

Yemen's Constitutional Process after the 2011 Revolution

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ABSTRACT

This paper focuses on the constitutional process that Yemen embarked on following the 2011 Revolution. It examines its achievements, the historical stations it experienced, and the reasons it stumbled. The paper is divided into three sections.

The first section focuses on the extent to which public participation was taken into account in the constitutional process. It compares the 1994 war and the 2015 on-going war, by looking into their causes and consequences, as well as the political and constitutional process that was proposed at the time with the aim of building a state based on the rule of law and achieving broad power and wealth-sharing. It further examines the manner in which the members of the Constitution Drafting Committee were selected, to assess the extent of public participation in the constitutional drafting stage. Lastly, it turns to the Constitution Drafting Committee that was established in Yemen following the 2011 Revolution, revealing the multiple stages it went through and its traits. It concludes that the committee acted as both a political and a technical body.

The second section assesses the extent to which the Yemeni draft constitution meets the aspirations and demands of the people. In this regard, the concept of overthrowing the regime – the slogan that was raised during the revolution, and across most of the governorates of the Republic – is explored both organically and substantively. In addition, the key constitutional guidelines that resulted from the National Dialogue are addressed, namely, comprehensive change and the establishment of a civic and federal state.

The third section examines the extent to which the Yemeni draft constitution could be effectively implemented, highlighting the features that distinguish it from the current constitution. It further outlines the objections that were directed at the draft constitution, such as the rejection of the federal state by the same actors who demanded its establishment, as well as the rejection of comprehensive change by some political actors who had previously called for such change. These objections are addressed and clarified.

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The paper concludes that the key to the solution in Yemen is to end the war, establish comprehensive peace, and seriously endeavour to build a civic and federal state that guarantees broad power and wealth-sharing, as per the draft constitution, which no political faction should be allowed to violate in the future. Peace in Yemen hinges upon building a new state that accommodates and protects everyone.

Keywords: *Political process, change, peaceful solution, devastating effects of the coup against the peaceful solution.*

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INTRODUCTION

A constitution embodies the essential rules in the absence of which no contemporary political system can exist. While some constitutions consist of a set of customary norms rooted in the public and private consciousness for many generations, most contemporary countries have written constitutions that differ in the way they are developed, adopted, and amended, keeping pace with generational developments and changes of era. Western philosophers hold different views regarding the legal value of constitutional rules; some consider the constitution to be a political document, while others consider it a supreme legal norm that should not be violated. Each view is supported by different arguments, but the fundamental difference is that those who hold that the constitution is a political document do not consider it to be binding. In other words, they believe public authorities are allowed to change it whenever they desire to and in the manner they deem appropriate. Meanwhile, jurists who view the constitution as a binding legal document – or even as the supreme legal norm whose provisions must not be violated – have seen their position reinforced through the imposition of specific sanctions for non-compliance with the provisions of the constitution, thus affirming its legally binding nature that requires punishing those who violate it and declaring any legislation or action contrary to it null and void. This is achieved through the establishment of two forms of constitutional oversight: political and judicial. Such oversight is exercised by constitutional councils or supreme/constitutional courts, whose main role consists in reviewing the constitutionality of subsidiary legislation and annulling any provisions that contradict the constitution.¹ The above applies to Western-style constitutions that are in place in most contemporary countries. However, the analysis of how Arab constitutions are drafted and the extent of popular participation in adopting and amending them requires a separate, detailed study of the constitutional process behind each of them.

In Yemen, no written constitution was adopted prior to the revolution of 26 September 1962. All the written constitutions that followed were enacted by virtue of decisions issued unilaterally by the President every so often, in the form of constitutional declarations, until the permanent constitution of the Yemen Arab Republic was enacted in 1970. This constitution was suspended several times by unilateral decisions and subsequently revoked with the establishment of the Yemeni unity at the beginning of 1990, when the Constitution of Unified Yemen was adopted in 1991.² This was the first constitution to be adopted by a referendum, amid religious opposition to it, which deemed its approval an overt act of disbelief. However, such opposition was met with an alternative religious discourse that approved of the adoption of the constitution and called for addressing constitutional issues that are of interest to the public, instead of focusing on the identity of the state, which, they argued, must be civic.³

¹ Abbas Mohammed Zaid, *Reviewing the Constitutionality of Laws* (Cairo: Dar Al-Nahda Al-Arabiya, 2008).

² With regard to South Yemen, there was the amended constitution adopted on 21/09/1978 by the Supreme People's Council, which represented the Socialist Party as the only political force under the totalitarian system that ruled both sides at the time.

³ Abbas Mohammed Zaid, *The Role of Religious Discourse in Shaping Yemeni Constitutions* (Beirut: Arab Association of Constitutional Law, 2017).

The Constitution of Unified Yemen was issued in a democratic climate and amid unprecedented freedoms. However, soon after, a civil war erupted between the ruling parties that had achieved Yemeni unity. As a result, the unity constitution was amended by Parliament in accordance with its own provisions. The state's identity, structure, and economic system changed under the slogan of "the Islamization of the Yemeni Constitution," which had been described as an infidel constitution prior to its amendment. This (Islamic) constitution, which emerged after the amendment of the Constitution of Unified Yemen at the beginning of 1994, was also amended by a referendum at the start of 2001. The main purpose of those constitutional amendments was the recurring renewal of the President's term, which is explicitly defined in the constitution. As such, public authorities repeatedly amended the constitution without engaging the public in any discussion or explaining the nature of the amendments, and without allowing any participation from outside the ruling party. The ruling party limited itself to justifying the amendments and using all the means available to pass them.

The abovementioned events occurred before 2011 – that is, before the outbreak of the widespread protests which turned into a revolution that ousted the decision-makers at the time and replaced them with others. The revolution was attacked by the authorities, who committed massacres against protesters in public squares and carried out arrests (which are still ongoing to this day). However, the revolution eventually managed to achieve its goal of overthrowing the heads of the previous regime one after the other. The purpose was to establish a constitutional foundation for the peaceful transition of power which had long been circumvented by the authorities. The revolution also sought to broaden the scope of the people's demands, by calling for the recognition of rights and freedoms that were absent under the previous regimes, and to demand participation in power and wealth distribution. "When people demand freedom, dignity, equality, social justice, the end of tyranny, and the departure of tyrants, these slogans are first and foremost related to the constitution. If existing constitutions had stipulated these rights in theory and ensured their practical implementation, there would be no need for revolutions, protests, and all the violence and destruction that have afflicted the countries of the region."⁴ One of the prominent demands raised by the protesters was the establishment of a civic state.

All of these demands should have been enshrined in any constitutional document drafted at the time. However, their mere inclusion cannot be deemed sufficient in the absence of broad participation by the Yemeni people in setting the goals and identifying the key guidelines to be adopted by the constitutional legislator, as well as a clearly drafted and detailed constitutional text, which should also be approved by the Yemeni people.

This is what we aim to address in the present paper, which will shed light on the historical context in which the Yemeni constitutional process unfolded following the 2011 Revolution. We will attempt to answer a set of related questions, the most important of which are the following: What is the extent of public participation in drafting and adopting the Yemeni Constitution? Did the new draft constitution include the demands expressed by the people during the revolution? Will there be any significant differences between the current constitution and the new draft constitution, in case the latter is adopted? Accordingly, the study is divided into three sections.

⁴ See the introduction of the Arab Association of Constitutional Law's programme on the constitutional process.

The first section examines the extent to which the constitutional process that was followed in Yemen has enabled public participation. Under this section, we address several questions, including how the members of the Constitution Drafting Committee were selected and appointed, how the Yemeni draft constitution was developed, and what the proposed mechanisms for adopting it are (I). The second section looks into the extent to which the Yemeni draft constitution meets the people's aspirations and demands (II). Lastly, the third section considers the extent to which the Yemeni draft constitution can be effectively implemented. Under this section, we address the following questions: What are the new 'revolutionary' provisions contained in the draft constitution? How likely is the draft constitution to be adopted and effectively implemented? What are the risks and challenges that may hinder its future approval? (III)

The present study addresses the above questions, as well as other questions related to the constitutional process that Yemen has embarked on. The paper draws on historical testimonies, especially since the author is a member of the Constitutional Drafting Committee and is familiar with most of the events that have taken place. Indeed, those events continue to unfold, and the draft constitution, which was developed under challenging circumstances, continues to draw political attention ahead of its political and popular approval.

I. THE EXTENT TO WHICH YEMEN'S CONSTITUTIONAL PROCESS HAS ENABLED PUBLIC PARTICIPATION

To determine the extent to which the constitutional process that was followed in Yemen after the 2011 protests adheres to the principles of legitimacy and public participation, it is necessary to answer several questions, the most important of which are: Has the principle of public participation and societal dialogue been taken into consideration in the ongoing constitutional process? Does the current process differ from previous ones that were followed to issue constitutions or constitutional amendments in Yemen? In order to address these questions and identify the features of the current process and how it differs from previous processes, it might be useful to compare it briefly to the events that occurred in 1994 after the establishment of Yemeni unity in 1990. This was the result of an agreement between the ruling parties in the north and south to achieve integrated unity and adopt the Constitution of the Republic of Yemen. Prior to that, several negotiations took place over a period of approximately ten years between the authorities of both regions (the Yemen Arab Republic and the People's Democratic Republic of Yemen).

The political crisis between the two ruling parties (the Socialist Party and the General People's Congress) escalated after the results of the 1993 legislative elections were announced. King Hussein of Jordan intervened as a regional intermediary, and a political dialogue took place between the political elites in Aden. The agreement that was reached was signed in the Jordanian capital, Amman, in the presence of Yemeni and regional representatives, and it was named the Document of Pledge and Accord.⁵ Afterwards, the North Yemen authority,⁶

⁵ The Document of Pledge and Accord included several constitutional amendments, the most important of which was calling for the establishment of a federal system, reforming the military, and guaranteeing the peaceful transition of power.

⁶ The forces loyal to former President Ali Saleh and his ruling party at the time.

along with the Yemeni Congregation for Reform (Al-Islah Party),⁷ waged war. Following the end of the war, the Document of Pledge and Accord signed by all political factions was violated. The ruling party did not only breach its provisions and disregard the constitutional reforms outlined in the document, but it also sought to discredit those who upheld it, leading to the trial of some leaders of the Socialist Party who had signed the document.

It is worth mentioning in this context that the political dialogue at that time was limited to the leaders of political parties and prominent political figures within the government and the opposition, where the number of participants was 80 or so. However, following the 2011 Revolution, public participation in the political dialogue expanded significantly, involving more than 560 individuals. The dialogue included young people and women from various political movements, and it encompassed participants from both the government and the opposition. Furthermore, the political process was not limited to the National Dialogue; it was preceded by a Technical Committee tasked with preparing for dialogue and then followed by the establishment of a committee tasked with drafting a new constitution. This process, which we discuss in detail in subsequent sections, would amount to a multi-phased constitutional process. Before doing so, it is worth to highlight the main characteristics, similarities, and differences between the pre-1994 dialogue and the dialogue that took place before the 2015 war.

- The dialogue that preceded the outbreak of the 1994 war took place among political elites from various currents and active political entities at the time, as well as political and social influential independent figures (such as tribal leaders and party leaders). However, the number of participants did not exceed 80 individuals, and as a result, no youth, women, or civil society representatives participated. On the other hand, the National Dialogue Conference held in 2013 included political elite leaders, young revolutionaries, and women, where the number of participants reached 560.
- Both the exclusive dialogue process of 1994 and the inclusive one of 2013 have advantages and disadvantages that cannot be fully listed here. Therefore, we will only highlight some of them. One of the significant advantages of the inclusive dialogue was the emergence of prominent figures who were brought to the forefront through the 2013 National Dialogue Conference. These figures did not have political parties or platforms supporting them; rather, they rose to prominence as a result of their active participation in the National Dialogue at its various stages. They played a role in advocating for change, as evidenced by the presence of figures such as the Minister of Foreign Affairs, the Prime Minister, and others from the political and military circles from all parties. Furthermore, the process provided an opportunity for the emergence of female political leaders and enabled some of them to hold decision-making positions.
- Below is a table outlining the main features of the dialogue processes of 1994 and 2011.

⁷ A tribal gathering of Sunni scholars and the Muslim Brotherhood in Yemen.

	Event	1994	2011
1	<i>Political crisis</i>	Between the Socialist Party on one hand and the General People's Congress and the Al-Islah Party on the other	Crisis leading to the 2011 Revolution and clashes between the Joint Meeting Parties and the General People's Congress, as well as the youth taking part in the protests
2	<i>Regional mediation</i>	Mediation by King Hussein bin Talal of Jordan	Mediation by King Abdullah bin Abdulaziz Al Saud of Saudi Arabia
3	<i>National dialogue</i>	Dialogue in Aden among political elites at the time	National Dialogue in the capital city of Sanaa involving political elites, independent youth, active women's participation, and representatives from civil society
4	<i>Signing an agreement</i>	The agreement was signed in Jordan on 18 January 1994 after the dialogue in Aden.	The Gulf Initiative was signed in Riyadh on 3 April 2011, followed by dialogue in Sanaa and the endorsement of the outcomes of the National Dialogue.
5	<i>A declared war after signing the agreement in alliance with an Islamic movement</i>	The war took place between the army loyal to Ali Abdullah Saleh, the Al-Islah party, and the Salafists against the Socialist Party in the south.	The war took place between the army loyal to Ali Abdullah Saleh and the Houthis (Ansar Allah) against the Al-Islah party and the south.
6	<i>Exclusion and monopolization of power</i>	Exclusion of the Socialist Party, which signed the unity agreement	Exclusion of all political forces participating in the National Dialogue
7	<i>Condemnation of the national document and denunciation of its proponents as traitors</i>	Undermining of the Document of Pledge and Accord	Undermining the Gulf Initiative, discrediting the outcomes of the National Dialogue, condemning the constitution, and persecuting those who endorsed it
8	<i>Monopolization of power and the army</i>	The monopolization of power by the General People's Congress and the Al-Islah Party, followed by the exclusion of the Al-Islah Party and the subsequent monopoly of power by the General People's Congress	The monopolization of power by Ansar Allah (the Houthis) and the Saleh faction, followed by the exclusion of Saleh and the subsequent monopolization of the army and popular committees by Ansar Allah (the Houthis)

The events leading to the Document of Pledge and Accord and those leading to the National Dialogue are strikingly similar.

It is worth noting that similar events took place following the signing of the Peace and National Partnership Agreement in 2014. After the formation of the government resulting from this agreement, half of the government ministers and the President, Abdrabbuh Mansur Hadi, had their freedoms restricted by Ansar Allah (Houthis) and security and political forces loyal to the former President, Ali Abdullah Saleh. Similarly, following the agreement between the General People's Congress, loyal to Saleh, and the Houthis, and the formation of the Supreme Political Council in 2016, a coup took place against the agreement, leading to a war between the former allies.

This conflict resulted in the Ansar Allah group (Houthis) reneging on their partnership with Saleh and subsequently monopolizing power. As a result, the equation shifted in favor of the party that managed to gain control, which changed the course of events and further complicated the situation. The main reason for these coups against the agreements and understandings reached was the lack of national and legal guarantees or regional and international guarantees, not to mention the ambiguity in the agreements themselves.

It is essential to emphasize the need to preserve the value of collective work, which are oft lacking in developing countries. The essence of the problem lies in the ability of every movement – and even every individual – to grant themselves the right to impose their own vision on others, even if this means resorting to the use of force if they are capable of doing so. Hence, any collective work that may require months or years to achieve in order to avoid the exclusion that affects everyone and causes suffering for all is disregarded. The failure to recognize the value of collective work leads to several problems, including:

- Non-compliance with contracts and agreements
- Violation of accords made between parties
- Breaking any agreement simply for having the power or authority to do so or due to a change in position, stance, or the ability to engage in treachery and betrayal
- Describing collective work with inappropriate characteristics, discrediting it, treating it with disdain, and waging media wars against it, which is known in Islamic jurisprudence as “Irjaf” (false rumours)

Collective work may be criticized for requiring time that can vary depending on the level of patriotic sentiment and the willingness to reach agreements and make concessions in order to accept the other and their differences.

We will now attempt to answer the remaining questions under this section. Did the method used to formulate and adopt the draft of the new constitution enhance the legitimacy of that draft in a way that counters the disadvantages of preceding stages? How was the committee responsible for drafting the new constitution formed in 2014? Was it appointed or elected? Did it represent all segments of society? Was the participation of women ensured?

To answer these questions, it is necessary to explain the method used to select the members of the Constitution Drafting Committee and to assess the extent to which societal and public participation were taken into account during the Yemeni constitutional process. This can be done by reviewing the affiliations and qualifications of the committee members.

A. THE METHOD USED TO SELECT AND APPOINT THE MEMBERS OF THE CONSTITUTION DRAFTING COMMITTEE

The method that was followed to select the members of the Constitution Drafting Committee was unique. It combined the advantages of election while avoiding the drawbacks of appointment. It was neither through direct election nor solely through appointment. Instead, the selection was based on consensus among the members of the

Guarantees Committee on the eve of the final day of the comprehensive National Dialogue Conference on 20 January 2014. The consensus reached among the Guarantees Committee members was to ensure equal representation of all political parties, political factions, and participants in the National Dialogue Conference. The calculation was made based on the participating factions and entities in the National Dialogue Conference, which resulted in 17 political factions, including representatives of civil society, women, and the youth. In fact, a representative from each party was selected regardless of whether the party had representation in Parliament or not. This was based on the fundamental principle that all participants emerged from a popular revolution against all authorities, primarily due to the absence of genuine representation of political factions in the elected and appointed state authorities.

Moreover, the principle of equality in representing political factions was a significant step towards achieving the highest level of diverse representation for all regions, political factions, and religious sects. As a result, representation was based on equality, regardless of whether a party had visible and widespread popular representation or not, since the work assigned to the committee was primarily technical, even though it had political implications. More importantly, the principle of equality was absent during the period prior to the 2011 Revolution; the opportunities for political party work were uneven, transparency was lacking, and public funds were misused, favoring certain parties over others. Some parties faced political persecution and were targeted, in violation of the law, and authorities waged wars based on sectarian or political considerations, resulting in a lack of equality and equal opportunities. In response, the participants in the Guarantees Committee at the National Dialogue Conference adopted the principle of equal representation, whereby each political component was required to nominate experts and specialists from various professional backgrounds to ensure that the composition of the committee was suitable for its assigned work. This approach aimed to achieve broader representation of the Yemeni people, encompassing all political factions and regions.

As such, each political component had a representative in the Constitution Drafting Committee, which allowed members from various age groups and experts in law and Sharia, both among those in power and those in the opposition, to participate in the committee. Academics from various Yemeni universities were further involved, making the composition of the committee diverse. In addition, women's representation in the committee exceeded 24%.

After the political forces independently selected their representatives, without interference from public authorities, they submitted their nominations to the Secretary General of the National Dialogue. These nominations were then referred to the former President of the Republic, who issued the decision to establish the Constitution Drafting Committee but lacked the power to select its members. Rather, the President's role was limited to formally appointing the members on the basis of the nominations submitted by the participating political forces. As such, his decision merely reflected the nominations of the political forces involved in the National Dialogue.⁸

The representatives of the youth, women, and civil society were nevertheless excluded from this nomination process; these were instead nominated by the Secretary General of the National Dialogue Conference based on criteria

⁸ Presidential Decree No. 27 of 2014 establishing the Yemeni Constitution Drafting Committee.

established by members of the National Dialogue Conference, specifically representing the women, youth, and civil society components.⁹

The above serves as an attempt to determine the extent to which the Yemeni constitutional process enabled community and public participation. A brief overview of the composition of the Constitution Drafting Committee and the political, academic, and regional backgrounds of its members helps confirm the matter.

1. Regional composition

North		South	
Ismail Al-Wazir	Sanaa	Ahmad Bamtref	Hadhramaut
Dr. Olfat Dabei	Taizz	Dr. Ahmad Attieh	Shabwah
Dr. Intilak Moutawakel	Amran	Jaafar Basaleh	Hadhramaut
Dr. Mohammad Al-Amri	Al Bayda	Dr. Jaafar Chawtah	Aden
Marwan Naaman	Taizz	Dr. Said Al-Skouti	Hadhramaut
Dr. Moeen Abedlmalak	Taizz	Randa Salem	Aden
Dr. Abbas Zeid	Sanaa	Dr. Najim Chmairy	Aden
Dr. Abdelrahman Al-Mokhtar	Hajjeh	Dr. Nihal Al-Awlaqi	Shabwah
Dr. Abdel Rachid Abdel Hafez (joint administration regions)			

2. Professional background

Some believe that the process of drafting a constitution only requires legal specialists and jurists, but this belief is mistaken. A constitution governs all members of society; it should be easily understood by everyone, and its provisions should be clear to all citizens. Therefore, it is essential to involve experts from various fields and scientific and practical specializations in the drafting and formulation of its provisions. It is in the interest of every citizen to be aware of the essential provisions contained in the constitutional text, not to mention specialists and intellectuals in the humanities and applied sciences. Therefore, the participation of experts from the humanities and applied sciences in developing the draft constitution brings added value to the drafting committee, especially since drafting a new constitution often encompasses various interconnected topics requiring expertise in different fields, including the humanities and applied sciences.

The committee effectively required all that expertise and specialized knowledge, whether in sociology, engineering, languages, or gender studies. The committee's composition facilitated the participation of a larger number of academics, most of whom work in various Yemeni universities, reaching a total of 12 academics.¹⁰

⁹ The nomination of representatives of civil society, women, and the youth was controversial. This is understandable, as any nomination, appointment, or even election mechanism is bound to be questioned. Controversies even took place within parties, which is logical given the large number of people that could have assumed the role.

¹⁰ Several academics and professors from Sanaa University, Aden University, Hadramout University, Taiz University, Hodeidah University, Dhamar University, and other private universities took part in the Constitution Drafting Committee.

While the expertise of some non-academic members exceeded others, particularly in the field of constitution drafting, experience has demonstrated that all specializations are beneficial. The only shortage of expertise in the committee was in the field of economics, which was addressed by seeking the assistance of economic experts, both national and international, specialized in the fields of economics or public finance. This was necessary because the constitutional draft addresses economic and financial issues, especially since it adopts a federal system that specifically requires clear provisions regarding public finance, resource and revenue allocation among the different levels of government.

The table below outlines the specializations of the members of the Constitution Drafting Committee.

Specialization	Number
Law	12
Sharia and Law	1
Islamic Studies	1
Sociology	1
Civil Engineering	1
Languages (Gender Studies)	1

3. Country of education

The Constitution Drafting Committee stood out for the diverse educational backgrounds of its members. The countries that the members received their education in varied, spanning several Arab and foreign countries. This provided a special advantage to the drafting committee in terms of the variety of schools and different specializations in the fields of humanities and applied sciences. It enriched the committee with a wide range of knowledge and diverse perspectives, without implying that all its members were exceptional. Yemen possesses a wealth of expertise, but the selection of committee members by different political factions ensured the diversity of their specializations, which added value to the committee rather than weakening it. While membership in the committee was politically disputed within the different factions due to the existence of several cadres for each political movement, as well as qualified independent cadres, the participation of Professor Ismail Al-Wazir as Chairman of the drafting committee was the subject of consensus and agreement by all.¹¹

¹¹ Professor Ismail Al-Wazir was supported by all parties, as he is a renowned jurist, invariably resorted to by Yemeni legislators for the drafting of constitutions and laws. He is a key authority on all of Yemen's republican constitutions, and contributed to drafting most Yemeni laws currently in force.

The table below provides an overview of the countries of education of the members of the Constitution Drafting Committee.

Arab	Foreign
Yemen	UK
Egypt	Russia
Syria	The Netherlands
Iraq	France
Morocco	United States of America
Sudan	
Jordan	

4. Participation in the National Dialogue

One of the advantages of the establishment of the Constitution Drafting Committee is that the political factions who participated in the National Dialogue were not required to nominate their representatives in the committee solely from among those who participated in the dialogue. Rather, they were given the opportunity to choose experts regardless of whether they had participated in the National Dialogue or not, providing an opportunity to enrich the committee with specialists. This led to the inclusion of new elements that were not involved in the conflicts that occurred during the National Dialogue, allowing for the consideration of new options in discussions regarding power vacuums and gaps that were not covered in the outcomes of the National Dialogue. It also led to finding alternative solutions from different perspectives, especially in areas where disagreements had reached an impasse.

The presence of participants from the National Dialogue – including some members from the previous Technical Committee of the National Dialogue – was also an important source of information for the drafting committee, as it allowed the members to be aware of all the discussions and disagreements that took place during the National Dialogue and within the Technical Committee. This is another significant advantage that ensured most members of the Constitution Drafting Committee were familiar with the political process, represented by the Technical Committee, followed by the National Dialogue, and culminating in the Constitution Drafting Committee. It enabled the members of the drafting committee to have a comprehensive understanding of everything discussed during the National Dialogue and to benefit from the transfer of expertise that occurred outside the framework of the National Dialogue Conference. Having said that, the table below classifies the members of the Constitution Drafting Committee based on their participation or non-participation in the National Dialogue and the Technical Committee.

From the National Dialogue

Ahmad Attieh
 Olfat Dabei
 Intilak Moutawakel
 Mohammad Al-Amri*
 Moeen Abedlmalak
 Abdel Rachid Abdel Hafez*
 Randa Salem
 Nihal Al-Awlaqi

From outside the National Dialogue

Ahmad Bamtref
 Ismail Al-Wazir
 Jaafar Basaleh**
 Jaafar Chawtah
 Marwan Naaman
 Said Al-Skouti
 Abbas Zeid
 Abdelrahman Al-Mokhtar
 Najib Chmairy

** Participated in the Technical Committee, the National Dialogue, and the Constitution Drafting Committee.*

*** Participated in the Technical Committee, resigned from the National Dialogue, but participated in the Constitution Drafting Committee.*

After reviewing the composition of the Constitution Drafting Committee, we now turn to the more important question regarding the proposed method for adopting the new constitution and the extent to which the public was involved in it. Answering this question requires discussing Yemen's overall constitutional process, which we will do in the section below.

B. YEMEN'S CONSTITUTIONAL PROCESS

In order to discuss the method for the adoption of the new constitution, it is necessary to examine the constitutional process since the start of the 2011 Revolution. The process underwent multiple stages, starting with the signing of the Gulf Initiative, which established the roadmap for the transitional period and the National Dialogue.¹² These stages aimed to halt the conflict, end the military division, and lead to the approval of the draft constitution. The Constitution Drafting Committee chose to have the constitution approved through a general referendum, where Yemenis would decide on the fate of their state, its structure, identity, and the political and electoral system put forward by the Constitution Drafting Committee on the basis of the outcomes of the comprehensive National Dialogue. To summarize these stages, we will discuss the constitutional process as follows: The process, which began following the 2011 Revolution, was characterized by multiple stages and historical milestones. It involved a diverse range of participants and comprised various bodies, each with specific roles and responsibilities. These bodies are outlined below.

First Stage: The Gulf Initiative

The constitutional process, and its related bodies was launched with the signing of the Gulf Initiative, which was a result of the consensus reached among the conflicting parties in Yemen. The initiative outlined the transitional

¹² The Gulf Initiative was signed in Riyadh on 23 November 2012.

period, starting with a peaceful and smooth transition of power, followed by the formation of a national unity government, the establishment of a National Dialogue, and the adoption of a new constitution. The initiative also emphasized the need to involve emerging forces in the National Dialogue, such as Ansar Allah (the Houthis) and the Southern Movement, and ensure the active participation of youth and women, alongside the warring parties that shared power during the transitional period.

Second Stage: Communication Committee

Although the committee's mandate was brief and its role ended shortly after its formation, it marked a significant stage in the process. Most of its members were leaders of the parties that had signed the Gulf Initiative in coordination with the representative of the Secretary-General of the United Nations. It was tasked with determining the Technical Committee's composition and nominating its members.¹³ There was a Mediation Committee tasked with identifying and nominating the members of the Communication Committee.¹⁴ However, the Mediation Committee excluded some of the political forces that signed the Gulf Initiative from the Communication Committee.¹⁵ It also took on the responsibility of selecting youth, women, and civil society representatives in the Technical Committee, which we will touch upon briefly. The Communication Committee's role ended shortly thereafter.

Third Stage :Technical Committee

The Technical Committee is considered to be the instigator of the National Dialogue and its outcomes. It was known as the Technical Committee in Charge of Preparations for the Comprehensive National Dialogue Conference, whose scope of work included specifying:

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- ¹³ The decision of the President of the Republic to form the Communication Committee stipulates as follows: Article (1)
- (a) For the purposes of involving all parties in the dialogue process, a Communication Committee shall be formed, comprising:
- 1- Dr. Abdul Karim Al-Iryani
 - 2- Mr. Abdul Wahab Ahmed Al-Ansi
 - 3- Dr. Yassin Saeed Na'aman
 - 4- Mr. Jaafer Saeed Basaleh
 - 5- Major General Hussein Mohammed Arab
 - 6- Major General Abdul Qadir Ali Hilal
 - 7- Lawyer Raqia Abdel Qader Humaidan
 - 8- Ms. Nadia Abdul Aziz Al-Saqqaf
- (b) The Committee shall appoint a Chairman from among its members during its first meeting.
- ¹⁴ The Mediation Committee was formed in coordination with Jamal Benomar, representative of the Secretary-General of the United Nations. Its task was to identify the members of the Communication Committee based on political criteria in order to convince them to participate in the National Dialogue. Its work ended after the decision to form the Communication Committee was issued.
- ¹⁵ The Secretary-General of the Al-Haqq Party was excluded from the Communication Committee despite being a signatory of the Gulf Initiative. The Al-Islah Party (Yemeni Congregation for Reform) also excluded any representative of the Joint Meeting Parties (Al-Haqq, the Nasserist Party, and the Union of Popular Forces) and only included the representative of the Socialist Party because they represent the south more than the Socialist Party.

- The composition of the National Dialogue Conference
- The topics of the National Dialogue
- The National Dialogue working groups and the decision-making mechanism.

The decision to form the Technical Committee was issued on 12 July 2012, and the committee included 32 members.¹⁶

Fourth Stage: Comprehensive National Dialogue

The Comprehensive National Dialogue is considered one of the most important stages in the transitional period,¹⁷ and it included 565 members. The Technical Committee in Charge of Preparations for the National Dialogue Conference was responsible for determining the number of participants and the quota of each political faction. Since deciding on the number of members and the quota of each faction is one of the most important and sensitive issues, the committee tasked the Special Envoy of the Secretary-General of the United Nations with doing so. The Special Envoy took into account the approval of the various forces and the ruling political parties at the time, which emerged from the power-sharing arrangement as a result of the Gulf Initiative. He took on this historic responsibility, with the approval of the members of the Technical Committee, and each member ensured the active participation of the political faction they represented at the time. The table below shows the number of seats distributed among the parties that participated in the National Dialogue Conference.

Political Actors	Number of seats
General People's Congress and its allies	112
Yemeni Congregation for Reform	50
Yemeni Socialist Party	37
Nasserite Unionist People's Organization	30
Four parties in the government (Yemeni Unionist Assembly, Union of Popular Forces, National Council of the Peaceful Revolutionary Forces, and Al-Haqq Party)	16
Peaceful Southern Movement	85
Houthi Movement	35
Youth	40
Women	40
Civil society organizations	40
Other actors: Al-Rashad Union (7), Justice and Construction (7), President's list (62)	80
Total	565

The members were distributed among nine working groups, which agreed on the outcomes that later became the national reference for the different political factions. The main warring political factions controlling the Yemeni scene all claim that their revolutions, coups, military efforts, and political struggles are primarily aimed at

¹⁶ Presidential Decree establishing the Technical Committee No. 30 of 2012, which included 25 members and was later expanded to include 32 members.

¹⁷ Presidential Decree establishing the National Dialogue No. 11 of 2013. The dialogue began on 18 March 2013.

implementing the National Dialogue outcomes. Recently, groups have emerged that disavow these outcomes, some openly and others in secret,¹⁸ due to changes in their military and field positions.¹⁹

The National Dialogue outcomes reached on the basis of the discussions held by the various working groups represented one of the most important sources for the provisions of the draft constitution. In fact, the outcomes of the State-Building Working Group and the Rights and Freedoms Working Group represent more than 80% of the provisions of the draft constitution, while the remaining outcomes resulting from the primary issues discussed by the other working groups represented the remaining share of the constitutional draft. These included the outcomes on the issue of southern Yemen (which was resolved by the establishment of a federal state), the Saadah issue (which was the foundation for the provisions on peaceful coexistence), the prevention of the glorification of war, the adoption of dialogue as a means to resolve all political differences, the constitutional emphasis on the importance of preventing political and sectarian groups from possessing weapons and restricting the possession of weapons to the state, the National Reconciliation and Transitional Justice Working Group, the Development Working Group, the Working Group on Building the Foundations for the Security and Military Institutions, and the Good Governance and Independent Agencies Working Group.

We have an ethical historical responsibility, as witness to these past events, to respect the intellectual rights of the first person to discuss the constitutional foundations required to achieve the revolution's demands for comprehensive change and overthrowing the regime: the martyred professor, Dr. Ahmed Charafeddine.²⁰ Dr. Charafeddine actively voiced before the Technical Committee the need to discuss these constitutional foundations at the National Dialogue – a demand supported by the majority of the members of that committee. We will touch upon some of these foundations in our present study. The martyred professor outlined these constitutional foundations in a detailed proposal that was presented before the State-Building Working Group. The proposal was aimed at achieving the aspirations of the people for the establishment of a civic and federal state, as well as a specialized judicial authority, a constitutional court, and an administrative judiciary to put an end to the encroachments of the legislative and executive authorities. He was the first to develop a vision showing the need for comprehensive change in all these areas.²¹

¹⁸ The President of the General People's Congress Ali Saleh officially declared the "death" of the National Dialogue outcomes in early 2015, and the Southern Transitional Council publicly rejected the outcomes of the National Dialogue after being empowered by some provinces of the south. The Southern Transitional Council is seen as the main proponent for the separation of the south from the north, despite its current participation in a presidential council that includes the components of what is known as the "internationally recognized and legitimate authority." It is also a participant in the "legitimate" Riyadh Agreement government.

¹⁹ The Houthi revolution had specific demands, including the implementation of the outcomes of the National Dialogue, the overthrow of the Peace and National Partnership Agreement government due to corruption, and revoking the decision to lift oil subsidies. Currently, all their movements and rhetoric are opposed to the outcomes of the National Dialogue.

²⁰ Dr. Ahmed Charafeddine participated in the Technical Committee and the National Dialogue on behalf of the Houthis, and he presented an integrated civic and federal vision with the approval of Houthi leaders. He was among the first to call for Yemeni unity, in addition to being a main founder of Al-Haqq Party and drafting the party's objectives and internal regulations. He retired from political work in 1994 and was martyred on the last day of the National Dialogue, where he was treacherously assassinated while on his way to sign the outcomes of the National Dialogue on 21 January 2014.

²¹ See: <https://www.youtube.com/watch?v=ycOMNmbR6EU>.

The rest of the political factions and independent participants of the State-Building Working Group also put forward their visions on all these constitutional issues, which included: identity of the state; structure of the state; judicial system; political system; electoral system; and administrative system.

These are the most important pillars of the draft constitution, which is supposed to effect comprehensive change and achieve the aspirations of the Yemeni people.

The reason it is important to highlight Professor Dr. Ahmed Charafeddine's role in defining the axes and constitutional issues to be addressed by the National Dialogue is that a dispute emerged after former President Ali Saleh stepped down from his position and transferred power to his former Vice President, Abdrabbuh Mansur Hadi, in accordance with the Gulf Initiative. Two political paths emerged. The first was content with overthrowing the regime's main figures and transferring power from the President to the Vice President and considered this an achievement of the revolution of Yemen's youth and people. The proponents of this approach argued that "the dysfunction was due to the bus driver and not the bus itself," so it was sufficient to remove the former President from his position. This discourse represented most politicians in Al-Islah party, who were content with the organic overthrow of the regime. Meanwhile, Dr. Charafeddine highlighted the importance of fulfilling the demands of young people and respecting their struggles and sacrifices on the streets of Yemen by substantively transforming the constitutional system and addressing the constitutional dysfunction in order to build a federal civic state that protects everyone, ensures the participation of all, and achieves security and stability. The faction that was content with the organic overthrow of the regime drew a series of hard lines in the dialogue, including the "inviolability of the republican system and of Islamic Sharia" (in reference to Article 3 of the current constitution) and the concept of "unity" (a centralized and integrated form of unity). Even though the participants in the dialogue all agreed on the need to preserve the republican system, they disagreed on other constitutional issues, hence the emergence of these hard lines based on the principle that the "dialogue is open and limitless" and that the revolution's objectives should be achieved at the substantive level and a new constitution should be drafted.

Fifth Stage : Constitution Drafting Committee

The Constitution Drafting Committee was formed to ensure the equal representation of all the political forces that took part in the National Dialogue, and it consisted of 17 members.²² The members were entrusted with translating the National Dialogue outcomes into constitutional provisions, drafting constitutional provisions to address the gaps in the outcomes of the National Dialogue, and implementing the National Dialogue recommendations relevant to drafting a new constitution for a federal civic state with a presidential system. The establishment of the committee and the nomination of its members was discussed above, including the details pertaining to their specializations and affiliations. Presidential Decree No. 26 of 2014 on the establishment of the Constitution Drafting Committee and its working mechanism outlines the committee's main powers as follows:

²² Presidential Decree No. 27 of 2014 establishing the Constitution Drafting Committee.

1. Drafting a new constitution for a federal state consisting of six regions
2. Adhering to the National Dialogue outcomes
3. Benefiting from previous local and international experiences
4. Participating in public events to explain the contents of the draft constitution
5. Presenting the draft constitution to the public and receiving, examining, and taking their observations into consideration

Based on the above, it appears that the first three main tasks are relevant to the constitutional drafting phase, while the remaining tasks are relevant to the post-drafting phase that precedes the final adoption of the constitution by the people. As such, the committee was entrusted with drafting the constitution and explaining its contents to the people, who hold the power to either accept or reject the draft constitution.

The Constitution Drafting Committee successfully finalized the initial draft of the constitution in accordance with its legal mandate. However, it was unable to fulfil its remaining legal obligations when it comes to explaining the content of the draft constitution, due to the military coup that suspended the political and constitutional process. The committee drafted a constitution for a federal state consisting of six regions. It proceeded as follows:

The first step it took, as part of its efforts to translate the National Dialogue outcomes into constitutional provisions, was to classify these outcomes into constitutional recommendations that can be included in a constitutional document, recommendations that can be included in legislation, and recommendations that can be included in detailed regulations. In terms of integrating the National Dialogue outcomes into the draft constitution, it proceeded as follows:

1. **Literal adoption** of some texts from the National Dialogue outcomes, such as the ones related to the civic state and the sources of legislation, along with the article related to the number of regions and their administrative divisions.
2. **Re-organization and re-drafting** of several outcomes, especially those related to rights, freedoms, as well as economic, social, and cultural principles, as they are interlinked and repeatedly mentioned in the National Dialogue outcomes.
3. **Limited discretion** in codifying the recommendations of the National Dialogue outcomes, especially those related to the division of powers between the central government, regions, and local authorities.
4. **Broad discretion** in filling the gaps, as the National Dialogue outcomes lacked certain recommendations that are considered necessary and constitutional by nature, such as the number of members of legislative councils at each level of government and how to select and elect the heads of regions.

In doing so, the Constitution Drafting Committee acted both as a political and technical authority.

Sixth Stage: The National Body for Monitoring the Implementation of the National Dialogue Outcomes

This stage relates to the National Body for Monitoring the Implementation of the National Dialogue Outcomes, which stemmed from the National Dialogue Guarantees Document. The decision to form this body was made after the National Dialogue Conference was concluded. It was entrusted with many tasks, such as monitoring the expanded partnership government. However, overseeing the establishment of a modern state was its most important task, as it was entrusted with monitoring the draft constitution and assessing the extent to which it took the National Dialogue outcomes into consideration.²³

The idea of establishing a body including all the traditional and emerging forces to monitor the draft constitution was among the propositions approved by the Guarantees Committee emanating from the National Dialogue.²⁴ A dispute arose at the time over the authority or body entrusted with overseeing the draft constitution from a political point of view, as some leaders of the ruling party against whom the revolution erupted, demanded that the House of Representatives – where it held a comfortable majority – be the legislative authority in charge of monitoring the draft constitution. One of the causes of the revolution was that the House of Representatives had failed to monitor the work of successive governments to whom it gave its vote of confidence, to the dismay of the forces of change and the rising revolutionary forces. This is why the idea of establishing a separate National Body for Monitoring the Implementation of the National Dialogue Outcomes was put forward and accepted. Its members were chosen from among the members of the National Dialogue Conference, which involved all political movements and currents. This body was entrusted with monitoring the work of the Constitution Drafting Committee. Unfortunately, this was the stage where military action obstructed the political process. As a result, the National Body was prevented from monitoring the draft constitution. Yemen was fragmented by the war, and the concept of state was eroded.

Final Stage: Public Referendum

Based on the above, one can conclude that the constitutional process in Yemen has undergone many stages and seen the involvement of many figures. This includes all those who signed the Gulf Initiative, the members of the Communication Committee, the members of the Technical Committee who set the framework for the National Dialogue, the members of the Comprehensive National Dialogue Conference, and the members of the Constitution Drafting Committee. It is worth noting that the members of the National Body for Monitoring the Implementation of the National Dialogue Outcomes were also meant to be part of the constitutional process. The final say, however, remains with the Yemeni people, who are entitled to a referendum on the draft constitution in accordance with the provisions of the law.

²³ Presidential Decree establishing the National Body for Monitoring the Implementation of the National Dialogue Outcomes No. 30 of 2014.

²⁴ This idea was proposed by the martyred professor Dr. Ahmed Charafeddine in a paper he submitted on the constitutional process, after he modified it due to severe opposition even from some individuals affiliated with him.

Indeed, the final decision-makers are the Yemeni people, in all their diversity. The draft constitution itself specifies that it must be approved by a popular referendum.²⁵ The proposal for approving the draft constitution by political consensus between the parties to the conflict was rejected, although no popular referendum can take place without the approval of the warring parties. The party that refuses to build a state that accommodates everyone is the main reason preventing the people from exercising their right to express their opinion through a referendum on the draft constitution, which seeks to build a civic and federal state; enshrines a wide range of rights and freedoms to be enjoyed by all; establishes equality among citizens; and ensures the effective participation of women by approving a women's quota of at least 30% in all institutions, in accordance with the Comprehensive National Dialogue outcomes.

II. THE EXTENT TO WHICH THE NEW YEMENI DRAFT CONSTITUTION MEETS THE PEOPLE'S ASPIRATIONS AND DEMANDS

The most important popular demands raised in the 2011 Revolution can be summarized as overthrowing the regime and comprehensive change. Under this umbrella, politicians at the National Dialogue Conference adopted several demands, reflected in the list of National Dialogue outcomes that were incorporated into the draft constitution. In order to determine the degree to which the revolutionary slogans and demands for change in the aftermath of the 2011 Revolution were met, it is necessary to compare the dialogue outcomes – especially those of the Working Group on State-Building and the Working Group on Rights and Freedoms – with the provisions of the draft constitution, to determine the extent of convergence or divergence between the two, as well as to assign responsibilities accurately. Although the list of National Dialogue outcomes is long, three main principles can be highlighted:

- Comprehensive change
- Establishment of a civic state
- Establishment of a federal state

Since overthrowing of the regime takes precedence over all other demands, it is outlined separately below.

A. THE CONCEPT OF OVERTHROWING THE REGIME

This slogan raised by the people was copied literally from the protests that erupted first in Tunisia and then in Egypt. Those protests forced Tunisian President Ben Ali to flee the country and ousted Egyptian President Hosni Mubarak, following which a military council was formed to manage the country's affairs. This is what encouraged young people in Yemen to raise the bar on the street to achieve radical change.

²⁵ The President of the Republic's decision to form the Technical Committee and to determine its jurisdiction stated that the Technical Committee shall set the rules and decision-making mechanism of the National Dialogue and the mechanism for holding the referendum on the new constitution.

As a result, some parties – which have international reach and relations with regional powers – took advantage of the youth’s revolution, which demanded comprehensive and radical change, and adopted the demands of all political parties that were affected by the previous regime, summarizing all those demands under a single slogan: overthrowing the regime. Some consider the participation of a military faction (First Armoured Division, which is affiliated with the Muslim Brotherhood) in the protests and its control of public squares as a military coup and a distortion of the civil and peaceful revolution that was launched by the youth and was later supported by political parties.

There are two aspects to overthrowing a regime: the first is organic, while the second is substantive.²⁶ The organic aspect consists of overthrowing the head of state and his senior aides in the various authorities, while the substantive aspect requires changes in the political and constitutional system that governs public authorities. If overthrowing a regime means the ousting of heads of state from decision-making positions, this was achieved in Tunisia, Egypt, Libya, and Yemen, and later in Sudan, even though the circumstances differed in each country. However, the substantive replacement of a regime is broader and consists in transforming the identity of the state identity and the political, judicial, administrative, and constitutional systems. This has not happened in Yemen so far. The current constitution is still the political and legal document on which all internationally recognized and non-recognized de facto authorities depend, although practically everyone’s actions are unconstitutional.

In terms of the National Dialogue outcomes, they do call for comprehensive change, and this is reflected in the draft constitution, which is in line with the revolutionaries’ ambitions and demands. However, various circumstances prevented the holding of a referendum on the draft constitution, and the political process was obstructed by the coup, which led to the outbreak of a war that is ongoing to this day. Below is a brief overview of the National Dialogue outcomes that were achieved and included in the draft constitution.

B. CONTENTS OF THE DRAFT CONSTITUTION

1. Comprehensive change

Based on the principle of comprehensive change included in the National Dialogue outcomes, some of the constitutional and legal provisions that were adopted at the National Dialogue Conference and that were included in the draft constitution are worth mentioning, such as:

- Changing the electoral system from a single electoral district system to a proportional list system
- Expanding the scope of women’s rights and their effective participation and establishing a quota system for women in all state institutions
- Changing the political system from a hybrid system – tilted towards placing decision making control in the hands of the President while marginalizing the role of the government – to a clearly defined presidential or parliamentary system.

²⁶ We have already discussed briefly the disagreement over the organic and substantive overthrowing of the regime as a way to achieve the goals of the revolution.

- Protecting state media, the civil service, and endowments from government control, making them independent bodies, and integrating provisions on the Bureau of Grievances into the constitutional document.
- Changing the judicial system from a unitary judiciary unable to carry out its duties to a specialized judiciary that is better placed to face the endless stream of cases, including the establishment of an administrative judiciary and the guarantee of the constitutional court's independence to protect constitutional provisions against any violation.

Among the principles of comprehensive change contained in the National Dialogue outcomes was the transformation of the identity of the state and its structure, which is clearly stipulated in the draft constitution. Both of these aspects are addressed below.

2. Federal state

Since the unification of Yemen on 22 May 1990, several events have shaken the belief in centralized unity, under which, contrary to expectations, the economic situation deteriorated instead of improving. During the 1994 war, forces loyal to former President Ali Saleh and the Islamic forces allied with him invaded the south, seeking to control it militarily, and ousted the Socialist Party – the main partner in achieving unity – resulting in the exclusion of a key national component. Over time, power became completely centralized in the hands of the President, and this transformation had a significant impact on the adoption of several fundamental constitutional changes, including the transition to a unified state constitution, the transition from a parliamentary system to a hybrid (hyper-presidentialist) system, and the transition from a collective leadership represented by a presidential council that guarantees a certain level of power-sharing to a system with a single, unconstrained ruler. In addition, the identity of the state and its economic system were transformed, as outlined below.

These changes prompted many political actors to reject the centralized model in favor of a federal state, as well excessive centralization, which failed to properly manage the state. This was exacerbated by the 2011 Revolution, which spread across the country's northern and southern governorates. The establishment of a federal state was the middle ground between the excessive centralization that failed and the division of Yemen into several smaller, warring and unstable states. We will not list the reasons for adopting the National Dialogue outcomes on the new structure of the state (i.e., federalism) or clarify the source of the provisions on the state's regions, which was integrated into the draft constitution.²⁷ (These provisions were taken literally from the outcomes of the Regions Committee). The idea of transitioning to a federal state was endorsed by most political factions in the National Dialogue Conference. There were disagreements on the form and number of regions, but not on the structure of the new state.²⁸ It is necessary to explain some the most important issues that were raised in this regard, which the public is entitled to learn about.

²⁷ Decision No. 3 of 2014 of the Regions Committee on the designation of regions, annexed to the National Dialogue outcomes.

²⁸ It is important to mention that the martyr Dr. Ahmed Charafeddine defended and justified the establishment of a civic and federal state from a patriotic perspective. He was known as an Islamic and a constitutional jurist.

- The presidential decree that established the Constitution Drafting Committee tasked it with drafting a constitution for a federal state made up of six regions. In accordance with this text, the political factions submitted their candidates for the Constitution Drafting Committee, did not object to the number of regions, and participated through their committee members.
- The presidential decree that established the National Body for Monitoring the Implementation of the National Dialogue Outcomes tasked it with monitoring the Constitution Drafting Committee, including its commitment to the National Dialogue outcomes and to drafting a constitution for a federal state consisting of six regions. The factions that participated in the National Dialogue only objected to their representation quotas in the National Body for Monitoring the Implementation of the National Dialogue Outcomes and to the violation of some of the provisions of the decree establishing that body, namely the Guarantees Document.
- The decree establishing the Regions Committee was issued before that of the Constitution Drafting Committee, and the outcomes pertaining to the regions, which determined the number of regions and their administrative divisions, were issued a year before the draft constitution was signed.
- The provisions contained in the draft constitution were not developed by the Constitution Drafting Committee; rather, they were already contained in the outcomes of the Regions Committee. A full year had passed between the adoption of the outcomes of the Regions Committee and the inclusion of those provisions in the draft constitution.
- The establishment of a federal state, as mentioned in the outcomes of the National Dialogue, requires two chapters to be included in the draft constitution related to the division of powers and financial aspects respectively. However, there was no text in the National Dialogue outcomes containing the relevant details. These two governing principles (i.e., the distribution of powers and wealth) were at the root of the problem that called for the National Dialogue and were at the centre of its discussions and disagreements.

3. Civic state

The identity of the state was discussed at length during the National Dialogue, and the participants agreed that it should be civic. The Constitution Drafting Committee adhered to the provisions of the State-Building Working Group of the National Dialogue Conference. Since the concept of civic state is very complex, the draft constitution had to outline the rights and freedoms that all citizens should enjoy equally in a civic state, as well as the guarantees of those rights and freedoms against any violation. For that reason, the establishment of the national Human Rights Commission, the ordinary and administrative judiciary, and the constitutional court was stipulated in a way that guarantees their independence.

III. THE EXTENT TO WHICH THE YEMENI DRAFT CONSTITUTION CAN BE IMPLEMENTED

It is necessary here to discuss the challenges that the constitutional process in Yemen has faced, examine the objections made against the draft constitution, and present a forward-looking vision of the extent to which there are opportunities for the adoption and implementation of the draft. But before that, it is important to address the question of what the “revolutionary” constitutional provisions included in the draft constitution are, as well as the likelihood of their adoption and implementation in Yemen.

A. DIFFERENCES BETWEEN THE NEW DRAFT CONSTITUTION AND THE CURRENT CONSTITUTION

Dr. Ahmed Charafeddine, Professor of Public Law at Sanaa University, explained the differences between the National Dialogue outcomes and the current constitution in a statement describing the constitutional provisions listed in the State-Building Working Group report, which were also included in the National Dialogue outcomes document. These were later included in the foundational provisions of the new constitution by the Constitution Drafting Committee. The statement he made is quoted below:²⁹

We developed new texts and provisions regarding the identity of the state. We formulated new provisions and a new system of governance. We developed a new system and form for the state. We developed a new electoral system. What matters the most is that if, God willing, this report is implemented, and this is what we hope, it will transform Yemen into a very advanced country, and will contribute to ending the disparities that currently exist on the Yemeni scene, whether intellectually or practically.³⁰

The table below helps show the extent of the comprehensive changes that the draft constitution promises. It compares the number of articles in the current constitution with those in the draft constitution regarding fundamental topics to show the extent of the positive changes contained in the new draft.

Constitutional topic	Article Number (from – to)	Number of articles in the current constitution	Numbers of articles in the draft constitution	Number of articles in the new draft constitution	Remarks
Political foundations	1 - 6	6	1 - 14	14	
Economic foundations	27 - 32	17	15 - 42	28	
Social and cultural foundations	24 - 35	12	43 - 71	29	
Rights and freedoms	41 - 61	20	72 - 137	66	The current constitution refers to rights and obligations, with no mention of freedoms.
Legislative Power	62 - 104	43	138 - 178	41	
Central Executive Power	105 - 144	39	179 - 205	27	
Judiciary	149 - 144	6	206 - 229	24	
Local authorities	145 - 148	4	230 - 263	34	
Sanaa and Aden authorities		N/A	263 - 281	18	

The table reveals a greater degree of attention paid in the draft constitution to core issues. While the current constitution is brief, as its provisions establish a unitary, centralized state, the draft constitution is more extensive as it seeks to respond to the demands of the people and because the National Dialogue outcomes included the

²⁹ See: <https://www.youtube.com/watch?v=ajVx8tx78uQ>.

³⁰ See the statement of the martyred Prof. Dr. Ahmed Charafeddine on evaluating the work of the State-Building Working Group via the link above.

establishment of a federal state. As a result, the draft constitution goes into additional detail to distribute powers among the different levels of government. It further develops the system of rights and freedoms, which lies at the heart of the Yemeni people's demands during the 2011 Revolution.

The current constitution establishes centralization in its most intense form, as demonstrated by the higher number of articles regulating the competencies of the executive branch as well as the House of Representatives. This numerical superiority can be observed in the comparison above, not to mention the great weight given to both authorities at the level of the constitutional text and in practice. This was one of the key reasons for the revolution, which demanded that centralized power be limited in favour of lower levels of government. While the draft constitution details the powers of the regions and local authorities, this is completely absent in the current constitution.

The contrast is also evident in the articles of the draft constitution related to the judiciary. The current constitution does not place much focus on the judiciary, which is unitary. This prevents it from carrying out its duties in achieving justice due to the unlimited flow of civil, personal, criminal, and commercial cases, at a time when people are demanding more justice. The participants in the dialogue had to come up with a system for the establishment of a specialized judiciary under the new constitution, including an administrative judiciary to deal with administrative violations, as well as the establishment of a specialized constitutional court to prevent any legislative violation of constitutional provisions.

As for the provisions on local authorities contained in the draft constitution, the main reason for their inclusion was that the draft incorporated the outcomes of the National Dialogue, including the establishment of a federal state to put an end to extreme centralization under the previous regime, both at the constitutional level and in practice. Given the failure of the highly centralized model in Yemen, the only solution was to move toward the establishment of a federal state – the alternative being separatism and the establishment of smaller states in perpetual conflict along sectarian, racial, and regional lines.

In summary, what distinguishes the draft constitution is the fact that it is the first constitution in the history of Yemen or even the Arab region to mention and codify certain issues such as:

1. Women's rights, imposing a female quota of at least 30% in all institutions, explicitly stipulating that the term citizen means every male and female citizen, and explicitly stipulating special rights whose inclusion in the constitution is a victory for feminist demands in Yemen.
2. The rights of young people and the need to ensure their active participation, and the rights of marginalized and other vulnerable groups.
3. Transitional and social justice.
4. The significance of the civic state and making it a constitutional requirement.
5. Elaborating on children's rights in detail.

This raises the following question: What are the conditions for the successful adoption of the new Yemeni draft constitution and for its subsequent implementation? What are the risks and challenges it will face?

This question is addressed in the third section of this paper, which assesses the potential success of the Yemeni constituent power in adopting the draft constitution. The constituent power in this respect refers to the Yemeni people, who are the final decision-makers, having been given the power to accept or reject the draft constitution. The Yemeni people come before the leaders of armed groups and decision-makers at all levels of the de facto and official powers, who must prioritize national interest, stop their futile wars, and put an end to the country's fragmentation into smaller states that do not fulfil the conditions for survival and that instead carry within them the seeds of annihilation and endless conflict. It can be said in all certainty that the only solution for the Yemeni people is to adopt the basic guidelines contained in the new draft constitution, which are the establishment of a **civic state** that rejects sectarian and religious discourse and protects religious rights, as well as the establishment of a **federal state** that preserves the unity of the Yemeni people, consolidates the principle of equality among citizens, and promotes power and wealth-sharing.

Even when all political factions become convinced that only with the establishment of a **federal civic state** can the killing of Yemeni citizens end and the interests of Yemenis achieved, they will still have to rely on the draft constitution's provisions related to state-building, rights and freedoms, and the division of powers based on broad power and wealth-sharing, even if they might require to be amended to achieve public interest.

As for the main risks that might hinder the building of a modern Yemeni state that protects and accommodates everyone, these include:

- The public and some leaders of armed groups remained uninformed of the new constitutional foundations.
- Monopolization of power by any armed group and the abolition of power-sharing.
- The existence of sectarian and regional armed groups, regardless of their orientation or sect.
- Regional and international intervention in Yemeni affairs, which has transformed the conflict into a series of regional conflicts and turned the war into multiple wars.

We have previously mentioned the available solutions and stressed that if the cause of the disease is known, so is its treatment.

In addition to what was mentioned in previous sections, the challenges that the draft constitution and political process face will be summarized here by explaining the reasons for which the armed groups rejected the draft, including the objections they made against it.

B. OBJECTIONS AGAINST THE DRAFT CONSTITUTION

The main objections made against the draft constitution are two-fold:

1. Refusal to specify the regions in the draft constitution

It has already been mentioned that the participants in the National Dialogue Conference reached a consensus on the principle of a federal state, and this principle was agreed upon by most of the active political factions in Yemen. There was disagreement on the number and form of the regions to be adopted in the constitutional document rather than on the principle of the federal state. The State-Building Working Group and the Southern Yemen Working Group worked on this fundamental issue, and the two groups concluded that the desired form of the Yemeni state is federal (this text is taken literally from one of the outcomes of the State-Building Working Group). However, the details were entrusted to the Southern Yemen Working Group that formed a sub-committee later known as the Committee of 16, where eight members were from the north and eight from the south. They studied all federal systems to come up with the methodology and the standards that would be used to define the regions, their numbers, and their boundaries.³¹ A proposal to form the Regions Committee emerged from the Committee of 16, and a presidential decree was issued after that to form the Regions Committee, which included all the active political groups at the time, primarily the representatives of the General People's Congress Party, Al-Islah Party, the Southern Movement, Ansar Allah (Houthis), and others.

This working group reached the decision to establish between two and six regions, and in a plenary meeting, the National Dialogue Conference tasked the President of the Republic to determine the number of regions where “the President of the Republic and the President of the Comprehensive National Dialogue Conference shall form a committee chaired by him, with the authorization of the National Dialogue, to determine the number of regions and whose decision shall be definitive. The committee shall consider the option of establishing six regions – four in the north and two in the south – or the option of establishing two regions, as well as any option between these two which achieves consensus.”³² The Regions Committee convened and proposed five regions, but the representative of former President Ali Saleh, the late Sheikh Yasser Al-Awadi, stated that he would only accept political and administrative division if the federal state consisted of six regions. Since the approval of the General People's Congress Party was important, and because the six regions were one of the proposed options, six regions were agreed upon, and the Regions Committee issued its decision on 10 February 2014. This decision was later referred to the Constitution Drafting Committee to be included in the draft constitution.

³¹ The sub-committee of the Southern Question Working Group was formed on 10 September 2013 to develop a vision for all political factions. See the National Dialogue Outcomes Document, Final Report on the Southern Question, 37.

³² See the Comprehensive National Dialogue Outcomes Document, Final Report on the Southern Question, Paragraph (c), 40.

As stated above, the Constitution Drafting Committee was only formed after the Regions Committee issued its decision to divide the centralized state into six regions with specific administrative boundaries, while giving the elected legislative power the power to review those regions after two electoral cycles in accordance with the provisions of the constitution. When the members of the Constitution Drafting Committee were about to sign the final minutes as the committee concluded its work, directives were issued by the alliance between Ansar Allah (Houthis) and former President Ali Saleh to the Houthi representative in the committee urging him to refrain from signing the minutes of the final session, despite him having signed the minutes of all the previous sessions. He proceeded to do so in compliance with the wishes of Ansar Allah (Houthis) and the former President Ali Saleh.

A media war was then waged against the Constitution Drafting Committee by former President Ali Saleh and the Houthis, although it was President Saleh's personal representative in the Regions Committee who had insisted on establishing the sixth region. The two aforementioned political and military factions not only objected to the six regions, but they also went as far as opposing the principle of the federal state in general; they even opposed the concept of civic state and the demands for comprehensive change at certain times. They made political accusations against the members of the Constitution Drafting Committee, described them as traitors, and accused them of seeking to divide Yemen into smaller states and undermining its sovereignty. However, they forgot in the process that they were the first to propose the adoption of the federal state principle during the Technical Committee stage.

We must make certain clarifications to dissipate those accusations of treason, especially since they caused harm to some members of the Constitution Drafting Committee, leading to insults being directed at them. Some were even fired from their jobs and their homes were broken into and looted.

- Ansar Allah (Houthis) is one of the most prominent political factions that proposed the establishment of a federal state even before the National Dialogue began and since the formation of the Technical Committee.
- Before the 2011 Revolution, there was an alliance of opposition political forces represented by the Joint Meeting Parties, which expanded the front of the opposition to the regime of former President Ali Saleh by adopting an expanded National Dialogue which included independent political figures, sheikhs, social movements, and a representative of Ansar Allah (Houthis), in addition to the Joint Meeting Parties. They issued a document known as the National Dialogue Document in 2010 in which constitutional reforms were proposed, the most important of which was the transformation of Yemen into a federal state consisting of five regions, each of which must have a maritime port. The Houthis participated in this coalition through a representative who signed that document. Therefore, the idea of transitioning to a federal state in order to preserve unity under a different form was proposed before the youth revolution in 2011, since the Document of Pledge and Accord, signed in Jordan in 1994, which called for abandoning centralization and moving towards building a federal state.
- During the National Dialogue, the representative of Ansar Allah (Houthis) explained in detail to the State-Building Working Group the need to abandon excessive centralization and the justifications for the

establishment of the federal state. (A copy of this important historical document drafted by the martyred Dr. Ahmed Charafeddine, who presented it on behalf of the (Ansar Allah) faction after the Houthi leadership approved it verbatim is annexed to this paper.)

- Regarding the Southern Question Working Group, Mahmoud Al-Junaid, the Houthi representative in the Committee of 16, agreed on the principle of establishing different regions and on tasking former President Abdrabbuh Mansur Hadi to form the Regions Committee to specify a number between two and six regions. The Regions Committee reached this consensus without pressure from anyone. Al-Junaid later participated³³ in the Regions Committee, covering for the absence of the head of the Ansar Allah Political Council at the time, Saleh Habra.
- The aforementioned representative of Ansar Allah in the Southern Question Working Group presented his party's vision, drafted by the Political Bureau of Ansar Allah. The Political Bureau assigned its aforementioned representative to present it publicly and officially to the Southern Question Working Group as a vision for resolving the South Yemen question. In explicit detail, they expressed the need to divide the centralized state into several regions, rejected the option of the two regions, and justified this by the need to distribute **centralized power** so that each region has its own executive, legislative, and judicial powers. A copy of this historical document is also annexed to this paper, given that it can be useful to advocate for the need to establish a federal state if and when Yemeni parties agree to stop the bloodshed in their country.³⁴
- In the Constitution Drafting Committee, the representative of Ansar Allah³⁵ insisted on the establishment of six regions early on, during the drafting of the provisions on the establishment of the Federal Council for the future state. He had insisted that the establishment of six regions was agreed upon and not disputed. When the time came to sign the minutes of the final session of the Constitution Drafting Committee, directives were issued to prevent him from signing, although he had signed all the previous minutes of the committee meetings.
- Article 141 of the draft constitution stipulates that **“The Federal Council shall consist of 84 members; 12 from each region, 6 members representing the city of Sanaa and 6 members representing the city of Aden. The members are to be elected through general, free, secret, direct, and equal vote under the proportional list system in each of the regions.”** Based on this text proposed by some members of the Constitution Drafting Committee, the issue of the six regions was settled. However, there was another proposed version of the same article, which read as follows: **“The Federal Council**

³³ Mahmoud al-Junaid was appointed as a member to represent Ansar Allah (Houthis) at the National Dialogue and served as Vice President of the Houthis. He is currently Deputy Prime Minister in the Houthi-controlled Sanaa government. See the following link for the document submitted by them: <https://www.youtube.com/watch?v=6eH6uC4g3-E>.

³⁴ See: <https://www.youtube.com/watch?v=6eH6uC4g3-E>.

³⁵ The representative of Ansar Allah (Houthis) in the Constitution Drafting Committee was Abdul Rahman Al-Mukhtar. He adopted the Houthis' positions with former President Ali Saleh during the last days of the committee's work.

shall consist of 12 members from each region, 6 members representing the city of Sanaa and 6 members representing the city of Aden.” This text does not specify the number of regions, whereby in the event of political consensus to change the number of regions or to merge the authorities of two regions into one, it would not require to be amended. An objection was made against the first text and referred to a sub-committee formed of six members of the Constitution Drafting Committee, including a representative of Ansar Allah. However, the representative of Ansar Allah insisted on passing the first text and rejected the open version, stressing that the Ansar Allah leadership had agreed to establishing six regions. This position, as well as the position that we will refer to later, indicates that the objection to the six regions was a new development, because the approval of the text on the formation of the Federal Council was agreed upon a month and a half before the adoption of the last articles of the draft constitution, which were pending approval until the last meeting of the Constitution Drafting Committee, and the representative of Ansar Allah signed the minutes of the meetings during which all matters related to the Federal Council were approved.

- It later turned out that the political factions that were planning to undermine the draft constitution and to subvert the entire peaceful political process deliberately let the proposal of the six regions reach its final stages to use it as a justification to undermine the entire process. The members of the Constitution Drafting Committee were betrayed, and Yemen became what it is today: scattered, war-torn, devastated, and destroyed, even at the level of social relations.³⁶
- During the work of the Constitution Drafting Committee, the German Berghof Foundation invited a group of high-ranking political leaders to a multi-day seminar in Addis Ababa in May 2014. The aim of this meeting was to present a proposal that would be submitted to the Constitution Drafting Committee, outlining the division and distribution of power across different governmental levels, in accordance with the National Dialogue outcomes. That proposal was presented to the members of the Constitution Drafting Committee, and one of the participants of the seminar was tasked with explaining it to the committee members. The document was presented under the title “The Structuring of the Federal State,” wherein power was divided among **six regions**. Several senior politicians from Ansar Allah, led by Abdul Malik Al-Ajri, attended this seminar.³⁷

³⁶ These positions were mentioned not in defense of the six-region proposal, but in defense of the members of the Constitution Drafting Committee who were betrayed and wrongly accused. The text of the article on the regions existed before the formation of the Constitution Drafting Committee, and the author of this paper, although a supporter of the federal form of state, does not believe that the six-region proposal is the only viable one. However, from the author’s point of view, a higher number of regions in the design of the federal state is better than one with less regions. The author believes that this text will be open to discussion and to consensus among the political factions if and when the war leaders decide to start the peace-building process.

³⁷ Ali Saif Hassan, Director of the Foundation, visited the Constitution Drafting Committee and asked one of the participants to explain the contents of the Federal State Structuring document and the contents of the division of the centralized state into six regions. Berghof was the only foundation that was allowed to present its vision to the Constitution Drafting Committee, because the document was issued as a consultative tool drafted by senior politicians, led by the Houthis, to help members of the committee.

- On the day that the Constitution Drafting Committee was to submit the draft, on 17 January 2015, in accordance with the provisions of the law requiring it to submit the draft to the President of the National Body for Monitoring the Implementation of the National Dialogue Outcomes (the late Dr. Abdul Karim Al-Iryani), and in the presence of the Constitution Drafting Committee members, the National Body members, and the former President of the Republic, the Secretary-General of the National Dialogue Conference and Director of the Office of the President of the Republic³⁸ was kidnapped. The representative of Ansar Allah (Houthis)³⁹ in the National Body objected to the submission of the draft and withdrew from the meeting, along with the rest of the members representing Ansar Allah and supporters of former President Ali Saleh. Their withdrawal came after the former President, Abdrabbuh Mansur Hadi, had announced in front of everyone that:

The draft is not the Quran, and the Houthis and President Saleh's representatives have the right to request that it be amended as they deem appropriate, especially with regard to the regions. An amendment was suggested on the basis of their previous request to give the Hajjah Governorate a seaport and transfer this Governorate to the Azal Region were fulfilled, as should be the case with respect to any new demands.

However, all the representatives of Ansar Allah and President Saleh insisted on withdrawing even after they were offered the option to amend the draft and the regions for the sake of the public interest. The offer was to no avail, as the decision to take military action against the entire political process had already been made by those objecting to the draft constitution.⁴⁰

- It becomes clear from the above that the Regions Committee report was signed on 10 February 2014, the Constitution Drafting Committee, in which the Houthis participated, was formed in March 2014, and the decision to establish it explicitly included the drafting of a constitution for a state consisting of six regions. The deadline for the committee to complete its work was 1 January 2015, and the date of submission of the first draft to the National Body for Monitoring the Implementation of the NDC Outcomes was 17 January 2015. The Peace and National Partnership Agreement was signed on 21 September 2014, while the Constitution Drafting Committee was conducting its work. This agreement did not include any explicit provision regarding the revision of the principle of the regions; on the contrary, it stressed that the National Body for Monitoring

³⁸ Dr. Ahmed Awad bin Mubarak was a member of the Technical Committee and was elected as Secretary-General of the National Dialogue Conference. The martyred Dr. Ahmed Charafeddine sought to nominate him as Prime Minister in the broad partnership government. When the decision was issued to assign him as Prime Minister, there was overwhelming opposition from the movement of former President Ali Saleh and the Houthis, and he was finally appointed Director of the President's Office after he refused the position of Prime Minister. He currently holds the position of Minister of Foreign Affairs, and before that he was Ambassador of Yemen in Washington.

³⁹ At that time, Hamza al-Houthi was the Houthi representative in the National Body, and he strongly objected and withdrew with the rest of the members of the Houthi component and supporters of President Ali Saleh. The Houthi representative to the Constitution Drafting Committee was excluded from attending this historic meeting based on a decision from the movement.

⁴⁰ See the published phone conversation between the official spokesman of Ansar Allah (Houthis) to the National Dialogue Conference and the former president, confirming that the incident that occurred on the day of the submission of the draft was a joint action taken by Saleh's and the Houthis <https://www.youtube.com/watch?v=0z0cQWaxFeg>.

the Implementation of the National Dialogue Outcomes should only review the principle of the regions with the Constitution Drafting Committee. Where and when did the objection to the principle of the regions arise after all that time had passed? How could the Constitution Drafting Committee be accused of issuing the decision to establish six regions? The committee was implementing previous decisions that faced no objection from any party, with no alternative having been presented to date. If there were to be any objection to the principle of the federal state, knowing that no other alternative was proposed, then those objecting to that principle, who were the ones to present the vision of a federal state at the National Dialogue Conference in the first place, bear responsibility for the devastation and destruction that Yemen has witnessed.

- I must bear witness to history and state that I asked the leaders of Ansar Allah (Houthis), while I was working as part of the Constitution Drafting Committee, to present their vision of the article relating to the regions. I had also asked them in November and December of 2014, through my martyred brother Hassan Zaid, to submit any proposal they might have regarding the objection to the six regions. Just before reaching consensus on all the provisions of the draft constitution, and after I had demanded the submission of an alternative during the drafting of the constitution, everyone refused to make any comment on the article related to the six regions. Why, then, did their national fervour arise after that? Why did they decide to object to a done deal that should not under any circumstances have caused such turmoil, especially since they could have easily reviewed the article and presented an alternative? And where is the alternative text or solution that they have provided to date?
- We conclude from all the above that the objections against the Constitution Drafting Committee's work, although ostensibly aimed at the text related to the six regions, in fact targeted the entire draft constitution, the entire political and constitutional process, and the very effort to build a modern Yemeni state that accommodates and protects everyone.

While any citizen or politician has the right to criticize all the provisions of the draft constitution and demand to discuss or amend them, this right cannot be given to the same political factions that had initially contributed to the adoption of the principle of the federal state. These factions did not make any objection to the article related to the six regions, and all their political documents and public positions bear testament to the fact that they expressed their approval of this principle,⁴¹ especially since they did not provide an alternative that could be agreed upon.

Lastly, we must once and for all dispel the accusations that the draft constitution divides Yemen. The federal state certainly does not entail the division of the country, but rather distributes central power, reduces excessive centralization, and establishes local authorities at various levels represented by the centre, region, governorate, and locality, as shown in a separate study.⁴²

⁴¹ Sami Al-Sayyaghi, "The Option of Federalism in Yemen and its Six Regions is a Fatal Remedy," *Muqarabat siyasiyya* 2 (2017): 47-87.

⁴² Abbas Mohammed Zaid, *Federalism: the European Union and the Arab League* (Cairo: Institute of Arab Research and Studies, 2017).

2. Rejection of the draft constitution by certain armed groups

As we have seen in previous sections, the goal was not only to condemn the establishment of the six regions, but to condemn the draft constitution entirely and the principle of the federal state, which the political factions had agreed upon, including those that publicly reject it today. While their reasons may differ, they employ the same means. In the first place, the draft constitution is rejected by the forces that demand separation, reject the principle of establishing a federal state, and reject unity in all its shapes and forms. In the second place, the establishment of a federal state is rejected by totalitarian political forces in order to maintain excessive centralization.

The common means employed by these two factions is that they both reject the establishment of a civic and federal state that accommodates all parties, where everyone participates in building and managing it while benefiting from the country's wealth, and by promoting the principle of equality among citizens.

Once the forces rejecting the draft constitution asserted themselves following their coup against the political process, the draft constitution could no longer be approved, because it opposes both excessive centralization and separatism. However, the only solution is for Yemen to adopt a new constitution for a “new form of state, a civic state that protects religious rights,”⁴³ and a federal state that guarantees power and wealth-sharing, to the benefit all and without monopolization.

Once everyone becomes convinced of the need to establish a that accommodates everyone, politicians and the public will find the draft constitution to be the only foundation to build upon, with the possibility to discuss and amend its provisions, so that everyone can live safely in a stable and secure state in which the rule of law is entrenched and the principle of equality among citizens is promoted. We thus conclude our study of the constitutional process in Yemen, in the hope that other researchers can answer the many questions we raised to complete the picture. No one possesses the ultimate truth, and everyone is subject to error and forgetfulness, and Allah alone knows the intention behind one's deeds.

⁴³ See the lecture of the martyred Dr. Ahmed Charafeddine on the justifications for the establishment of a civic and federal state annexed to this paper.

ANNEXES

A. Ansar Allah's Vision on the Form of the State, presented to the National Dialogue's State-Building Working Group

State Form

The unity agreement between the Yemen Arab Republic and the Democratic People's Republic of Yemen was signed in 1990. As a result, a new state called the Republic of Yemen was established as a new international entity. Accordingly, the two international entities of the two former republics disappeared, and the new state took a simple form. The local administrative divisions of the two previous states were maintained, and some amendments made to the administrative division later on, bringing the total number of governorates in the Yemen Arab Republic to 21, six of which are the governorates of the former Democratic People's Republic of Yemen, and the rest are those of the former Yemen Arab Republic, with very slight overlaps between the two former states.

Before 1994, the new state order was not adequate, because the process of achieving unity was hasty, and innumerable problems arose immediately after the unification, gradually worsening until they resulted in a severe political crisis which required a new formula for the state. The Document of Pledge and Accord of 1994 was the solution agreed upon between the two political partners of unity, the General People's Congress and the Yemeni Socialist Party. This document addressed the tense situation by reconsidering the state's form and rebuilding it on another basis by dividing the country into autonomous or semi-autonomous regions. As a result, this document was the first glimpse of the idea of a (composite) federal state instead of the simple state form mentioned in the agreement to declare the Republic of Yemen.

Hence, we can say that the agreement to establish the Republic of Yemen as a simple state was amended by the Document of Pledge and Accord of 1994. The previous unilateral actions taken by the partners in unity and the outcomes of victory of one partner over the other, the most important of which was the elimination of South Yemen from the political equation, do not affect the basic form of the Yemeni state in accordance with the contents of the Document of Pledge and Accord. As such, the following can be noted:

1. The legitimacy of the simple Yemeni state has been modified by the Document of Pledge and Accord; therefore, the restoration of the status quo ante is ill founded.
2. All the developments that took place after 1994 contrary to this document, including the general elections, the amendment of the administrative division, etc., are illegitimate.
3. The document offered an adequate basis for the establishment of a composite state, but this has yet to be achieved.

4. In practice, and over the course of more than twenty years since the establishment of the integrative unity, the simple state has failed to maintain the country's unity and to carry out its assigned duties.
5. The geographical, cultural, demographic, and civilizational factors in Yemen are all in favour of a composite state, not a simple one.
6. The Yemeni unity of 1990 was a voluntary unity established by an agreement between its components, resulting in the establishment of a simple state. This state form has been voluntarily modified by another agreement. Subsequently, the choice of whether the original or modified form of the state will be maintained should also be voluntary. This should be decided by the National Dialogue Conference, which officially recognized the existence of two equal parties (North and South), and this was reflected in the distribution of the membership quota equally among the two parties.

Based on the above, we believe that the future form of the state should be as follows:

The establishment of a composite (federal) state, the details of which will be determined by the National Dialogue Conference by consensus.

B. Lecture by the martyred Dr. Ahmed Charafeddine during the National Dialogue at the "Afham" (Understand) Forum

The main reason that has led Yemen to its current state, in my opinion, is threefold: the religious forces, the tribal forces, and the military forces. These three sides formed alliances with each other and brought the country to where it is now. The problem was not primarily legal, as we had a constitution that addressed many important matters, and we had laws that governed many aspects which we can discuss. We had to some extent an institutionalized system from a legal perspective. However, in practice, this system was absent. This troika controlled Yemen, while the constitution and laws remained mere words on paper. I will not delve into the wrongdoings of these three parties and how they have led us to where we are, as you are all familiar with this. Instead, I will focus on the remedies.

First Remedy:

When we talk about addressing the religious forces, it does not mean that we are not religious. In fact, we may be even more religious than them, and we are more committed to our faith than them. However, religion has been misused in the past, and this was facilitated by constitutional and legal provisions.

To address the religious forces, **we need to build a different kind of state. We need to establish a civic state with no religious discourse, meaning that the state does not adopt a religious discourse and it does not use religious discourse against the people. Religion should belong to the people, and the state should not have a religion, because the state is a moral entity.** This dialectic has been extensively debated by intellectuals, but they have not reached a conclusive outcome. We are now revisiting this dialectic and asserting that

in the present era, the state should distance itself from religious discourse. Why? **Because we have lived under religious states for hundreds of years, and when the state adopts religion, it imposes a specific, dominant sect, eliminating other sects and ideas.** We know that most of the conflicts among Muslims were caused by the religious state. When you establish a religious state, those in power will endorse a discourse from a particular perspective that may not be acceptable to the other party, leading to conflicts. This has been the case throughout centuries, and constant conflicts have erupted for this reason. As you know, Islam has multiple interpretations, not just a single interpretation in terms of behaviours and rituals, let alone in the political realm. There are differences, and it is impossible to satisfy all parties with a single political theory based on a religious foundation.

Therefore, we assert that religion belongs to the people with their diverse sects and denominations, while the state should distance itself from religious discourse. However, it is the duty of the state to safeguard religious rights. This is what we strive for at the State-Building Working Group: to ensure that religious texts guide the people's religious practices, as is the case in many countries around the world, while keeping the state separate from religious discourse. Islam should not be the religion of the state, and the Islamic Sharia should not be the sole source of legislation, including the constitution, because it is the constitution that builds the state. If we include religion within all legislations, this implies that the constitution and the state it establishes should be based on a religious foundation, which leads us back to the previous dilemma we discussed earlier.

Second Remedy:

The influential tribal powers can be addressed through a federal state. When a federal state is established, it will strip these “centres of power” of the influence and capabilities they rely on. Previously, when the state was simple, the decision-making centre was in Sanaa, and the influential tribal powers, which still exist, were located near Sanaa, thus having control over the decision-making process. They extended their influence through financial, commercial, social, and other means, leveraging this centre, which is the state's centre. When we advocate for a federal state, it means that these powers will lose their ability to influence the state's centre. Why? Because they will no longer be able to control anyone thereafter.

Each region of the federal state will have its own separate powers, including legislative, executive, and judicial powers. Each region will have its own constitution, laws, courts, and resources. Consequently, the tribal powers or influential forces existing in the capital or its vicinity will not be able to influence these distant regions. At most, they may have minimal influence on the centre of the federal state. Nevertheless, we demand that the capital be relocated from Sana'a to another city that is far from these centres of power and tribal influences. Additionally, the federal state's jurisdiction will be limited to defence, foreign policy, and finance, which are shared among all regions. However, all other matters will be transferred to the individual regions. **When we advocate for a viable federal state, having two regions or multiple regions in the south and the north,** all of these concepts align with the principle of a federal state. The specifics can be further negotiated and agreed upon.

Here, I would like to highlight an important point regarding extensive or full local governance. In global systems, there is no local governance that has extensive or full powers, nor is there a system that is deficient in powers. Each system has its own foundations and rules, and if these foundations are disrupted, the system deviates from its original form and no longer represents the intended concept. There is no such thing as “extensive” or “full” in an absolute sense. For example, when we talk about administrative decentralization, the concept is well-defined, with its principles, pillars, and established rules. If these principles are violated, the entity ceases to exist as intended. The term “extensive” or “full” in terms of political powers has been used to mislead people. It implies that local governance will have significant powers and complete autonomy, promising certain rights and benefits to the people. However, in reality, it may not lead to the desired outcome because you will still operate within an administrative system.

We are talking about a political system, not an administrative one. We are talking about political decentralization, where all state powers, not just administrative aspects, are distributed. Even if the administrative side is decentralized, the central government still maintains control over these decentralized powers in the regions. At any time, through parliamentary action, the central government can modify this system. We have witnessed numerous amendments to the decentralization system, both in its territorial and regional forms, based on political considerations rather than administrative or developmental ones. Therefore, we seek to curtail the influence of these “second-tier” powers in order to rectify the situation in Yemen.

Third Remedy

We now come to the realm of military power, the forces that have waged wars and have led the state in one way or another. We wish to have a people’s army that protects the people and does not wage wars against them. An army whose creed is to protect the people rather than to harm them, an army that carries a patriotic ideology rather than a religious one. It is unfortunate that when this army engages in warfare, it does so on religious grounds. Wars have been waged on the South under the banner of jihad, claiming that the southerners are fighting against Muslim Yemenis. They waged those wars that you are familiar with. Furthermore, wars have been waged in Saadah under similar slogans, labelling certain groups as apostates or deviants, accusing them of going against the religion. Soldiers are sent to fight while carrying these ideologies.

We want an army built differently; one whose creed is the protection of the people rather than waging war against them. An army whose ideology serves the people’s interests and does not harm them, an army that embraces a philosophy that benefits the entire population with its diverse political, sectarian, and religious orientations, rather than being aligned with one group and against another. We envision an army founded on a national creed and built upon national foundations, not on sectarian, regional, or tribal grounds as is currently the case. It should represent all the people, from Saadah to Al-Mahra, and everyone should participate in it. This army would truly embody the entire nation and act as its guardian, refraining from initiating wars against its own people.

In conclusion, if we are able to build the state on these three foundations: a civic state, a federal state, and a national army, we will overcome the troika that has led the country to its current state.

C. “Ansar Allah’s Vision to Resolving the Southern Question: An Introduction to the Southern Cause Working Group

In the Name of God ,the Most Merciful ,the Most Beneficent

Ansar Allah’s Vision on the Approaches and Guarantees for the Southern Question

Discussing the proper and necessary approaches to any problem must stem from a precise diagnosis of the roots of that problem and its underlying causes. Based on this premise and our analysis of the roots and causes of the Southern Question in our vision, we will attempt to outline our vision to addressing it in these brief paragraphs. We are fully aware of the significant importance of this question and its wide-ranging implications and impacts at the national level as a whole. It necessitates immediate and urgent resolution without any delay, procrastination, patchwork, or fragmentation, as it cannot tolerate such approaches, especially considering that some forces with power and wealth in Sana’a are working to hinder and obstruct any solutions that may deprive them of their privileges and interests.

Furthermore, we emphasize that addressing all national issues, including the Southern Question, requires sincere and serious political will. Without it, no solutions or approaches will succeed. Instead, matters will only worsen and become more complicated than they already are. Moreover, they will collide with the will of the people, who will not allow anyone to subvert their aspirations. We also stress the importance of involving all components of the Southern Movement in addressing the issue.

Firstly, we would like to point out that addressing this issue actually begins with taking urgent measures and actions that can build trust and create a conducive environment for a comprehensive solution. This is precisely what the twenty points presented by the Technical Committee in Charge of Preparations for the Comprehensive National Dialogue Conference and the eleven points demanded by the Southern Question Working Group at the outset of their work represent. In this regard, we express our deep disappointment due to the reluctance and procrastination in implementing these points by one party or the other. This is because their implementation would have had a positive impact on the ground. Therefore, we strongly emphasize the need to immediately implement all the provisions contained in those points as a crucial and important step to address the issue, particularly since many of them relate to various human rights and humanitarian dimensions.

Here, we emphasize that everything related to the Southern Question, including the violations and rights associated with it, must be addressed primarily through the implementation of the thirty-one points and the inclusion of any overlooked aspects. All human rights violations related to the issue since the summer war of 1991 must be

incorporated into the topics of transitional justice and national reconciliation. This entails applying the principles and measures of transitional justice in accordance with international standards to all these violations. It is necessary to acknowledge all crimes and violations without any justification by the ruling powers in Sana'a at that time, to apologize for them, to provide redress and compensation to the victims, and to rectify the institutional structure of the state's bodies and institutions involved in those violations, ensuring the protection of citizens' rights, freedoms, and dignity.

As previously discussed, the roots of the Southern Question lie in the failure to establish an institutional state and the seizure of power by military, tribal, and religious forces in Sana'a. This has undermined the foundations of the state, targeted its institutions, hindered their functions, and fostered a police state mentality which control the situation through crises and wars and takes possession of the country's assets, power, wealth, and authority to serve the interests of influential circles. The transformation of the state from an institutional national project into an authoritarian traditional structure, while superficially maintaining a political and democratic facade, has disrupted the rule of law and violated the rights and freedoms of citizens.

We also consider the summer war of 1991 as the direct catalyst for the emergence of the Southern Issue. The nervous system of the regime in Sana'a was not prepared to transition into a state that could guarantee unity and its preservation. Therefore, the Southern Issue is fundamentally a state-building issue, as the relationship between the two is intrinsic, deep-rooted, and of vital importance.

Therefore, the building of a **modern civic state**, based on a genuine institutional structure that guarantees civil and political rights, enhances social cohesion and paves the way towards the future envisioned by all Yemenis, is the most crucial foundation for addressing the Southern Question and ensuring its non-recurrence. It is essential that all grievances, violations, and transgressions committed against the people of the South are addressed. In this regard, there have been multiple options and proposed approaches by Yemeni political parties to resolve the issue. These options have ranged across four tracks, as follows:

- A unified state with a strong central government, favoured by some political forces in the North, is considered one of the least preferred options. It is particularly characterized by its contradiction with the spirit of the protest movement in the South.
- A unified state with a strong local administration, represented by a simplified state structure with extensive powers delegated to local authorities, has supporters from various political spectrums. However, similar to its predecessor, it does not enjoy any support within the South.

A federal state represented in:

- A multi-regional federal system
- A federal system with two regions: Some view this option as a transitional solution for a period not exceeding four years, after which the people of the South would have the right to self-determination.

- The establishment of an independent, democratic, and federal state on the territory of the People's Democratic Republic of Yemen. Supporters of this option argue that the root of the problem lies not in the current system or state structure but in the dominance of the culture and system of the North.

Given the current complex facts of the Yemeni situation, particularly regarding the Southern Question and its deep connection to the failure of nation-building, it is our opinion that the appropriate form for the state to be built upon is that of a federal state. This would entail a genuine agreement on the form of unity, taking into consideration the intricacies of the Yemeni context.

To ensure its success, this federation should be based on a federal constitution that upholds sound national principles, criteria, and foundations. It should dismantle power centralization and monopolization of wealth, while guaranteeing the right of the people of the South to fair participation in the management of federal institutions. It should emphasize the rights of regions to exercise legislative, executive, and judicial powers, as well as the right of each region to have its own constitution that defines its power structure and authorities within the framework of the federal constitution. The federal system should adhere to democratic principles and good governance, ensuring justice, equality, the rule of law, the independence of the judiciary, the neutrality of the military institution, and the separation of powers. It should also safeguard rights and freedoms. Additionally, there must be a comprehensive strategy for achieving sustainable development, which is another pillar upon which the federal union must be based. This strategy should be actionable, implemented directly, and subject to practical application.

Our inclination towards this option is based on our vision of the desired form of the state, as presented to the State-Building Working Group, which includes the following:

“Since the war of 1991 and the preceding unilateral actions by the unity partners, as well as the subsequent outcomes resulting from the victory of one partner over the other, including the exclusion of the South from the political equation, did not affect the other fundamental basis of the Yemeni state in accordance with the provisions of the Document of Pledge and Accord, we note the following:

1. The legitimacy of the existing simplified Yemeni state has been modified in accordance with the Document of Pledge and Accord, and, therefore, reverting back to the state prior to this document is not based on valid grounds.
2. Any actions taken after 1994 that contradict the provisions of the document, including general elections, administrative division amendments, and others, lack legitimacy.
3. Since the document contained a sufficient basis for establishing a composite state, it is necessary to complete the establishment of this composite state.
4. Practically, over the past twenty years since the integrative unity, it has become evident that the simplified state has failed to maintain unity and fulfil its expected obligations.

5. The geographic, cultural, demographic, and civilizational factors in Yemen all favour the composite state over the simplified state.
6. The Yemeni unity of 1990 was a voluntary unity that arose from an agreement between the two parties, resulting in the establishment of a simplified state. This form has subsequently undergone voluntary modifications based on another agreement. Therefore, the preservation or alteration of the original or modified form of the state must also be voluntary.

Guarantees:

- Any solution must be subject to the satisfaction and acceptance of the people of the South.
- Since the remaining period of the transitional phase is not sufficient to fulfil its obligations, including the drafting of a new constitution, conducting a popular referendum on it, enacting an electoral law based on the new constitution, and establishing a new electoral registry, it is necessary to reach a consensus on a new transitional phase to implement the outcomes of the National Dialogue, particularly regarding the issues of Saadah and the Southern Question, and to build a state based on the following principles:
 - **Issuing a constitutional declaration agreed upon by the political forces represented in the National Dialogue.**
 - **Establishing a transitional legislative council and a national unity government (National Salvation) to oversee the implementation of the outcomes of the National Dialogue, with equal representation from the South and the North.**
 - **Transforming the resolutions and agreements reached into clear constitutional and legal principles and texts to ensure that past events are not repeated.**

May Allah grant us success

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