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Returning to Transitional Justice in Yemen

A Backgrounder on the Commission
on the Forcibly Retired in the
Southern Governorates

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Acronyms

GCC	Gulf Cooperation Council
NDC	National Dialogue Conference
PDRY	People's Democratic Republic of Yemen
SLC	Saudi-Led Coalition
TJP	Transitional Justice Process
UNDP	United Nations Development Programme
YAR	Yemen Arab Republic

Even as the violent conflict in Yemen continues while parties to the conflict, together with the international community, struggle to find a new path towards peace through negotiations, one of the most important issues for the future of Yemen remains entirely unaddressed: the so called Southern Issue. Since 2009, a broad social movement in the southern and eastern parts of the country, which until 1990 formed the independent People's Democratic Republic of Yemen, has been demonstrating peacefully for secession from the northern part of the country. Since the Houthi and Salih militias occupied the former capital of the South, Aden, in March/April 2015, Southerners have taken up arms to defend their home areas against the invaders from the north. They successfully liberated Aden – with the help of the Saudi-Led coalition (SLC) – in July of the same year. Northerners living in the South have since been forced to leave southern areas, and check-points have been established along the former border between North and South Yemen. Southern attempts to seek international and regional support for the creation of an independent 'South Arabia' have so far met with great reluctance, however. The dominant regional and international perspective on this matter seems to be that the unity of Yemen is to be preserved. If that is indeed considered the way forward, the only path towards preserving Yemeni unity peacefully is by taking concrete and earnest steps to rebuild trust between North and South through transitional justice, once the war has come to an end. Such a trust-building process, which will be much more difficult now that the South has once more experienced the invasion of northern forces, can – amongst others – build on the work of two commissions established in the framework of the GCC Initiative.

The work of one of these, namely, the Commission on the Forcibly Retired in the Southern Governorates, is the focus of this report. The data presented here is based on the author's work as legal advisor for UNDP in Yemen in 2014, supporting this Commission. Due to both the outbreak of full-out warfare across the country beginning of 2015 and a lack of funds, the Commission suspended its work in March 2015.¹ It is the author's hope that the important and diligent work of both commissions will not go to waste when it comes to re-building Yemeni society and statehood in a post-conflict transition process.

¹ I would like to thank Dr. Wasim al-Jerafi, Head of the Faculty of Humanities and Law and Assistant Professor of International Commercial Law at the British University in Yemen, for assisting me in June 2016 in contacting Judge Sahl Muhammad Hamza, chairman of the Commission, in order to assess the impact of the war on the Commission's work.

Towards Transitional Justice in Yemen

In November 2011, after more than nine months of protests, President ‘Ali ‘Abdallah Salih signed the Gulf Cooperation Council (GCC) Initiative that detailed the relevant steps ending his rule and a subsequent transition process. The Executive Mechanism of the GCC Initiative stipulated that the transitional justice process have three main instruments: the National Dialogue Conference (NDC), the Commission on Land-Related Disputes and the Commission on the Forcibly Retired. The latter, referred to as the Commission throughout the brief, was established to address issues of employees that were forced out of their jobs in the civil, security, and military sectors. Both of these commissions were tasked with addressing grievances in the Southern governorates. In Yemen’s geographic south and east, thousands continue to demand the “liberation” from what they perceive as “Northern occupation”. In the eyes of many, protests and demands have already moved beyond a point where preserving Yemen’s unity would have been a valid negotiation issue. Others remain open towards a (two-region) federation, conditional on the actual power divested to the regional level within the federal system. If Yemeni unity is to be preserved, many political observers believe, any future Yemeni government urgently needs to implement steps to advance Southern Yemenis’ trust in the political framework of a united Yemen.

From a legal theoretical perspective, the concept of a national dialogue conference combined with commissions to address specific legal problems is considered as promising amongst experts in transitional justice.² The success of the NDC that took place in the capital city Sana’a from March 2013 to January 2014 continues to be praised both by national as well as international actors involved in the Yemeni transition process as an important contribution to the post-‘revolution’ state-building process. However, its potential was ultimately squandered not by a lack of investment in the NDC process, but by a lack of attention to everything else that was happening in the country, first and foremost the deteriorating economic and humanitarian situation. Neither the results of the NDC nor the results of the work of the two commissions should thus be ignored. They are important stepping stones for any post-conflict peace-building process to build on. Until the commissions were forced to cease their work due to the outbreak of full-out warfare across the country, the Commission on Land-Related Disputes had successfully investigated approximately 30,000 cases³ and the Commission on the Forcibly Retired had investigated around 20,000 cases.

² Roundtable discussions at the conference ‘Transitional Justice for Palestine’ at Hebron University, 18.11.2014, and author’s interviews with professor Mia Swart, University of Johannesburg and UNDP transitional justice experts in Sana’a and Ramallah.

³ On the work of this Commission see Unruh 2016.

From a legal perspective, this is a tremendous success given the very difficult challenges of this process. At the time the author of this study worked with the Commission on the Forcibly Retired as a legal consultant, however, the success of the Commission was in danger because no comprehensive compensation mechanism was in place to enforce the legal decisions undertaken by the Commission. This lack would remain a challenge for the transitional justice process, should the work of both commissions be resumed once the ongoing war is brought to an end. A legal ruling alone would not alleviate the existing distrust in the rule of law found throughout the country; but as people would begin to actually benefit from this process as soon as financial compensation is paid, trust would begin to be restored. Further recommendations can be found in the final section of this report under 'Conclusion'.

Background

In 1990, Yemen's unity was established when the People's Democratic Republic of Yemen (PDRY or South Yemen) and the Yemen Arab Republic (YAR or North Yemen) merged and became the Republic of Yemen. After a difficult unification process in which the political elites of neither side ceded enough power to actually merge the former two states' institutions, Southern elites declared secession in 1994. The subsequent civil war resulted in a victory of the North, the plundering of army bases in the South and that of many other former state assets, and the forced retirement of army and security forces personnel next to other Southern state employees. Over the coming years, the cultural, economic, and political marginalization and exploitation of the South by Northern elites, the lack of rule of law in the whole country, and the refusal, in many cases, to pay the pensions of the forcibly retired resulted in growing resentment in the South towards the government in Sana'a.

In 2007, these forcibly retired army and security forces employees began taking to the streets to demonstrate for their re-employment or, alternatively, the payment of their pensions. Their protests were quickly joined by other forcibly retired state employees, unemployed youth, intellectuals, journalists, and other Southerners with legitimate grievances. President 'Ali 'Abdallah Salih's politics of cooptation and *divide et impera* were unable to quell these protests, which grew in number as he turned to violent means to thwart the emerging Southern Movement [al-hirak al-janubi]. By 2009, calls for secession from the North were frequently heard in Aden, the former capital city of the South, as well as in other cities, and the flag of the PDRY was increasingly waved during the regular protests.

In 2011, the Southern Movement initially joined the protests against the Salih regime, but distanced itself again when Northern political elites that had sustained the Salih regime joined the protests in March 2011. In November of that year, 'Ali 'Abdallah Salih signed the GCC Initiative that detailed the relevant steps ending his rule and a subsequent transition process.⁴ A Transitional Justice Process (TJP) was initiated along with the election of a new president, the establishment of a national unity government, and a security sector reform process.

Transitional justice is a collection of mechanisms aiming at reorganizing and stabilizing a political and legal system in a transitional period from authoritarian to democratic rule. It can deal with aspects of criminal law (e.g. political crimes), public law (e.g. land), civil law (e.g. material compensation) and also symbolic aspects such as the official acknowledgement of the legitimacy of claims and truth commissions (Osiel 2014). In Yemen, the legal basis for the TJP in the framework of the post-'revolution' transition process were the GCC Initiative and several subsequent presidential decrees⁵ that rendered precise procedural aspects of the main mechanisms. Furthermore, the United Nations Security Council issued several resolutions that aimed at achieving more political and legal stability in the country.⁶

The main pillar of the TJP in Yemen was the NDC that brought together (socio-) political stakeholders from all over the country to negotiate the future of the country. Well reported in national and international media, the NDC came to a conclusion in January 2014 with approximately 1,800 recommendations. Two less well-known mechanisms of the TJP were set-up to tackle accusations that were specifically raised by the Southern Movement: one commission to deal with land-related disputes;⁷ and a second commission to address the problem of many employees in the military, security and civil sector who lost their jobs in an unlawful manner between 1989 and 1995. The latter commission addresses procedures that led to the unfair termination of work contracts, as the right to be heard or to present evidence was not respected. The tragic stories of employees who lost their jobs after working in high-ranking positions in the military, the security apparatus or in state-owned companies for decades are numerous. Many are currently receiving little or no payment from the government and, as a consequence, cannot feed their families.

⁴ The text of the agreement can be found at: http://peacemaker.un.org/sites/peacemaker.un.org/files/YE_111205_Agreement%20on%20the%20implementation%20mechanism%20for%20the%20transition.pdf, last accessed November 2014.

⁵ Presidential Decree No. 24 of 2011, No. 2 of 2013 and No. 253 of 2013.

⁶ UN Security Council Resolutions No. 2140 of 2014, No. 2051 of 2012 and No. 2014 of 2011.

⁷ This relates to land theft, as well as the fact that, based on different legal traditions, ownership is claimed on the same land in Yemen (Kambeck 2013: 197–213).

This report focuses on the work of the Commission to Address Issues of Employees Forced Out of Their Jobs in the Civil, Security, and Military Fields; in short, the Commission on the Forcibly Retired. The author had the opportunity to serve as a legal advisor to the United Nations in 2014 where he gave recommendations concerning administrative and legal reform, as well as political and communication strategies, based on group and individual interviews with members of the Commission and applicants, as well as activist groups that represent the interests of former employees in the South. UNDP supported the TJP by providing expert advice and operational support to the NDC and the two commissions, amongst others by conducting training courses, workshops and seminars for all the Yemenis who worked passionately for the success of this extremely challenging process.

The information and views set out in this report are those of the author and do not necessarily reflect the official opinion of the UNDP. Neither the UN institutions and bodies, nor any person acting on their behalf, may be held responsible for the use which may be made of the information contained herein.

The Commission's Structure

The main legal basis for the work of the Commission on the Forcibly Retired was Presidential Decree No. 2 of 2013 which established the two commissions mentioned above.⁸ Based on this decree, the members of the Commission drafted their own bylaws and used their legal experience to design a decision-making process to ensure that the rights of the applicants to be heard and to present legal evidence were respected, as well as their right to a fair and fast legal procedure. Between summer 2013 and spring 2014, more than 150,000 people filed an application for compensation and the right to be reinstated into their old positions. At the end of the validation process, 95,000 to 100,000 claims are estimated to be valid. In the light of such large numbers, it is not difficult to imagine the various difficulties that the members of the Commission faced in organizing fair procedures in a timely manner.

The work of the Commission worked was firmly located at the nexus of law, politics and history. Its members were addressing both symbolic and material aspects of the civil law component of transitional justice: symbolic because

⁸ Along with the Republican Decree No. 33 of 1992 on Pensions and Incentives for Armed and Security Forces and the Republican Decree No. 253 of 2013 establishing a Compensation Fund for Confiscated Land Issues and Dismissed Civil, Security and Military Servants in the Southern Governorates since July 1994.

the Presidential Decree No. 2 of 2013 and the decrees that were issued by the Commission acknowledged the legitimacy of legal claims due to unlawful dismissal; and material because they lay the legal foundation for compensation payments from the financial fund that was established for this purpose in 2013. Since its inception, the Commission has faced massive social pressure due to the high expectations of the people in the South. Throughout the process, many Southerners believed they had been tricked and fooled by politicians, and continued to express the suspicion that the new regime never intended to compensate them for their years of service to the former southern socialist government before the country merged with the North.⁹

Judge Sahl Muhammad Hamza was and is the chairman of the Commission. He is also judge at the Supreme Court in Sana'a. The Commission formed three subcommittees:

- 1) The Military Subcommittee [lajnat al-'askariyyin] was made responsible for cases of military personnel, mainly involving applicants who served in the military forces of the PDRY. Brigadier General 'Ali 'Ubayd Saleh, who is also the vice chairman of the Commission and Brigadier General Salim 'Abdallah al-'Attas are the members of this subcommittee.
- 2) The Security Subcommittee [lajnat al-amniyyin] deals with the applications of people who worked in the security apparatus of the former South. This includes both police and intelligence. Members of this subcommittee are Colonel Husayn 'Abd Rabbu Saleh 'Abdan and Major Khalid Muhsin al-'Ukaymi, who is also the rapporteur of the Commission.
- 3) The Civil Subcommittee [lajnat al-madaniyyin] deals with claims from former employees of the civil sector. Members of the Civil Subcommittee are Ms. Judge Nura Dhaif Allah Muhammad Qa'id, who is also the spokesperson of the Commission as well as judge at the State Prosecution Office in

⁹ Historically, this issue can be compared to the German unification process that took place in the same year (1990). The political architects of both the Yemeni and the German unification knew that massive financial burdens are part of such an endeavor. In Germany, however, in contrast to Yemen, compensations were paid as the state had the necessary financial resources. Also, German society was able to participate with solidarity payments, referred to as the 'solidarity tax' [Solidaritätszuschlag], which has been raised by the German government from 1991 until today. It ranges between 7.5 percent (1991–92 and 1995–97) and 5.5 percent (from 1998 onwards) on income, capital gains and corporate taxes. The government justified this tax with the financial costs of German unity and the costs of the German participation in the first Gulf War (Desert Storm). The total sum of taxes raised, for example, in 2012 amounted to 13.6 billion Euros. Between 2007 and 2010, German regional and federal courts came to differing opinions whether or not the tax is in accordance with the German Constitution, as the tax was not appropriated for a specific purpose and rather used as a financial buffer for miscellaneous expenses. The Federal Constitutional Court eventually ruled in 2010 that the *Solidaritätszuschlag* is legitimate.

Aden;¹⁰ Judge ‘Alawi ‘Abdallah Qasim al-Adeemi, who is a judge at the State Prosecution Office in Sana’a; Judge ‘Ali ‘Awad bin Hamil, who is a judge at the State Prosecution Office in Hadhramawt; and Judge Nasir ‘Ali ‘Abduh ‘Alaw, who is a judge at the Civil Court in al-Mahweet.

Facts and Figures

The office of the Commission was located in Khor Maksar, Aden. Working hours were from 8:00 until 13:00. During the establishment phase of the Commission (the first four months after its inception in January 2013), additional working hours were set from 16:00 until 21:00. The accounting unit in charge of both commissions was located in the Aden office of the Ministry of Finance, consisting of six members. The twenty-two staff members of the Commissions’ Secretariat included representatives of Yemeni ministries and state organizations (Ministry of Interior, Ministry of Defense, Ministry of Civil Service, Political Security Office, Civil Service Fund, Civil Service Aden Office, Security and Pension Authority) and people who worked on data entry or as office maids.

The commissioners estimate that 60–65 percent of all registered cases would deal with applications from military personnel, 5 percent would be filed by former employees in the security apparatus, and 30–35 percent would be filed by former civil employees.

By November 2014, the Commission had issued four decrees approving 17,261 valid claims. All claimholders are entitled to participate in the financial settlement process. This includes, for example, the continuation of the payment of regular pensions, a new calculation of pensions or salaries in cases where the years in service or ranks had not been calculated correctly, compensation payments, etc.¹¹ Out of the above valid claims, 13,304 applicants are entitled to reinstatement in their former positions or to promotion into higher ranks.

A sum of 56,789 applications had been submitted in the military sector by May 2014. The total number of applications was expected to rise up to 65,000 in this subcommittee and 40–45,000 claims were estimated to be validated by the end of the process. Heirs at law were expected to file 7–10 percent of all military cases. Around 20 percent of all applications in the Military Subcommittee were estimated to relate to cases prior to 1990.

¹⁰ According to Judge Sahl Muhammad Hamza, she was later transferred to another commission by President Hadi.

¹¹ According to Judge Sahl Muhammad Hamza, by June 2016 all persons with valid claims have been compensated with YR 100,000 (~ USD 336 (June 2016)) as part of their full compensation.

By mid-2014, the Commissions decided that 1,665 claims of a total of 4,752 cases from the security sector it had investigated so far were valid. Around 18,000 applications had been submitted by May 2014, with another 2,000 cases expected to be filed by the end of the application process in autumn of 2014.

The civil sector submitted 43,467 applications by May 2014. The Commissioners expected approximately 30,000 valid claims from a total of 50,000 by end of the application process.

The Commission's Work Approach

During the first phase after its inception, the Commission decided to focus on working on applications filed by former military personnel. The reasons for this were: (1) the military personnel were estimated to make up the majority of all cases, at 60–65 percent; (2) for the majority of cases in this subcommittee, the evidence that was provided by applicants was easy to verify by comparing the data with the database of the Ministry of Defense; and (3) a well-functioning military with sufficient human resources was seen as crucial for stability in Yemen.

The commissioners were highly motivated and felt the responsibility to reflect on their work not only as legal practitioners, but also in its political and historical contexts. They were aware that the outcome of their work had the potential to either fuel social tensions or support a reconciliation process, an essential element of the TJP. Moreover, the commissioners were conscious of the fact that their work would have political impact on the fragile situation in Yemen because of the potential to show that demands from the Southern population were taken seriously. They knew that if the work of the Commission failed, this would strongly support those voices within the Southern Movement who see secession as the only way forward.

The legal key documents and principles for the work of the Commission are the Presidential Decree No. 2 of 2013, the Yemeni laws in general, international legal standards (e.g. concerning the fairness of the trial and the design of the decision-making process), and aspects of natural law (e.g. concerning balancing the de facto power of the parties involved and strengthening the legal position of the applicants as the weaker party). Equally important to the Commission's work is the reform process of the Yemeni legal environment, which will be significantly influenced by the new constitution, the first draft of which was presented in January 2015. Besides the general legal environment,

a new constitution might also affect legal aspects of the TJP, and more specifically the compensation process.¹²

Article 9 of the Presidential Decree No. 2 of 2013 stipulates a time frame of one year (until January 2014) for the Commission to conclude its work. It was obvious from the beginning that this time frame could not be adhered to and would need to be extended. Unfortunately, the stated time frame of one year gave rise to high expectations in South Yemeni society. The time limit given in the decree was motivated by the political aim to speed up the transition process, but over-ambitious due to the practical and organizational challenges involved. Public opinion in Yemen nevertheless judged the commissioners in the light of this timeframe, and the number of 4,752 cases concluded by the initial deadline of January 2014 compared to an estimated 150,000 applications reinforced the perception that the Commission was working slowly and inefficiently.

The commissioners were also aware of both their scientific and historical responsibility, and were concerned about the security and accessibility of data for the public and for scientific purposes. They were convinced that both the outcome of the Commission's work (e.g. the legal foundation for the compensation process) and the procedural setup that allowed the necessary legal assessment of the individual cases in a fair and timely manner would be discussed beyond national Yemeni politics. It was not the first time in history that financial compensation for systematic political injustice is an essential element of a transitional justice process. For example, Brazil and other countries in Latin America faced similar challenges in the last decades. Nevertheless, there are no standing legal or operational procedures on how to conduct a fair compensation trial. Transitional justice is "imperfect" justice because it cannot recur to a democratically legitimized procedural legal framework. The necessary procedures must be created *de lege ferenda* in a situation where politics and law are rather unstable. Furthermore, the history of transitional justice as a discipline in law is constantly evolving and the legal and political procedures and instruments that are currently used in Yemen and other countries in the context of the Arab uprisings post-2011 are necessarily an important reference for scholars of political transition. The commissioners thus considered it as very important that their work was documented and that the relevant data would be accessible for research. UNDP shared this perspective and discussed the technical options of securing data together with their IT consultants.

¹² The constitution of Brazil from 1988, for example, stipulates in Article 8 the principle of "amnesty as reparation", granting amnesty rights for workers in the private sector who suffered disadvantages due to political reasons. Based on this constitutional principle, several laws were drafted in the following years that also granted financial reparation payments for employees that were dismissed in an unfair manner (e.g. Article 11 of the Law No. 9.140 that was enacted in 2002); see Abrao & Torelly 2011: 449.

The Commission's Decision-Making Process

The Commission decided all cases in meetings, with all Commissioners present, unanimously.¹³ The subcommittees were responsible for preparing the applications by validating the presented evidence and for giving recommendations for the final decision to the Commission.

The Commission understood and interpreted its mandate given and verbally clarified by President Hadi as a form of symbolic compensation; i.e., in the sense that the Government of the Republic of Yemen acknowledges that an unlawful decision-making process led to many dismissals and caused harm to the former employees in the majority of cases of dismissed civil servants. In the light of this understanding, the Commission saw its task in “finding out who is entitled to material compensation and who shall benefit from the President’s acknowledgement that many people did not receive a fair treatment”,¹⁴ and thus shifted the burden of proof from the claimant (here: the applicants) to the defendant (here: the government). If the Commission was in doubt whether or not a claim was valid, it conducted an oral hearing and gave the defendant (e.g. a Yemeni ministry) the chance to prove that the dismissal was lawful.

The legal principle of the benefit of doubt (*in dubio pro reo*) is known in criminal law and anchored in the Yemeni constitution in Article 47, as well as in Article 4 of the Law Concerning the Criminal Procedures (13/1994). The Commission applied this principle to the decision-making process in this matter of public law and argued that it was their task to protect the rights of the applicants as the weaker party against the stronger party (here: the government). In the Commission’s decree No. 1 of 2013, the commissioners argue that the application of the *in dubio pro reo* principle in the current matter of public law is necessary due to pragmatic reasons. It is also legitimate by applying an analogy to Article 101 of the Yemeni Evidence Law, which also stipulates a reversal of the burden of proof in cases of an evident imbalance of the power of the parties.

In the legal discussions in the context of the authors’ fact-finding mission, the commissioners also supported this legal perspective with an analogy to

¹³ Chapter 4, Section 2, No. 1 of the Commission’s bylaw.

¹⁴ Chairman of the Commission Judge Sahl Muhammad Hamza in an interview with the author in Aden on 28.04.2014.

Article 213¹⁵ of the Yemeni Civil Law (Law No. 14 of 2002) and legal principles of *shari'a* and Yemeni customary law (*'urf*). The Commission therefore decided in favor of the applicants in those cases where the evidence that was provided by the applicants cannot be proven because data cannot be validated but other indications lead to the conclusion that the applicant's claim is valid (for example, if an applicant can be attributed to a larger group of applicants whose data can be validated).

Duties of the Commission

In the following, the Commission's main duties as stipulated in the Presidential Decree No. 2 of 2014 will be outlined and the efforts of the Commission to implement the assigned tasks will be described.

1. *The Commission shall develop and make public its own rules and procedures to organize its meetings and decision-making processes (Art. 5).*

The Commission drafted bylaws that were in the process of being revised in mid-2014. In general, the Commissioners were satisfied and considered the work on the bylaws as successful and finished. The bylaws were issued under the Commission's resolution No. 1 of 2013 (22.01.2013), and include six chapters and 16 articles. They had not been made public by the time of the author's work with the Commission because the Commission wanted to initially include their publication in a communication strategy. When made public, the bylaws were meant to be accessible in Arabic and English on the Commission's website (which was still to be established), and in printed brochures.

2. *The Commission shall develop and declare mechanisms of its work in a manner that ensures easy receipt of reports and complaints and swift implementation (Art. 3c).*

By March 2013, the Commission had established three subcommittees. Furthermore, it had created a system to document applications with two forms, one for the claims made by applicants from the civil sector and a second for applicants from the military and security sector. It was challenging for

¹⁵ Article 213 of the Civil Law (14/2002) reads: "Whenever doubt related to the contract terms occurred, such doubt shall be interpreted in the favor of the indebted party, being the obliged party, with exception to (obligatory/submission) contracts whose terms were inserted by the strong party over the weak party, where interpretation therein shall not harm the submissive (weak) party."

the Commission that applications were handed in to other institutions, such as the NDC, and had to be collected and filed in the Commission's office in Aden.

3. *The Commission shall propose legal and fair recommendations and remedies and estimate reasonable compensations to the President of the Republic in quarterly reports, who shall submit the reports to the government for implementation (Art. 3b).*

Three decrees issued have identified 17,261 people entitled to compensation or reinstatement. The decrees include the recommendation to reinstate 13,304 former employees in public service, mainly military personnel. The reinstatement had not been implemented by the time of the author's work with the Commission. The reasons given by the Ministry of Defense, who were obliged by the Commission's decisions to reinstate their former employees, were mainly a lack of financial resources. The lack of implementation of the Commission's decision was seen as significantly impeding its work, and was considered damaging to the Commission's reputation and perception in the national media.

4. *The Commission shall investigate the violations covered in the scope of its function on the basis of a complaint and/or reports by the affected persons, and conduct independent and transparent investigations in this respect (Art. 3a).*

Until May 2014, a total number of approximately 95,000 applications had been registered: 56,789 former military personnel, 20,000 former civil employees and 18,000 claimants from the security sector. Applications were collected in four phases: the first phase lasted from March until April 2013 and focused on the city of Aden; the second phase (June 2013) focused on Hadhramawt and Socotra; the third phase lasted through August 2013 and had a regional focus on al-Mahra and Shabwa; and the fourth phase (February 2014) had a regional focus on Abyan, Lahj, and (again) Aden. The Commission would have preferred to open permanent field offices but it lacked the necessary financial resources. Thus, the field offices operated only temporarily.

5. *Verify the documents of all parties, hear all sides in an equitable manner to arrive at the truth that would enable it to issue a fair and legal ruling based on core and sound arguments and foundations (Art. 3a).*

The verification of documents was a major task. The Military Subcommittee compared documents with the database of the Ministry of Defense.

The Security Subcommittee compared the claimants' information with the database of the Ministry of Interior and the Political Security Office, but their work was more difficult due to reasons discussed later in this report. The validation work of the Civil Subcommittee had started in spring 2014 and was pending at the time of the author's work with the Commission.

6. *The Commission shall refrain from considering any cases settled previously; or cases that have been subject to a final court decision (Art. 2b).*

Previous commissions have dealt with the problem of forced dismissals in 2003, 2007 and 2010. These commissions had a more limited mandate compared to the present one, but nevertheless managed to settle cases. Yemeni courts decided in cases where contradicting laws caused disadvantages in promotion and salaries for police personnel. Notwithstanding those final and binding decisions from courts and commissions, the current Commission decided – in contradiction to its given mandate but with the verbal consent of President Hadi – to include applications from these groups because they considered the current process as a one-time opportunity to balance injustice (including previous settlement procedures that were criticized as unfair) and settle and reconcile lawful legal claims.

7. *The scope of work shall cover employees from the civilian, security and military sector from 1990 until 2013 (Art. 2b).*

All three subcommittees extended the time frame given by the mandate in its Article 2c, which states that only cases after 1990 should be assessed. They also accepted applications concerning cases prior to 1990, some of them dating back to 1968. President Hadi had verbally approved this work beyond the given mandate, saying that it was an important sign to the people that the government was taking their situation seriously and looking at the problem comprehensively. The government also feared that social tensions would increase if this group of claimants would not be recognized. The Presidential Office would decide at a later date whether the applicants who were dismissed before 1990 would be included in the financial settlement within the scope of the present Commission.

The Three Subcommittees

The Military Subcommittee

The former PDRY had between 60,000 and 85,000 military and security personnel. These figures vary depending on the source.

The Military Subcommittee had received 56,789 applications from former officers and soldiers by May 2014. In some cases civilians, such as engineers, were contracted by the military. Such applications could be made to the Military Subcommittee and the Security Subcommittee. Many applicants completed forms for both subcommittees. Additionally, many applicants handed in forms twice or more often or in more than one office. It was therefore the task of the Committee to identify and filter these doublings. The commissioners in charge estimated that about 40,000–45,000 cases would remain at the end of that process.

As mentioned above, the Military Subcommittee also accepted cases prior to 1990. These cases were believed to make up about 20 percent of all military cases according to the estimates of the two commissioners in charge.

The Commission also accepted cases of family members or other legal successors filing the claim. According to the estimates of the commissioners, these would comprise 7–10 percent of all military cases.

Compared to the Security and the Civil Subcommittees, the work of the Military Subcommittee was less difficult because more official data existed for the validation process.

The Security Subcommittee

The Security Subcommittee had accepted 18,000 applications by May 2014, out of which 14,000 had been digitized in the Commission's database by the time of the author's work with the Commission. The commissioners expected another 2,000 cases to be filed until the end of the ongoing validation process.

The majority of applicants lost their jobs in two waves, the first occurring immediately after the war in 1994 and the second in 1995 and 1996.

The security apparatus in the PDRY had employed approximately 20,000 people. About 30–40 percent of the staff were dismissed from the job after the war in 1994 by a committee from Sana'a that had investigated who had remained in office during the war and who had fled to the countryside. Only those who had remained in office were retained, while the others were dismissed through several ministerial decrees. This process was considered as

unfair by the commissioners, because no court decision or any other kind of fair trial with the possibility of legal participation of all parties in the process had led to the dismissal.

During 1995 and 1996, senior officers were transferred to remote governorates, mainly in the north, that were far away from their home towns. Many resigned as a reaction to this process. The Commission also accepted these applications, acknowledging that these senior officers were forced out of their positions by unfair treatment.

The work of the Security Subcommittee was complicated by the fact that a new system of military and security ID numbers was introduced after the war in 1994. Some applicants only had their old ID number, which made it more difficult to validate their data.

In approximately 20 percent of the cases that were registered by the time of the author's work with the Commission, no data existed in the databases of the Ministry of Interior and the Political Security Office that would have validated evidence presented by the applicants. The Security Subcommittee thus has to investigate these cases further.

In the case of approximately 90 applicants without congruous data in the database of the Political Security Office, a senior official and advisor to President Hadi confirmed that he knew these applicants personally and that they had worked in positions that entitled them to compensation or reinstatement according to the mandate of the current commission.

Yemeni ministries and authorities had deputized thirteen representatives to support the work of the Commission in the Aden office. Their job was to validate the applicants' request. Unfortunately, the Ministry of Interior did not accept the signature of its own deputies and claimed that they had no power of attorney. The deputy of the Ministry of Interior was eventually called back to Sana'a. The subsequent Minister of Interior, 'Abduh Husayn al-Tarib, appointed new representatives to the Commission, and the cooperation between the Commission and the Ministry of Interior improved subsequently.

The work of the Security Subcommittee was also hindered by the fact that its members had limited or no access to the non-digital database in the Ministry of Interior. In cases where they wanted to validate claimants' data which could not be found in the digital database, they required access to the paper archive in the ministry. This access was not granted in the majority of cases. The commissioners suspected this was due to a lack of manpower in the Ministry of Interior and/or a lack of political will to support their work. A potential lack of support could be interpreted as a breach of the duties stipulated in the

Presidential Decree No. 2 of 2013 Article 4.b) (duty of authorities to facilitate the commission's work) and Article 4.d) of the Decree No. 2 of 2013 (right to request documents).

The problem of contradictions between laws No. 67 of 1991 and No. 15 of 2000 affected 1,134 applicants by the time of the author's work with the Commission, as well as approximately another 500 that had not yet been digitized. Law No. 15 of 2000 contains a passage in Article 50 that does not allow police personnel to be promoted higher than the rank of major unless they are graduates of a Yemeni police academy or an equivalent institution that is recognized by the state.¹⁶ The commissioners assumed that this regulation aims at discriminating those police officers who studied abroad (e.g. Russia or East Germany), and their education was – sometimes due to political reasons and not based on a fair assessment – not regarded as equivalent to that of the Yemeni police academy. However, the law of 1991 does not restrict promotion. The problem of these contradicting laws is well known to the Yemeni legal community and has been subject to various claims at Yemeni courts. The commissioners expected that Law No. 15 of 2000 would eventually be revised and that the respective Article 50 will be declared null and void. Thus, the Commission decided to assess the claims of the affected group in the light of Art. 7.a.1. (application of salary and wages strategy) and 7.a.3. (the right to rightful promotion) of Presidential Decree No. 2 of 2013.

The Governor of Aden hired 5,000 employees, mainly in the security sector, during 1993 and 1994, at a time when the tensions between North and South were already rising. Different circles of power were gathering manpower prior to the 1994 war. This group of employees initially served as guards in the oil fields for six months to a year, and later on as soldiers in the war.

It was difficult for the Commission to deal with these claims because no evidence in official databases existed to prove the claims. In many cases the claimants were only able to identify themselves with old military ID cards and numbers, and this data could not be verified with the existing database. Consequently, the claimants could not present clear evidence on their time of duty in the Southern administration or in public service. Salary payments for this group were discontinued in July 1994. The difference to other claimants is that this group was not hired by a ministry, but by the Governor of Aden. Claims of this group were addressed in previous settlement attempts of

¹⁶ Article 50 of the Law on Police Authority (Law No. 15 of 2000) reads: "The promotion of ranking officers shall be according to seniority and according to promotion conditions, however such promotion shall not exceed the rank of major, and those who are currently at higher rank than major may maintain their ranks, till they reach pension age, and shall continue receiving annual allowances even if such allowances exceeded their (basic) salaries."

the *Dismissed Commissions* in 2003, 2007 and 2010, but no solution was ever reached and the claimants were not considered entitled to compensation by previous commissions. However, the Presidential Office expressed willingness to include this group in the current settlement process.

The Civil Subcommittee

The Civil Subcommittee had received 43,467 applications from the civil sector by May 2014 and 21,130 of those applications had been digitized by the time of the author's work with the Commission. The commissioners estimated that a total of 50,000 applications from the civil sector would be received by the end of the settlement process, with about 30,000 claims judged as valid. About 3–5 percent of the applications were expected to be outside the scope of the mandate, because they were prior to 1990 or not from the Southern governorates.

The work of the subcommittee started in spring 2014 as the Commission had prioritized work on the military and security cases. The commissioners expected a more difficult process of validating the civil applicants' data compared to the military and security cases, as there was a lack of comprehensive databases for the former employees in the civil sector.

The privatization of companies that were state-owned during socialist rule and then sold to private owners after unification led to various problems in the work of the commissioners. One major obstacle was that data had been lost and that it was consequently difficult – in some cases impossible – to validate the evidence presented by the applicants.

Several laws and decrees have been issued since 1999 and now form the legal framework for the privatization process and the compensation process for employees who lost their jobs. However, the compensation process has been criticized by many claimants as unfair, and the Commission decided to also consider cases that had been settled under these previous compensation processes. As this exceeded the mandate (Article 2b) given in the Presidential Decree No. 2 of 2013, President Hadi approved this step verbally.

The legal framework for the privatization and compensation process is the Law on Privatization (Law No. 45 of 1999) that stipulates the establishment of a High Committee for Privatization in Article 6 and the establishment of a Technical Privatization Office in Article 9. Both offices were charged with various tasks concerning the organization of the transition process from public to private ownership. Furthermore, the law regulates the establishment of a Privatization Proceeds Fund in Article 32. Five years later, the Law concerning the Establishment of the Civil Service Fund and the Executive Regulation (Law No. 1 of

2004) clarified in its Article 5 No. 1 that the fund's resources are derived from the proceeds of the privatization process. In Article 4 No. 2, the law stipulates that the fund (also) aims to provide remedies for the employees through early retirement and a fair compensation. In its Article 36, the law repeats the instruments of (a) early retirement and (b) payment of financial compensation. Former employees, who were parties in these compensation processes based on this law, have criticized the settlement process as unfair. For example, there was no right to appeal against a decision, and the compensation that was offered was seen as inadequate. In addition, many people complained that the promised compensation was not fully paid or not paid at all.

The Compensation Fund

President Hadi issued Republican Decree No. 253 of 2013 on establishing a Compensation Fund for Confiscated Land Issues and Dismissed Civil, Security and Military Servants in the Southern Governorates since July 1994. According to Article 4a) of the decree, the purpose of the fund is "to compensate the claimants of lands and dismissed civil, security and military servants who deserve compensation in the Southern governorates, according to the remedies and resolutions issued by the two Commissions, established by Presidential Decree No. 2 of 2013". Accordingly, it is the most important financial resource for the work of the Commission.

Until the time of the author's work with the Commission, the budget of the fund, which was launched in September 2013, had not been determined. One realistic estimate was that 1.2 billion USD would be required (Ghobari 2013), but UNDP was engaging national and international experts to do further calculations. The International Legal Development Group at Alem & Associates in Beirut estimated 950 million to 1 billion USD as the minimum budget for the adequate compensation of all the claims that were submitted until May 2014; however, the total budget that would be needed to compensate all entitled claimants, including those that had not filed their claims by May 2014, would sum up to 1.2 billion USD.¹⁷ By the time of the author's work with the Commis-

¹⁷ The author was involved in preparing a high-level meeting of senior officials and relevant stakeholders within the Yemeni Government at the International Legal Development Group at Alem & Associates law firm in Beirut, Lebanon in August 2014. In this context, the team discussed different options for compensation budgets. The meeting was meant to channel donor support and define appropriate and efficient decision-making procedures of the Compensation Fund. The attempt to gather all relevant national and international stakeholders in one meeting to decide the necessary amendments to the procedural framework of the Compensation Fund fell through following resistance from some Yemeni ministries.

sion, Qatar has pledged 350 million USD (“Qatar confirms” 2013). It remained unclear, however, what sum would be sufficient, and also whether and when the contributing states would pledge the missing millions. Also, the Yemeni government would have to establish different funds covering material compensation based on human rights violations in both fields of criminal law and civil law (al-Moshki 2014). A comparable comprehensive reparation program in Brazil worked with a budget of two billion USD.¹⁸

The commissioners were concerned that the Compensation Fund was the main economic resource for all potential compensation payments, as well as that both the sufficient financial resource for the compensation process and the fully functional administration, including a result oriented decision-making panel of the fund, were not yet in place. All legal procedural work of the Commission would be jeopardized if the claimholders could not benefit at the end of the compensation process.

The administration of this fund, according to Chapter 4, Article 11 of Republican Decree No. 253 of 2013, was to be in the hands of a board of directors. The board, among others, included the prime minister as chairman and the ministers of defense, finance, planning, interior, local administration, civil service, endowment and legal affairs, as well as the deputy director of the Presidential Office and the chairman of the Political Security Office. However, in the face of an already deteriorating situation of statehood and a struggle over the government in the context of the Houthi take-over of Sana’a in September 2014, the staffing of the board was unclear. The commissioners highly recommended that the international community be involved in the administration of the fund, and they welcomed indications that Qatar, as one of the major financial donors of this fund, was interested in international participation. Such international participation would be aiming at two things: firstly, to ensure a greater willingness to contribute or actually pay pledged financial contributions once the international side would co-own the compensation process; and secondly, to lead to a certain degree of external control and more transparency, with the decision-making process less prone to be delayed and complicated due to national political power games.

18 The Brazilian reparation program for victims of direct violation of human rights also included political crimes (Abrao & Torelly 2011: 444).

Former Employees' Associations

During his field visit in May 2014, the author held several meetings with members of different associations of former employees in the civil, military and security sector. Discussions took place with members of associations in the civil sector and members of associations in the military and security sector (senior staff members of the Southern army tasked with commanding warships and helicopter fleets, leading the intelligence unit of the political security, military attaché at an embassy of the PDRY, etc.).

In general, the reputation of the commissioners was positive. It was also considered a good sign that (civil) judges were involved as commissioners (the majority of prior commissions consisted of military and political personnel only). The Commission's work was viewed and discussed critically. Some voices expressed concern that the Commission's settlement process was the last chance to avoid civil unrest and violence.

According to the information given by representatives of the various associations of pensioners, the vast majority of former employees in the civil, military and security sector had organized themselves in associations. The representatives demanded participation in the compensation process (not as passive applicants, but rather in an active position as experts who want to provide information and give advice) and continuous updates on the progress of the work of the Commission. The Commission recognized that the impact of the associations on public opinion was not to be underestimated, and discussed options to better include the knowledge and expertise of the members of the associations in the compensation process.

Future Challenges

At the time of the author's work with the Commission, the commissioners were considering various options in regard to how applicants and representatives of former state employees could participate in the validation process. The establishment of a media and participation unit in the Commission was also being discussed in cooperation with UNDP, which was the Commission's main facilitator for technical and operational support. The Commission's national and international communication strategies with media and politics were also being discussed and revised. Different teams were working on important issues, such as creating a web presence and ensuring a safe and efficient data archive. The Commissioners were aware that their work should ultimately be

lessons learned from other countries combined with an insider's trustworthy instincts and dependable faculty, based on legal, Yemeni and very much pragmatic experience, on how to best translate this knowledge into the current fragile Yemeni context.

Conclusion

The team of commissioners of the Commission to Address Issues of Employees Forced out of Their Jobs in the Civil, Security, and Military Fields and their staff has performed very well under the given circumstances, and they deserve respect and appreciation. Nevertheless, should the work of the Commission be resumed after the end of the ongoing war, they will continue to face immense future challenges. The commissioners see the role of international partners, such as UNDP and international development agencies, as crucial in supporting the Commission's work. Without expert advice and the organizational and conceptual assistance with implied and derived tasks, the commissioners will not be able to invest sufficient time into their assigned task to review and consider an estimated 150,000 applications.

Notwithstanding the difficulties of the past years, the concept of the combination of political and legal instruments is auspicious and should be continued and supported once the transition process is resumed. Taking into account the potentially widespread impact of its work on the financial situation of many people in the Southern governorates, the outcome of the Commission, be it success or failure, will have a significant effect on the transitional justice process in Yemen. The social frustration in the South was a source of energy for the political changes in the last few years and no future government can neglect the potential impact of the Commission's work on public opinion and its political leverage. If the decisions of the Commission are not implemented and the process is consequently considered as a failure, the Southern Movement will see it as a confirmation of their allegation that the government continues to systematically and deliberately marginalize the needs of the Southern population.

The commissioners were aware that their work has the potential to polarize. Their output could either reduce or fuel the existing social tensions, depending on the public's perception of the Commission as either being "part of the suppressing northern regime" or "a valuable advocate for the rights of the people in the southern governorates".

If the pre-war work of the Commission is not to go to waste, it must not only be reinstated, but:

- it must be granted the political support and protection its members need by ensuring access to governmental databases and cooperation with ministries and administration;
- it must be supported with sufficient financial resources for its ongoing work;
- it must be supported, most importantly, by implementing the Commission's decisions concerning compensation and reinstatement in a timely manner;
- the Compensation Fund must have a legal and procedural framework that allows efficient management; and
- the Compensation Fund must be appropriately stocked.

The Commission to Address Issues of Employees Forced out of Their Jobs in the Civil, Security, and Military Fields was and remains an essential part of the Yemeni legal and political transformation process, and will urgently require ongoing political and financial support from the international community once the post-war transition process in Yemen is resumed. UNDP and other international development agencies and donors should coordinate their efforts notwithstanding the difficult political situation and seek ways to continue their support, in spite of the security risk to travel in or to the country. One option would be to consider and discuss ways of temporarily continuing the work of the Commission outside of Yemen.

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Project website: bonn-sanaa.de

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CARPO was founded in 2014 by Germany-based academics trained in the fields of Near and Middle Eastern Studies, Political Science and Social Anthropology. Its work is situated at the nexus of research, consultancy and exchange with a focus on implementing projects in close cooperation and partnership with stakeholders in the Orient. The researchers in CARPO’s network believe that a prosperous and peaceful future for the region can best be achieved through inclusive policy making and economic investment that engages the creative and resourceful potential of all relevant actors. Therefore, CARPO opens enduring channels for interactive knowledge transfer between academics, citizens, entrepreneurs, and policy-makers.

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