

Position Paper

Yemen's dialogue: Conflicting forms of the new state

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Introduction

The national dialogue in Yemen reached its final phase but uncertainty about the form that the state should take still prevails. While northerners want to maintain the unity of the country, southern forces are divided between immediate secession and fair and equal participation in the state's power and wealth. It seems that the balance of power is inclined towards a multi-regional federal state. This would enable powers in North and South Yemen to reach an agreement without pushing the country into a state of chaos that could strengthen jihadists, interfere with international shipping routes on the southern Red Sea, and destabilise the Gulf region.

The comprehensive National Dialogue Conference (NDC) represents a turning point in the transition process in Yemen. The NDC became the mechanism which the country has depended on to resolve key issues of dispute and determine the features of the next phase, and the form of state that Yemen will take.

The most important achievements of the NDC have been its ability to employ dialogue as the sole way to institute change and resolve disagreements. Dialogue, thus, became a substitute for violence and bloody conflicts and distinguished the transition in Yemen from the route that many states affected by the Arab Spring went down. For the first time, conflicting parties gathered around the same table in a constructive dialogue. This

dialogue engaged 565 participants representing various sectors and classes of Yemeni society. It broke traditional rules where dialogues only usually took place between the authorities and the opposition. Rather the NDC included most political and social actors (except those that refused to participate), as well as parties that previously were not considered part of the political scene, such as civil society organisations, youth, women, Jews, and marginalised sectors of society.

The participants were divided into 9 groups that discussed 9 main themes, namely: the southern issue, the Houthi rebellion, transitional justice, state-building, good governance, rebuilding the army and security apparatuses, independence of the institutions, freedom and rights and overall development.

Over the past 6 months, since its launch on 18 March, the NDC achieved consensus on up to 90% of the issues, and 6 out of the 9 contact groups agreed on their final reports. The remaining areas which have not reached consensus have been referred to the Conciliation Commission in an attempt to reconcile differences of opinion. In addition to major disagreements in the group discussing the Houthi issue, there was disagreement in the two groups discussing the issue of the South and on the shape of the new Yemen.

It is expected that the issue regarding the South and the form that the state should take will remain dialogue dilemmas in the coming period. Despite the agreement among the 8+8 Committee – which emerged from the group discussing the southern issue – on a range of important issues, and their agreement, in principle, on the adoption of the federal system as the form of the new state, there is still a raging controversy over the number of regions that a federal state should take (2 or 5), its borders and how natural resources should be distributed between regions and the central government. In addition to this, there is significant disagreement regarding the South's share and role in the central authority structures in the permanent phase after the transition period.

In all cases, it is not expected to delay taking a decision on currently pending, contentious issues. This is because it is related to the formulation of the new constitution on the one hand, and is a fundamental issue in the transition process, on the other hand. Therefore political forces in Yemen will have to confront these issues in order to reach a consensus through dialogue. If such a consensus is not reached this could potentially lead to chaos, instability and further acts of violence in the South.

Dispute over the form of the State

The current dispute on the southern issue has several aspects. The most important aspect is the dispute over the form that the state should take. After discussing a wide range of options for the form of the new state; ranging from local government with full powers, and the option of separation and restoring the state of the South, and the

establishment of a bi-regional and multi-regional federal state, it was agreed, in principle, to adopt the option of a federal state. This was seen as a compromise on the southern issue that could reconcile the demands of the southern separatists who occupy a broad cross-section of the elite and the population in the South, and the demands of preserving unity, a position which is backed by the majority of the elite and the population in the north. The dispute has been narrowed down to two following options.

The first option: The establishment of a federal state comprising two regions – the North and the South. This would see granting the South the right to a referendum after five years to decide whether to stay part of the federal state or to opt to become an independent state. Groups belonging to the southern movement participating in the dialogue and the Yemeni Socialist Party are pushing for the latter option, which is also supported by the Houthis, with the aim of granting the South the right to determine its future. This position, however, has been rejected by the two major parties: the General People's Congress (GPC) and The Yemeni Congregation for Reform (al-Islah), and a large segment of the social and political elites in the North. The consensus here is that such a position is merely a gateway to achieve relatively seamless separation in two steps, repeating the scenario of South Sudan's secession.

The second option: The establishment of a multi-regional federal state that includes the establishment of regions integrated between the North and the South, as well as the establishment of five separate regions (two in the South and three in the North), as a compromise in preserving unity. This is on the grounds that the multi-regional system reduces fears of secession and helps to ensure that there will not be local laws that discriminate between the people of the North and South regarding rights and freedoms related to freedom of movement, work and property. Two major parties insist on pursuing this option: GPC and Al-Islah. It also appeals to some southern groups in Hadramout and Al-Mahra and to some extent Shabwa, as it gives them the ability to form independent regions on their own away from the dominance of the centre in Sana'a and Aden, and gives them their independence before the establishment of the Democratic Republic of Yemen. Fifty-four southern participants in the NDC called for the establishment of the so-called eastern province, featuring eastern regions: the governorates of Hadramout, Mahra, Shabwa and the Socotra Archipelago; for granting these governorates the right to self-determination; and not to impose views on any of the parties under consideration that they suffered from the rule of the Socialist Party which was imposed by force after 1967, and that they had suffered from exclusion, marginalisation and looting of wealth under the unified state after 1990. It seems that these demands have been welcomed by the neighbouring regional parties.

The option of dividing the south into two provinces was strongly rejected by groups of the southern movement participating in the dialogue and the Yemeni Socialist Party and

other southern forces, on the grounds that it would lead to dividing the South. This is considering the fragility of a unified state which has been around for less than twenty-three years, that is since independence on 30 November 1967 until unification on 22 May 1990, in addition to the weakness of the southern identity and the strength of regional identities. This gauge, from the perspective of the other side, also applies to a united state, as it is newly established and it is where the Yemeni identity is also weak, especially in the South, and a bi-regional federal state would also likely divide a united state. There is third option, which is not on the negotiating table and which has been neglected by the participants due to the focus being on resolving the southern issue and ignoring that the country needs to build a state capable of facing its security, political and economic challenges. This option is still strongly supported by the intellectual elite, and by a number of international experts who recently visited Yemen. This option holds that, despite the federal state's many benefits and positive aspects, it is not the perfect solution for Yemen in light of its current reality, its limited economic potentials, and profound social challenges and political struggles that have beset the country, in addition to the weakness of the state and its institutional and legal structures. Fundamentally, the situation of the military would require years of hard work to turn it into a professional institution that is far from the narrow regional, political and sectarian conflicts and loyalties that currently define it. Adopting federalism, before first establishing a centralised state, may lead to a weakened internal situation and the disintegration of the state into smaller sectarian and regional components. Since federalism was mainly proposed to resolve the southern issue, which essentially was about the fair distribution of power and wealth between the North and the South, it is possible to avoid the risk of disintegration and to solve the southern issue through special agreements that would give the South a special status in power-sharing at the level of the centre, and also the enforcement of local government with full powers that can determine the criteria for the re-distribution of natural resources which would be satisfactory to the South. At the same time this could resolve severe financial and administrative problems that have beset the central government and that have prevailed in the past period, hindered development and given space for rampant corruption.

The forces of the South: Conflicting accounts

There is a movement among the southern elite which does not see the southern issue only as the result of administrative mistakes committed by the previous political regime in the South, or as a political issue and a matter of injustice, but believes that unity was a mistake in and of itself. They feel it was this that has hurt the interests of the South at the level of elites and people. Given the demographic, geographic and economic disparity between the South and North; the South has a smaller population than the North (a ratio of, roughly, 1:4); and is richer than the North (in comparison to the size of the population) in natural resources and land. Thus, the South will be much better off

separated from the North's overpopulation, sectarian problems, and the continuing conflicts between the social and political forces over the limited resources.

Because of the fact that any democracy necessarily depends on a majority system, which in this instance would give control back to the North and abuse the South's rights to power and wealth, a modern democratic state does not meet the aspirations of that movement. Due to the numerical majority of the North, which was apparent in the first parliamentary election after the unification of the State in April 1993; an election, which removed the Socialist Party that represented the South in that period, from authority making it a secondary party with only fifty-six out of a total of 301 seats. This, in fact, led to the alienation of a large number of the southern elite, and then when the 1994 Summer War broke out and they demanded that former president Ali Salem al-Beidh openly declare separation. What later reinforced separatist sentiment in the South were the injustices, the policy of marginalisation and exclusion, and the looting of wealth practiced by the former regime in the South.

So today we find a large segment of the southern elite and people who see separation as the perfect solution for the South. The frontrunner in the movement of the secession movement, at the level of the elites and organised labour, is the Separatist Movement led by al-Beidh who calls for immediate separation from the North.

Another group among the separatist movement is represented by the peaceful movement that rejects rapid and violent separation. Their position is that that would drag the South into chaos and internal conflicts. Rather they aspire for smooth and peaceful separation through the option of a bi-regional federal state with equal shared power structures during the transition period, and the right to a referendum on self-determination after five years. This would be a similar process to the 2005 Naivasha Agreement between North and South Sudan. Their most prominent leader is the southern leader Abu Bakr al-Attas and a broad spectrum of leaders at home and abroad.

There is another broad and wide southern movement in the current ruling authorities in Sana'a, as well as the extensions of the main parties in the southern provinces. It agrees with the former movement that unity in its current form does not take into account the right of the South to power and wealth, and that it has deviated from the path of participatory unity. Yet this movement believes that the massive disintegration among the southern forces and the lack of a single united force able to control the South may likely lead to the return of old regional conflicts over power which were aggravated by the events of 13 January 1984, and led to the break away from the defeated party to the North, and later to its participation alongside the northern forces in defeating the separatist forces in 1994.

From the standpoint of this movement, the most appropriate option is to reform the path of unity, through resolving injustices and reforming previous imbalances that prevailed in the South, and most importantly to return to participatory unity where the South is an equal partner to the North that would not depend exclusively on a numerical majority. This would see an agreement on a special status for the South so as to match its land-population ratio, and to share northern power and wealth equally. The federalism issue and the issue around the number of regions are not priorities for this movement, as they feel that these issues do not represent the root of the problem. Rather, their priority is to reach lasting agreements that ensure the South will be an equal partner and not subordinate to the North.

The 8+8 Committee, which is included within the group that is focussed on the southern issue in the NDC, managed to achieve substantial progress on the recognition of past mistakes and to apologise to the South, and to devote its energies to addressing and applying the points 20+11 (regarding demands and human rights issues) within a specific timetable in place for the transition period. This includes an agreement that during this period southerners will receive fifty per cent of all leadership structures in the executive, legislative and judicial powers, including the army, security, the Supreme Judicial Council and the Supreme Court. A further stipulation would see that that fifty per cent of the members of the House of Representatives will be represented by southerners and that they will also have priority during this period in filling vacancies, and undergoing training in the civil service, the armed forces and security apparatuses.

Additionally there would be an agreement that the Federal Constitution, after the transition period, will provide the necessary executive, judicial and parliamentary mechanisms to protect the vital interests of the South. These mechanisms may include special rights to veto, special representation, and the inability to change the constitution unless it is agreed upon by a majority of the representatives of the South in the House of Representatives.

Future options

In any event, even if the NDC ended without resolving the issues of these unresolved disputes, that would be for a limited time, as it is not possible to proceed with the drafting of the new constitution without consensus on the form of the state. Additionally the gravity of not resolving the southern issue in light of the growing tendency towards violence and chaos in the South makes this issue critical. Considering the available options for a solution there are three options available: 1) unlikely, 2) likely and 3) from the point of view of some, preferable.

The unlikely option: It seems that the option of the bi-regional federal state is the least acceptable. This is because it is rejected by the major forces in Yemen due to its raising

fears of separation. There is nothing that would force these parties to make compromises that might threaten the unity of state. A unified state is recognised in the eyes of the international community, and the legal framework for the transition process represented in the Gulf initiative and the Security Council resolutions emphasises that all solutions must be within the framework of unity. This inclination is supported by international parties sponsoring the transition process, which consider supporting stability in Yemen to be an interest of high priority. This is particularly to ensure that security in waterways adjacent to Yemen is maintained. Further the security of the Gulf region is of high strategic importance for the global economy, and there is the necessity of restraining the growing presence of Al-Qaida in this region.

The former U.S. ambassador to Yemen, Gerald Feierstein, explicitly expressed fears that the bi-regional federal state would later lead to separation on the ground, and the British Ambassador in Sana'a, Jane Marriott, endorsed his fears. The fear in the international community is that the number of regions would affect the security and stability of Yemen in the next phase. Marriot pointed out that the focus on authorities, governance and budget flows is, in fact, more important than the number of regions because that addresses the root of the problem.[1] While the European Union's ambassador to Yemen, Bettina Muscheidt, affirmed that all decisions reached by the NDC must be within the framework of the Republic of Yemen and within the framework of unity. The alternative would be war and instability.[2]

The international sponsors realise the complicated map of distributing power and wealth in Yemen. The majority of the population and manpower resides in the North and oil resources are in the South. They also acknowledge that separation, if it takes place, would further lead to deepening the problems of Yemen's political, economic and security situation. Additionally the international community fear an uprising in the South, which if not contained could spread to the North towards Saudi Arabia and the Gulf countries. This could ignite conflict due to economic, population or tribal problems in the North, and instability would not be in the interests of either the neighbouring countries or regional powers.

The likely option: Adopting the multi-regional federal state, coupled with the agreement on permanent laws for power-sharing between the North and South. This would depend on a balance in the land-population ratio, and the adoption of a form of consensual democracy that can permanently achieve fair participation for the South in the central authority and parliamentary assemblies through civil frameworks and parties. Constitutional stipulations would need to be put in place to prevent any future separatist demands.

This option meets the demands of the wider sector of elites and people in the North and the South, and is accepted by the international and regional parties. On the one hand, it preserves the unity, and on the other hand it corrects its path by making the South a partner in power and wealth and not simply a follower of the North, as has been the case since the 1994 Summer War.

The perfect solution: Some argue that the best option for the reality of Yemen and its interim conditions is to apply the rules of power-sharing and wealth between the South and North that were referred to in the previous option. This option would see the replacement of the federal system with a system of local government with full powers that broadens the base of political participation at the level of regions and local communities, and the fair distribution of power and wealth between central and local governments. This is the best option, because it resolves the core of the problem by returning the unity of the state to the participatory path, and saves Yemen from the risks of federalism and its negative effects which may increase the complexity of Yemen's political, economic and social problems.

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[1] The British Ambassador endorses the U.S. ambassador's fears of the bi-regional system and stresses: the Yemeni people have to think of the country as a single unit, website Huna Aden, 6 October 2013, <http://www.hunaaden.com/news/4187/> # ixzz2gxe1TxJo

[2] The Ambassador of Germany raises her voice above the Youth Movements in Aden (security and stability will only be within the framework of the unity of Yemen), website Huna Aden, 13 October 2013, <http://hunaaden.com/news/3836/> # ixzz2gDrcqytI