reality of political practice, the constitution is always the most comprehensive framework for determining the structure of institutions and the way they work. Thus, institutions will reflect the logic of the constitution, whether it supports a free multiparty system and works to widen its scope or seeks to restrict this scope and to place constraints on political parties.

This section discusses the constitutional foundations that govern the process of transition to pluralism in theory in order then to examine the distance between theory and practice in the experiment with pluralism in the Republic of Yemen. The discussion begins with a summary of the constitutional provisions concerning political parties that existed prior to the establishment of a unified Yemen, in the Yemen Arab Republic (North Yemen) and the People's Democratic Republic of Yemen (South Yemen). It then examines the texts and content of the foundations of party pluralism in the 1990 constitution, and traces the evolution of the constitutional foundations of pluralism with the constitutional amendments of 1994 and 2001.

## ***2.1. The Pre-unification Constitutional Legislation and its Position on Party Pluralism***

### ***2.1.1. North Yemen, 1962–90***

Revolutionary concepts were prominent in legislation issued after the 26 September 1962 revolution against royal rule in North Yemen and the declaration of a republican regime (al-'Azzi 1985). Neither the first constitutional declaration, made on 3 October 1962, nor the temporary constitution of 13 April 1963 set down a permanent system of government.<sup>1</sup> Neither took a clear position on party activity in the context of the new republican regime; they were silent on the issue of allowing parties the freedom to form and at the same did not state that parties were forbidden.

With the promulgation of the permanent constitution on 27 April 1964, the outlines of party activity were defined, based on article 155, which said that 'citizens form a popular organization to work for goals for which the revolution took place and to encourage efforts to build a sound nation'. Thus the 1964 constitution guaranteed the right to form social organizations and unions (article 38). However, it limited the freedom of political activity to a single political organization established by the authorities.<sup>2</sup> Article 37 of the permanent constitution of 1970 (p. 9) stipulated clearly

that ‘party activity in all forms is prohibited’ and, on this basis, the constitution did not stop at banning the freedom to establish a multiparty system, or limit party activity to a single political organization or party, but went beyond this, to ban all types of party activity,<sup>3</sup> demonstrating a hostile attitude to political parties. This provision continued and was a common feature of the various authorities that ruled North Yemen until unification in 1990.

In practice, the constitutional ban did not put a complete stop to secret party work, despite the harsh measures taken against it by the security organizations and the official anti-party line. Successive political leaderships were aware of the presence of political parties and their clandestine activities; in some cases parties were actually given a margin of freedom on an unofficial basis. In September 1974 the leadership of the 13 June Movement issued a law banning soldiers and officers in the armed forces and security organizations from joining political parties.

### *2.1.2. South Yemen, 1967–90*

South Yemen’s constitution adopted Marxist socialism, which was opposed to party pluralism as it was a feature of Western liberal regimes. The 1970 constitution embodied the concept of the (ruling) National Front’s monopolization of political activity, based on article 7, which said that: ‘Based on scientific socialism, the National Front leads political action among the masses through mass organizations in order to develop society so that the national revolution can take its non-capitalist path’. Later, article 3 of the 1978 constitution (amended) stated that: ‘The Yemen Socialist Party, armed with the theory of scientific socialism, is the leader and guide of society and the state, and sets the general scope of the evolution of society and the external and internal political line of the state.’ This is a clear declaration of the development towards adoption of the one-party system, following the scientific socialist model applied in socialist countries, whose constitutional texts, in theory,<sup>4</sup> lean towards guaranteeing more social freedom at the expense of political freedom, especially the freedom to organize politically.

No doubt the members of the Constitutional Committee, which was formed in 1972, were aware of this when they met—long before unification—to draft a unity constitution. The signatories to the final version of that unity constitution in 1981<sup>5</sup> declared that the political reality of Yemeni society is made up of various political forces, namely, the two powers ruling the two halves of Yemen, and other forces outside this framework. Thus, for stable unity there must be constitutional guarantees that aim to absorb all the political forces in a unified state and guarantee their right to operate.

### *2.1.3. The Official Transition to Political and Party Pluralism, 1990*

Party activity, in the sense of pluralistic and public activity, was banned in both parts

of Yemen prior to unification. In the North the constitution banned party activity, and in the South the regime did not allow any parties to exist alongside the Yemeni Socialist Party (YSP) until only shortly before unification.

Serious negotiations over unification paved the way for the appearance of political pluralism when it became necessary for the leaderships in both North and South to define the form of the unified state's political regime. This task was entrusted to the Committee on a Unified Political Regime, the first session of which took place on 21 October 1989, to discuss this issue. The committee debated the following alternatives (Kamim, Abd al-Aziz 1996: 46):

(a) merging the General People's Congress (GPC) in the North and the YSP in the South;

(b) retaining both organizations as independent bodies, with national figures and groups having the right to political activity;

(c) letting the GPC and the YSP dissolve themselves and allowing the freedom to form political organizations; and

(d) forming a broadly-based national front made up of the GPC, the YSP and other groups that believe in the principles of the two revolutions (of September 1962 in North Yemen and October 1973 in South Yemen). These organizations would retain their independence.

It was agreed to continue discussing these alternatives during the committee's second round of meetings.

On 15 January 1990, the Committee on a Unified Political Regime endorsed the second alternative, which retained the GPC and the YSP as independent organizations while other parties and figures had the right to engage in political activity. This right was guaranteed by the unified state for all political organizations.

In reality, the second alternative and the adoption of the multiparty system were dictated by a number of factors, such as the difficulty of merging the two parties because of their ideological differences, the fear that one would dominate the other, and the impossibility of expecting them to relinquish power according to the third alternative. The entry of several groups into a national front, before the foundations of the new state were consolidated, would threaten the stability of the state; this alternative was set aside as an option for the future.

Thus, the official adoption of a multiparty system as the foundation of the new state's political regime was the best choice. It also went along with international requirements, namely limiting the one-party state, moving towards pluralist democracy and respecting human rights.

The adoption of the multiparty system was linked both to internal developments, which manifested themselves in the achievement of unity in 1990, and to the indirect impact of domestic, regional and international factors which helped to speed up the declaration of unity. However, this is not to deny the impact of the rapid international

developments at the end of the 1980s, beginning with the fall of the totalitarian regimes and the socialist camp in Eastern Europe and the situation in developing countries where one-party systems had ruled and which were now shifting towards pluralist systems. These developments continued, and saw the collapse of the Soviet Union and the bipolar international system at the end of 1991, with the victory of the Western capitalist system based on pluralism as the sole international model. In one way or another, these factors certainly helped to limit the one-party system and the transition to multiparty systems in most countries of the world, including Yemen, as part of what was called the ‘third wave of democracy’.

## **2.2. The Constitutional Framework of Party Pluralism in the 1990 Constitution and its Amendments in 1994 and 2001**

### *2.2.1. The Constitution of the Unified State, 1990*

The 1990 constitution drew a different picture from the anti-pluralism of the constitutions adopted by both parts of the country prior to unification. It removed the distorted ideas that had been associated with the concept of the political party, through articles and expressions used by some political figures<sup>6</sup> and the fears that the state media had reinforced about the dangers of multiparty systems.<sup>7</sup> The draft constitution of the unified state provided a minimum level of party pluralism, imposed by domestic developments and the impact of international changes, as a logical and peaceful alternative for the two leaderships. Political forces, by announcing that they had formed parties and insisting on their political rights, turned pluralism into a reality.

All the political parties that announced their creation after unification based their legitimacy on article 39 of the new constitution, which mentioned the free multiparty system, stipulating that:

Insofar as it is not contrary to the constitution, citizens of all of the republic may organize themselves politically and professionally and in unions; they have the right to form social, cultural and scientific organizations and national unions, such that the goals of the constitution are served. The state shall guarantee this right and shall take all necessary measures to enable citizens to exercise it. The state shall also guarantee all freedoms for political, labour, cultural, scientific and social organizations and institutions.

The logic of this article is flexible, since it does not specifically permit party pluralism; it can be interpreted in different ways, including ways that suit the authorities. The expression ‘citizens . . . have the right . . . to organize themselves politically’ is not tied to the right to set up political parties, as is the case with the right to form cultural and scientific organizations. The expression ‘and guarantees all

freedoms for political . . . organizations and institutions' does not specify the type of these groups; it can be interpreted as meaning a single organization, or any political organization guided by the authorities.

Given these unclear provisions, article 39 can perhaps be interpreted in a way that allows the authorities to get around it so as not to grant parties permission to engage in their activities. The article represents a defect in the constitution and should be amended so that the constitution clearly stipulates that the political regime is established on the basis of party pluralism.

### *2.2.2. The Constitutional Amendments of 1994 and 2001*

The first amendment of the constitution, in 1994, went beyond previous expectations and shortcomings. Its article 5 stated that: 'The political system of the Republic of Yemen is based on political and partisan pluralism in order to achieve a peaceful transformation of power. The Law stipulates rules and procedures required for the formation of political organizations and parties, and the exercise of political activity.'

In addition to this amendment's clearing up the vagueness about the constitutional basis of party pluralism, one researcher comments: 'The Yemeni legislator hit upon the truth when he decided, in this text, that the goal of party pluralism is the peaceful transfer of power, forbidding the taking of power through a coup, conspiracy, or the use of force in any form' (al-Kamim, Abdullah Salih 1995: 89).

The amendments of 2001 involved incorporating a text in article 5, that is, within the part of the constitution that can only be amended by complicated procedures that end with a popular referendum (Constitution of the Republic of Yemen, amended 2001, article 158). This would guard against any government or party that reached power introducing amendments that hinder the setting up of political parties or their activities by virtue of simply having a three-quarters majority in the legislature, as required by the constitution prior to the 1994 amendments.

## **3. The Legal Framework of Party Pluralism in the Republic of Yemen**

The legal framework here means the detailed statutes and measures connected with the setting up of parties and political organizations, and their pursuit of their activities, which provide constitutional guarantees that safeguard the right of citizens to participate in political life, to express their opinions freely and to organize themselves politically and professionally and in cultural and political institutions and organizations.

The legal framework within which political parties operate is a comprehensive set of laws regulating political rights in general, such as the election law, the Press and Publications Law, the Law on Public Assembly, and others that relate to the means and channels of political participation and the expression of public opinion.

However, the discussion here will be confined to the political parties law as the one specifically designed to regulate party life and create the mechanisms by which the affairs of political parties are administered.

### **3.1. Law No. 66 of 1991 on Political Parties and Political Organizations**

This law was passed to confirm that public freedoms, including party and political pluralism, were both rights under and fundamental pillars of the social and political regime of the Republic of Yemen. They could not be abolished or limited and no means could be used to obstruct the freedom of citizens in exercising these rights.

Article 5 guarantees the right of Yemenis to form political parties and organizations; they have the right to belong voluntarily to any political party or organization, according to the constitution and the law.

While article 6 refers clearly to the mechanism and scope for carrying out party activity in order to guarantee the transfer of power or peaceful participation in it through elections, article 7 affirms that the cementing of national unity is the most important task of political parties and organizations.

#### **3.1.1. The Conditions for Setting up Political Parties**

Article 8 sets down conditions for the establishment and continuation of the activities of any party or political organization. These conditions include the following.

1. A party's principles, objectives, programmes and means cannot contravene (a) Islamic values and religion, (b) the sovereignty of the nation, its integrity and the unity of the country and of the people, (c) the republican system and the objectives of the September and October revolutions, as well as the constitution of the republic, (d) the national solidarity of the Republic of Yemen, (e) basic rights and freedoms, and the Universal Declaration of Human Rights, or (f) Yemeni society's national, Arab and Islamic affiliations.

2. A party or political organization may not be based on regional, tribal, sectarian, class, professional, or any other form of discrimination among citizens on the basis of their sex, racial origin or colour.

3. A party or political organization may not be based on concepts that are contrary to Islamic law, nor base its activities on excommunication of the other parties or members of society, or proclamations of being the sole party representing the true Islam, or patriotism, or nationalism, or the Revolution.

4. Parties or political organizations may not establish military or paramilitary forces, or assist in establishing them, or use any form of violence or intimidation or the instigation thereof.

5. A party or political organization may not be affiliated to a political system in a foreign country. Yemeni parties may, however, establish ties on an equal footing with

any non-Yemeni party or political organization in a manner that is not contrary to Yemen's supreme national interests, the constitution and the laws in force.

6. A party or political organization must publicly declare its principles, objectives, methods, political structure or form, and leadership.

### *3.1.2. The Conditions for Joining a Political Party*

Article 10 stipulates that, for a person to be accepted as a member of a political party, he or she must be Yemeni and at least 18 years of age; must enjoy all political rights; and cannot be a member of the judiciary, or an officer or a member of the armed forces or security organization, or assigned to diplomatic missions outside Yemen.

### *3.1.3. Setting up a Political Party*

Article 14 requires a written application to be submitted to the chairman of the Committee on Political Party Affairs, signed by 75 members; the party must have at least 2,500 members when it is set up, present in most governorates of the republic. The committee has 45 days to object to the party's establishment through a documented, justified decision; if no objection is made, the application is considered approved.

Article 15 allows applicants to challenge a decision by the committee within 30 days of receipt of the decision. In the event of a dispute the matter is referred to a specialized court that deals with urgent matters. Parties to the dispute can use all legal means to challenge decisions.

Party finances are covered in articles 17–27.

As to the functioning of parties, article 30 allows each party to publish newspapers to express its opinions without being required to be licensed as stipulated in the Publications Law. Each party can use various media to express its opinion. At the same time, article 33 sets specific conditions which parties must adhere to in carrying out their activities. These include: (a) not impugning the doctrine of Islam; (b) not endorsing former regimes of the imam or the sultans; (c) not disrupting the general order and security, involving themselves in plots or violence, or instigating others to do so; (d) not using government posts or public funds for party gains; and (e) not using mosques or educational and governmental facilities to promote or criticize any party or political organization.

### *3.1.4. The Exemption of Older, Pre-existing Parties from the Procedures for Setting up a Political Party*

The draft law submitted by the government exempted the GPC and the YSP from the requirements set down by the law on setting up a party because they officially existed before the law was issued.<sup>8</sup> This sparked reactions by the parties that were not in power and were opposed in principle to the requirement of licences to set up

political parties, on the grounds that they received their legitimacy directly from the constitution. Parties should not be obliged to be licensed if they had been active in political life for more than a year, they argued.

In the end, all parties were exempted from the procedures required to set up a political party if they had announced their establishment before the law was issued on 16 October 1991. This was the result of several factors: the debate among these political groups, both inside and outside Parliament;<sup>9</sup> the considerations that the situation prevailing at the time imposed on inter-party relations, both inside and outside the government; and the authorities' eagerness to bring together the different political actors in order to preserve the new state.<sup>10</sup>

The political parties law therefore distinguished between two types of parties, based on the criterion of the date when the law was issued. For parties that were in existence before it was issued, article 38 specified the following: the 'registration and registration measures for existing parties and organizations will take place on the basis of a list issued by the Council of the Presidency. These political parties and organizations must settle their status regarding membership prior to the issuing of this law, according to the provisions of article 10, paragraph 4, provided that this is done by 30 December 1991'.

The wording of article 38 shows a close link between implementing the exemption of existing parties from the licensing requirement and the issuing of an Implementing List, on the one hand, and the implementation of the law and the establishment of the Committee on Political Party Affairs, on the other. It should be noted that the two 'ruling' parties did not agree during the transitional period on making effective a working programme for the Committee on Political Party Affairs, and that they failed to issue the Implementing List.<sup>11</sup> This led to the freezing of Law no. 66 until the end of 1995,<sup>12</sup> when the Committee on Political Party Affairs was re-established and made effective with the issuing of the Implementing List, which led to the exception in article 38 being reconsidered. The implications of this are discussed below.

### ***3.2. The Committee on Political Party Affairs: its Establishment and Mandate***

The Committee on Political Party Affairs is the specialized technical body for implementing the provisions and measures connected with the setting up of political parties and their activities, rights and duties, as specified in the constitutional texts, the laws and implementing lists. The method of appointment of this committee and the nature of its composition were seen as a vital issue for the parties, both ruling and opposition, since they would have a considerable impact on the freedom to set up parties, their effectiveness, their activities, and their impact on the inputs to and output of the political system.

An examination of the way in which the committee is appointed, the neutrality of its members and the limits of its mandate therefore provides significant indicators by

which we can measure the degree of freedom or constraints imposed by the authorities on party activity. We can also determine the degree of trust in the relationship between the authorities and the opposition, and how credible it is to assume the principle of the peaceful transfer of power.

On the basis of the discussion above, it is fair to say that the application of the constitutional and legal foundations that regulate party life in actual practice depended on the committee and on acknowledging its right to carry out its tasks on the basis of its legal and constitutional mandate.

This was evidenced by the circumstances prevailing when the committee was established for the first time in March 1992, after Law no. 66 of 1991 was issued. The tension and lack of trust between the GPC and the YSP led to the failure to endorse the committee's right to carry out its duties or exercise its mandate, which in its turn led to the freezing of the political parties law and the suspension of some transitional provisions, and necessitated special measures at a later stage for dealing with the existing parties.

Although the law was not being implemented, the freedom to engage in political activity was not hindered. However, the smaller parties paid the price for this when they found themselves unable to satisfy the conditions for licensing required by the new committee, when it was re-formed in 1995 after three years. Granting licences to them was a condition for these parties continuing to exist legally and exercising their right to participate in the 1997 parliamentary election, as will be seen below.

### *3.2.1. The Composition of the Committee*

Article 13 of Law no. 66 of 1991 on Political Parties and Organizations established the Committee on Political Party Affairs as follows. The minister of state for parliamentary affairs is the chairman; the ministers of justice and the interior are members; and there are four members who do not belong to any party or political organization, who are former judges or lawyers allowed to take cases before the Supreme Court, provided that they are honest, neutral, independent and committed to the principles of democracy and political and party pluralism.

The chairman and two members are selected in their capacities as government ministers, while the other four are nominated by the Higher Judicial Council; they take the oath before the Council of the Presidency to the effect that they will abide by the conditions regulating them throughout the period while they are members of the committee (article 13, paragraph 5 of Law no. 66 of 1991), and their establishment is announced in a presidential decree. The committee meets in its headquarters in the capital, Sana'a, once a month on a regular basis. It can also hold exceptional meetings upon request of the chairman or one-third of the members. A majority was required for a quorum and decisions would require an absolute majority for approval. In the case of a tie, the chairman would decide the matter (Ministry of Legal Affairs 1995: 7). If the chairman were absent for any reason, or if his seat became vacant

through death, resignation or inability to serve, the member whose name followed the chairman's in the official announcement of the committee's establishment would take his or her place (articles 14 and 15 of the Implementing List of the Political Parties Law: 7).

It is clear from the composition of the committee that from a legal point of view it embodies an acceptable balance between an official group, adopting the positions of the government, and a supposedly neutral group that attempts to secure the public interest when there are disputes between the authorities and the opposition parties.<sup>13</sup> The presence of four independent members as against three from the ruling party prevented the government from enjoying a majority that would enable it to issue illegal decisions against a given party or parties, so long as the law was respected with regard to the qualifications of the four members, even though the committee's chairman was from the ruling party.

The Committee on Political Party Affairs was also balanced and neutral, in form at least, compared to the mechanisms used to regulate political parties in other Arab countries that have adopted pluralism. In Jordan, the law grants the Ministry of the Interior power in this regard, and the same is true in Algeria and Tunisia.<sup>14</sup> In Egypt, Political Parties Law no. 40 of 1977 and its amendments created a Committee on Political Parties and granted it the authority to administer and regulate party activity, but its mandate, its make-up and the way in which it is established are different from those of the Yemeni equivalent.<sup>15</sup> In Egypt, the government has the majority in the committee so that it can issue decisions without being affected by the independent component of the committee, which is likely to restrict the establishment of parties and obstruct their pursuit of their activities. It weakened the possibility of achieving justice when the committee rules on matters brought before it, since the majority are from the ruling party.<sup>16</sup>

Although the Yemeni committee's composition and method of selection were considered relatively advanced compared to the mechanisms for regulating party affairs in some Arab countries, it is not the optimal solution. A neutral judicial committee charged with this task would be more of a guarantee that the legal foundations of pluralism will be respected. It is worth noting that, in the dispute between the opposition parties and the authorities over this committee, the ruling party's stance reflected a short-sighted view, based on the desire to remain in power, while the opposition parties believed it to be impossible that they would ever gain power. The ruling party concentrated its efforts on issuing legislation and taking steps to constrain the activities of opposition parties, while never believing that power would ever pass to the opposition in a pluralist system. This wide mandate would work against the ruling party if this actually happened: both sides need to recognize the importance of the neutrality of the body regulating party life, isolating it from any factors that might influence its work.

### *3.2.2. The Mandate and Jurisdiction of the Committee on Political Party Affairs*

The law gives the committee a wide mandate, such as deciding on the licensing of parties and problems arising while they are being set up, monitoring their activity and checking their finances. It allows the committee to check and verify documents from parties that have applied for licensing, including taking any measures it sees fit in order to carry out its task, based on the law (Implementing List of Law no. 66 of 1991 on Political Parties and Organizations, article 26, paragraph 2: 11).

The committee issues a document certifying that the application to set up a party has been received, if the party fulfils the specified conditions. If it does not, the committee's decision to reject the application must be issued within 45 days of receipt (Implementing List of Law no. 66, article 27: 11). As regards the party's regular running of its activities, the committee's role is to verify what the party submits in terms of documents and other materials and to ensure that it continues to be legally eligible to carry out its activities.

If a party violates the provisions of the political parties law, the law gives the committee the power to take various steps. First, it can issue a warning, which the party concerned must comply with. If it does not, the committee can then issue an ultimatum, and if this too is ignored the committee can take appropriate steps, including dissolving the party or referring it to the judiciary (Implementing List of Political Parties Law no. 11, articles 59 and 60: 21). Legal action taken by the committee against the party in question varies from a request for a court decision freezing the party or any of its activities; it can also request that the party be dissolved. This is usually done through a justifying decision by the chairman, approved by the members. The court can then dissolve the party and liquidate its assets, designating the individual or group that will then be responsible for these funds (Implementing List, article 58, paragraph 2: 21). This can be done if the party no longer satisfies one of the conditions for being established or if it engages in activities prohibited by article 33 of the political parties law<sup>17</sup> and article 56 of the Implementing List. The committee chairman, after gaining the approval of the members, can ask the competent court, as a matter of urgency, to suspend the party's activity or any of its decisions until the question of its being completely dissolved is settled. The court must act on such a request within 15 days, and the decision on dissolving the party must be taken within 90 days from the date when the committee informs the party's president of the request filed with the judiciary.

The law also defines two main mandates of the committee with regard to parties' financial affairs. The first involves monitoring the sources of parties' funds, their expenditure and their accounting practices, while the second deals with financial allocations for parties in the state budget.

In the first area, the committee has the right to monitor the legitimacy of financial inflows to parties<sup>18</sup> and check that their expenditure is legitimate and is on party

matters and goals, on the basis of a party's constitution and internal regulations.

In an attempt to regulate political parties' resources and ensure that they are subject to the committee's supervision, a party must deposit its funds in a Yemeni bank and have organized accounting books which show its revenues and expenditures, based on its by-laws. It must submit annual reports on its final accounts for the year to the committee by October of each year (Implementing List of the Political Parties Law, article 41: 15). The party must register all its assets with the committee and notify it of any change. Article 42 of the Implementing List allows the committee, after examining the annual report submitted by a party, to audit its various financial records. The committee chooses a non-party technical committee to help it in this task; neither body may violate the confidentiality of the records they examine, unless a violation is discovered which demands that the records be submitted to the judiciary according to the law and the Implementing List.

In the second area, the committee assigns percentages of state financial allocations to the various parties. Every year, the committee should submit to the Cabinet a proposal for a total amount for these allocations, based on the political parties law and the Implementing List. The amount is entered into the draft budget after it is approved (Implementing List of the Political Parties Law, article 35: 15).

Article 36 of the Implementing List defines the principles for the committee's assigning shares to the various parties. Twenty-five per cent of the total is distributed equally to all parties represented in the Chamber of Deputies. Seventy-five per cent goes to all parties, including those listed above, in proportion to the number of votes their candidates received in parliamentary elections. A party cannot receive a share if it received less than 5 per cent of the total votes cast. In all cases, the annual assistance by the state cannot exceed the total annual dues of a given party; the surplus here goes to the state treasury.<sup>19</sup>

Analysing the mandate and jurisdiction of the Committee on Political Party Affairs reveals another dimension of the experience with party pluralism in legal terms. This is the impact of the relationship between the authorities and the opposition in the period prior to pluralism, which cemented, for each side, an opinion of the other. This was reflected in the legal foundations for the regulation of the political parties under pluralism, and pluralism has not been in place long enough to do away with the effects of the oppression and persecution from which the opposition parties suffered when their activities had to be secret. It was this that led to the opposition's view of the various laws and regulations, namely that they are merely methods used by the authorities to keep the opposition in check. For their part, the authorities' view of the opposition parties is based on older preconceptions: whenever any opposition is expressed to the laws and measures regulating party activity, they see the political parties as conspiring to do away with the authorities.

This was clear in the authorities' behaviour when the ruling (GPC–YSP) coalition decided to implement the political parties law to regulate political activity.<sup>20</sup> In preparing to implement the law, it reconstituted the Committee on Political Party

Affairs in 1995 and issued an Implementing List that interpreted the law and the work of the committee. This produced fears on the part of the opposition parties, which believed, on the basis of their own old preconceptions about the authorities, that they would be politically marginalized. They were therefore totally opposed to these measures, but without basing their opposition on any legal or procedural violations by the authorities, and thus failing to demonstrate that their opposition was limited to the unconstitutionality of certain rules and measures and not to the whole idea of implementing laws to regulate a multiparty system. The authorities, for their part, assumed on the basis of their preconceptions about the opposition that its rejection of and refusal to comply with these procedures revealed its hostility and ill feeling towards the authorities.

The experience with party pluralism has demonstrated that more pluralism will gradually help to do away with the fears on both sides, and the final section of this study will attempt to show this by examining aspects of the issuing of the Implementing List of the Political Parties Law. This produced implementing procedures that prompted different reactions by the ruling parties and those in the opposition.

## **4. How the Authorities Implement Legislation**

From 1990 until 1996, there was no intervention by the authorities in the setting up of political parties or even constraint on their activities, since the political parties law (Law no. 66 of 1991) could not be put into effect. The stamping out of the separatist movement in 1994 removed the biggest justification for not implementing the law, namely the dispute between the GPC and the YSP, which had begun midway through the transitional period. This dispute allowed party activity to continue without the law being implemented during the four years after it had been issued.

The Implementing List for the Political Parties Law is the third in a series of pieces of legislation that regulate political party activity and the most relevant for determining how the authorities and the opposition deal with each other. Its provisions directly affect the freedom of pluralism; they either limit or encourage the setting up and the activity of parties. In many cases, implementing lists do away with what the constitution grants in the way of rights and freedoms.

### ***4.1. The Issuing of the Implementing List of the Political Parties Law***

The Implementing List of the Political Parties Law was issued by a presidential decision, based on a report by the Chairman of the Committee on Political Party Affairs, and after the approval of the Cabinet, on 21 August 1995 (Presidential Decision no. 109 of 1995 on the Implementing List of Law no. 66 of 1991 on Political Parties and Organizations). Its 65 articles are divided into several sections: (a) names and definitions; (b) foundations and goals; (c) conditions for the setting up of political parties and continuing activities; (d) the Committee on Political Party

Affairs; (e) parties' acquiring legal status; (f) notification of formation application; (g) financial provisions; (h) rights and duties; (i) legal and penal repercussions; and (j) concluding provisions.

Most of the 65 articles are a detailed repetition of what is contained in the law. Article 61 sparked objections from the opposition parties because it required all parties to adhere to the procedures for registration in the political parties law: this would mean eliminating the exemption for already-existing parties contained in article 38 of the law. This dropped the distinction between old and new parties, and between opposition and ruling parties.

According to article 61, all parties lost their legitimacy, as if they were starting from scratch to gain legal status. Many questions were raised about the constitutionality of the articles of the list, especially article 61, and about whether the opposition parties had the strength and influence to affect the authorities' insistence on the law being implemented. If they did not, would all parties be able to meet the requirements? Most importantly, what would be the impact on the freedom to form parties and on parties' performing effectively and engaging in political activity?

#### **4.2. Political Parties' Reactions to the Implementing List and Calls for Its Adoption**

Different parties had different reactions to the Implementing List, depending on their own considerations, alternatives and ability to deal with these issues. The GPC and the Yemeni Gathering for Reform (Islah), in alliance as the ruling parties, defended the legal and constitutional legitimacy of the list in general and article 61 in particular. Their argument as to the soundness of the list can be summarized as follows: the preparation of the list took place according to the mandate granted in the constitution and specified by the political parties law.<sup>21</sup> The authorities, represented by the government, justified the abolition of the old law's article 38, which exempted parties already in existence from the procedures for setting themselves up, on the grounds that it was no longer in force: the article specified a definite time-period, which ended on the last day of December 1991.

The abolition of article 38 affected all political parties, including the GPC and Islah: all would be obliged to apply for licensing in order to carry on with their activities. This would mean complying with the requirement to submit a petition signed by 75 founding members and validated by a Court of First Instance judge; and parties needed at least 2,500 members, from most of the governorates in the country.

Some opposition parties accepted the move cautiously, or conditionally; others objected to the measures taken by the authorities and challenged the move with the judiciary, arguing that some articles of the list were unconstitutional. Some parties, whose influence was very limited, adopted a policy of 'wait and see' regarding the results of the confrontation between the two sides.

The GPC, Islah and the parties of the National Opposition Council<sup>22</sup> reacted positively to the demands of the Committee on Political Party Affairs that existing parties be licensed in order to continue their activities and that all new parties should be licensed according to similar requirements and conditions, and began the necessary procedures.<sup>23</sup> Six of the eight parties in the Higher Coordinating Committee of the Opposition announced their opposition to the Committee on Political Party Affairs' request concerning licensing, based on article 61 of the Implementing Law; they favoured article 38 of the political parties law.<sup>24</sup> These six parties sent a letter to the Committee on Political Party Affairs requesting that their names be registered with the committee, on the basis of article 38. In November 1995, the six parties filed a legal challenge to a number of articles of the Implementing List and against the chairman of the committee as its legal representative.<sup>25</sup> The challenge, against the legitimacy of the authorities' measures in a period of party pluralism, was the first of its kind.<sup>26</sup>

The parties opposing the Implementing List felt that the legitimacy of their existence derived from their historical presence and organizational reach and from the fact that they were active during a period of party pluralism, participating in the 1991 referendum on the constitution and the 1993 parliamentary election, with some party members gaining seats in Parliament. On the basis of this argument only, parties that are in the process of being established should be obliged to carry out the formalities, while already-existing parties should simply be declared to be active and merely submit the required documents to the committee.

When the Committee on Political Party Affairs gave itself the right to abolish a party or grant it legal status once again, a number of parties were prompted to ignore its requirements and object to the measures on the grounds that they were unconstitutional and illegal. When the parties sensed that the committee understood the position of the already-existing parties, they cooperated and expressed their readiness to normalize their situation, which would leave their legal status unaffected.

#### ***4.3. Negative and Positive Repercussions of the Implementing List for Political Parties***

Despite the legal and political objections raised by parties opposed to the Implementing List, they did not have sufficient weight or influence to alter the government's decision or its determination to put an end to the freezing of the laws regulating multiparty political life.<sup>27</sup> The government began applying the measures to the ruling parties themselves, which weakened the position of opposition parties. The government dismissed the opposition's stance as an attempt to avoid complying with legal provisions which they had played an active role in drafting when they were able to influence legislation in the Chamber of Deputies.

Confirming its previous position, the Committee on Political Party Affairs announced in early 1996 that official recognition would be considered a condition

of a political party's participation in the 1997 parliamentary election. This prompted the remaining parties to submit their registration applications quickly, allowing the committee to examine these applications and complete its work. By election day on 27 April 1997, 17 parties had been licensed, while others sought to put their affairs in order and submit their applications for legal status. New parties, meanwhile, applied for licensing to form and carry out activities; a total of 22 parties had received the committee's approval by 2003 (see table 2.1).

Table 2.1: Yemeni Political Parties That Have Obtained Legal Status, as of 2003

<b>Name of Party/Organization</b>	<b>Date of Publication of Statement of Formation</b>
General Popular Congress (al-Mu'tamar al-Sha'bi al-'Amm)	5 February 1996
Arab Socialist Baath Party (Hizb al-Ba'th al-'Arabi al-Ishtiraki)	17 February 1996
Democratic Nasserite Party (al-Hizb al-Dimuqrati al-Nasiri)	11 March 1996
Yemeni Gathering for Reform (al-Tajammu' al-Yamani lil-Islah)	1 March 1996
Sons of Yemen League (Rabitat Abna' al-Yaman)	27 March 1996
Popular Nasserite Unionist Organization (al-Tanzim al-Wahdawi wal-Sha'bi al-Nasiri)	4 May 1996
National Democratic Front (al-Jabha al-Wataniyya al-Dimuqratiyya)	27 April 1996
Liberation Front (Hizb Jabhat al-Tahrir)	7 August 1996
Nasserite Popular Correctional Movement (al-Tashih al-Sha'bi al-Nasiri)	18 August 1996
Yemeni Socialist Party (al-Hizb al-Ishtiraki al-Yamani)	8 October 1996
Truth Party (Hizb al-Haqq)	17 October 1996
Arab National Socialist Baath Party (Hizb al-Ba'th al-'Arabi al-Ishtiraki al-Qawmi)	9 March 1997
Union of Popular Forces (Ittihad al-Qiwa al-Sha'biyya)	March 1997
Yemeni League (al-Rabita al-Yamaniyya al-Shar'iyya)	March 1997
Social Nationalist Party (Hizb al-Qawmi al-Ijtima'i)	March 1997
Popular Unionist Liberation Party (Hizb al-Tahrir al-Sha'bi al-Wahdawi)	July 1997

Popular Unity Party (Hizb al-Wahda al-Sha'biyya)	July 1997
Democratic People's Party / Hashd (Hizb al-Sha'b al-Dimuqrati)	October 1997
Septembrist Movement (al-Tanzim al-Sebtombri)	1998
Yemeni Unionist Gathering (al-Tajammu' al-Wahdawi al-Yamani)	1999
Social Green Party (Hizb al-Khudr al-Ijtima'i)	2001
Democratic Union (al-Ittihad al-Dimuqrati)	2001

Source: Committee on Political Party Affairs, *Record*, 2003.

The measures taken by the Committee on Political Party Affairs led to a new division between parties that had announced their presence on the political scene, according to the criterion of licensing; some parties were licensed and others were not. Thus the phenomenon of 'party inflation' subsided. About half of the parties disappeared compared to the first year of party pluralism, when there were 45, as table 2.2 shows (see also al-Ulaymi and al-Bashari 1993).

Table 2.2: Yemeni Political Parties that Announced their Presence in the Political Arena

**Name of Party/Organization**

1. General Popular Congress (al-Mu'tamar al-Sha'bi al-'Amm)
2. Yemen Socialist Party (al-Hizb al-Ishtiraki al-Yamani)
3. Yemeni Gathering for Reform (al-Tajammu' al-Yamani lil-Islah)
4. Popular Nasserite Unionist Organization (al-Tanzim al-Wahdawi wal-Sha'bi al-Nasiri)
5. Truth Party (Hizb al-Haqq)
6. Arab Socialist Baath Party (Hizb al-Ba'th al-'Arabi al-Ishtiraki)
7. Union of Popular Forces (Ittihad al-Qiwa al-Sha'biyya)
8. Democratic Nasserite Party (al-Hizb al-Nasiri al-Dimuqrati)
9. Nasserite Popular Correctional Movement (al-Tashih al-Sha'bi al-Nasiri)
10. Nasserite Unionist Vanguard (al-Tala'i al-Wahdawiyya al-Nasiriyya)
11. Nasserist Hawks Organization (Tanzim al-Suqur al-Nasiriyya)
12. Arab Socialist Baath Organization Party  
(Munazamat Hizb al-Ba'th al-'Arabi al-Ishtiraki)
13. Liberation Front Popular Organization (al-Tanzim al-Sha'bi li-Jabhat al-Tahrir)
14. Democratic Septembrist Movement (al-Tanzim al-Sebtombri al-Dimuqrati)
15. National Democratic Front (al-Jabha al-Wataniyya al-Dimuqratiyya)
16. Renaissance Movement (Harakat al-Nahda)
17. Constitutional Freedom Party (Hizb al-Ahrrar al-Dusturi)
18. Yemeni Unionist Forces Front (Jabhat Qiwa al-Wahda al-Yamaniyya)
19. Tawhid and Islamic Action Movement (Harakat al-Tawhid wal-'Amal al-Islami)

20. Free Yemeni Forum Party (Hizb al-Minbar al-Yamani al-Hurr)
21. Republican Party (al-Hizb a-Jumhuri)
22. Union of Revolutionary Islamic Forces (Ittihad al-Qiwa al-Thawriyya al-Islamiyya)
23. Arab National Unity Party (Hizb al-Wahda al-Qawmi al-'Arabi)
24. National Union Conference (Mu'tamar al-Talahum al-Watani)
25. Yemeni Progressive Popular Organization  
(al-Tanzim al-Sha'bi al-Taquddumi al-Yamani)
26. Social Nationalist Party (Hizb al-Qawmi al-Ijtima'i)
27. Party of God (Hizbullah)
28. Shura Party (Hizb al-Shura)
29. Yemeni Vanguard Organization (Tanzim Tala'i al-Yaman)
30. Peace Party (Hizb Salam)
31. Yemeni Revolutionary Party (Hizb al-Thawri al-Yamani)
32. Free Emigrants Party (Hizb al-Muhajirin al-Ahrar)
33. Nasserite Revolutionary Command (al-Qiyada al-Thawriyya al-Nasiriyya)
34. Popular Agreement Front (al-Jabha al-Sha'biyya lil-Ittifaq)
35. Democratic Front (al-Jabha al-Dimuqratiyya)
36. Democratic Islamic Party (al-Hizb al-Islami al-Dimuqrati)
37. Nasserite Islamic Arab Organization (al-Tanzim al-'Arabi al-Islami al-Nasiri)
38. Yemen Youth Organization (Munazzamat Fityan al-Yaman)
39. Revolutionary Correctional Front (Jabhat al-Tashih al-Thawriyya)
40. Liberation Front (Hizb Jabhat al-Tahrir)
41. Nasserite Murabitoun Organization (Munazzamat al-Murabitun al-Nasiriyyin)
42. Yemeni League (al-Rabita)
43. Revolutionary Democratic Party (al-Hizb al-Dimuqrati al-Thawri)
44. Democratic Movement (al-Haraka al-Dimuqratiyya)
45. International Islamic Movement (al-Haraka al-Islamiyya al-'Alimiyya)

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Source: Abu Talib, Hasan, *al-Wahda al-Yamaniyya* [The unification of Yemen]: 370; and [Documents on the Yemeni parliamentary elections] (Sana'a: Awan Services, 1997): 21–22.

The move towards a smaller number of parties and their increased effectiveness are seen as positive signs so long as the freedom to form political parties is not affected.

The Committee on Political Party Affairs showed some flexibility in dealing with some of the parties in implementing the procedures for setting them up, reaching a political accord of a kind with some whose situation was in conformity with certain licensing measures.<sup>28</sup> The committee was not tough in interpreting and checking the general conditions for setting up parties and checking that their activities were consistent with the documents they had submitted.

However, the conditions for setting up a party specified in the Implementation List were an obstacle for small parties seeking legal status. The requirement of 2,500 members was a very difficult one and limited their constitutional right to form a

party, whatever the legal justifications for the lawmakers setting this condition.<sup>29</sup> This minimum of 2,500 members is the highest threshold required in Arab countries that have adopted party pluralism.<sup>30</sup>

The parties that had first opposed the conditions for setting up a party when the law began to be debated in the Chamber of Deputies, around 1991, after they themselves were exempted from these requirements, which applied to new parties only, tried in the parliamentary committee responsible for drafting laws to add a provision that new parties must have at least 2,500 members when they are set up. This reveals a certain short-sightedness on the part of the legislators, who were seeking to handle the issue that was prominent at the time, namely the large number of parties; they ignored the impact on the formation of parties in the future. These self-same parties felt the burden of this constraint, which had been placed on future parties, when they found themselves obliged to implement it. After article 38 of the law was abolished, removing the exemption for already-existing parties, they too had to submit the names of 2,500 members and publish them in the *Official Gazette*, not to mention the 75 founding members.

We can thus evaluate the impact of the regulating laws (the political parties law and the Implementing List) on the present and future of new political parties and their continued activity under pluralism. We can also assess the foreseeable future of the work of the Committee on Political Party Affairs, its mandate, and its method of dealing with political parties.

There have been no indications that existing parties' freedom to carry out political activity has been reduced, that is, the committee did not exploit its mandate to limit the freedom to establish parties from 1996 to 2003. However, the general nature of some articles of the law and the Implementing List, in which specific criteria for the setting up of parties are not precisely defined, means that they can be interpreted in such a way as to support the dissolution of a party, or the suspension of its activities or any of its decisions, on the pretext that the party fails to meet one of the conditions specified in article 8 of the political parties law and article 9 of the Implementing List, or that it has engaged in activity prohibited by article 33 of the law and article 56 of the Implementing List.

## 5. The Most Prominent Features of Yemeni Parties and the Factors That Affect Their Performance

### *5.1. The Most Prominent Features of the Political Map of Parties in Yemen, Over Three Parliamentary Elections, 1993–2003*

The overall picture is one of 22 political parties and the results of three elections, in 1993, 1997 and 2003. The indications are that Yemen's political parties have moved towards stability, whether in terms of their number, or of their positions between centres of power and the ranks of the opposition, or of their ranking on the list of parties based on their political weight and the extent of their participation in all phases of the electoral process. This includes their ability to influence the masses when it comes to pressuring the authorities to meet party demands, and their ability to set up effective party monitoring of the performance of state institutions.

#### *5.1.1. The Political Party Map after the 1993 Election*

Forty-six parties announced their existence during the first year of the multiparty system. Although no constraints or legal procedures limited the freedom to form parties between 1990 and 1996, the parties were in effect exposed to a 'weeding-out' process through their participation in the electoral process.

About half of the parties were able to announce their participation in the 1993 elections. The GPC took first place, gaining 40.53 per cent of the seats in the legislature, followed by Islah with 20.93 per cent. In third place was the YSP, with 18.6 per cent of the seats, followed a long way behind by the Baath Party, before it split into two parties: it secured seven seats, or 2.33 per cent of the total. The Nasserite Unionist Organization (NUO) and the Democratic Nasserites, the Nasserite Correctionists and the Truth Party each obtained one seat, while independents secured 48 seats (15.95 per cent), with 15 parties failing to secure representation in Parliament.

The 1993 results for the authorities and the opposition were thus as follows:

- Three parties entered the government, namely the alliance between the GPC, Islah and the YSP.
- Four opposition parties secured relative participation in the legislative branch, along with the 'parties of the authorities'.
- Fifteen parties failed to secure a seat in the Parliament; their names remained on the list of opposition parties that took part in the election.
- About half of the parties that had announced their existence were unable to enter the electoral contest.

### *5.1.2. The Political Party Map after the 1997 Election*

Seventeen parties were licensed to continue their activities prior to the 1997 election. Twelve parties took part in the election and the others (including the YSP) boycotted it. The election results on 27 April 1997 reshaped the political map in terms of the authorities and the opposition:

- The GPC remained in power after winning 187 seats, or 62.54 per cent of the total number of seats; it was then able to form a government by itself for the first time.
- Islah obtained 54 seats (18 per cent), allowing it to continue its participation in the legislative branch; it joined the opposition after failing to enter the government.
- Independents secured 54 seats (18 per cent); these included some YSP members who rejected the party's decision to boycott the election.
- The Nasserite Unionist Organization won three seats and the Baath Party two, retaining their symbolic representation in the Chamber of Deputies. Only two women won seats in the 301-member body.
- Eight parties failed to see their candidates elected and ended up along with the boycotters outside the legislature.

### *5.1.3. The Political Party Map after the 2003 Election*

- Twenty-two parties enjoyed legal status prior to the 2003 election and all took part in the election. The results were announced on 27 April 2003.
- The GPC remained in power after receiving 226 seats. For the second time in a row, the GPC formed a government by itself and saw a 16.55 per cent rise in its share of parliamentary seats.
- Islah received 54 seats.
- Independents obtained 14 seats, a sharp decline compared to the 1997 election.
- The YSP gained seven seats—a loss of 49 seats since the last time it participated, in 1993.
- The Nasserite Unionist Organization kept its three seats, and the Baath Party two.
- The four opposition parties in Parliament held 20 per cent of the total seats.
- The number of female deputies dropped to one.

## **5.2. The Internal Relations of Parties and their Impact on Parties' Performance**

Most Yemeni parties have been unable to overcome the crisis of democracy within their organizational make-up or their dealings with their members.<sup>31</sup> This is seen in a lack of commitment to the rights of members to engage in debate and dialogue,

express their opinion and objections, participate effectively in decision making, and vote or stand in elections for party office, and by parties' failure to follow democratic procedures when selecting their leaderships.

The deterioration in relations between some party leaders and their party bases<sup>32</sup> and the resulting huge gap between the two has had important repercussions at various levels. The loyalties of party cadres and organizations have become divided and frustration about the usefulness of party activity has increased; life outside the party is not the answer, but neither is continuing to take a mistaken path on the grounds of party discipline.

When leadership decisions are 'sacred' for the rank and file, the behaviour of the latter becomes mechanical and lacking in creativity. This abilities of party members are stifled, and when behaviour becomes institutionalized higher-ranking members begin to believe that they deserve privileges and that their views must always prevail. Thus they require absolute loyalty and obstruct democratic methods. Party conflicts are therefore mainly the result of failure to rely on democratic methods in the transfer of power within the party.

### **5.3. The Impact of Tribalism on Yemeni Society**

#### **5.3.1. The Impact of the Social Structure**

Until the end of the 1940s, the traditional social structure prevailed in Yemeni society (Abd al-Jalil 1990: 115). Society was divided into specific segments<sup>33</sup> with each one having its special rights and duties, tasks, social roles and specific status in the social ladder. For the most part, each segment would inherit certain characteristics and associated rights; the classification of society's various segments was based on factors such as lineage, profession, inheritance and political role.

Rather than discuss the many details of the social structure, this chapter will examine the negative effects of this system on political party pluralism. Party pluralism rests on the idea of equal rights and duties for all members of society. The traditional structure, on the other hand, granted particular segments of society rights that were not enjoyed by others; each group had its own social role to perform, which meant different rights and duties. High state positions were limited to two groups—*sayyids* (leaders or chiefs) and judges—while military posts in the state were taken by members of armed tribes under the leadership of their sheikhs. All other segments of society were outside the political framework and deprived of political rights. They were dealt with 'like payers of taxes and tribute and serfs, in the interest of the state' (Abd al-Jalil 1990: 121).

At the end of the 1960s, the traditional social structure of Yemeni society began to see important changes in the wake of the political developments that the revolutions brought to both North and South Yemen (Mansur 1997: 18). However, the legacy of this structure and some of its psychological baggage are still in existence today,

especially regarding the concept of equal rights and duties for all citizens, or rather in the absence of this concept.

The legacy of this mindset will hamper the consolidation of democratic principles, including the right of all people to participate in determining the affairs of government or to work in the public sector, and the principle that appointments and promotion should be based on competence, not nepotism.

The negative impact of this legacy is bound to appear in the early stages of party pluralism, but the transition to a modern civil society and the continued exercise of democracy will lead to the gradual erosion of this mindset, so that one based on equality, with no discrimination on the basis of family, profession or social origins, takes its place.

### *5.3.2. The Impact of the Tribal Structure on Political Parties*

The make-up of Yemeni society is characterized by tribalism, especially in the northern and eastern parts of the country. Some studies indicate the continuing role of the tribe in the political life of Yemen (e.g., al-Zahiri 1996). This section will focus on the impact of this tribal make-up of society on the pluralist party system.

Many studies emphasize the negative aspects of the tribal structure on parties under pluralism: it is considered the biggest obstacle to their development (Abd al-Jalil 1990: 118–20). According to this line of argument, the tribes' loyalty to a political party will not be based on a comparison between party programmes or an evaluation of their contributions to building national democracy. On the contrary, in most cases loyalty will have personal foundations. In addition, some tribal customs and values have a damaging effect on democratic values and principles. The tribe's glorification of force contradicts the concept of dialogue and of resort to legal, logical and moral criteria to resolve disputes inside or outside a party. Thus, a large percentage of Yemenis are psychologically prepared for extreme solutions, which usually involve force, to resolve party disputes or political crises, and will be less amenable to compromise or consensus. Other commentators believe that tribalism involves opposition to the phenomenon of modernization itself and a hostile view of the state, and that tribal entities thus seriously hinder the process of building a state of modern institutions and civil society institutions, which include political parties (see e.g. Mustaqbal Studies Center 1998: 84-8).

In contrast, other studies are critical of the idea that tribalism should be blamed for violent conflict (Abd al-Majid: 245; Akova: 55) and for opposition to modernization; this is considered a one-sided view that involves a partial understanding of modernization theory, such that everything 'modern', even if negative, is considered best and everything 'traditional', even if positive, is deprecated. Even if it applies in some cases, the idea that progress is only achieved when the state and society become more modern, from cities and buildings to cultural and political aspects, and that traditional structures are the most important obstacle to political evolution and a

source of conflict, is not correct in the light of the complex nature of Yemeni political society as a whole and its history.<sup>34</sup>

Some of the studies that consider tribalism an obstacle to democratic development and party pluralism (e.g. al-Zahiri 1996: 208–10) maintain that, despite the classification of the tribe as part of the traditional structure, in the absence of modern civil society institutions it can undertake, on a temporary basis, some of the tasks of the political party in confronting the authorities, bringing together the interests of individuals and expressing them. Since parties were openly approved and Yemen began to move towards pluralism, the tribe has not rejected the idea and values of social and political modernization. It has accepted the existence of parties and coexisted with them through participation by its members in political parties and in some cases assuming the highest leadership posts in these groups, which enjoy weight and influence.

Thus, opinions are divided on the impact of tribalism on Yemeni society and pluralism. Some believe the tribes to be the biggest obstacle to the success of society and pluralism, while others see a positive interaction between the tribes and the transition to open party pluralism; tribal pluralism, they believe, can provide an objective basis for the success of the experiment with pluralism because the tribe is relatively independent from the authority of the state, or because it is able to achieve a type of independence: where the tribal structure of a state is pluralist, and the majority of people do not belong to a single tribe, there can be a balance among political players.

Perhaps the tribal structure, like any socio-political phenomenon, has its positive and negative effects on party pluralism. To prevent tribalism from having a negative impact, parties must be able to exploit its positive aspects.

Also, tribalism is not an independent variable that makes parties effective or marginalizes them in political life. There are states which do not have tribes that suffer from the same lack of or marginalization of parties.<sup>35</sup>

Thus, the tribes in Yemeni society might help the experiment with pluralism, provided tribal loyalty is not greater than national loyalty and the influence of tribes in their regions does not go so far as to weaken the authority of the state more than democratic balance requires. The tribes would be better able to help the experiment with pluralism if there were social development within their structure, particularly through an increase in the number of their members who enter the educational system, state-sector jobs and civil society organizations.

## 6. Conclusions and Recommendations

From this discussion of the constitutional foundations of the party system in Yemen, it appears that the constitution and its amendments in 1994 and 2001, which were based on party pluralism, contain no provisions that would constrain the freedom to set up political parties or their activities. Yemen's experiment with political party

pluralism is therefore not one of the ‘constrained’ type (regarding political parties) that is found in the Arab world (al-Ahram Strategic Studies Center 1995). However, even if the constitution takes a positive stance on the right to establish parties and conduct party activity, this does not exclude the fact of the negative repercussions—albeit indirect—of constitutional legislation on party activity in the earlier period, before unification, when parties were subject to legislation that was hostile to them. The period of clandestine activity impacted negatively on their establishment, the course of their development, their culture, their expertise and their work methods, and even on the psychology of their members; their party traditions were formed under the pressure of this hostility and of harassment by the authorities.

Certainly, the negative impact of this anti-party legacy has declined, and there is a growing awareness on the part of many Yemenis of the importance of parties in political life as a natural result of experience gained through five elections (parliamentary, presidential and local) from 1993 to 2003. However, some negative effects remain today in the political thought of Third World societies in general, and in Yemeni society in particular. The successive stages of the drafting of the legal basis for regulating the political parties in Yemen show that the accumulated historical legacy of hostility between the authorities and the opposition, which prevailed when parties were banned and their activities were secret, had a negative impact on the drafting of the political parties law and the Implementing List. Some of the provisions for the establishment of parties and the conduct of their activities are redolent of fear and mutual suspicion between the authorities and the opposition. These fears and suspicions were prevalent during the first years of the experiment with the multiparty system and were reflected (negatively) in the legal and procedural constraints that helped to obstruct the free formation of political parties.

The following are the most important of these obstacles.

### **6.1. Legal Obstacles**

The main obstacles contained in the political parties law (no. 66 of 1991) concern the freedom to form parties, namely the stipulation that a party seeking legal status must have at least 2,500 members, and the complexity of some of the procedures for setting them up contained in the Implementing List.

The application of the Implementing List was an obstacle for small parties aspiring to legal status; whatever the lawmakers’ justifications, the conditions impaired the constitutional right to form political parties.

The continued raising of legal and procedural hurdles for parties that seek legal status increases the feeling on the part of political forces that are not granted licensing by the Committee on Political Party Affairs that their chances to take advantage of the legal channels for expressing their opinions are poor; they react by trying to get around the legal constraints to the achievement of their goals, or engaging in illegal practices. It would be better to allow them to operate within a peaceful, democratic framework.

## **6.2. Obstacles Resulting from the Way Party Affairs Are Administered and the Performance of their Duties**

These obstacles involve the harmful effects of the way in which the Committee on Political Party Affairs was set up on the evolution of party life in Yemen. Although in legal terms the make-up and selection of the committee were considered advanced in comparison to similar bodies in the rest of the Arab world, they were not optimal. Allowing a neutral judicial body to take over the regulation of political parties would be a better way to achieve justice and interpret and implement the law; it would be isolated from factors that might affect its neutrality.

The performance of the Committee on Political Party Affairs in monitoring and dealing with the parties from 1996 to 2003 does not suggest that it was limiting the freedom of the parties that had obtained legal status. It did not exploit its mandate to limit this freedom or party activity; its actions showed flexibility and encouraged parties to participate in elections.

However, the general and vague nature of some provisions in the political parties law, and the lack of precision in some of the criteria to guide its implementation, especially regarding the setting up of parties and their continuing activity, could lead to the law being interpreted in such a way that parties are dissolved or frozen on the grounds that they do not meet the conditions stipulated in article 8 of the law and article 9 of the Implementing List, or that they have engaged in activity forbidden under articles 38 and 56 of the list.

The political parties law and Implementing List should be amended to simplify the procedures for setting up a political party. The bases on which party activity is to be monitored should be specified, and the criteria to be used should be measurable, so that the committee can exercise the limited mandate it has been granted for monitoring party activities, finances and foreign relations. The legislators should help to move the situation forward, away from the mutual fear and suspicion which characterized the first year of the experience of pluralism and were reflected in the provisions of the political parties law.

At the time, parties were unable to carry out legal and open activity, nor could they develop the minimum level of democratic culture and party practice or mechanisms that would allow them to make the transition to an institutional phase. In these circumstances a political parties law could not be expected to produce the hoped-for democracy in isolation from the prevailing political and cultural conditions, which were characterized by a lack of trust and mutual suspicion among the different players in the political process.

Thirteen years' experience with pluralism has been long enough to produce demands for the necessary reform. There are now urgent demands for the updating of the law and the Implementing List as part of keeping up with democratic development and broadening of the scope of participation by women in party life (especially since the political parties law is fixed compared to the parliamentary election law, which

was amended six times between 1991 and 2002).

The following amendments are needed.

- There should be clear provisions, compliance with which can be proved, obliging parties to adhere to their by-laws, especially regarding the holding of general conferences on time and holding regular elections at specific times; these should be basic conditions for parties continuing to be legitimate and active.
- The authorities should allocate a certain quota of representation for women in leadership bodies at various levels, matching the overall level of female membership in parties. They should empower women to take part in internal party activities and the decision-making process.
- There should be a suitable mechanism for holding internal elections to select party candidates for Parliament and for local and consultative councils; a percentage of slots for women in state legislative and executive bodies should be set aside.

Over the period 1990–2003 there has been a clear disparity in the level of democratic evolution in the organization of internal party life as between two main groups of parties. One group have achieved differing levels of evolution and commitment to running their internal relations on a democratic basis; they include parties that are active on the scene, such as the GPC, Islah, the YSP, the NUO and the Baath Party, and a small number of others. The second group, the remainder, lack the components of democracy. They are considered part of the multiparty system to the extent that they practise internal democracy.

The lack of democratic methods in most Yemeni parties' internal affairs is a fundamental reason for the proliferation of organizations and for the divisions between members of the same intellectual movements. Generally, this leads to the fragmentation of parties and weakens their role and impact on political life. It harms the democratic process. If parties could overcome their crisis of internal democracy they would strengthen themselves against disruption by external causes. This would guarantee their growth and development because it would lead naturally to the growth of the pluralist system and the development of the entire democratic process.

In conclusion, the top priority should be amending the law on political parties so that it guarantees sound democratic practice within parties and political organizations by making party activities open, requiring that regular conferences be held on time to select party leaders, and modernizing the foundations by laws that rule the parties' internal practices. This should take place in a way that guarantees equal rights for members, men and women, in debating and participating in decision making and external representation. The opinions of others should be respected; this will reflect on the relations among parties, on the premise that if democracy is not practised internally, within the ranks of a party, it will not be practised in relations with other political players, since democratic debate is the most civilized method of resolving disputes that arise both inside and outside political parties.

## Notes

<sup>1</sup> The introduction to the Constitutional Declaration of 1962 specified that the document would be in force for a five-year transitional period, but the temporary constitution issued in 1963 did away with this period. The temporary constitution would cease to be in effect from the date when the permanent constitution was approved by popular referendum. See article 60 of the 1963 temporary constitution (Sana'a: Legal Library of the Yemen Arab Republic, 1963): 26.

<sup>2</sup> The establishment of the Revolutionary Popular Federation, implementing article 155, was announced on 17 November 1966. It was the sole political organization in the country during this period, ceasing to operate when President Abdullah Sallal was removed from power on 5 November 1967. (For more detail, see al-'Azzi 1985: 220.)

<sup>3</sup> A professor of international law remarked about article 37: 'The constitution of the Yemen Arab Republic may be the only Arab constitution that bans party activity in all forms, and this allows for alternative organizations to survive, such as the tribe, which is more dangerous to the unity of the state. As for peaceful party activity, it guarantees the break-up of the tribal traditions from which Yemen suffers' (Tamawi 1988: 382).

<sup>4</sup> Article 44 of the 1978 constitution, amended, gave citizens the right of assembly and demonstration, and freedom of expression through the press, publishing and the media. The constitutions of 1970 and 1978, amended, established guarantees of the right to work, to free education and medical care, and to form mass organizations that adhere to 'the leadership of the political organization of the sole, ruling party'. Qa'id Muhammad Tarbush indicates that: 'These guarantees remained theoretical. What was actually implemented involved the monopolization of authority by the National Front's political organization and then the Yemen Socialist Party, and the establishment of dependent mass organizations. Freedom of opinion and demonstration were therefore constrained by the state's political and ideological directives' (Tarbush 1999: 23).

<sup>5</sup> The period between the setting up of the committee and the preparation of the draft constitution for a unified state and the declaration of its completion (1972–81) helped to preserve the independence of many of the committee members from pressure by the authorities in both Yemens because the government and the presidency changed in both regions. In the North, President Iryani was removed from power and presidents Hamdi and Ghashami were assassinated, and in the South President Rabi' was assassinated and Abd al-Fattah removed from power. As a result, some members of the committee were distanced from pressure by the authorities, while others represented political forces and organizations that were not in power, although they continued to be committee members (al-Jawi 1986: 130).

<sup>6</sup> Famous statements were attributed to President Abd al-Rahman al-Iryani in the early 1970s: 'Party activity begins with being influenced and ends with being an agent (of a foreign power)' and 'We reject party activity, whether it comes from priests or the devil'.

<sup>7</sup> One of the official slogans of the YSP was 'No voice over that of the party'.

<sup>8</sup> Article 33 of the government's draft law said that: 'Articles 9, 10, 11 and 12 regarding the procedures for setting up a political party do not apply to the GPC and YSP because they existed officially before the issuing of this law. They must regularize their position on the basis of paragraph 4 of article 6, regarding membership that predates the issuing of this law, by the end of the transitional period at the latest'. Articles 10–12 of the government's draft match articles 13–16 of the law regarding the establishment of the Committee on Political Party Affairs and the procedures for setting up a party. Regularizing their position means adhering to membership conditions and settling the situation of military personnel, judges and diplomats who were party members.

<sup>9</sup> The Committee on Political Party Affairs when it was re-formed requested that all parties which were in existence before the law was issued be covered by the exemption from the procedures for setting up a party. It also asked for acknowledgement of the fact that there were political parties and organizations that had had an actual presence for many years, even if this was not public, during which time they participated in political life and were dealt with by both leaderships in the two Yemens prior to unification. This meant that they should not suffer by losing the exemptions in the government's draft law. The committee stated that these parties should deposit their documents with the committee concerned, as per the specified measures. (Committee on Rights and Freedoms, Report to Parliament about the Political Parties draft law (date unknown): 32.)

<sup>10</sup> The condition that previously existing membership in the existing parties must be renewed shows the legislator's insistence on the need to follow this provision by banning members of the armed forces and the security organizations, judges and diplomats, from joining political parties, based on paragraph 4 of article 10.

<sup>11</sup> After the law was issued, a dispute arose between the GPC and the YSP about a number of issues, the most important being the failure to adhere to the principle of neutrality of the armed forces regarding party work; the merging of profit-making state institutions; the division of top political posts; and conflicting professional interests. Obstructing the work of the Committee on Political Party Affairs, which was formed in March–April 1992, was a way of avoiding implementing the provision on party activity in the army. Because of its organizational make-up, which included military as well as civilian members, the YSP was more inclined to allow this situation to continue (Abu Talib: 262).

<sup>12</sup> The freezing of the provisions of the political parties law did not lead to a break in the creation of political parties or their activity: they enjoyed the right to participate in the 1993 parliamentary elections. This applied to all the parties that had announced that they simply satisfied the conditions that allowed them to exercise this right.

<sup>13</sup> The composition of the committee was not finalized until after a long period of debate between the GPC–YSP governing alliance and the other parties, as the former sought to retain a majority on the committee. The government favoured forming the committee as per the draft law on parties submitted to Parliament: it would have five members, with the minister of state for parliamentary affairs in the chair, plus the ministers of the interior and justice, and two non-party members from among former Appeals Court judges, and its decisions would be issued in the form of presidential decisions from the (former) Council of the Presidency. The parliamentary committee, comprising representatives of other parties, in its report and suggestions about the draft law expressed the view that the committee should be made up of two ministers, one of them the chairman, and three independent members, according to certain selection criteria. For a comparison, see article 9 of the draft law on political parties submitted by the government: 4; Human Rights and Public Freedoms Committee, report on the draft law (date unknown), article 13: 14; and article 13 of the final version of the political parties law.

<sup>14</sup> See the Jordanian Political Parties Law, no. 32 of 1992, articles 7–9. Article 11 of the Algerian law states that measures related to licences for associations of a political character are the responsibility of the minister of the interior, who is tasked with monitoring compliance, publishing the licensing statement in the *Official Gazette*, and lodging requests to dissolve or suspend a party with the judiciary, according to articles 15 and 34 of the Law on Associations with a Political Character. In chapter 8 of the Tunisian Political Parties Law, no party can be set up and become active unless it is licensed on the basis of a decision by the interior minister. Those who seek licensing, according to chapter 11, must provide the ministry with a statement containing the name of the party, its slogan, goals and headquarters, and supporting documents.

<sup>15</sup> According to article 8 of the Egyptian Political Parties Law, no. 40 of 1977, the Committee on Political Parties is composed of the president of the Shura Council; the ministers of justice and the interior; the minister of state for Majlis al-Shaab (People's Assembly) affairs; and three non-party members who are former judges or their deputies. They are chosen by a decision by the president of the republic; the place of the president of the Shura Council is taken by one of his deputies if he is absent, and if they are all absent the president issues a decision naming a replacement chairman. For a quorum, the chairman and four other members must attend (including the three ministers). The committee takes decisions by a majority of the members present, with the chairman deciding the issue in the event of a tie. See article 8 of the Political Parties Law, no. 40, amended by Law no. 144 of 1980 and Law no. 30 of 1981: 9–10.

<sup>16</sup> For more information on the constraints resulting from the nature of the make-up of the Committee on Political Parties in Egypt, its wide-ranging mandate and the impact on the freedom of pluralism in Egypt, see Sumay' 1988: 363–7.

<sup>17</sup> Prohibited activities include impugning Islamic doctrine or religion; advocating a monarchy; activities that contradict the goals of the Yemeni Revolution, the republican system, unity and democracy; violating public security and order; interfering with the neutrality of the state bureaucracy; exploiting the state bureaucracy or public money for party ends; recruiting members in military institutions, the judiciary or the diplomatic corps; and using mosques or government or educational institutions for party activities or propaganda.

<sup>18</sup> The law specifies four sources of financing for parties: membership dues and donations; state budget allocations; returns on investment related to publishing newspapers or the activities of publishing houses, provided that the chief objective of the publishing activity serves the party's goals; and gifts and donations from Yemeni individuals. According to article 34 of the Implementing List, parties cannot invest money in commercial enterprises except for the print media and publishing. A party or political organization cannot accept any gift, donation or advantage from a non-Yemeni source, even if it enjoys Yemeni citizenship.

<sup>19</sup> The state's financial contribution to any party or political organization ceases in any of the following cases: (a) if a judicial decision is issued suspending the party's activity, based on article 43 of the political parties law; (b) if the party fails to submit its annual financial report to the Committee on Political Party Affairs; (c) if the party violates article 43 of the Implementing List by accepting a gift, donation or advantage (this is based on a judicial decision against which there is no appeal); and (d) if the party halts its activities voluntarily. The suspension of financial assistance ends and payment resumes if the reason for the suspension ends. Financial assistance ceases for any party whose dissolution is ordered by a judicial decision. (Implementing List for the Political Parties Law, articles 39 and 40: 15.)

<sup>20</sup> A GPC–YSP coalition was formed after the separatist movement was crushed in 1994 and the YSP moved to the opposition camp.

<sup>21</sup> The authorities based the constitutionality of their measures on article 5 of the constitution, amended in 1994, which permits the law to set out procedures for setting up political parties and organizations and to regulate their activity. Article 39 of the political parties law, in turn, tasked the Implementing List with determining the detailed procedures to implement the law; and the law gave the president the right to issue it in a presidential decision, based on a report by the minister of state for legal affairs, the chairman of the Committee on Political Party Affairs, after the Cabinet's approval.

<sup>22</sup> The parties of the National Council of the Opposition (formerly the Opposition Democratic Alliance) lean towards supporting government policies; they include the Democratic Nasserite Party, the Baath Party and the Liberation Front.

<sup>23</sup> The GPC's statement of formation was issued on 16 February 1996, followed by those of the Baath

Party on the following day, the Democratic Nasserite Party on 11 March 1996, and Islah on 1 March 1996. Besides the name of the party, its by-laws and political programme, the names of 75 founding members and 2,500 members were published as well. (*al-Thawra* 11408 (16 February 1996); 11408 (26 February 1996); 11443 (12 March 1996); 11451 (24 March 1996).)

<sup>24</sup> The six parties were the YSP, the Popular Nasserite Unionist Organization, the Baath Party, the Union of Popular Forces, the Yemeni Unionist Gathering and the Truth (Haqq) Party.

<sup>25</sup> The parties' challenge before the Constitutional Department of the Supreme Court argued that some articles of the Implementing List were unconstitutional, most importantly article 61, which obliges all parties to fulfil the formation and registration procedures in the political parties law and the Implementing List; article 31, which prevents party founders from carrying out any party activity until the party gains legal status; article 18, which appoints a secretary to the committee with the rank of minister, appointed by a presidential decision; article 81, paragraph 4, which forbids party membership for members of the SCER; and article 24, paragraph 2, which requires the by-laws and political programmes to be approved by party members when the application to set up a party is submitted.

<sup>26</sup> The challengers strengthened their brief with legal arguments that in their view proved the unconstitutionality of the articles in question. They felt that the court would accept their challenge and rule that the articles of Implementing List no. 109 of 1995 were in fact unconstitutional. See the challenge brief, Constitutional Department of the Supreme Court, Sana'a, 1995.

<sup>27</sup> The YSP held the position of deputy speaker of the Chamber of Deputies and the chairmanship of the Human Rights and Public Freedoms Committee, which reworked the draft law on political parties. See the report of the Human Rights and Public Freedoms Committee on the draft law on political parties and organizations (date unknown): 33.

<sup>28</sup> For example, the political agreement between the committee and the YSP, by which the latter would submit a list of 75 founding members and submit a letter confirming that the articles violating the political parties law and mentioned in the party's draft by-laws were no longer in force and would be amended at the fourth party conference. There was also a pledge to submit a petition with the names of 2,500 members at a later date.

<sup>29</sup> This condition was not contained in the draft law on political parties, no. 66 of 1991, submitted by the government, article 10 of which required only 75 members' signatures. The draft was reworked in Parliament and the Human Rights and Public Freedoms Committee, in article 14, added the stipulation that there be at least 2,500 members at the time of formation, to exclude small, fragile parties. This condition will also help bring together similar political orientations and encourage them to merge. For comparison, see the draft political parties law submitted by the government to the Chamber of Deputies: 4; and Human Rights and Public Freedoms Committee, report on the political parties law (date unknown): 16.

<sup>30</sup> Article 7 of the Egyptian Political Parties Law, amended in 1981, stipulates that the application to form a party must be signed by 50 founding members. The Tunisian law, no. 32 of 1988, in part 12, article 2, states that two or more founding members should sign each party's documents submitted. In article 12 of the Algerian law on associations with a political character, the application must be approved and signed by three founding members, while article 14 says that there must be at least 15 members. Article 4 of the Jordanian law, no. 32 of 1992, sets a minimum number of 50 founding members.

<sup>31</sup> A number of leading political figures confirm this. See al-Mikhlafi 1998: 30; Abbad 1998: 9; Qahtan 1998: 3; and Jassar 1998: 33.

<sup>32</sup> For example, some YSP leaders in 1994 announced their secession from the unified Yemen, which contradicted the goals and principles of the party. This had important repercussions for the party and

its place in political life.

<sup>33</sup> These segments are *sayyids*, judges, tribal sheikhs, farmers, merchants, artisans and servants.

<sup>34</sup> This school of thought also holds that the tribal composition of society is responsible for conflict and wars, especially the war of summer 1994. In fact the reality demonstrates the role of 'modern' forces in the outbreak of the war, especially political parties and the YSP, which considers itself a 'modern' organization. The war was fought with the heavy weapons of the army, not of the tribes. After the GPC and the YSP closed all avenues of dialogue, tribes sought to play a role in this dialogue. During the conflict, the position of the tribes was more progressive and sophisticated than those of some party leaders, as they remained neutral. It was expected that the party conflict would move to the one tribe whose membership was split between the GPC and YSP. (Abd al-Majid: 254.)

<sup>35</sup> For example, the decline in the influence of the tribes in Egypt and Tunisia did not help to improve the growth of parties or make their situation any better than those in Jordan and Yemen. Abd al-Majid: 251; and al-Jamal, Yahya, *al-Ta'addudiyya al-Siyasiyya fil-Watan al-Arabi*: 169.

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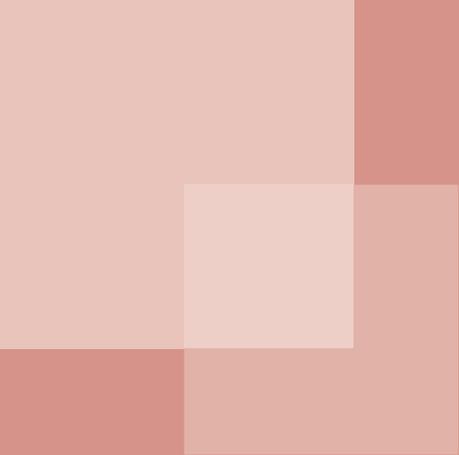
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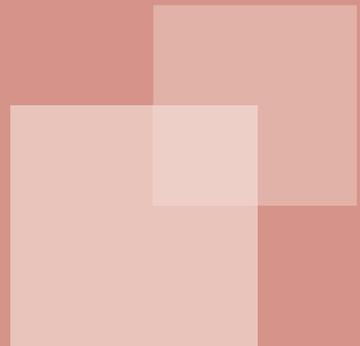
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# Chapter 3

## Electoral Systems in Yemen



# Electoral Systems in Yemen

## 1. Introduction

Multiparty elections have taken place in Yemen since the Republic of Yemen was established on 22 May 1990. The constitution guarantees party and political pluralism as the basis of the political regime, the goal being the peaceful transition of power through free and fair competitive elections run by an independent and neutral administration. This chapter will try to answer two principal questions. First, has the legislation in force created an equitable electoral system that guarantees the holding of free and fair elections based on the minimum criteria set down in international law? Second, are these criteria and the rule of law respected in practice, and in particular are the neutrality of the electoral administration, the neutrality of public money, the state media and the state bureaucracy, and the will and rights of voters respected?

To answer these questions, whether directly or implicitly, this chapter evaluates the electoral system in terms of the voting system and the requirements for winning seats, as well as the conditions of fair competition between parties. It examines the law and electoral practice in the light of international criteria for free and fair elections. Its methodology is based on an examination of both formal and analytical aspects, using a number of legal sources. These include the constitution, the Elections and Referendum Law, the political parties law and the Local Administration Law; other laws related to the minimum criteria of free and fair pluralistic elections, including international human rights instruments such as the Universal Declaration of Human Rights; and, finally, studies of how these criteria and different electoral systems

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are implemented in democratic countries and countries undergoing democratic transformations. In this context, the following deserve mention: the *International IDEA Handbook of Electoral System Design* published in 1997; Guy S. Goodwin-Gill's *Free and Fair Elections: International Law and Practice*, originally produced by the Inter-Parliamentary Union; a series of proposals for reforming the electoral system and dialogue about this topic by Yemeni political parties, especially the dialogue that took place in 2001; official declarations of the Supreme Commission for Elections and Referendum (SCER); and statements by the Yemeni opposition and international monitors, especially the National Democratic Institute for International Affairs, on the 2003 election.

The chapter also considers the conditions required for a democratic transformation to take place, as well as Yemen's priorities in making the transition from conflict, violence, authoritarianism and a one-party system to peace, pluralistic democracy, modernization and progress.

The importance and topicality of this chapter derive from its subject, as the future of the democratic transformation depends on the electoral system, which can either help or hinder this transformation. The first step in building a democratic system involves creating a parliament that is produced by elections of which the legitimacy is recognized; it must give expression to different ideologies and interests, must include both men and women and rich and poor, must be effective, and must influence the formation of governments and their policies. This situation has yet to come about in Yemen, as this study will show.

Since the current electoral system is the subject of some dispute and is believed to be one of the obstacles to democratic transformation, this study focuses on showing how far the electoral system provides confidence that election results are fair and just and that they provide for democratic transition and a peaceful transfer of power. The chapter also examines the obstacles to this process, both in theory and in practice.

The chapter deals with these topics in two sections. The first (section 2 below), dealing with criteria for representation in the Chamber of Deputies, takes up the electoral system as it relates to the representation of parties in the legislature. It examines the criteria for fairness, such as the proportion between the number of votes a particular party obtains and the number of seats it then receives in the Chamber; the strengthening of party pluralism through this electoral system; the move from tribes and tribalism to civil society; the extent to which the results are satisfactory and accepted by the public; the legitimacy of the authorities; the legislature's expression of different interests and ideologies; and the presence of women and the poor in it. Section 3 discusses inter-party competition and administrative and other aspects of the elections, according to the minimum standards for free and fair multiparty elections set down by international law. These include the neutrality and independence of the electoral administration; the soundness of the voter lists; the neutrality of the state bureaucracy, the state media and public money; the provision of a sound and safe electoral environment; and election campaigns. Each section examines the laws in

force and the practice on the ground to produce its findings.

Section 4 summarizes the chapter and puts forward general conclusions and proposals for reforming the electoral system.

## 2. Criteria for Representation in Parliament

Evaluating the current electoral system in order to gauge its suitability and suggest ways to reform or replace it requires, first of all, that we establish the priorities of the electoral system for the country in question. This is so that we treat democracy not as a mere collection of rituals but as an effective, sound and purposeful method of improving the democratic process in a particular country, whether it has built a democratic system or, as in Yemen, is trying to move beyond an authoritarian system, from conflict to peace, from totalitarianism to pluralistic democracy, and from traditionalism to modernity. This transition involves moving from tribalism and clannishness to a civil society and citizenship based on equality, empowering people to choose their rulers, changing those rulers through the peaceful transfer of power; removing obstacles to progress and the modernization of state and society; and creating a democratic social and cultural environment and structure that provide political stability and achieve development.

Choosing an electoral system means choosing its form and content, bearing in mind such things as the administrative capacity of the government, the level of development of the country in question, and the voters' educational level. A country like Yemen suffers from the fact that more than half of its population is illiterate and has low political awareness; one of the tasks of the electoral system therefore involves raising political awareness and seeing an accumulation of democratic culture through each election.

However, quite apart from the specific goals for a given country, we cannot ignore international criteria for free and fair pluralistic elections or the peaceful transfer of power. Otherwise, repeated elections could consecrate democracy in form alone while maintaining an authoritarian system along with anti-democratic practices. This would lead to a loss of trust and of hope in change through democratic mechanisms, particularly general elections. It is feared that Yemen could take this path if matters are not corrected before it is too late.

It has been 12 years since the democratic orientation in Yemen was proclaimed and there have been three parliamentary elections since then (in 1993, 1997 and 2003), a referendum on the constitution (in 1992) and a referendum on amending it (in 2001), the latter year seeing local elections as well. The first-ever presidential election was held in 1999. However, democracy has not been strengthened during this period. On the contrary, each election has been less sound and transparent than the one before, as will be shown below.

The priorities we will employ in discussing the ideal electoral system for Yemen are those of moving towards civil society and democracy, as well as achieving national

unity, social and political cohesion, and national reconciliation, at which the Yemeni state since unification in 1990 and the civil war of 1994 has yet to arrive.

Yemen has a First Past the Post (FPTP) electoral system—a candidate-centred system in single-member districts, in each of which one successful candidate is elected according to the plurality rule, or the largest number of votes cast. This section evaluates this system on the basis of three criteria: strengthening party pluralism, legitimacy and equity, and the general criterion of free and fair elections.

## **2.1. Strengthening the Multiparty System**

One of the priorities for Yemen's electoral system involves strengthening political parties and multiparty pluralism, the cornerstones of a democratic polity. Parties are civil society institutions that engage people who wish to participate in public affairs and political life. Through them different ideologies and interests are represented, and the destructive struggle over power and wealth is turned into competition for office through democratic mechanisms and free and fair elections. Building a democratic system and removing obstacles to change and modernization in Yemen depend on strengthening the multiparty system. An electoral system that does not embody this goal renders elections pointless and robs the movement towards democracy of its content and its future.

In the case of Yemen, party pluralism is a new concept, only acknowledged with the establishment of the Republic of Yemen in 1990; pluralism was not specified or discussed in the various unification agreements. These go back to the Tripoli Declaration<sup>1</sup> and even the Sana'a Treaty signed by North and South Yemen on 4 May 1988. These agreements stipulated a one-party system after agreement by the Yemeni Socialist Party (YSP) in North Yemen and the General People's Conference (GPC) in South Yemen.

The Tripoli Declaration advocated linking unity to democracy—that is, acknowledging party pluralism—and the Sana'a Summit of 24–26 December 1989 settled this by accepting the concept.<sup>2</sup> However, the type and purpose of this pluralism were not made sufficiently clear: the option of forming a national front, meaning authoritarian pluralism, was retained.<sup>3</sup> Even after a legal framework for pluralism was approved<sup>4</sup> and the political parties law (Law no. 66 of 1991 on Political Parties and Organizations) was adopted, efforts to merge the two parties have continued to this day.<sup>5</sup>

While party pluralism and the declaration of democracy resulted from the political balance that produced the establishment of the Republic of Yemen, an imbalance in this relationship because of the 1994 civil war means that the electoral system is decisive in strengthening party pluralism and improving the democratic process, and thus helping to eliminate the idea which was dominant in the North, that belonging to a party is tantamount to treason, or the culture of the one-party system that was in place in the South until 1990. At the same time, the culture of pluralism has not

been given the chance to grow since the republic was established. This is the result of the hate campaigns that preceded the 1994 war and their continuing impact, which reinforced anti-democratic and anti-pluralistic values.<sup>6</sup>

Thus, a suitable electoral system would be one that sees party pluralism replace tribalism, and national loyalty replace narrow loyalty to tribes, regions, groups and clans. For parties to rise to these tasks, the electoral system must help them become strong and cohesive. The party system must evolve towards one in which a number of parties enjoy effective representation in Parliament—representation that is in harmony with the different visions and interests that exist within the society. In other words, the electoral system must enable parties to create a wide base that is founded on these visions and interests. It should encourage parties to form alliances in order to create a broadly-based ideological and political membership and put behind them the obsolete ties that prevent national cohesion and lead to fragmentation along tribal, kinship and regional lines. An electoral system that preserves these retrogressive connections will not help strengthen democracy and modernization, and will equate party pluralism with tribal pluralism. It will strengthen the type of political party that is mixed with a tribal element—one based on kinship and regional ties. It is this latter kind of party that is found under Yemen's current electoral system, as will be seen below. Hence the need to replace the current system and for complete reform of the electoral system.

## ***2.2. Political Ties Replacing Tribal Relations***

The influence of traditional social structures in Yemen is well known. The leaders of tribes and clans, tribal relations, and tribal customs and traditions have been continually in the ascendant, despite the dialectic of historical transformation.

The traditional political system, the imamate, was abolished in 1962 in North Yemen and the tribe as an influential institution was limited to a small geographical area—the northern part of North Yemen. However, the late 1960s and early 1970s saw a revival of tribal relations in other parts of the North. In the 1980s, tribal relations were restored and tribal customs and traditions became dominant. After South Yemen gained independence from the British Crown and the nation state was established on the ruins of the sultan–sheikh system based on tribal structures, traditions and relations, state authority took over from tribal authority. To a great degree, political relations and national ties took the place of tribal relations; the law took the place of tribal custom and tradition.

However, after unification in 1990 and the beginning of pluralism, a targeted revival of tribal relations took place in the South, and after the 1994 war tribal culture became dominant throughout Yemen.

The authorities deliberately encouraged this culture of tribal relations in order for them to take the place of political and party pluralism. The result was the creation of parties mixed with tribal elements. Tribal and clan leaders, albeit manufactured

ones, have become party leaders. Loyalty to the authorities and gaining support for a candidate in parliamentary elections depend on tribal and clan loyalty and support; the current electoral system strengthens tribal ties, so that Parliament mostly represents traditional elements. This reflects the dominance of a very small minority in society in terms of actual structure and authentic culture.

Yemen therefore requires an electoral system that strengthens pluralism and allows the country to move towards modernity, the rule of law and institutions, and a civil society, with political parties at its forefront. Parties should play an effective role, not just in political participation and elections but also in actually modernizing and educating society in democratic values and human rights, moving towards a modern civil society. Political and national ties should take the place of tribalism and regionalism, which hinder national cohesion and the establishment of a modern state, not to speak of democracy, stability and development.

### ***2.3. The Fairness of the Electoral System***

A monopoly on power gives control of resources as well, and Yemen's backwardness and lack of resources make it impossible to realize a minimum level of social justice. The existence of a monopoly on power marginalizes the interests of the overwhelming majority of the poor and deprives them (especially women) of their legitimate political role. As a result, the authorities lose legitimacy and acceptance, and become a source of cycles of violence that weaken society and make it backward and unstable. An electoral system that produces a Parliament with men and women and rich and poor from all parts of the country is needed. The number of seats held by political parties should match the share of votes they receive, something which the current electoral system cannot ensure.

### ***2.4. Achieving and Accepting Legitimacy***

A reading of Yemen's recent and older history reveals a history of rejection of and resistance to tribalism, regionalism and family-dominated politics. The imposition of these systems has led to fragmentation, wars, revolutions and coups, which have set Yemen apart from other countries of the Arabian Peninsula. Democratic legitimacy is necessary for Yemen, its unity and modernization, and social peace. Thus it was recognized that unification had to come about peacefully, and the declaration of the Republic of Yemen included a reference to party pluralism. However, the 1994 civil war followed the first parliamentary election. As a result of this war, the legitimacy of the unified state and its rulers became the legitimacy of the victorious side in the war.

After this conflict, restoring national consensus and true legitimacy became a national priority. This requires an electoral system that helps to create a climate of harmony among regions, parties and voters, replacing the climate of hostility, conflict

and violence created by the war. One of the ways to achieve national reconciliation involves eliminating the sharp divisions within society, which were made worse by the war. A fair electoral system can play a role in this regard and produce results that achieve an acceptable level of legitimacy. This can take place if parties receive seats according to their levels of support in the election, and if different ideologies, positions and political groups are represented in the legislature. Parliament should represent the interests of all Yemenis, and be able to guide government policies in the direction of safeguarding all these interests and to stop mistaken policies. The legislature should hold the government accountable: a minority must be able to hold a majority accountable and prevent it from evading the concept of democratic legitimacy. The current electoral system cannot do this and should be replaced or reformed.

## **2.5. The Electoral System**

As mentioned above, the top priorities of achieving change and progress are the basis for evaluating the suitability of the current electoral system to promote democratic transformation and change the political and socio-economic structure of society. In the end, these are the objectives of holding regular elections. Can this electoral system truly lead to change and peaceful transition in power?

The issue of legislation has to be linked to actual practice and the consequences of this system.

In articles 43 and 64, the Yemeni constitution guarantees the right of all Yemeni citizens to vote and stand for a seat in the Chamber of Deputies, without discrimination on the basis of gender, colour, religion, politics, language, ethnic affiliation or residence. A person must be at least 18 years of age to vote and at least 25 to stand in the elections, and be able to read and write.<sup>7</sup> However, the constitution deviates from the principles of non-discrimination and equality in candidacy as it uses moral and religious values as a criterion. Article 64, paragraph D requires that a candidate for the Chamber of Deputies be morally upright and perform his or her religious duties. Moreover, article 3 of Law no. 13 of 2001 on General Elections and Referendums is discriminatory on the citizenship issue, as it sets down a period of time before a naturalized citizen can stand for the Chamber of Deputies.<sup>8</sup>

The constitution sets down two bases for the electoral law and allows the law to determine the details. The first, set down in article 5 ('The republic's political system is based on political and party pluralism, in order to see peaceful transition of power . . .') is that multiparty elections lead to the peaceful transition in power, which is also a foundation of the country's political regime. The second stipulation involves the single-member district. However, the constitution does not specify measures related to candidacy for the legislature or the way in which victory is decided, that is, it does not specify whether it should be an absolute majority (which would mean a two-round system) or through a plurality.

An examination of article 63 of the constitution might lead one to believe that, in opting for the single-member electoral district, the lawmakers wanted to allow people to choose between individuals and not parties, retain geographical representation, and link a deputy to the voters of his district so that local interests would be represented and constituents could hold the deputy accountable. Article 63 states: ‘The Chamber of Deputies is made up of 301 members, and the republic is divided into electoral districts that are equal in terms of population (varying in size by not more than 5 per cent); each district elects a single deputy’. On the basis of this reading, choosing between individuals and not parties, in a country in which cementing party pluralism is a priority, means that the electoral system is destroying pluralism before it has a chance to appear.

There is a contradiction between articles 5 and 63 of the constitution. This is true today and was true before the Republic of Yemen was established, but it was not true at the time the constitution was promulgated, which was before the consensus on party pluralism. The constitution was approved by the legislative bodies of both North and South Yemen, and then by a referendum at the beginning of 1992. Party pluralism was accepted consensually in the interpretation of article 39 of the constitution.<sup>9</sup> Article 5 of the constitution, meanwhile, stipulates party pluralism and the peaceful transition of power, but this was incorporated after the 1994 civil war, and at this stage the need to amend the other bases of the electoral system in another article—article 63—was not foreseen. This contradiction should be eliminated by replacing the FPTP system and its single-member district with a system that strengthens party pluralism.

As for geographical representation, linking a deputy to the constituency and representing local interests, this too was not present when the constitution was promulgated. We can see this by reading article 63 along with articles 4 and 75. Article 4 states that local inhabitants’ interests are represented in local elected bodies, while article 75 says that a deputy does not represent his district but the entire people and is responsible for safeguarding the interest of society as a whole.<sup>10</sup> Deputies are not accountable to the voters of the electoral district and the voters can place no constraints on their membership in the legislature.

Moreover, the situation does not encourage unity, which means that the divisions between the North and the South must be overcome, and regional affiliation must be replaced by national affiliation. The achievement of political cohesion is hindered by the geographical representation in the Chamber of Deputies which tips the balance towards the interests of the larger region, namely the North.

Thus, the single-member district has not helped to strengthen the democratic political regime or party pluralism. Party pluralism was not adopted when the constitution was promulgated, and there is a lack of awareness of the impact of this electoral system on the future of democracy and party pluralism.<sup>11</sup>

It is possible that a plurality system was chosen by both parties to the consensus at the time—the GPC and the YSP—because they sought controlled or balanced competition and because an election campaign would cost less than one under an

absolute-majority, two-round system. However, it is more likely that the system was adopted because it resembled the system both sides were used to before unification, in non-pluralistic elections.

Things changed after the 1993 election, when the GPC and the Yemeni Gathering for Reform (Islah) formed an alliance and won a share of the seats in the Chamber of Deputies that was greater than the percentage of total support they had received. They won the majority of seats in the North, while the YSP won all the seats in the South. The constitution was amended after the alliance's victory in the civil war, which removed the balance that the YSP, the largest leftist party, had provided. Party pluralism was no longer desired, and the government and the GPC retained the single-member district and victory by a plurality in order to achieve immediate results in the elections.

Under article 85 of the law governing the 2001 election, candidates stood under their political party's name or as independents. The law stipulated that at least 300 registered voters in most electoral districts must support the candidacy of an individual in order for him or her to stand as an independent, and that they could only support a single candidate in this way. However, a candidate put forward by a party was exempt from this requirement if the party nominated him or her and then withdrew its support; the candidate could then continue in the electoral contest as an independent. This measure may have been designed to spur competition among party members and to fragment the voting bloc of small parties and opposition parties in general, in an attempt to sow division.

Under articles 8, 57 and 100 of the election law, a voter can only vote once, for a single candidate in the district; the ballot paper should contain the candidate's name or special electoral symbol (the symbol of the party or that of the independent candidate). The names and symbols are listed on the ballot paper in order of the dates on which the candidates' applications were submitted. In a country in which most people are illiterate, the system does help this section of society exercise their right to vote.

According to article 105 of the election law the winning candidate is the one who secures a plurality (the largest number, even if is not an absolute majority) of valid votes cast.

Thus, Yemen's electoral system as it stands gives priority to a choice between individuals, with the choice between parties coming second. The financial resources and influence of the candidate and party also come into play: voters can benefit by selling their votes, retaining their government job or securing a new job, or protect themselves from harm as a defensive measure. The system is appropriate for a one-party state or one-man rule as a device to renew the legitimacy of the regime, regardless of whether there is any public conviction of its legitimacy. However, such a system is unable to produce results that lead to change or hope for change through democratic elections through the peaceful transition of power.

The electoral system is also unfair when it comes to administrative procedures and

fair competition. This makes it a source of frustration regarding democratic change and replacing leaders in office, and threatens the collapse of the political regime and a return, in one way or another, to the violence Yemen has known in different phases for centuries.

The following are the most important effects of this electoral system.

1. The system is not based on fair representation and does not represent the majority of voting blocs, whether in terms of geographical electoral districts or in terms of the nation as a whole. Likewise it does not represent parties fairly; hence the decline in party pluralism and its impact. The government party receives a share of seats in the Parliament that is greater than the percentage of votes it obtains, and the opposite is true for other parties. This weakens their representation and keeps small parties from being represented in the first place.

This trend has grown with each successive election. Hope for change by democratic means is disappearing and the Parliament is losing the ability to guide the government's policies and hold it accountable. This is weakening the role of the legislature, and the authority of the constitution is being overtaken by that of the executive branch. A minority is unable to hold the majority accountable and there is a lack of respect for constitutional legitimacy.

The results of the elections of 1993 and 2003 demonstrate clearly the trend for the party in government to win a disproportionate share of the seats in the Chamber of Deputies. In 1993, the GPC obtained 40.5 per cent of the total number of seats; while the YSP and Islah obtained around 20 per cent of the seats each.<sup>12</sup>

In 2003, The GPC obtained about 75 percent of the seats, the YSP obtained 2.33 per cent of the seats, while Islah secured around 15 per cent of the seats in the Chamber of Deputies.<sup>13</sup>

In a country which is seeking to move democratically from a pre-modern phase, in which traditional affiliations dominate, to one of the sovereignty of law, this electoral system works to stifle the possibility of change and transformation.

2. 'Mixed' parties have emerged, made up of state institutions and tribes. This has been encouraged by (a) the FPTP system with single-member district and victory by plurality, (b) the failure to distinguish between the party and the institutions of state or between public money and the authorities' private resources, and (c) the non-neutrality of the state bureaucracy and the state media.

There has been an increasing reliance on these mixed parties, the tribe, the clan and regional solidarity, while party pluralism has declined in favour of tribalism.

Parties have tended increasingly to fan regional and other conflicts, and the role of modern ideas has fallen by the wayside; party affiliation is beginning to become a matter of tribal affiliation. For the different political and tribal authorities to maintain their positions, a candidate or candidates of the government party must succeed, which means selecting candidates who can call on regional and tribal support. Local officials in various parties have resorted to the same strategy. Other parties, mainly leftist, rely

on modern concepts and anti-tribal ideas in their political platforms, while some party members have to stand as independents, hoping to gain the support of their tribes or avoid clashes with the tribes of other parties' candidates. This phenomenon was increasingly in evidence during the 2003 election.

3. The FPTP system with single-member district and victory by plurality is not conducive to a climate of harmony or to ending hostility and violence between parties and voters. This includes parties whose ideological–philosophical views and programmes do not in fact clash. The system obstructs the building of alliances between parties. For example, the parties to the Joint Meeting (al-Liqa al-Mushtarak) of 2003 were unable to conclude agreements not to compete against each other and to exchange support for each other's candidates. Their leaderships insisted on putting forward the largest number of candidates in various districts, to 'establish themselves'. The electoral system in fact leads to splits within parties because each local leadership within a party is keen to secure as much financial support as possible so that it can put forward the largest number of candidates possible in the largest number of districts. If a party fails to obtain parliamentary seats in a certain region it will try to exclude the members of its leadership who belong to this region.

4. The FPTP system (with single-member district and victory by a plurality of the vote) loses votes for parties. This loss of votes, especially for small parties and those that lack financial resources, means that members and supporters lose hope in their candidates winning. It leads to members refraining from participating in party activities and supporters voting for other parties' candidates. For this reason, in 2003 party cadres rebelled against their leaderships and were active in supporting candidates of other parties in order to obtain monetary rewards or to help the chances of a candidate from a party whose views were closer to their own. This leads to splits and divisions, the loss of the popular base and the shrinking of the parties' voting blocs. In the end, the interests and ideas of a large segment of society are not represented. The electoral system thus puts the future of the political system and democratic development in increasing danger. People lose hope that they can effect democratic change and lose their connection with the political regime. This danger is not reduced by the government party's efforts to draw intellectuals away from their parties and into the GPC by granting them privileged party or government positions. Each party is an expression of certain interests in society and a way must be found of representing all interests and sections of society in Parliament.

5. The single-member district system has not helped women to get into Parliament. The selection of candidates on the basis of who is best at mobilizing group and traditional solidarities means that party leaderships, especially at the local level, do not choose female candidates, or at least not in districts where victory is a possibility. It encourages parties that oppose the presence of women in Parliament to maintain this stance, and with each successive election the results have been worse for the representation of women in the legislature. In 1993, there were 42 female candidates and two won seats (for the YSP, in the South of the country). In 1997,

there were 19 female candidates and two won seats (also for the YSP, for Aden). The figure dropped to 11 candidates in 2003, with only one winning a seat (for Aden, from the GPC, although her victory was contested).

6. This unfair electoral system, which allowed the government party to control the results and win a comfortable majority in 1997 and a huge victory in 2003, has given traditional forces complete dominance over Parliament, not thanks to their actual strength but thanks to an electoral system which allows it to manipulate the results and employ real and artificial tribal ties to achieve this end—all this at the expense of the representatives of modern political trends and the participation in Parliament of women and representatives of the poor.

The GPC arose in the early 1980s as a party 'mixed' with members of the political authorities, which had allowed the influence of the tribes and of traditional forces in general to prevail in society. The GPC was also mixed up with the tribes themselves through the sheikhs and through their members in the army and various state organizations. A study in 2003 of the social make-up of the present Parliament showed that the GPC majority meant that the overwhelming majority in Parliament was made up of traditional forces, specifically tribal sheikhs, who comprise about 30 per cent of the total membership. Tribal sheikhs who combine traditional leadership with commercial activity, classified as merchants and businessmen, made up 26 per cent of the total membership. The sons of sheikhs and traditional leaders, whose social position is based on that of their ancestors and who are educated and work in state organizations, were classified as a new traditional class and represent 13 per cent of the members of the Chamber of Deputies. Military personnel (8 per cent), academics (4 per cent), self-employed professionals (7 per cent) and employees (12 per cent) made up the remainder (Yemeni Institute for Democratic Development 2003: 150).<sup>14</sup>

Thus, the electoral system has produced a Chamber of Deputies which is representative of traditional forces, the rich, and men, while the forces for modernization, the poor and women are increasingly brushed aside with each successive election. Retaining this electoral system and practice will gradually destroy party pluralism and the democratic orientation, blocking the possibility of modernization and of building a state where the law is sovereign.

7. The adoption of the single-member district has deprived one large group of the public—those living abroad—of their right to vote. Redressing this would require producing voter lists for every electoral district and for every country in which Yemenis are registered and reside, and ensuring an electoral mechanism for use in those countries. (Article 5 of the election law considers the country a single electoral district for presidential elections and referendums, while article 6 allows Yemenis to take part in presidential elections by voting at embassies and consulates abroad.<sup>15</sup>)

For this reason and others, such as deepening national unity and guaranteeing widespread popular participation, opposition parties suggested in 2001, while

preparations were under way for the 2003 election, that the government present a draft amendment to the election law that would replace the current system with a proportional list system.<sup>16</sup>

Judging from the evidence presented above, the current system is in conflict with the priorities for change in Yemen. It does not strengthen democracy or establish party-based pluralism; it is an unfair system that reduces the chances for new forces, important ideological and political trends, the poor and women to be represented. In the final analysis, it maintains the domination of traditional structures and the state that does not rely on the law. It does not help to remove the multifaceted social divisions or create national reconciliation that would put an end to the destructive effects of the conflicts of the past and cycles of violence, so that they can never be repeated. In particular:

- it perpetuates backwardness and the vitality and strength of traditional structures;
- it perpetuates the one-party system, the effectiveness of which is based on ‘mixing’ between the institutions of state and the tribe; and
- it eliminates the most important advantage of democracy by removing hope in the possibility for peaceful change through democratic mechanisms.

Perhaps simplicity and the low cost of holding elections are the only positive aspects of the current single-member district system. As for empowering independents to enter Parliament, it is an imaginary benefit, since independents cannot in fact compete with the parties. When an independent candidate wins it is thanks to the support of a party. He or she therefore joins this party’s parliamentary bloc or supports its positions. This is what happened after the three previous elections. In 2003, 14 independents were victorious and ten of them joined the GPC parliamentary bloc, while it was known that their victories were made possible by the support of parties from the Joint Meeting.

### **3. The Criteria for Inter-Party Competition**

The previous section has shown that Yemen’s electoral system is unfair and unsuited to building multiparty democracy. It is helping to preserve the traditional conditions that predate the rule of law. Whatever system is used in future, Yemen’s transition from conflict and cycles of violence to peace, and from the one-party state to pluralism, requires fair competition and the holding of safe, sound and democratic elections. This begins with securing the political and legal guarantees for free and fair elections (i.e., on a basis of equality).

Yemeni opposition parties have raised this demand prior to each election, starting in 1996, during preparations for the 1997 election, and until the most recent election in 2003.<sup>17</sup> They advocate allowing competition on an equal basis, according

to the minimum criteria for free and fair elections in international law. The 1948 Universal Declaration of Human Rights specifies, implicitly and explicitly, criteria of freedom and fairness in elections, such as general principles to guarantee freedom and non-discrimination when it comes to political rights. There are also specific principles related to the right of citizens to participate in administering the public interest and to enjoy free and fair elections, or democratic pluralistic elections. These are mentioned particularly in article 21 of the Universal Declaration of Human Rights and article 25 of the 1996 International Covenant on Civil and Political Rights.<sup>18</sup> The Inter-Parliamentary Union adopted the declaration on the criteria for free and fair elections in its 154th session in Paris on 26 March 1994. The decision of the UN Commission on Human Rights with regard to boosting the principle of fair and regular elections and other international and regional documents have also supported these criteria. Each citizen should have a fair share of participation in the political authority through a democratic, multiparty system whose authority derives from the free will of the people, expressed through free and fair elections that take place on a regular basis and are transparent, with the secret ballot, and all votes for voters and parties are of equal value. Other conditions that must be met are the securing of political rights; non-discrimination; fair administration of the elections; appropriate voter registration methods; measures to prevent cheating; respect for rule of the law; the protection by law of voters, candidates, parties and activists; and the provision of trust in the mechanisms for the settlement of disputes, especially the independence, neutrality and accessibility of the judiciary.<sup>19</sup>

In addition, the final statement of the Conference on Security and Co-operation in Europe (CSCE) in Copenhagen in 1990 stated that multiparty democracy and the rule of law were two fundamental ways to guarantee all human rights and basic freedoms, and that free competition and a clear division between the state and political parties constituted criteria for free and fair elections. This is all, of course, in addition to the presence of a fair electoral system, with the votes for each candidate or party determining the weight of its representation in Parliament.

Let us now apply these criteria to the Yemeni experience, regarding both legislation and practice, to gauge the extent of free, fair and democratic multiparty elections.

The constitution of the Republic of Yemen guarantees pluralism as connected to human rights in articles 4, 5, 6, 24, 25, 28, 40, 41, 42, 43, 58, 65, 106, 145, 146, 149, 151 and 159, and others. Laws on political parties and political organizations, elections and referendums, the press, the judiciary and others are to specify the general principles and rules in this regard. The constitution sets down the general principles of multiparty democracy, guaranteeing equality and non-discrimination by providing equal political opportunities, allowing social and political participation, free activity and affiliation, provision for competition and access to the state media on an equal basis, freedom of expression, respect for the independence of the judiciary, independent administration of the elections, and other requirements for free and fair elections.

The constitution states that multiparty elections (parliamentary, presidential and local) are a direct type of popular exercise of power (article 4) and that party and political pluralism is the basis of the republic. It further considers multiparty democracy to be a means for the peaceful transfer of power (article 5) through elections that are secret, regular, free, direct and transparent (articles 63, 65 and others).

The general election laws, beginning with no. 41 of 1992 and ending with no. 13 of 2001, specify the manner in which free, direct, equal and regular elections are to be held. These elections are supposed to grant citizens, both women and men, and political parties equal rights in elections and in candidacy. Law no. 66 of 1991 on Political Parties and Organizations set down for parties and political organizations the equal rights that they should enjoy.

Law no. 13 of 2001 stipulated the secret ballot and free, equal and direct parliamentary elections (article 55). Article 63 states that presidential elections must be competitive and article 78 stipulates the same thing for local elections. Articles 3, 8, 53 and 56 specify that elections should be based on the principal of equality, so that citizens who are politically eligible can exercise their right to vote and stand for office without discrimination, with each voter having one vote and the country being divided into electoral districts of equal size.

This equality is theoretical in nature, as the previous section has shown. The electoral system does not give a candidate victory on the basis of the relative weight of support received in terms of votes cast. In principle, equality means that votes have equal weight, although there might be slight disparities. However, the current FPTP system with single-member districts and victory through a plurality, whatever the share of the votes the winning candidate has won, leads to an imbalance; and this imbalance is increased by tampering with the division of electoral districts, by ignoring population figures, and by getting around article 62 of the constitution and article 42, paragraph A of the election law, in order to damage the chances of rival political parties, as will be seen below.

More than one article of the law specifies the meaning of free elections and freedom of choice. Article 4, paragraph E stipulates that no citizen can be coerced into selecting his or her electoral residence and no voter can be coerced into selecting a specific candidate; any person in a position of civilian or military authority who uses his authority or influence to alter the will of a voter will be subject to punishments set down in article 133 of the law on Parliamentary Elections and Referendums and dismissal from his or her position.<sup>20</sup> As for equality among parties, the meaning of this according to the law is discussed below.

Despite this, the phenomenon of coercion in all elections since 1994—the parliamentary elections in 1997, the presidential election in 1999, and the local elections that accompanied the referendum on the constitution in 2001—has made article 4, paragraph E a source of embarrassment for the government each time. In the second half of 2001, a draft bill submitted by the government sought to abolish this provision; the old law was retained after dialogue between the government and

the opposition.

The law stipulates the secret ballot to guarantee that the voter is protected from coercion in casting his or her vote; article 100, paragraph B stipulates voting behind a curtain, in secret fashion.<sup>21</sup> However, the phenomenon of coercion has spread, reaching its peak in the 2003 election, and voters, candidates and activists have all suffered from it. It has even taken place in polling stations where international observers were present, although they were only a very small percentage of the total (National Democratic Institute for International Affairs 2003).

International observers witnessed ‘legal—electoral infractions, including political intimidation and threats’ by activists with the GPC against other parties’ delegates. The security agencies intervened in the electoral process, security agents led voters to polling stations (National Democratic Institute for International Affairs 2003), and the principle of the secret ballot was violated in two ways: either ballot papers were distributed outside polling stations, with certain candidates’ names highlighted, or local government officials and security agents intervened to force public voting on their subordinates or on voters in general by tearing down the curtains and being present with voters when ballot papers were marked.

As regards the holding of elections on a regular basis, the Yemeni constitution and the election law do not use this phrase in defining free and fair; the concept appears implicitly in the specification of the mandate of Parliament and other elected state bodies, namely in the need to hold elections at the end of a given period,<sup>22</sup> based on international criteria. The period between the elections cannot be excessively short or long; it must be in line with practice in democratic countries (Goodwin-Gill 2003: 75).

On the basis of this definition of ‘regular’, the amendment to the constitution in 2001 was a retrograde step which inflicted damage on political life because the regular nature of elections was not respected, for two reasons.

First, according to article 64 of the constitution, before it was amended, the ‘term of the Chamber of Deputies is four solar years, beginning upon its first meeting’—a period of time suitable for a country in a period of transformation and common in many countries, including those with long democratic traditions. However, the amendment of the constitution in 2001 extended it to six years. This works against the strengthening of political pluralism and weakens hope in the possibility of a peaceful transition of power. The mandate of the president was also extended. Article 111 of the constitution formerly specified a five-year presidential term, and the amendment extended this period to seven.<sup>23</sup>

Second, the Chamber of Deputies and the president violated the legitimacy of institutions. The will of the voters had determined that members of Parliament should be elected for four years and the president for five. A presidential election was cancelled by not holding it as scheduled. Moreover, the president is supposed to serve no more than two consecutive terms, but this has been violated as well. When the president was elected for the first time, in 1994, this was an indirect election and it

was not counted when in 1999 he was elected for a second term.<sup>24</sup>

### **3.1. The Administration of Elections**

#### **3.1.1. Election Administration Committees**

One of the most important priorities for Yemen is to move from national division and a long, deep-rooted struggle to social peace and national concord, and from a one-party state to pluralism. However, there is still a monopoly over power and wealth and the law is not respected.

Recognizing the need to strengthen the multiparty system, and thanks to the political balance which made unification possible, the authorities formed a Higher Committee for Administering Elections after the Republic of Yemen was established. The committee comprised representatives of various political parties and groups before the constitution stipulated its creation and before Law no. 41 of 1992, on general elections, was issued. After the law was issued it was amended to specify the number of members of the committee, to allow all parties at the time to participate. The 17 members were nominated by the Chamber of Deputies and their appointment was confirmed by a decision of the president. Representatives of all political parties, independents and one woman were among the members.<sup>25</sup> Election committees were also formed, tasked with preparing voter lists and administering the first multiparty parliamentary election on 27 April 1993.

On the basis of dialogue and the principles mentioned above, the two sides at the time, the GPC and the YSP, along with opposition parties, agreed to have an independent body run the elections. It would be independent of the government, but not independent of the parties, which had to consolidate their role in order to strengthen pluralism. The neutrality of this body depended on two things, balance among the political forces represented and their ability to monitor its work, in order to prevent other sides from exploiting the committee to their own ends and to prevent the committee from violating the law.

The independence of the committee and the affiliated local subcommittees, with their neutrality guaranteed by the country's political balance and the conviction of all political parties that these bodies were competent and honest, had a major impact on the electoral process. The parliamentary election of 27 April 1993 was considered the fairest election in Yemen's history; but the 27 April 1997 parliamentary election, the presidential election of 23 September 1999 and the local elections on 20 February 2001 were all seen as steps backwards. The 1993 election strengthened multiparty democracy, while the subsequent elections were a retreat in terms of the margin for democracy and a disappointment regarding the move to democracy and change. It was clear from international experience that, to strengthen democracy, 'the institution running the elections must be independent and competent, and all participating candidates and parties must be aware that it is completely fair', while 'experience

shows that confidence in a fledgling multi party system is more likely if the parties themselves have chosen from among their peers those with experience in electoral administration (Goodwin-Gill 2003: 77).

Ironically, the running of elections in Yemen today has been undertaken, in legal terms, by an independent and neutral constitutional body since 1994, when an amendment to the constitution, article 159, stipulated that ‘running, supervising and monitoring the elections and referendums should be carried out by a neutral and independent Supreme commission, with the law specifying the number of commission members and the conditions that they must meet, and the method of their candidacy and appointment; and the specializations and mandate of the commission so that it can carry out its duties in the optimal fashion shall also be specified by law’.

The 2001 election law retained the statutes on the administration of elections as they appeared in the 1996 law and its amendments; the SCER was made up of seven members who were appointed, on the basis of a decision by the president, from a list of 15 persons nominated by the Chamber of Deputies. The list was approved by a two-thirds majority of deputies. The mandate of the commission was for six years, and all its members were eligible for nomination for a second and final term. The law stipulated that candidates for the commission had to be at least 35 years old, with both parents Yemenis, and must hold a university degree and possess the required competence and experience. After being appointed, a party member was obliged to suspend his or her party membership for the duration of his or her membership of the commission. The commission member enjoys immunity from dismissal, except by a judicial decision if he or she no longer fulfils one of the requirements of membership as stipulated in article 21 of the law. A vacant seat on the commission is filled in the same way, by selecting someone from the list approved by Parliament, with the new member serving out the remainder of the original member’s term. The commission members elect their chairman and deputy chairman.

The SCER is responsible for preparing for, administering, supervising and monitoring elections and referendums, beginning with dividing the country into local and parliamentary electoral districts, registering voters, overseeing candidacies, regulating election advertising and the use of the media, administering the voting and vote counting, and announcing the winners. At the local level, a supervisory committee in each governorate is responsible for overseeing the elections, and a committee in each district is responsible for preparing voter lists. There are subcommittees in each polling station, a committee to oversee elections at the level of the electoral district, and a committee responsible for each ballot box; this last committee is temporary in that it is convened at the start of the election and dismissed when it ends. A central, permanent administrative apparatus is responsible for overseeing all administrative aspects of the electoral process; it has branches in the governorates and is responsible to the SCER.

Although the new law stipulates competence and qualifications as criteria for recruiting people to this administrative body on a competitive basis through

advertisement in the public media, the existing imbalance within the SCER has allowed the government party to take it over and use it to its advantage.

According to article 25 of the law, besides the central administrative apparatus and its branches, the SCER is responsible for the following:

- central and branch supervisory committees, and committees to administer elections and referendums; the heads and members of these committees are responsible for performing tasks they are charged with by the law, and are accountable to the SCER, which can replace members who fail to carry out their duties;
- all individuals from the executive branch or local government who are asked to carry out duties connected with elections, such as security committees, governors, security officials and directors; the neutrality of these persons in carrying out the assigned tasks must be confirmed; and
- the state media and elections. The law requires local government officials who are tasked by the SCER with election duties to remain neutral. However, in elections between 1997 and 2003 these officials have combined election-related duties with election campaigns for the GPC in the areas where they serve.

The legal independence of the electoral administration and the SCER's responsibility for all aspects of the electoral process make its role decisive for all election-related measures and the election results. This body is a unique one in the Arab Mashreq, and its existence might lead one to assume that Yemen's elections are free and fair. However, when these supervisory bodies were formed in 1996, the lack of participation from the political parties made them representatives of the government and its party, the GPC; the presence of two representatives of Islah, as a party in alliance with the government at the time, did not change matters. Since the GPC is 'mixed' with the institutions of state, the executive branch of the government apparatus really ran the elections, to the benefit of the government and its party. There was no opportunity for competition among parties, but instead competition between state bodies, which monopolized power and wealth. This state of affairs saw the GPC secure a huge majority in the legislature in 1997, robbing the Chamber of Deputies of its effectiveness and the parliamentary and presidential elections of the element of competition, and in effect the GPC controlled the results.

The election law does not stipulate that the SCER shall be made up of party representatives, or that parties should take part in its setting up. However, beginning in 1996, the opposition parties began to demand to be represented equally, on the basis of the idea that balance would ensure the electoral administration's independence from the government and its neutrality, which is what the constitution and the law meant in stipulating independence and neutrality. There is the implicit recognition of the participation of parties in article 21, paragraph F, which requires party members to freeze their membership after being appointed to the SCER. Article 24, paragraph D says that the composition of any electoral committee or subcommittee cannot

involve only one party, which means that those committees formed after 1994 violate article 159 of the constitution and the election law. To remove any pretext for an opposition call for parties to be represented in the committees supervising elections, the government introduced a draft law to amend the election law of 2001 to abolish the independence of the SCER and the immunity of its members from dismissal, thus turning it into an apparatus tied to the executive authority, namely the president, the head of the GPC.<sup>26</sup>

The dialogue between the government/GPC and the opposition produced a compromise: the relevant articles of the law were retained, while a provision was added that anyone dismissed from a local electoral committee by the SCER would be replaced by a member of the same party to which the dismissed member belonged, and this was added to article 25, paragraph B. The government and the GPC were obliged to observe the principle of balance in forming the SCER and local committees of party members, without this being present in the law. The parties were to reach a consensus agreement about how to be represented, through dialogue preceding the formation of the committees.

However, subsequent rounds of dialogue failed to achieve balance in the formation of these committees, which prepared the new voter lists prior to the 2003 election and administered the election. The GPC maintained its two-thirds majority in each committee, with the YSP and Islah having one member each in the SCER. The YSP had 11 per cent of the members of local committees, compared to 20 per cent for Islah, while the other parties secured only symbolic representation, to the benefit of the GPC.<sup>27</sup> This meant that the parliamentary election held on 27 April 2003 did not satisfy the minimum criteria specified by international law, and even Yemen's own legislation, for free and fair elections.

### **3.2. Voter Registration**

Under the FPTP system with single-member districts, voter lists performing their function—allowing eligible voters to participate and preventing cheating—depends on a sound division of electoral districts according to legal criteria. Moreover, a voter's electoral domicile should not be tampered with, and precise documents and registration papers should be used. The process should include precise organization of the voter lists and public confidence in the neutrality and fairness of the electoral supervision apparatus, so that there is confidence in the entire electoral process and the results. The following considerations are involved.

1. The voter lists have a fundamental, if not decisive, role in ensuring free and fair elections.
2. The voter lists are the key element in securing legitimacy for the process, whether regarding the exercise of the right to vote or settling election-related disputes.
3. The voter lists are the key method used by candidates and parties to learn

about the different electoral districts so that their campaigns can be successful (such as canvassing from house to house).

4. The voter lists are the basic tool used by party and candidate delegates and observers in carrying out their duties on election day.

Article 63 of the constitution specifies the issue of equality in the division of electoral districts. ‘The republic is divided into equal electoral districts in terms of population, with a margin for difference of 5 per cent’. Article 53 of the election law of 1992, regarding electoral districts, confirms this principle of equality and the need to facilitate travel by voters to polling stations and the building up of contacts among people in the same district. Article 24, paragraph A states that the SCER ‘divides the republic into districts on the basis of equality, respecting social and geographical factors; this is issued in a presidential decision’. Paragraph B of the same article mentions ‘dividing each directorate into local electoral districts equal in terms of population, with a margin for difference of 5 per cent’.

Local districts, under the provisions of article 60 of the Local Government Law (Law no. 4 of 2000), are the geographical areas that represent a single-member electoral district for elections to local councils. Directorates are to be divided into local electoral districts of equal size. This provision existed before the amendments of 2002, as indicated in article 24, paragraph B of the election law; it also conforms to the need to respect social and geographical factors, according to paragraph A of the same article. However, in article 24, paragraph B, the election law aimed not only to confirm what was mentioned in the Local Government Law but also to tackle a number of problematic issues. It sought to correct problems resulting from massive fraud in the voter lists by specifying the electoral domicile in all elections and establishing voter lists which would specify election centres where registration and voting could take place. The election law also aimed to tackle the problem of tampering in the division of centres or local electoral districts and the discrepancy in this division, especially in view of the government’s decision for a new administrative redivisioning of the country into 301 directorates.<sup>28</sup>

However, attempts to deal with the electoral domicile issue were only partial in nature and did not produce a fundamental solution after the failure of dialogue between the government and its party, the GPC, with the opposition parties, when the former refused to amend the law.<sup>29</sup>

Article 2, paragraph D of the election law defines the electoral domicile as the place in which the individual usually resides, or which contains his or her principal place of work, or is the home of his or her family, even if he or she does not reside there. In other words, the law gives generous latitude for selecting an electoral domicile. This latitude in selection has led to tampering and cheating in the voter records, in the following ways:

- (a) using groups of people as ‘travelling’ voting blocs—army and security

personnel, civilian employees and workers in the public sector, students and others;

(b) removing competitors for a seat in a certain district or getting rid of the opposition candidates in districts where there are no strong tribal or pro-regime figures, by registering influential figures and letting them stand for office in areas with which they have no connection on the pretext that the area in question was the original residence of the individual's family;

(c) registering individuals in more than one electoral district, and registering under-age individuals in the voter lists; and

(d) voting in the name of the deceased or those absent from the country, or even in the name of those who are present and attempting to vote.

For these reasons, the opposition requested that the electoral domicile be limited to either place of residence or the residence of the family, abolishing the permanent voter lists in order to clear up the issue of electoral domicile after the additions and subtractions to the lists in 1996 involved considerable tampering; even the SCER acknowledged that more than 500,000 names were registered more than once. (On voter registration in 1996, see Higher Coordination Council of Opposition Parties 1997.) However, the government only accepted partial amendments, such as abolishing the permanent voter lists and issuing new ones based on the local electoral district as the electoral domicile. Selecting place of work as the electoral domicile now required at least six months in the job in the area in question.<sup>30</sup>

To allow people and parties to challenge mistakes in the voter lists and allow parties to set their campaign strategies for contacting voters, article 13, paragraph A made it compulsory for the voter lists in each electoral district to be published, with parties enjoying the right to copy them, at their own expense. Nonetheless, the new voter lists proved worse than their predecessors. The election legislation was not unified or respected, the election administration body was not neutral as it lacked political balance, and government policies were not implemented. The reasons for this are the following.

1. There was no comprehensive, accurate nationwide civil register that could prevent tampering with people's ages and electoral domicile, the registering of under-age individuals, or the registering of the same individual in more than one electoral district and under different names.

2. No administrative division measures were enacted, although a government committee was established for this purpose in 1991. There was a stalemate between the GPC and YSP, as the traditional forces preferred to rely on tribal and regional borders that predated not only unification but even the state itself. The draft law on administrative division went nowhere and, while the 2001 election law was being prepared, the government announced its plan to prepare a draft law on administrative divisions and submit it to Parliament for discussion and approval, after which the SCER would re-district the country into parliamentary electoral districts and divide

these into local districts. After the election law was issued and the SCER was formed, Parliament issued a decision, in a strange move that violated legal and constitutional provisions regulating the legislature's work. The decision halted the administrative division draft before it was submitted to Parliament.<sup>31</sup>

3. Because of the electoral system and the majority it produced, which was not based on legitimacy, the voter registration system was used in tampering and cheating, which in turn affected the election results. The draft law submitted by the government after dialogue with the opposition limited the documentation needed for registration on voter lists to the personal identity card, while voting took place with the electoral card.<sup>32</sup> However, as a result of the GPC's dominance in Parliament, the relevant parliamentary committee amended the final draft law so that it did not contain the new proposals, which were based on constitutional procedures. Thus, the electoral legislation contradicted itself and the 2003 election saw tampering with the electoral domicile and voter lists.<sup>33</sup>

4. The new election law, no. 13 of 2001, was an example of an attempt to legitimize illegal actions.<sup>34</sup> The SCER began preparing for the 2003 election by reviewing the districting system for parliamentary elections; the country's directorates were divided into local electoral districts, on which the voter lists would be based. The electoral domicile thus became the place of registration and voting.

The commission carried this out without matching the parliamentary districts to the local administrative divisions and without specifying the place of voter registration and voting, as if it were the electoral strategy of a one-party system. Thus, because of the large disparities between districts, the districting worked against the idea of equal electoral districts. Some districts contained 20,000 voters, while some had up to 60,000.<sup>35</sup> The large differences in local electoral districts were even more obvious, and the government sought to legitimize these disparities through laws passed by the Chamber of Deputies.<sup>36</sup>

Although districting took place according to a previously prepared plan, to limit equality and tamper with the electoral domicile, there was an official directive to register voters for local elections without adhering to specific legal controls on the electoral domicile.<sup>37</sup>

Cheating in the voter lists was obvious on three fronts: the registration of several hundred thousand people who were not of voting age,<sup>38</sup> the large disparity between parliamentary and local electoral districts in terms of numbers of registered voters,<sup>39</sup> and the fact that the number of registered eligible voters far surpassed the number that was expected on the basis of the population statistics.<sup>40</sup> The GPC, not surprisingly, benefited from these practices in the 2003 election.

### **3.3. Election Campaigns: the Influence of Money and the Mass Media**

Articles 5 and 40 of the constitution prohibit the exploitation of public-sector positions or the military or public money, as well as the state media, in the interests of a political party. The election law (no. 13 of 2001) and the political parties law (no. 66 of 1991) confirm this, in addition to stipulating that parties and candidates may use the state media equally in parliamentary elections.<sup>41</sup>

In practice, these provisions are widely violated. This did not have an impact in the 1993 election, because of the political balance of the time, but elections since then have shown it clearly. There is complete conformity between the government party and state institutions, which are responsible for running the GPC election campaign, headed by the governor in each district, who is responsible for all state institutions in his area as the head of the executive authority. The mass media—radio, television and the daily newspapers—are exploited in the service of GPC candidates (other parties have only one weekly newspaper each). With state organs responsible for the GPC campaign, public money is thus exploited and donations by businessmen are collected, and other parties cannot truly take part in the campaign when faced with this monopoly of power and money. This, in addition to the adoption of the single-member district and plurality, has led to election results that are almost predetermined.

As hope of achieving positive election results for the opposition dwindled and as the value of the individual vote decreased, and in view of the lack of awareness of mechanisms for change, voters sought to secure their interests through direct promises, whether real or unreal, such as promises for projects to be carried out in the electoral district if the GPC candidate was elected. Vote-buying also occurs, as was the case in the 2003 election: it is estimated that the GPC set aside 40–60 billion Yemeni rials (YER) (c. 217–325 million USD at current exchange rates) for this purpose, and Islah around 10 billion YER (c. 54.2 million USD). The YSP's assets are in the hands of the authorities, and the party ran its campaign by using a sum of 100 million YER (c. 542,000 USD) provided by the government. This was reflected at the level of candidacies, as the GPC fielded candidates in 294 districts, compared to Islah (221) and the YSP (105). Civil society groups were marginalized in this election, the parties suffered from internal divisions, unions and associations were dominated or paralysed, opposition newspapers and journalists were harassed by the judiciary (National Democratic Institute for International Affairs 2003), and the practice of coercion and violence spread. Dozens were killed and injured in the run-up to and during the election.

During the 2003 election, parties and candidates observed many infractions of the electoral law, attested to by international observers as well. They centred on the following practices.

1. The re-districting process ignored the criteria set down by the law, particularly

those involving population and geography.

2. Voters, civil servants and members of the armed forces and security organizations were widely coerced to register outside their electoral domiciles and vote for government candidates; public voting was enforced as well, although secret voting is mandated by law.

3. Vote-buying took place.

4. Voter lists were tampered with, as a large increase in the number of under-age voters was registered.

5. Candidates for opposition parties, especially the YSP and Islah, were prevented from standing.

6. During the campaign, public money, the state media and the civil service were exploited in the service of the government's candidates; opposition party activists were threatened with losing their public-sector jobs and harassed by the security forces. Some were threatened with violence and even received death threats. Opposition manifestoes were sometimes published in the state media but tampered with. State schools were manipulated by registering students who were not old enough to vote; they and their parents or guardians were coerced into voting for GPC candidates, under the supervision of the people making the threats.

7. The legal guidelines for election advertising were ignored, national and religious hatred was stirred up against opposition party candidates and their election paraphernalia was destroyed, and election advertising continued in polling stations.

8. Ballot papers were distributed outside polling stations and more than one was sometimes used; GPC candidates' names were marked on some of these ballot papers that were distributed.

9. Election administration committees had a majority of GPC members and changed election results when there were indications that an opposition party candidate might win. Election results were tampered with and the announcement of the results was halted when an opposition figure was about to be declared the winner. Force was sometimes used to cancel unfavourable results as opposition party members were removed from election committees. Ballot boxes and other documents were sometimes seized in such cases or the announcement of the results was withheld and they would be annulled by the SCER.

10. Members of vote-counting committees, campaign delegates and even international observers were ejected from polling stations and vote-counting centres; ballot papers were hidden or produced illegally.

11. Voters were prevented from arriving at polling stations by orchestrating confusion and gunfire.

12. GPC delegates were permitted to enter and leave voting areas in order to influence voters.

This state of affairs may have been due to the following.

First, the authorities monopolized power and wealth. This should be tackled by

constitutional reform that prevents the concentration of power in a particular state body or person. Legislation should be introduced that renders certain institutions concerned with administering public money, such as the Central Bank, and the state media and state bureaucracy, independent of the executive branch of government.

Second, the electoral legislation in force contains contradictions; the election law does not provide mechanisms to prevent the use of public money and the civil service in favour of a specific party.

Third, the bodies that administered the elections, such as the SCER and local committees, were not neutral. This problem has a direct impact on the electoral process and should be corrected immediately.

Fourth, the judiciary was neither neutral nor independent and was unable to take up new tasks, such as protecting pluralistic democracy and human rights. This was due to deficiencies in the training and administration of the judiciary and its performance.<sup>42</sup>

From the above, we can conclude that Yemen's electoral system and electoral practice have meant that each successive election has been a step backwards, leading to a one-party system. The authorities have engaged in coercion, exploited public money and the state bureaucracy to entice or intimidate voters, developed the art of violating the law, and restricted the ability of other parties to compete. If these practices continue, the 'playing field' will be restricted to one team, whose members will compete against each other, unless the existing electoral system is reformed, violations of the law stopped, and the playing field is levelled.

#### 4. Conclusion and Recommendations

The electoral system in Yemen—the FPTP system with single-member districts and victory by a plurality of the votes—is one that has become obsolete on the international scene. The single-member districts were incorporated into the constitution of the Republic of Yemen before multiparty democracy was adopted. The first election law, of 1992, adopted the principle of victory by a plurality, with candidacy by independents or in the name of parties. The constitution and the law guaranteed the right to vote for men and women over the age of 18 who are registered on voter lists, provided that they have had Yemeni citizenship for at least 15 years.

This chapter has sought to evaluate the single-member district and victory by plurality in the light of Yemen's priorities. The country is undergoing a democratic transformation and faces the task of moving from conflict and cycles of violence to peace, leaving behind the concentration and monopoly of political power, authority and money; from a one-party system to one of participation and multiparty democracy; from division to unity, modernity and a state governed by the rule of law; to a modern civil society where human rights are guaranteed. The electoral system was not carefully chosen, and the choice was not based on an awareness of the tasks at hand. Instead, it works against the achievement of these goals, does not strengthen

party pluralism, and fails to ensure equality because of the disproportion between voter support and numbers of seats won in Parliament. It does not produce results that enjoy legitimacy and is therefore obstructing the democratic transformation and the achievement of society's priorities. If this electoral system continues, it will lead to further frustration with the possibility for change through democratic means. It is holding back the greatest benefit of democracy—change through the ballot box.

This electoral system does have two positive points. First, it is not complex, which means that it suits the level of cultural awareness and widespread illiteracy in Yemen, as well as its limited administrative capabilities. Second, elections can be held at a relatively low cost. Nonetheless, the goal is not only to have regular or non-regular elections, but for elections to lead to a democratic transformation and the peaceful transfer of power. The FPTP system therefore contradicts the constitutional bases of Yemen's political system and works against the purpose for which local or parliamentary elections are held. According to the constitution, the basis of the political regime is party and political pluralism, and elections are the means to achieve peaceful transition in office between parties. This is the basis upon which all stakeholders in the democratic process come to accept the legitimacy of the elected government. This acceptance is only possible if the electoral system is fair and voters and political parties have confidence in the election results.

There are also many administrative measures that help parties and candidates to engage in equal competition. They include the independence and neutrality of the body that administers elections; reliable and tamper-proof voter lists; the separation between the state and political parties; non-intervention of the executive in elections; the neutrality of public money, the state media and the civil service; the holding of elections in a climate that is free of fear, intimidation and coercion; and the independence and neutrality of the judiciary, which is charged with protecting people's rights and ensuring that everyone has the right to resort to it in the event of disputes.

If these aspects of elections in Yemen are evaluated against the criteria for free and fair elections found in international law, the constitution and the laws on elections and political parties do include many of these criteria—the independence and neutrality of the SCER overseeing the elections; the representation of parties on different election committees; provision for the voter lists to be challenged before the committees and the judiciary; provision for voting procedures, vote-counting and the results to be challenged in the Supreme Court; prohibitions on the improper use of public money and the state media; equitable access to the state media for candidates and parties; provisions forbidding intervention by the executive and sanctions on those responsible; and so on. However, the legislation also suffers from a number of gaps and loopholes, such as the absence of mechanisms for preventing public money and the civil service being used by a political party. The government is a party to elections as, in the absence of the rule of law and an independent judiciary, it uses the state bureaucracy against other political parties. The judiciary performs poorly and

suffers from poor administration and lack of qualifications. There is no mechanism to specify how parties should be represented in running elections in a country where the rule of law has yet to take root, and only a balanced membership can help to form the type of electoral administration that can be neutral and independent of the government.

Moreover, the legislation governing the electoral system contains elements that work against its positive elements. For example, there are the issues of the reliability of the voter lists and the voting and vote-counting procedures. The legislation allows registration on the basis of personal identity cards that do not mention the electoral domicile, that is, voting without producing the election card that has been issued especially for this purpose.

However, the main negative effect on the process is produced by the lack of security, a proper electoral climate and a sound democratic environment, because the repercussions of the 1994 civil war are still felt. This conflict produced a deep division in society; exceptional measures against mass parties and organizations, especially against the YSP, remain in effect. In addition, illegal practices have dominated every election since the conflict. The authorities in the executive branch have intervened in the electoral process, and there is a conflict of interest involved in the same group running the GPC's election campaign and administering the election process through the SCER. The authorities in the executive branch have used coercion and pressure, exploited the army and security bodies, and employed state money and the state media in the service of government candidates. These practices eliminate the positive aspects of the electoral legislation and the possibility of equal competition between the opposition and the government, which benefits from power and money, sets the criteria for election advertising, and controls the majority of those tasked with administering elections.

The elections from 1997 to 2003 have seen a gradual transformation from free and fair multiparty elections to mere shadows of this, threatening the margin for democracy, political party pluralism and the legitimacy and acceptance of the results. If the process continues, parties and voters will lose hope that change can take place through democratic means. They will begin to perceive taking part in elections as useless or see elections only as an opportunity for achieving their own personal interests.

From this exhaustive reading of the electoral law and practice, the conclusion can be drawn that the electoral and political system in Yemen suffers from a structural problem in legislation which contradicts itself in its foundations, concepts, provisions and detailed measures. There is a contradiction in the culture of power, which accepts pluralism in form and in legislation but rejects it in practice in favour of reproducing a totalitarian form of polity, such as the one-party state, which is in the interest of traditional structures such as the tribe, the clan, the family, the region and centres of power.

1. The one-party regime is being recreated, in one way or another; and the situation prior to unification and the declaration of party pluralism is also being recreated. The government party's share of seats in the current Parliament is about four-fifths, weakening the legislative branch's role and its ability to influence the government and its policies. This means that the opposition—the minority—is unable to hold the majority accountable or to prevent it from deviating from the laws and legitimacy of the democratic system. The situation also threatens the return of authoritarianism and the loss of human rights.

2. The electoral system is not equitable because of the imbalance between the numbers of votes obtained by parties and their representation in Parliament. The government party has about four-fifths of the seats but received little more than half of the votes cast, regardless of whether these votes were secured by legal and proper means.

3. There is a lack of conviction in the legitimacy of the election results because opposition parties are not convinced of these results and consider them achieved by controlled and illegitimate means and through elections that are not fair and free. For this reason, and in the light of the opposition's rejection of the electoral system, discussion is under way within the opposition parties over the withdrawal of their representatives from the Parliament.

4. Women have been effectively prevented from gaining representation in Parliament.

5. Representatives of the poor and marginalized, who make up the overwhelming majority of society, have been kept out of Parliament.

6. Society's traditional forces dominate Parliament, marginalizing the forces for modernization and modernity, as well as those with knowledge and expertise in the various fields.

On the basis of what has been outlined above, the electoral system is in urgent need of reform, so that it becomes a complete and integrated system that achieves pluralistic democracy and carries out the tasks of democratic transformation. To achieve this, there must be guarantees of a democratic system as a whole, such as the normalization of political life, the achievement of national reconciliation, the separation of powers, and an independent body to administer public money, the state media and the public services, both civil and military. However, the scope of this study does not cover this; hence the following recommendation will focus on the reform of the electoral system.

#### **4.1. The Electoral System: Voting, Vote Counting and the Declaration of the Results**

1. The FPTP system should be replaced by a system that is still simple and administratively inexpensive to run—one that has proved in practice to achieve the

priorities of countries undergoing democratic transformation, especially those that resemble Yemen with its history of violent conflict and divisions, and its need for national reconciliation and a move away from the monopoly of power and wealth. In addition, party pluralism must be strengthened, election results must be fair and seen to be fair, and to be effective Parliament must represent rich and poor, men and women, and all political groups. The system of proportional representation and closed lists has proved effective in countries undergoing a democratic transition.

We suggest that the single-member district be replaced by the proportional list system. Fifty per cent plus one of Parliament's seats would be elected from national lists put forward by each party, with the remainder selected through lists in each governorate, whether through party alliances or alliances with independents. The system should include the following.

(a) The threshold for a party to be represented in Parliament should be the number of votes that will allow it to win one seat.

(b) Parties should be allowed to form blocs and set up a unified body (enjoying status as a legal entity) for purposes of electoral competition. They should have the freedom to specify the role of this body, which would help them coordinate their positions. It could stand in an election by putting forward a unified list, or separate lists, depending on the parties' preferences. In the latter case, it would reconstitute its votes into a single block and award a seat or some seats it had won to the party or parties that are least represented.

(c) Each party list should have a minimum level of women's slots to fill, namely 10 per cent, and place these names in positions on the list that are likely to win election.

(d) To limit the pressure on deputies to withdraw from their parties and the monetary enticements to them to take positions supporting the government party, the law should allow parties to replace deputies who stray from the party's programme or take positions opposed to its platform, if this is proved, replacing the deputy with the candidate with the next-highest number of votes on the candidate list.

2. The Shura Council, whose members are currently appointed by the president, should be transformed into a second chamber which provides for geographic representation. An equal number of members should be elected in each governorate, through a closed-list proportional representational system, with the governorate as the electoral district.

#### **4.2. Administrative Aspects of the Electoral System and Empowerment**

1. An administrative re-districting should be undertaken that reduces the number of governorates so that the southern and eastern provinces and new areas added to them would contain roughly half of the country's governorates. A redivision of directorates

and local electoral districts should then be carried out. Voter lists should be based on this new division, and voters should vote in the district where they have their electoral domicile and are registered on the voter lists. The governorate should be the electoral district in local elections for the governorate, and the directorate for local elections for the directorate, also using the closed-list proportional representation system.

2. A person's permanent residence or his family's permanent residence should be the electoral domicile.

3. The SCER and other election-related committees should be made up of parties that received 1 per cent of the total votes or more in the previous elections. No party should have more than one member on any committee. The Higher Security Committee (a part of the SCER) should be abolished and security committees employed only at local levels. These security committees should be under the direct supervision of the SCER and affiliated committees.

4. To prevent cheating, the law should stipulate the use of the available technologies to ensure the security of the voter lists, and they should be comprehensive and accurate. Fingerprints and electronic signatures should be used, and identity cards should be designed to prevent forgery; the electoral card should be used in all cases and it should show the electoral domicile.

5. Legal and institutional guarantees to guarantee the neutrality of state bodies should be provided, for instance:

(a) Administrative officials should be forbidden to head or participate in election administration bodies for their parties or to engage in election advertising, whether directly or indirectly.

(b) State employees should be prevented from being obliged to show up at work on election day, or transferred en masse to polling stations. Army and security personnel equally should be not transferred en masse to polling stations on polling day.

(c) Government agencies should be prohibited from spending their funds to support a political party or using it in the election in direct or indirect fashion.

(d) Media coverage of government activities, such as the inauguration of projects, the laying down of 'foundation stones' and field visits, should be suspended for a period beginning three months prior to an election.

6. Financial obstacles to and constraints on candidacy and all obstacles to submitting electoral challenges should be removed.

7. Electoral courts should be established, to be responsible for deciding the soundness of voting measures at polling stations, since the courts cannot act independently in deciding on legal challenges.

## Notes

<sup>1</sup> The Tripoli Declaration of 28 February 1979; and the Kuwait Declaration, issued on 30 March 1979, stipulating that a united political organization be formed, comprising all the people's productive forces.

<sup>2</sup> Text of the agreement issued by the Sana'a Summit. A Committee on Political Organizations would be tasked with: (a) drafting the basic orientations of the law on political organizations; (b) drafting the basic orientations of the Election Law; (c) drafting the National Covenant; (d) organizing dialogue with various organizations and involving them in discussion of the drafts mentioned above; and (e) preparing a plan for the relationship of the armed forces to political action in a unified Yemen.

<sup>3</sup> Although the Committee on Political Organizations, in its second session in Aden on 8–10 January 1990, endorsed political pluralism, the lack of complete conviction about the issue left the door open for another option, namely the forming of a national front on a voluntary basis.

<sup>4</sup> The legal form here involves endorsing the draft on basic orientations of the Law on Political Parties and Organizations produced by the Committee on Political Organizations in its session in Taiz, 3–5 May 1990.

<sup>5</sup> The government newspapers still repeat the call for the parties, especially the GPC and the YSP, to merge. This is an expression of the lack of conviction about a multiparty system and the feeling of irritation with the presence of the YSP.

<sup>6</sup> Strengthening the multiparty system will help not only to strengthen the democratic process but also to modernize the state and society. Modernization is being obstructed by the strength of traditional institutions—the tribe and clan, customs of clannishness and the narrow interests of tribes. Tribes and tribalism have helped to distance Yemen from modernization and progress. Of all the Asian Arab countries, Yemen has the lowest rate of economic growth because of the absence of democracy and a lack of a role for civil society. An election law should improve the role of groups like political parties, which have demonstrated recently that they can allow people to participate politically in an effective manner. They can help in modernizing society, guiding it towards democracy and human rights, and mobilizing individuals to make the transition to a modern civil society and participation in a democratic system.

<sup>7</sup> Article 43 says that 'each citizen who has reached 18 full solar years enjoys the right to vote' and that 'a citizen has the right to vote, be a candidate and express an opinion in a referendum; the law determines the provisions for the exercise of this right'. Article 64/1 says that: '1. The voter must fulfil the following conditions: A. He must be Yemeni. B. He must be at least 18 years old. A candidate for the Chamber of Deputies must fulfil the following conditions: A. He must be Yemeni. B. He must be at least 25 years old. C. He must be able to read and write. D. He must be morally upright and perform his or her religious duties and cannot have had a judicial verdict against him in a case involving the harming of public honour or trustworthiness unless he has re-obtained his civil and legal rights.'

<sup>8</sup> Article 3 states that 'each citizen who has reached 18 full solar years enjoys the right to vote, except for naturalized citizens who have not held citizenship for the period determined by law'. The basis of this discrimination is Law no. 6 of 1999 on Citizenship; the period was set at 15 years from the date of obtaining citizenship and only Muslims can obtain Yemeni citizenship. Article 23 of the Citizenship Law says that: 'A foreign male Muslim who has obtained Yemeni citizenship according to articles 4, 5, 6, 9 and 11 of this law cannot exercise political rights set down for Yemenis before 15 years pass following the obtaining of citizenship'. Nor can the person be elected or appointed to any parliamentary body until 15 years after obtaining citizenship.

<sup>9</sup> The constitution has been amended twice, and this article became number 58 in the current constitution. It says that: 'Citizens in all parts of the republic, such that this does not contradict the constitution, have

the right to organize themselves politically and on a professional or union basis, and have the right to form scientific, cultural and social organizations and national federations such that they serve the goals of the constitution, and the state guarantees this right . . . It will take all the necessary steps to allow citizens to exercise this right and guarantee all freedoms for political, labour, cultural, scientific and social institutions and organizations’.

<sup>10</sup> Article 4 of the constitution says: ‘The people are the holders and source of authority and exercise it on a direct basis through referendums and general elections. They exercise this authority on an indirect basis, through legislative, executive and judicial authorities, and through elected local councils’. Article 75 says that: ‘A member of the Chamber of Deputies represents the entire people and safeguards the public interest, with no constraints or conditions placed on his status as a deputy’.

<sup>11</sup> Both halves of Yemen used to hold non-pluralist elections and there was therefore no need to study other electoral systems. The system adopted was therefore not selected on the basis of a decision as to which kind of system was preferable, and there was no awareness of its impact on the future of democracy, political parties, political life and the multiparty system.

After the adoption of the multiparty system and the issuing of the political parties law in 1991, Election Law no. 41 of 1992 should have provided details about this system, and how the results could be a fair proportion between the number of votes received and victory in Parliament, so that majorities would represent majorities and not minorities. However, the FPTP system that was adopted meant that the actual percentage of votes won was not important for victory. In some districts, where competition is strong between various candidates, the winning candidate might have only 10 per cent of the actual votes cast.

<sup>12</sup> From official statements by the SCER. The other parties’ results were as follows: Baath—80,362 votes (3.5 per cent), seven seats (3.6 per cent); Nasserite Unionist Organization (NUO)—52,303 votes (2.3 per cent), one seat (0.33 per cent); Truth (Haqq) Party—18,659 votes (0.80 per cent), two seat (0.66 per cent). The Nasserite Popular Correctional Movement (al-Tashih al-Sha’bi al-Nasiri) and the Democratic Nasserite Party (al-Hizb al-Dimuqrati al-Nasiri) each obtained one seat, with roughly the same vote totals.

<sup>13</sup> From official statements by the SCER. The NUO received 1.83 per cent of the vote (with 1.88 per cent of men’s votes and 1.07 per cent of women’s) and three seats (1 per cent of the seats). The Baath Party received 0.68 per cent of the total votes and won two seats (0.66 per cent). Independents received 10.35 per cent of total votes and 14 seats (4.65 per cent).

<sup>14</sup> This study was included in a report by the Yemeni Institute for Democratic Development (Sana’a, 2003): 150. The original report demonstrates the GPC and government’s bias and praises the results of the 2003 elections.

<sup>15</sup> ‘A. During presidential elections and referendums, each Yemeni whose name is registered in an electoral district and who holds an election card can vote in any Yemeni embassy or consulate outside the country. The SCER must take the steps that guarantee this right to vote, depending on the circumstances in each country. B. No election can take place in any embassy or consulate if the number of present registered voters holding an election card is less than 500.’

<sup>16</sup> The proposal was part of a dialogue between the GPC and opposition parties during a meeting on 8 July 2001. The parties at the Joint Meeting which produced this suggestion were Islah, the YSP, the NUO, Baath, Truth and the Union of Popular Forces (Ittihad al-Qiwa al-Sha’biyya). Other parties such as the Septembrist Movement (al-Tanzim al-Septembri) also took part. The opposition put forward the proportional list system as a first choice, and if this could not be implemented it supported a two-round system, used when no candidate obtains 50 per cent of the vote in the first round. However,

the legal committee tasked by the Joint Meeting with producing detailed suggestions left the second proposal aside because it would not achieve the desired goals, not to speak of being administratively expensive. See *Mabadi' wa Usus Tarsikh al-Dimuqratiyya al-Shurawiyya wa Tatwir al-Amaliyya al-Intikhabiyya* [Concepts and foundations for cementing consultative democracy and improving the election process], prepared by the Joint Meeting of opposition parties.

<sup>17</sup> See the statements by the parties of the Higher Coordination Council of Opposition Parties and the Joint Meeting in the Council's *Min Ajli Intikhabat Hurra wa Naziha* [For free and fair elections], 1997. This was repeated in a proposal submitted to the dialogue between the government and the GPC and opposition parties:

'First: Guarantees to Reform the Political and Electoral Climate.

1. Guarantee the neutrality of state agencies and the bureaucracy so that the GPC does not exploit them.

2. Guarantee the neutrality of public money.

Second:

1. Guarantee the neutrality of the state media, and place them under the control of the National Media Committee.

2. Guarantee the neutrality of the armed forces and security organizations, and prevent any change in the will of the voters.

3. Guarantee non-interference with the judiciary, confirm the principle of the rule of law, provide a suitable political climate for the exercise of democracy by treating the repercussions of earlier political conflict, including the 1994 war, and achieve national accord.'

(*Mabadi' wa Usus Tarsikh al-Dimuqratiyya al-Shurawiyya wa Tatwir al-Amaliyya al-Intikhabiyya* July 2001).

<sup>18</sup> Article 21 of the Universal Declaration of Human Rights states: '1. Everyone has the right to take part in the government of his country, directly or through freely chosen representatives. 2. Everyone has the right of equal access to public service in his country. 3. The will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures.'

Article 25 of the International Covenant on Civil and Political Rights says that: 'Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in article 2 and without unreasonable restrictions: (a) to take part in the conduct of public affairs, directly or through freely chosen representatives; (b) to vote and to be elected at genuine periodic elections, which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors; (c) to have equal access to public service in his country.'

<sup>19</sup> These criteria are:

1. Free will: the people must be able to express their will freely and be guaranteed that the elections will take place in an atmosphere free of fear and intimidation. There must be a safe and secure electoral environment that safeguards human rights, removing the obstacles that might prevent full participation. The conditions for holding elections in a suitable environment must be met, and the freedom to choose any party, person or political group must exist. Each citizen must be reassured that he or she will not be harmed or injured as a result of his or her free choice.

2. Secure political rights such as freedom of opinion, expression, peaceful assembly and forming associations.

3. Non-discrimination; parties must have equal opportunities when it comes to campaigning, competing and having access to the state media, so that each party, including the government party, has

the same right to put forward its opinions and programmes.

4. The use of a regular and equal form of secret and general voting.

5. The fair administration of the election process: (a) impartial and independent administration and supervision; (b) proper voter registration; (c) documenting voting-related procedures; and (d) providing suitable means to prevent cheating and tampering;

6. The rule of law and securing its protection for all parties, voters and candidates.

7. Providing reassurance and confidence in settling disputes. Especially important here is the independence and neutrality of the judiciary and facilitating the resort to the judiciary.

<sup>20</sup> Article 133 of Law no. 13 of 2001 on Parliamentary Elections and Referendums says that no punishment should be harsher than imprisonment for one year for those guilty of the following: (1) threatening or using force to prevent voters from exercising their right or encouraging people to vote a certain way or abstain from voting; (2) giving or promising to give a voter material benefit directly or indirectly if he or she votes a certain way or abstains; (3) spreading false information about a candidate with the goal of influencing the opinions of voters; (4) entering a polling station armed, in violation of article 97 of this law; (5) cursing, defaming or threatening a member of an election committee in the course of his or her duties; (6) interfering with the election committee or ballot box with the intention of obstructing the vote counting; (7) using authority or influence to change the will of a voter by depriving him or her of his employment; and (8) violating article 143 of this law.

<sup>21</sup> 'The head of the Election Committee hands the voter a ballot paper to fill out behind the curtain designated for this, inside the election hall, in secret fashion. The voter then puts the ballot paper in the ballot box in front of the head of the Election Committee, its members, candidates or delegates, with none of these individuals having the right to read the contents of the ballot paper. A disabled or blind voter or one unable to distinguish between symbols or mark them may rely on an individual whom he or she trusts to fill out the ballot paper.'

<sup>22</sup> Article 65 of the constitution, after the amendments of 2001, states that the mandate of the legislature is for six solar years, beginning from its first meeting; the president calls on voters to elect a new legislature at least 60 days before its term ends.

<sup>23</sup> The amended article is now numbered 112 and reads: 'The mandate of the president of the republic is seven solar years, beginning from when he takes the constitutional oath of office; no person may hold the office for more than two terms, each of seven years' length'.

<sup>24</sup> Article 161 of the constitution says that: 'The period of seven years mentioned in article 112 of the constitution begins with the first, current term of the president'.

Article 162 of the constitution says that: 'The period of five years mentioned in article 65 of the constitution begins with the first, current term of the legislature, after the passing of this amendment'.

The concept of regular elections was avoided by creating new transitional statutes in the constitution. Article 161 considers the president now in his first term, which will allow him to stand for a third term. The same process was used to extend the term of the legislature, which overwhelmingly approved a two-year extension to the term of local councils in 2002, a draft law prepared by the government.

<sup>25</sup> Article 20 of the draft amendment says that the SCER is appointed as follows: (1) The president of the republic nominates a list of 15 people who meet the conditions mentioned in this law. (2) This list is presented to the Chamber of Deputies, which selects seven of them through an absolute majority vote. (3) The commission is formed of nine members in a decision issued by the president of the republic; the decision names the commission chair, in the following manner: (a) seven members chosen by the Chamber of Deputies; (b) two members chosen by the president. The commission is considered directly responsible for its activities to the president.

Article 21, paragraph C of the draft law stated that the president could replace any member of the SCER or appoint a person to a vacant seat on the commission in the same way that the person's predecessor was appointed. Paragraph E of article 22 of the draft law stated that a member of the SCER could not be a member of a political party or organization; if he or she is, he or she must resign from the party and announce this.

<sup>26</sup> To eliminate any connections that could be objected to, the amendment stated that SCER members could not be members of political parties. The provision preventing any local election committee from being made up of members of only one party was eliminated, but dialogue led to the older provision being retained.

Although the draft law aimed to do away partly with the legal conditions for free and fair elections, the acceptance by the government (and the GPC) of dialogue with the opposition was a positive step in the direction of the kind of pluralism that existed before the 1993 election (whatever the results).

During the phase of dialogue, the opposition parties insisted on article 159 of the constitution and the laws in force; they suggested amendments that would strengthen the neutrality and independence of the electoral administration and pluralism. The parties suggested having all worthy political parties represented in the committee, proposing that any party represented must have received at least 1 per cent of the total votes in the previous elections. The parties would nominate the members, the Chamber of Deputies would approve these choices unanimously, and the president of the republic would issue a decision to appoint or name them. Also, the committee would have nine members. Local election committees would be formed equally of all parties and replacement members would be from the same parties. To strengthen the SCER's financial independence, a separate budget would be set aside for it as part of the annual national budget.

These proposals were submitted by the Joint Meeting to a dialogue session on 8 July 2001, under the title *Mabadi' wa Usus Tarsikh al-Dimuqratiyya al-Shurawiyya wa Tatwir al-'Amaliyya al-Intikhabiyya* [Concepts and foundations for cementing consultative democracy and improving the election process]; a legal committee representing the parties of the Joint Meeting then submitted a detailed proposal regarding amendments.

<sup>27</sup> The shares of each party in the Basic Supervisory Committees and subcommittees in the 2003 election were as follows: the GPC 44 per cent, Islah 20 per cent, the YSP 11 per cent, the NUO 4 per cent, Baath 2 per cent, Truth 1.5 per cent, the Union of Popular Forces 1.5 per cent, Baath (Qawmi) 1.5 per cent, the Nasserite Democratic Party 1 per cent, the Nasserite Popular Correctionist Movement 1 per cent, the National Front 1 per cent, the Yemeni League 0.33 per cent, the Social Nationalist Party 0.33 per cent, the Popular Unionist Liberation 0.33 per cent, the Popular Liberation Front 0.33 per cent, the Popular Unity Party 0.33 per cent, the Democratic People's Party 0.33 per cent, the Septembrist Movement 0.25 per cent, and the Yemeni Unionist Gathering 0.25 per cent, in addition to 10 per cent as the share of the SCER. In practical terms this benefited the GPC.

<sup>28</sup> An opposition demand involved re-districting for the parliamentary and local elections in addition to specifying the local district as a voter's electoral domicile.

<sup>29</sup> The opposition asked for the electoral domicile choices to be limited to permanent residence or family's permanent residence, eliminating the place of work option.

<sup>30</sup> The government and the GPC only accepted partial amendments, such as the local district as the parliamentary polling centre and those concerning place of electoral domicile. In addition, the local district was identified in article 2: 'It is the basic electoral unit which contains voter lists for all voters eligible to vote. It constitutes the electoral centre in the parliamentary electoral district and contains the voter lists in use in local, parliamentary and presidential elections and referendums'. Article 4, paragraph

A stated that: 'In any case, the person cannot register his or her name in more than one electoral centre, and can only vote in the centre in which his or her name is registered'.

Article 4, paragraph B contained the stipulation that a person must have worked in a location for at least six months before being able to transfer his or her electoral domicile to that place.

The law abolished the permanent voter lists and stipulated the drawing up of new ones in the local electoral districts. Article 144 says that: 'After the issuing of this law, the SCER begins registering voters' names at each local electoral district, and these voter lists are considered to be what is employed according to article 2 in local, parliamentary and presidential elections and referendums'. To combat tampering by the authorities through the use of the electoral domicile and civil servants and military personnel, whether by coercion or threats or payment of money, article 4, paragraph D says that having more than one electoral domicile constitutes a felony. Paragraph E makes it a felony for anyone using civilian or military authority to affect a voter's choice, including forcing him or her to change electoral domicile. Article 13, paragraph B makes it a crime to remove a name from the lists illegally.

According to article 12, paragraph A, voter lists can be reviewed and edited within a period of 30 days once every two years, and in addition once within four months from the date of the decision to hold elections. No changes are then allowed after this decision is issued.

<sup>31</sup> A possible explanation for this is the dispute between traditional and modern forces within the GPC about this division, which was known only to the GPC and the government. To alleviate the embarrassment for the government, the GPC used its large majority in Parliament to stop the draft. This in itself shows the negative side of the current election law, which produces such a parliamentary majority and thus a weak Parliament.

<sup>32</sup> Article 11 of the Election Law says that voter list committees must confirm the age of the person whom they wish to register on the voter lists by referring to a personal identity card or other official document containing a photograph of the individual. This provision was the result of a strategic policy with specific goals, which met with no opposition when the committees or the judiciary were approached about the practice. Article 18 says that: 'A. Each citizen whose name is registered on the lists has the right to vote and must prove his or her identity with a personal ID, electoral card that contains his or her photograph, or any other official document that contains his or her photograph'. However, the changes introduced by the Chamber of Deputies did not deal with article 99, which says that each voter must present an election card to the head of the Election Committee when voting, and the head of the committee or one of the members must confirm the person's identity and inclusion on the voter lists; this will be marked next to the person's name.

<sup>33</sup> Party officials, civilian and military personnel, neighbourhood leaders and the majority of election committees coordinated to oversee the transport en masse of members of the state apparatuses and students to polling centres selected by these officials; here they voted under the supervision of civilian and military personnel and school principals. The single-member district increased the tension associated with this practice. Local officials and party members were tasked with ensuring the victory of certain government candidates, and those who failed to do so saw their chances of promotion disappear.

<sup>34</sup> There are other examples. There is no competition in presidential elections; the opposition called for people to boycott the referendum to amend the constitution in 2001 or vote No. Since voter lists are limited to the voters in a given district and are produced manually, there was considerable confusion about voting and departures from the rules about electoral domicile or proving one's identity upon voting. This, of course, worked against public confidence in the results. Article 5 of the election law for 2001 stated that, for the purposes of presidential elections and referendums, the country is considered a single electoral district; voters can vote in any polling station upon showing their personal identity

document, electoral card or other official document containing their photograph. The SCER must introduce measures for guaranteeing this right. The constitution had been amended to make it consistent with the Local Government Law; later, the Local Government Law was amended in view of the violation of the local electoral districting provisions of article 60.

<sup>35</sup> See the official statements by the SCER of 2003.

<sup>36</sup> The government's proposal to amend article 60 of the Local Government Law defined the local districts and a presidential decision was issued on districting. Prior to the amendment, the law tasked the SCER, based on the provisions of article 59, with dividing the directorate into districts with each one having one member of the directorate's local council. Article 59 stipulates that districts must be roughly equal in terms of population, but the amendment violated this, although the provision remained; it also violated the election law in force.

<sup>37</sup> Lower committees were subject to directives issued by bodies other than the SCER. Directives came from the Security Committee not to adhere to the electoral domicile when it came to members of the armed forces and security organizations. When parties objected to these practices, the SCER became their enemy openly, announcing that it would adhere to these illegal practices.

<sup>38</sup> The SCER acknowledged 200,000 such people.

<sup>39</sup> The disparity between districts was obvious from the official statements of the SCER.

<sup>40</sup> There were 8,097,162 registered voters, while the official population statistics indicated that the number of those 18 aged and above was 8,814,413 (Central Statistical Bureau, *Annual Statistical Report 2001*: 39–42). It is estimated that more than 1 million Yemenis reside outside the country. There are also people who are eligible to vote who have not come forward to register, such as women, who as eligible voters greatly outnumber men.

<sup>41</sup> Article 5 of the constitution says that state-sector jobs or public money cannot be used by a party or political organization. Article 40 sets down the same stipulation for the members of the armed forces, the security organizations, the police and other forces. Article 39 tasks the SCER with ensuring that the state media (print and audiovisual) offer candidates the opportunity to present their programmes equally. Article 143 of the 2001 election law says that the state's resources, organizations and equipment cannot be used by any party or candidate, whether directly or indirectly. Article 133 of the law provides sanctions for violations.

Article 33 of the Law on Political Parties (no. 66 of 1991) states that the state bureaucracy must be neutral and cannot be used by any party or organization, whether directly or indirectly. Nor may public money be so used. Article 31 states that parties have equal access to the state media to present their opinions to the public.

<sup>42</sup> In addition to the lack of trust in the judiciary, the election law set down a 50,000 YER (c. 270 USD) fee for challenging the election results, which meant that some parties, like the YSP, were unable to file challenges. The party filed only two challenges in its name and left others to submit challenges in their own names if they could secure the money to pay the fee. The SCER overturned the results in only three districts, to the benefit of the GPC, out of more than 60 in which challenges were filed.

The problems of the lack of rule of law and the lack of independence and neutrality of the judiciary have been dealt with in *Qadiyat Dawlat al-Qanun fi al-Azma al-Yamaniyya 1999* [The issue of the rule of law in the Yemeni crisis]; Human Rights Training and Information Center, 2002a; and Human Rights Training and Information Center, 2002b.

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## Acronyms and Abbreviations

ADHR	Arab Human Development Report
FPTP	First Past The Post
GPC	General People's Congress
SCER	Supreme Commission for Elections and Referendum
NUO	Nasserite Unionist Organization
YSP	Yemeni Socialist Party