



المنظمة العربية
للقانون الدستوري

The Arab Association of Constitutional Law

Federalism in Yemen

Deadlock and Proposed Solutions

Policy Paper

November 2020

By Musheer Abdulqawi Al-Othmani

PhD researcher at the Faculty of Law and Political Science - Tunis Al-Manar University.

Al-Othmani's academic research started with a Master's thesis on "The Impact of the Southern Issue on Yemeni National Security after 2011". His doctoral dissertation studies the impact of "The Saudi-Iranian conflict in Yemen".



This paper is published as part of the outcomes of the fifth session of the Constitutional Law Academy, held in Tunisia in 2019. Since 2014, the Academy has been an annually organized project by the Arab Association of Constitutional Law to discuss and learn about the prevalent trends in constitution-writing in different Arab countries and to explore the most timely and controversial constitutional topics.

The Academy is also part of AACL's efforts to promote dialogue among researchers and scholars in Arab countries and to encourage them to work together on selected constitutional topics with the purpose of exchanging experiences and examining common challenges. The Academy further contributes in the creation of a suitable environment for study programs and research opportunities that are both theoretical and applicable to the current situations of the countries of the Middle East and North Africa region.

The AACL is the first regional network of constitution-making experts. Established in 2013, it seeks to contribute to the efforts of democratic transition and good governance in the Arab region by fostering legal education in the region, offering rigorous in-depth technical studies, focusing on the future of constitutional frameworks in the region, and putting its expertise at the disposal of reform efforts in all countries of the Middle East and North Africa region.

Table of Contents

Introduction	1
First: Federalism in the National Dialogue Conference and the Draft Constitution	2
1. The Regions Committee and its outcomes	2
2. Drafting the Constitution: The straw that broke the camel’s back	4
Second: Comparative federal models – Potential solutions for Yemen	5
1. Criteria for Internal Border Delineation of a Federal State	5
2. Border Mapping Authority in Federal States	8
3. Stipulation of border delineation in federal constitutions	9
4. Financial Arrangements of the Federation	10
Third: The proposal to map Yemen’s internal borders and its advantages	11
1. Internal Borders of the Federal Republic of Yemen	12
2. Mechanism of distribution of wealth revenues to establish the borders of the Federal State of Yemen	16
3. Main circles of influence in Yemen	19
Final recommendations	19
Bibliography and footnotes	21

Introduction

Federalism is one of the political systems at the service of the organization and management of state affairs, shaping a state's form and designing its structures. Given that it is a human experience, it is relative, and assessing its value can be grounded on its success and/or failure. Judging federalism must not be based on the merits of its own value, rather on its political, economic, social and cultural returns.

Federalism has gained popularity internationally, as more than 40% of the total world population live in federal states ⁽¹⁾. A federation can be achieved in two ways. The first way is "integration": a system that brings together a group of states with common characteristics which unite to form a strong central state that represents them on the international arena and handles defense, national security and other issues as defined by the Constitution. This central state is called a federal state; the USA is an example of this. The second way consists of an administrative and legal reorganization of internal units, which are granted more autonomy to manage their affairs. A simple unitary state thus becomes a composite federal state, as is the case in Belgium, Brazil and Malaysia⁽²⁾.

Federalism was invoked in Yemen as part of a peace strategy. However, failure in determining the number and boundaries of the constituent units led to a shortcoming in the formulation of the federal structure and derailed it. As a result, the transitional phase went downhill, and the country slipped into the abyss of conflict and war.

This paper aims at outlining a roadmap to rectify the path of federalism that will take form in the new Yemen, by capitalizing on the opinions of experts specialized in drafting federal constitutions, and by drawing on similar experiences through conducting a comparative critical analysis. The paper begins by firstly reviewing the deliberations that took place regarding federalism and the reasons why it was disputed. Secondly, the paper explores the keys to the solution by looking at similar experiences and benefitting from the opinions of prominent international experts in federal constitutions. Thirdly and lastly, it sets a vision that proposes the solution's roadmap.

First: Federalism in the National Dialogue Conference and the Draft Constitution

Changing the form of the state in Yemen was proposed as part of the deliberations of the Comprehensive National Dialogue Conference (NDC) from March 18, 2013 until January 25, 2014. The “federal model” proposition was put on the negotiation table as part of a solutions package for the Southern issue. In principle, there was a general consensus on the federal model⁽³⁾, as it was the only model offering a middle ground between the two opposing poles: integrated unity and complete secession.

As the saying goes however, “the devil is in the details.” Indeed, a disparity emerged and underlined the differing stances of the forces participating in the dialogue. The details that need to be considered in the arrangements for a transition to the federal model were behind said differing stances.

Border delineation was the main point of contention, and so it overshadowed all other controversial issues in the NDC. The dispute was centered on the number of regions and their borders (i.e. the states that would make up each region). The Southern Movement insisted on the South being a single region within the borders of what was formerly known as the People’s Democratic Republic of Yemen (the pre-May 22, 1990 borders). The majority of NDC participants however called for a multi-region federal state, fearing that the other party’s demand would ultimately lead to secession. These fears might have been justified since the Southern Movement had included in its vision that the federal model would be a mere three to five years transitional phase after which a referendum for self-determination would be held in the South.

1. The Regions Committee and its outcomes

The NDC was unable to find a way out of the border delineation dilemma, and thus out of the Southern issue which was given excessive attention that sapped the transition process at the expense of other key issues⁽⁴⁾. On December 23, 2013, the document to resolve the Southern issue mandated that the President of the Republic forms the Regions Committee.

On January 28, 2014, the President of the Republic issued Decree No. 2 of 2014 establishing the 22-member committee under his chairmanship. As per the NDC mandate, the president defined the tasks of the committee, namely to examine the six-region (four in the north and two in the south) and the two-region options, as well as any option in between that might reach consensus. The decisions of the committee were to be included in the draft constitution.

On February 10, 2014, the committee adopted the six-region option - four in the north and two in the south - as follows:

- Hadhermout region, comprising the governorates of Hadhermout, Maharah, Shabwah and Socotra;
- Aden region, comprising the governorates of Aden, Lahij, Abyan and Al-Dhale;
- Saba region, comprising the governorates of Ma'rib, Al-Jawf and Al-Baidha;
- Janad region, comprising the governorates of Taiz and Ibb;
- Azal region, comprising the governorates of Sanaa, Amran, Saadah and Dhamar;
- Tihama region, comprising the governorates of Hodeidah, Raimah, Hajjah and Mahweet.

According to this option, Sanaa city shall be the federal capital under the authority of none of the regions. The constitution shall include special arrangements to ensure its neutrality and autonomy. Aden shall be an administrative and economic city with special status within the Aden region. It shall enjoy independent legislative and executive powers.

The Southern Movement objected to the number of regions because it divided the South into two, while Ansar Allah objected to the borders of the regions since Saadah (the hometown of the Houthi family) was added to Azal region, which lacks resources and access to the sea⁽⁵⁾. Besides, there were reservations concealed behind political considerations, which made it impossible for Ansar Allah to achieve political or electoral influence in a region where the General People's Congress and the Yemeni Congregation for Reform (Al-Islah) were strongly present at that time.

Other concerns were raised, such as fears that this decision would be a prelude to secession, given its classification of the north versus the south, and that it allows for reconsidering these borders in a way that might not serve the cohesion of the state structures and its national and territorial cohesion.

It was also alleged that the borders divided Yemen between the rich in Saba and Hadhermout and the poor in the other regions, and that there were dubious intentions to create a sectarian conflict, by placing the Zaydis in one region (Azal) and the Shafeis in the others.

Nevertheless, such objections were appeased by concessions and promises that the constitutional drafting process would come up with arrangements to address such problems.

2. Drafting the Constitution: The straw that broke the camel's back

On March 8, 2014, two presidential decrees were issued. The first, decree no. 26 of 2014, defined the working mechanism of the Constitution Drafting Committee. The second, decree no. 27 of 2014, formed a 17-member Constitution Drafting Committee. This committee's work is to result in drafting a new constitution for Yemen as a federal state comprising six regions. This draft should include the recommendations of the final outcome document of the NDC (2000 recommendations). The committee was given one year to complete its tasks and submit the draft to a referendum. The committee received international support from the UN Support Group in Sanaa and the International Institute for Democracy and Electoral Assistance (IDEA). The draft constitution was issued on January 17, 2015, and included 446 articles.

The federal form of the state was reflected in the draft, starting with its first article, which coupled the name of the state with its new form, dubbing it the "Federal Republic of Yemen". However, a crisis broke out due to the inclusion of texts that contained the decisions of the Regions Committee. Article 391 stated, "The Federal Republic of Yemen consists of six regions, four in the North and two in the South: Hadhermout region, Saba region, Aden region, Janad region, Azal region and Tihama region..." This article also specified the governorates that are part of each region. Accordingly, there would be six regions with a special status for Sanaa city as the capital of the state, and a special status for Aden city within Aden region. The regions would be divided into 21 governorates, which are the existing governorates subdivided into 333 districts.

As a result of the transitional system's insistence on including the number and borders of regions in the draft constitution, Ansar Allah rejected the draft because it violated the "Peace and National Partnership Agreement"⁽⁶⁾ and did not take into consideration that the designation of regions was part of arrangements made outside the context of consensus and unanimity in the NDC. They demanded that the draft includes the essence of what was agreed upon, that Yemen is "a Federal State", and leaves the contentious issues to future understandings to ensure holding an unobstructed referendum. Despite the logical reasoning behind this justification, mistrust prevailed among the political forces, and President Hadi might have believed at the time that if he could not pass those articles as a single and coherent package in the draft constitution in an international environment supportive of transitional steps, there would be no other opportunity to do so.

While Ansar Allah were adamant about the demand of clearing the draft constitution of any texts designating the regions, Hadi insisted on keeping them. As a result, tensions escalated and extended to other issues, including the deterioration of the economic and security situations. Violence erupted consequently then a war called "Operation Decisive Storm" broke out on March 26, 2015.

Second: Comparative federal models – Potential solutions for Yemen

In the 28 federal states of the world, some experiments have succeeded while others have failed and have mostly led to collapse and disintegration. This is especially true for states that transitioned from a unitary state to a federal one. Still, there are no fixed molds for value judgments or ready-made recipes valid for all states at all times and in all places. The path taken by states with successful experiences might fail in others in the absence of suitable conditions. Likewise, steps that led to the collapse of a certain state might find an appropriate setting and path in another and succeed. One can extract the criteria for success from the experiences of success and failure, if there is a clear vision of the desired outcome of the federal model.

Therefore, the focus will be on the experiences related to the determination of the number and borders of constituent units of the federal state in a way that preserves the cohesion of state structures, on the authority that has the power to determine them, and on when they will be determined. Will it happen before or after drafting the constitutional document? Are the borders noted in the constitution or in basic and ordinary laws? How did those states manage to settle the issue of wealth distribution, and what are the applicable standards and principles in this regard? How can wealth distribution be used as a flexible factor to make border delineation successful and acceptable?

1. Criteria for Internal Border Delineation of a Federal State

The delineation of federal borders is one of the most complicated stages of designing a political map and making constitutions because it requires a wide knowledge of the affairs of the sub-units. This process is further complicated when the need arises to partition a dominant region or annex it to another unit to achieve balance. In an attempt to overcome these challenges, George Anderson and Sujit Choudhry contributed in setting comparable criteria to be taken into account when delineating borders, of which we mention⁽⁷⁾:

- Sociological and cultural factors, like nationalism, ethnicity, language, religion and tribe.
- Geographical features, like natural borders such as rivers and mountains.
- Economic factors, like competence, efficiency and viability, such that the presence of a large number of small or economically poor units is avoided.
- Public opinion, which can be assessed through referendums or public consultations.

- Historical borders, which often determine the identity of the people and can constitute a useful point of reference. They also eliminate the need to consider other criteria in detail when delineating borders.
- Political balance, which means dividing one or more dominant region(s) or dividing a region that might have secessionist aspirations, or avoiding the existence of a structure formed of two or three units only which is a situation often characterized by divisive policies and political instability.

By comparing the feasibility of using these criteria to determine the borders of the future federal state of Yemen, it is clear that:

- a. Social harmony and cohesion are strongly present, supported by nationalistic, ethnic and religious unity, and interlinked with strong bonds of family closeness and cross-border and cross-geographical tribal and clan intermixture.
- b. Yemen's widely diverse topography does not allow reliance on natural borders to draw the federal map.
- c. The gap in economic disparities between Yemeni regions is very clear. Resolving this issue through territorial engineering will be faced with resistance from regions of wealth, which have a solid tribal structure, and on whom it is not easy to impose measures they are not convinced of. When Dhamar inhabitants protested the annexation of their governorate to the wealth-scarce Azal region in 2014 and asked to be annexed to Saba region, the constituents of Saba firmly rejected this demand. Therefore, the paper will consider a proposal of administrative and legal arrangements that can achieve a fair distribution of wealth to overcome the hurdle of imposing economic territorial engineering of internal borders.
- d. It is not possible to organize a referendum on the delineation of internal borders due to insecurity and the technical and logistic complexities of the electoral process. There is not a reliable electoral register, and it is difficult to decide who has the right to participate in voting on the border delineation. Besides, the overall atmosphere does not support holding a referendum in an environment charged with biased regional mobilization ruled by the ongoing conflict, which may generate results based on a spur-of-the-moment reaction. It is also worth mentioning the effects of regional and international polarization and the potential exploitation of poverty to use the referendum as a bidding commodity.

In general, constitution-building experts are not inclined to put a legislation that allows self-determination to avoid trapping the constitution and distorting the state-building which can lead to the collapse of its structure. The international community does not encourage this option for the same reasons, and international law does not authorize this measure except to get rid of occupation or of serious human rights violations.

Experiences have proven the importance of not introducing the referendum criterion for border delineation or self-determination to ensure maintaining the cohesion of the state and its structures. Spain prohibits self-determination referendums, and therefore has not lost the Basque and Catalonia⁽⁸⁾. As Iraq did not legitimize self-determination, it prevented the Iraqi Kurdistan Region from seceding in 2017. Canada is also connected to the province of Quebec because it linked self-determination to the votes of all Canadians rather than to those of one province only. As opposed to these successful experiences, Sudan, for instance, failed to retain the South in 2011 because its constitution allowed self-determination, as per the 2005 Naivasha Agreement. Likewise, Ethiopia lost Eritrea in 1993.

Although some factions of the Southern Movement are pushing for legitimizing self-determination, this demand does not enjoy national or international support. All UN Security Council resolutions stress on the unity and territorial integrity of Yemen. Due to central government weakness and foreign interference, incitements to impose a secession by force have emerged, a secession similar to those of South Ossetia, Abkhazia, Northern Cyprus and Somaliland. However, the international community, which does not encourage soft secession through a self-determination referendum, opposes hard, de facto secession. Therefore, for decades, these cases have been deprived of international legitimacy.

- e. Adopting historical borders is considered to be an attractive option, but it is one riddled with caveats. This is due to the appearance of pro-independence tendencies that are based on historical and geopolitical records, in which there is a human concentration that is unified in its secessionist inclination. In general, countries that adopt the criterion of history reinforce their unity through a legislation that bans secession, and their central authority is powerful enough to face any threats to its entity. Although Spain gave special status to Catalonia for historical considerations, its central government firmly stopped Catalonia's recent secession attempts in 2017 for the constitution forbids it. Spain's Senate had voted to activate Article 155 of the Constitution, which allows the central government to suspend self-rule in Catalonia, dismiss the region's leaders, and call for early elections.

In Yemen, as soon as the idea of considering history to delineate borders comes up, reasonable questions arise. What is the start date? Does one go back to ancient history when Yemen's territories expanded into neighboring countries? Or to the date chosen by the Southern Movement in Lahij and Al-Dhale, and sometimes Aden, a date limited to when liberation from the British Occupation took place and to when the People's Democratic Republic of Yemen rose? Noting that the PDRY had lasted for 23 years (from 1967 to 1990) — actually less than the existing Yemeni unity has. Or are we then to talk about pre-1967 history, going back to 1937 for instance, when Hadhermout was still an independent entity, as is today demanded by prominent entities in the south like the "Hadhrami League"? Relying on history amid expected central government weakness and legislations that might fall short, not to mention regional and international interference, may lead to the fragmentation of Yemen into several regions, not just north and south.

- f. Political balance is one of the main proposed criteria for the delineation of Yemen's internal borders because the dispute over border delineation stems essentially from incitements by internal political parties that want borders aligned with their aspirations, and by foreign parties that have their greedy eyes on Yemen's wealth and strategic location.

2. Border Mapping Authority in Federal States

There are at least three approaches to carry out border mapping. The first is a vertical approach beginning from the top, whereby the government or the main parties handle the task of border delineation. The second is an opposite approach beginning from the bottom, whereby local and community bodies handle the task. The third is a dual approach, whereby the main parties set the guidelines for the federal map, leaving the discussion of details to lower levels of community institutions and mass surveys of public opinion⁽⁹⁾.

For the case of Yemen, this paper suggests a conciliation between the South African experience for border delineation in the foundation stage and the Indian experience at a later stage to benefit from revising and amending borders or even from creating new constituent units.

South Africa launched talks between the African National Congress (ANC) and the National Party (the apartheid government). Deliberations took place on the sidelines between other major parties, and at a later stage, it all turned into an in-depth participation of the grassroots population to enrich the talks with details⁽¹⁰⁾.

In India, there was disagreement within the constituent assembly between those who wanted to remap the borders of states on the basis of communities (especially linguistic communities) and those who wanted to maintain the borders that exist since the colonial era. As a compromise, the existing borders were preserved, and the Parliament was authorized by the constitution to change the borders of states later on, with the requirement of holding non-binding consultations with the legislative authorities of said states. This constitutional provision has been used ever since to alleviate tensions by making the borders of states more in line with the cultural and linguistic ones⁽¹¹⁾.

3. Stipulation of border delineation in federal constitutions

The dispute over federalism in Yemen is mainly based on the issue of delineating the borders that were approved by the Regions' Committee. However, the conflict arose with the insistence on having the draft constitution provide a map determining the number and borders of regions.

Experts on federal constitutions do not believe it is necessary to include federal state borders in the constitution. Instead, they suggest that they can be stipulated by quasi-constitutional means such as ordinary legislation or basic laws, thereby providing a solution to some problems, or at least a way to postpone such problems until better occasions, so that the border controversy does not hinder the path of constitutional negotiations. There are cases in which the failure to settle such disputes obstructed the conclusion of an agreement on the constitution itself. Nonetheless, India overcame this dilemma by leaving this issue to a later stage of state redefinition. One of the advantages of not addressing borders in constitutions is that it allows for changes in the future without the need for a constitutional amendment⁽¹²⁾.

Some federal states such as Belgium, Kenya and South Africa were keen on mapping their internal borders before drafting their new constitution, while other countries drafted their constitution before having a clear border demarcation or a total or partial settlement of this issue. For example, India adopted its constitution in 1949 on the basis that the state's structure is considered temporary, which gave it the opportunity to directly start performing the functions of the federal system and to slowly restructure its states.

George Anderson and Sujit Choudhry believe that having a border map is necessary to implement federal arrangements, yet it is not a requirement that the new map be complete when the constitution is approved, especially if doing so is controversial and takes a long time. An agreed upon procedure for the establishment of constituent units would suffice, provided the constitution sets general standards that serve such purpose. According to Anderson and Choudhry, the federation could start with a transitional map that would be subject to a comprehensive review in due time, and if there are issues related to borders, or to the merger or demerger of certain units, then these can be addressed after the adoption of the constitution. They also believe that revisions could be possible, even in long-standing federations, depending on the decision-making rules specified in the constitution⁽¹³⁾.

4. Financial Arrangements of the Federation

There is no fixed mechanism to deal with the issue of distributing financial revenues⁽¹⁴⁾. However, there are general classifications that sometimes rely on the method of setting up lists. A list of resources and levies is then drawn up for constituent units. A second list is one shared between the center and the constituent units, and a third list is drawn up for federal government resources. The ratio of central government revenues differs from that of the revenues of local governments⁽¹⁵⁾ (see Table 1). The balance of a federal government shall exceed its needs, which would thus allow it to make financial transfers to local governments in need⁽¹⁶⁾.

Table (1): The federal government’s share of revenues

State	The federal government’s share of revenues
Nigeria, Venezuela, Mexico, Russia, Malaysia	90 - 97%
Argentina, Australia, Belgium, Brazil, South Africa	70 - 85%
Germany, Austria, India	60 - 65%
United States of America	55%
Canada	47%
Switzerland	40%

Source: Author’s table, based on information available in: George Anderson: Fiscal Federalism: A Comparative Introduction, translated by Maha Takla, (Canada: Federations Forum, Yemen: Friedrich-Ebert Foundation, 2013), p.18.

Federal systems follow certain principles of financial distribution, such as budgets or balances and the derivation principle whereby the constituent unit receives a percentage of its resource revenues (often sovereign natural resources). There are also vertical financial transfers from the center to the units, or horizontal ones between the constituent units to support the units in need and thus bridge the financial gap that is between them. The federal state might be forced to make asymmetric arrangements. Canada granting the province of Quebec a certain liberty

to set pensions and have better tax benefits than the neighboring province of Ontario is an example of this. Malaysia also granted the states of Borneo special powers over forests, fisheries and petroleum resources⁽¹⁷⁾. In the early stages of its federal constitution, Russia introduced extreme asymmetric arrangements, but it gradually and systematically eliminated said asymmetry.

Although asymmetry as an unbalanced measure is useful in keeping some issues and conflicts in check, advisors on federal systems building warn against overdoing it in a way that could create a discriminatory gap between parts of the State⁽¹⁸⁾. This is to be especially considered when a certain unit receives privileges at the expense of larger units whose rights have been curtailed. Such unbalanced measures, advisors believe, should be temporary to address a transitional phase and should not be stipulated for in the constitution.

Federal systems also establish funds aimed at addressing financial disparities between different levels of government, keeping separatist tendencies in check, and improving the status of some units to prepare them for integration or to bring them to enjoy conditions similar to those of other units. This mechanism was adopted by Germany after the fall of the Berlin Wall to rehabilitate East Germany and strengthen the conditions of unity. Spain, despite being a non-federal country, established a “regional balance” fund to correct economic imbalance, curb regional disparities, activate the principle of solidarity between groups, and finance investment expenditures. The Organizational Law of 1980 stipulated that 30% of its revenues come from approved public budgets earmarked for public investments. This share grew by 25% in 1992 with the state’s contribution increasing to at least 35% of its investments during the period between 1992 and 1996. The central authority distributed the money of this fund according to specific criteria. These mechanisms contributed to reducing the gaps and imbalances between the constituent units and provided equitable pillars for the distribution of national wealth⁽¹⁹⁾.

Third: The proposal to map Yemen’s internal borders and its advantages

The success of the federal formula in Yemen requires the design of a map that reflects consensual and organizational boundaries in order to perform the functions of the federal system without delay, efficiently (less effort and cost), and in a flexible way (scalability that keeps pace with the development of the experiment). This is to achieve the objectives of this formula, most importantly to ensure the cohesion of the national fabric and the fair distribution of wealth, but also to reduce hegemony and power concentration in one region at the expense of others.

With regard to conflict issues, the best solutions are those based on compromise moderation. Federalism has been accepted because it is in between integrative unity and complete secession. It would have been better for its internal design to be based on moderation for success to be complete. The National Dialogue Conference referred the question of the determination of regions to the “Regions’ Committee” and gave it three options, to either study “the option of six regions, ‘four in the north, two in the south,’ or that of two regions, or any other consensual option in between.” Aware of the controversy in the NDC, the committee had already ruled out the first two options and knew that there was no real interest in adopting either of them. Therefore, this referral gave it absolute authority to opt for a third choice that would win consensus. However, the committee sided with the first option supported by the transitional system and disregarded finding a third choice that would achieve consensus.

This paper opts for the third option, which allows examining and presenting a consensual middle ground for the question of border delineation of the Federal Republic of Yemen as follows:

1. Internal Borders of the Federal Republic of Yemen

The border remapping process necessitates correcting the structural composition of the internal border map that was approved in the wake of the 1994 summer war by unilateral authoritarian decisions that lacked clear foundations or criteria. The federation should then be made up of 17 states — the six governorates that constitute part of the People’s Democratic Republic of Yemen and the 11 provinces of the Yemen Arab Republic (i.e., the number and borders of southern governorates and northern provinces before May 22, 1990).

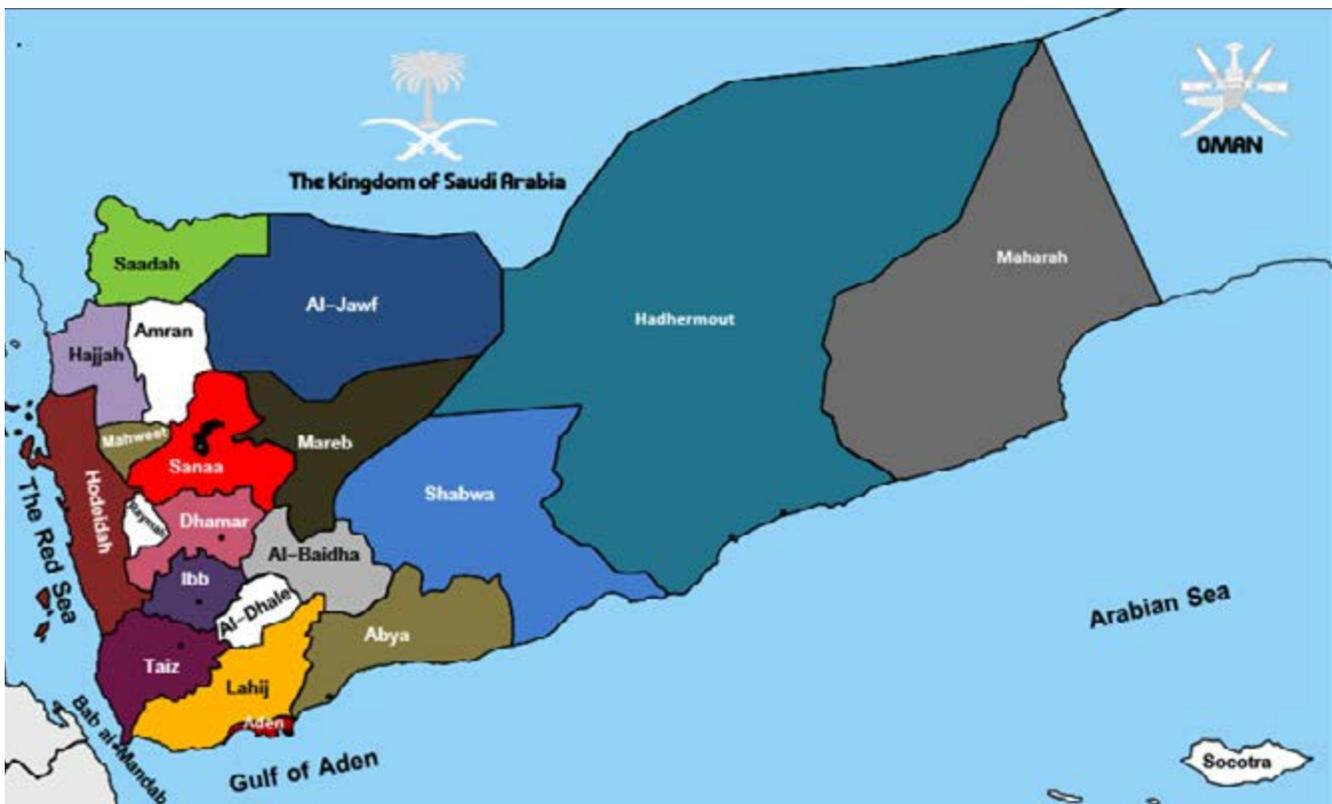
This process is clear and uncostly because it is not based on the principle of “destruction and reconstruction”. It is rather based on the “removal of creations” that came to existence following three presidential decrees: decree law no. 23 of 1998 – passed on July 28, 1998, regarding the creation of Amran and Al-Dhale governorates and the distribution of districts among Al-Dhale, Lahij, Abyan, Al-Baidha, Taiz and Al-Jawf; decree law no. 5 of 2004 – passed on March 25, 2004, to create Raimah governorate; and presidential decree no. 31 of 2013 to establish the governorate of Socotra Archipelago.

Table (2) and map (1) present the number and borders of states that will make up the future Federal Republic of Yemen as per this proposal. The expected desired features are the following:

- The proposal is legally legitimate, which supports its presentation. The NDC approved, through the document to resolve the Southern issue on December 23, 2013, the mandate of the president to form the Regions' Committee to examine three options: a six-region option, a two-region option and a consensual option in between. Presidential decree no. 2 of 2014 to form the committee was issued, and the committee approved the first option. The proposal herein is part of the efforts to seek a solution according to the third option.
- This proposal does not seek to overthrow the committee's decision to have six regions, but rather to improve it as it tackles the two contentious points — namely the number and borders of regions. It seeks to do so by suspending talks on regions and by maintaining the current states (governorates) and districts, though with a proportional amendment of the number and borders of the states to be in conformity with what they were prior to the unification of May 22, 1990 (this technically resembles repairing a bug through a factory reset).
- The number of states will be 17⁽²⁰⁾. This is an ideal number that establishes a dynamic that strengthens the power of the central government as it is neither a large number that would require capacities exceeding Yemen's potential, nor a limited number that would strengthen states and encourage their independence inclinations.
- There is no small state in terms of surface area or population. The smallest sovereign federal state is Saint Kitts and Nevis with a surface area of 261 km² and a population estimated at 55,000 people. In Yemen, the smallest governorate in terms of surface area is Mahweet (2,328 km²), and it is around nine times the surface of Saint Kitts and Nevis. The least populated governorate is Mahrah with 131,000 people, and it has more than twice the population of that state. Still, if a need for amendment arises, the governorates might be allowed to organize a limited merger process according to certain arrangements.
- George Anderson explained in his paper "Yemen's Failed Constitutional Transition" that the development and composition of regions requires financial and human capacities that exceed Yemen's abilities. He referred to the federal model of 21 governorates (which is the current number of governorates in Yemen) as a more logical and manageable option that would allow benefitting from the existing infrastructure⁽²¹⁾. There are elected local councils in each state (governorate) as well as institutions that would be able to implement the new federal system.

- The proposal keeps up with the changes that Yemen has undergone since the federal formula was officially put up for discussion in 2014. At the time, the demand of Ansar Allah was a modest one, limited to including Saada within a region that has wealth and access to the sea. This ceiling was commensurate with their power and limited influence at the time. The influence of the Southern Movement was likewise limited in the southern governorates. However, the balance of power has changed since then. Ansar Allah now controls most of the northern governorates⁽²²⁾, and it is difficult to bargain with them to improve the situation of Saada, especially with the great sacrifices they believe they have made to get thus far. The same applies to constituents of the Southern Movement⁽²³⁾. It also corresponds to what the ‘map of control and influence’ reflects for the remaining major parties.

Map (1): Proposed designation of Federal Yemen states



Areas in white (Amran, Raimah, Al-Dhale and Socotra) returned to their pre-1990 situation, as shown in Table (2)
 Map prepared and designed by the author.

Table (2): Proposed states of the Federal Republic of Yemen, supported by data related to surface area, population and districts.

States	Surface area	Surface area (%)	Population estimate 2020 Growth rate (3%)	Population (%)	Number of districts	Removal of post - May 22, 1990, creations
1. Aden	6,239	1.3	937,637	3.1	10	After the re-seizure of the two Socotra districts, with the possibility of annexing Socotra to Mahrah since it was the capital of Mahrah Sultanate until 1967.
2. Hadhermout	186,793	38.4	2,441,401	8.1	28	
3. Shabwah	42,584	8.7	696,251	2.3	17	
4. Abyan	18,096	3.7	703,494	2.3	12	After the re-seizure of Mukayras district from Al-Dhale
5. Lahij	11,624	2.4	1,112,350	3.7	18	After the re-seizure of the five Al-Dhale districts, and the exclusion of Al-Qabbaytah and Al-Maqatirah districts that I join to Taiz
6. Maharah	67,297	13.8	131,119	0.4	9	
Southern states	332,633	68	6,022,252	20	94	
7. Taiz	12,009	2.5	3,852,043	12.8	26	After the re-seizure of Al-Qabbaytah and Al-Maqatirah districts from Lahij, and Al-Hasha district from Al-Dhale
8. Ibb	6,604	1.3	3,380,336	11.2	22	After the re-seizure of Damt and Qaatabah districts from Al-Dhale
9. Dhamar	7,586	1.5	1,967,559	6.5	12	
10. Sanaa	24,679	5	3,533,764	11.8	45	After the re-seizure of Bart al-Anan, Kharab al-Marashi and Rajouza districts from Al-Jawf, and the six districts of Raimah and the 20 districts of Amran.
11. Saadah	11,375	2.3	1,028,648	3.4	15	
12. Al-Jawf	36,519	7.5	291,142	1	9	After the exclusion of three districts and their transfer to Sanaa
13. Ma'rib	17,405	3.6	353,012	1.2	14	
14. Hodeidah	17,145	3.5	3,193,176	10.6	26	
15. Hajjah	8,227	1.7	2,189,760	7.3	31	
16. Mahweet	2,328	0.5	733,880	2.4	9	
17. Al-Baidha	9,347	2	911,779	3	20	After the re-seizure of Jiban from Al-Dhale, and the exclusion of Mukayras to Abyan
Secretariat of the Capital	390		2,586,794	8.6	10	The federal capital
Northern states	153,224	32	24,022,893	80	239	
17 states	486,247	100	30,045,145	100	333	

Prepared by the author based on raw data available at the National Information Center, Presidency of the Republic (Yemen).

2. Mechanism of distribution of wealth revenues to establish the borders of the Federal State of Yemen

The problem of border delineation has been linked to the absence of a balanced border map that would give the regions a fair access to wealth and sea. During NDC deliberations, schemes for territorial engineering were proposed to grant each region a share of the wealth and access to the sea. However, these schemes could not be discussed, let alone adopted, for they seemed like mere utopic theorizations at the wrong time. The sensitive and tense situation in Yemen requires solutions that introduce the least possible innovations to avoid a shock in terms of theorization and in terms of making huge changes on the ground, like merging, separating and creating new entities.

Yemen needs two mutually reinforcing and complementary measures within an interconnected system that contributes to enhancing the federal model's chances of success. First, states with agreed-upon borders. Second, a balanced mechanism for distribution of wealth. The borders that have the highest level of approval are the historical borders of the six governorates in southern Yemen, and those of the 11 provinces in the north, prior to the Yemeni unification in 1990. Then comes the role of the wealth distribution mechanism that should take into account the criteria of balance, hierarchy, need, and flexibility in determining shares and keeping independence tendencies in check. It should also similarly consider the aforementioned to keep the desire of production areas to monopolize wealth and the strengthening of the financial arm of the central government in check, for as the saying goes, "The hand that gives, rules."

Proposed mechanism for wealth distribution:

The mechanism begins by underlining the importance of financial arrangements that were included in the draft constitution. Therefore, this proposal will be in line with what those arrangements allow for supporting the border delineation procedure suggested in this paper.

The draft provided room for jurisprudence in establishing a mechanism that could be accommodated by a federal law. This means that this proposal could be adopted in the future federal law. Article 372 of the draft constitution stipulated, "a federal law shall establish a federal revenue fund and treasury and funds and treasuries for the governments of regions, states, districts and the cities of Sanaa and Aden to deposit their shares of national revenues and own revenues. The respective treasury shall manage its own revenue fund. The modality for composition and other functions of the treasury shall be defined by law..."

Article 390 stipulated, “a federal law shall set out the criteria and a formula for the distribution of revenues and natural resources, including oil and gas, ensuring transparency and equitable distribution, and taking into account the needs of the producing states and regions and allocating a share of the revenues to the federal government.”

The idea of the proposal is based on a three-level distribution of revenues from the proceeds of natural and unnatural sovereign wealth (illustrated by Figure 1):

- **Level 1:** The producing state: receives 10% the proceeds of the wealth collected from it.
- **Level 2:** requires the creation of two regional treasuries: The first treasury is based in Aden, and 20% of the sovereign wealth proceeds of the six southern states (Hadhramout, Aden, Shabwah, Abyan, Maharah, and Aden) are deposited therein. The other treasury is based in Ma’rib, and 20% of the proceeds of wealth earned from the 11 northern states (Sanaa, Ma’rib, Al-Jawf, Saadah, Dhamar, Hodeidah, Taiz, Ibb, Hajjah, Al-Baidha, and Mahweet) are deposited therein.

The regional revenue proceeds of each treasury are equally redistributed to the states within their jurisdiction, including states whose share was previously deducted from their production revenues, given that these revenues are the outcome of a cumulative aggregate process. Federal law regulates the timing of the redistribution of these revenues (annual, semi-annual, etc.).

- **Level 3:** A “National Revenue Fund” shall be under the umbrella of the Central Bank of Yemen in the federal capital - Sanaa, and 70% of the proceeds of the sovereign wealth collected from all states are deposited therein. A federal law shall regulate the redistribution mechanism.

In light of this mechanism, many advantages are achieved and reinforced by the following criteria:

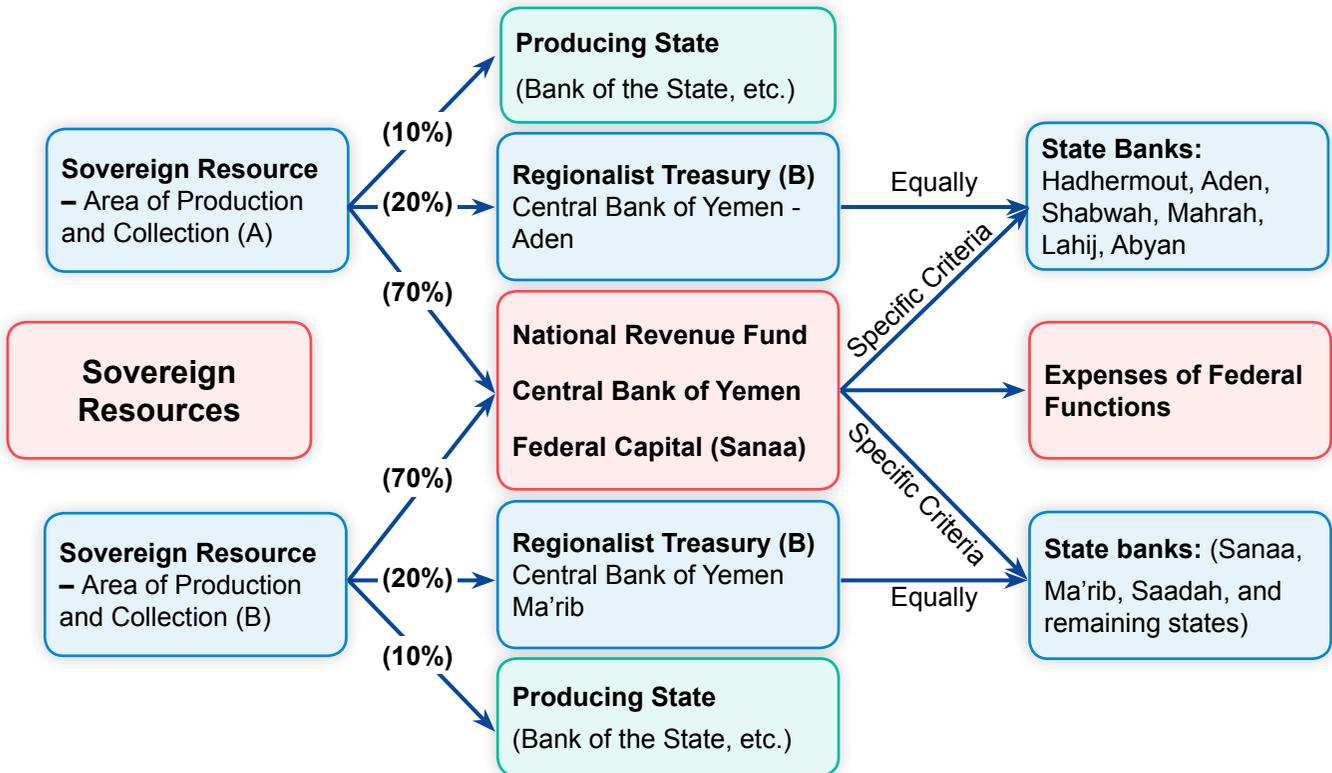
- **Derivation criterion:** The producing state shall be granted a special percentage from the revenues of its resources and wealth.
- **Geographical differentiation criterion (asymmetry):** Regional grouping of states with the aim of creating asymmetric financial arrangements within the standard positive discrimination procedures followed in some federal models to keep some regional tendencies⁽²⁴⁾ in check, in accordance with the following equation:

Treasury balance (Aden) = 20% of the revenues of sovereign wealth in the six southern states, distributed equally (annually) at a rate of 16% to each southern state (Aden, Hadhermout, Shabwah, Maharah, Lahij, Abyan).

Treasury balance (Ma'rib) = 20% of the revenues of sovereign wealth in the 11 northern states, distributed equally (annually) at a rate of 9% to each northern state (Sanaa, Ma'rib, Al-Jawf, Saadah, Dhamar, Hodeidah, Taiz, Ibb, Hajjah, Al-Baidha and Mahweet).

- **Equality criterion in horizontal transfers:** The revenue available in the (Aden) treasury shall be divided equally among the southern and eastern states, while the revenue in the (Ma'rib) treasury shall be divided equally among the northern states.
- **Justice criterion in vertical transfers:** The federal government redistributes and recycles revenues in the “National Revenue Fund” back to the states based on the agreed upon criteria to ensure justice and redress for the underprivileged states, to meet states’ needs of infrastructure and services, and to help respond to disasters and crises.

Figure (1): Diagram outlining the revenue distribution mechanism of sovereign resources of the Federal Republic of Yemen



Sovereign resource in the area:

(A) Resources collected from the states of Hadhermout, Mahrah, Shabwah, Abyan, Aden and Lahij.

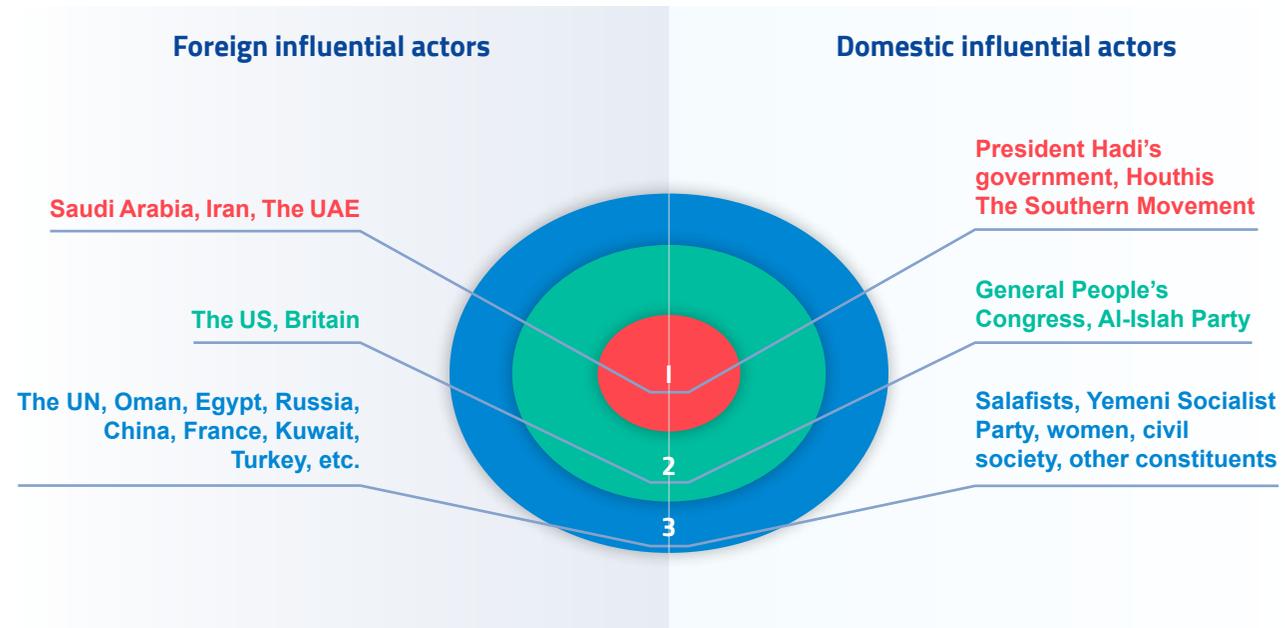
(B) Resources collected from the states of Ma'rib, Hodeidah, Al-Jawf, Saadah, Hajjah, Sanaa, Mahweet, Taiz, Ibb, Dhamar, Al-Baidhah

Graph form and content prepared by the author.

3. Main circles of influence in Yemen

Three main circles of influence can be determined in Yemen, and they are the same key influential actors working on making the proposals herein successful, as follows:

Figure (2): Circle of local, regional and international actors in Yemen



Graph form and content prepared by the author.

Final recommendations

In her famous book “The March of Folly,” which talks about countries that failed to protect themselves against disintegration, American historian Barbara Tuchman warned against repeating what has happened and said, “the greater was thrown away for the less, the unworkable pursued at the sacrifice of the possible.” It is possible for Yemen to preserve its cohesion in the agreed federal formula and, within the possible, to agree to implement a package of direct transitional measures that set the stage for the new federal system. The said measures include stopping the war, establishing a presidential council that includes the main influential parties, and forming a technocratic government far from the quota system. This government should garner the support of the international community and embark on the main pressing tasks related to addressing the economic situation, reforming the security and military establishment, and taking a series of long-term measures, including:

1. Ridding the draft constitution of:

- a.** Provisions related to determining the number of regions and their borders and of associated wealth distribution issues. A federal law is to address these.
 - b.** Provisions of discriminatory nature (e.g., on the South), being temporary interim measures that may be dealt with by a transitional law. Their existence constitutes a fundamental contradiction in contrast to articles in the same document that affirm equality.
 - c.** Transitional provisions (Chapter 10 in full). They are to be promulgated in a “transitional” law and their implementation is to be given priority. Most of them are confidence-building measures that were supposed to be implemented since the inauguration of the transitional phase in 2012. Their presence in the draft is an unjustified burden that detracts from the value of the constitutional document (for example, part of Article 446 deals with compensating a local newspaper and releasing its guards from prison.)
- 2.** Including in the draft a “constitutional declaration” or a basic law to regulate the tasks of the first phase of the federal system (a full 4-year cycle of governance). This is to ensure no constitutional void and to develop the structure and writing process of the draft in light of leading international experiences, including the South African experience. Such declaration shall be subsequently put to a referendum to establish a new federal era.
 - 3.** Including the mechanism proposed by this paper regarding border delineation and wealth distribution in federal law.
 - 4.** Assessing the feasibility of having a federal law stipulate that arrangements for a federal system shall begin with the establishment of a government and a legislative council at the state level only in the first election cycle, and that the organization of states’ affairs begins with a basic law instead of an independent constitution for each state. Meanwhile, the districts exercise their powers with decentralized financial and administrative prerogatives.

Bibliography and footnotes

- (1) رونالد ل. واتس: الأنظمة الفيدرالية، (كندا: منتدى الاتحادات الفيدرالية، 2006)، ص 5، 8.
- (2) The origin is in the term federation. It can be said that the federal model is a middle ground between integrated unity and complete separation. To see where the federal model stands among other state models, see:
Davis S. Rufus: **The Federal Principle: A Journey Through Time in Quest of Meaning**, (Berkeley and Los Angeles: University of California Press, 1978), P.216.
- (3) There were 12 visions supporting the federal model, including the stance of Ansar Allah and the Southern Movement, out of 14 visions presented to the NDC.
- (4) هيلين لانكر: انتقال اليمن سلمياً من الحكم الاستبدادي: هل كان النجاح ممكناً؟، ترجمة: علي برازي، (السويد: المؤسسة الدولية للديمقراطية والانتخابات "IDEA"، 2016)، ص. 13.
- (5) Saada governorate is located in the northern part of Yemen, 243 km from the capital Sanaa. It is connected to the governorates of Hajjah and Amran from the south, Al-Jawf from the east, and Saudi Arabia from the north and west. It seems that annexing it to Azal region was intended to disconnect it from the regions of wealth (Al-Jawf) and to deprive it of its sea access (Hajjah). This also means reducing the surface area of geographic links of Ansar Allah to Saudi Arabia, considering Al-Jawf and Hajja are zones of geographical contact with Saudi Arabia.
- (6) According to Article 8 of the Peace and National Partnership Agreement signed between the political parties on Sept. 21, 2014, "the President of the Republic shall work closely with all constituencies in order to develop a consensus on a new constitution, through the mechanisms of the Constitution Drafting Commission and the National Body."
- (7) سوجيت شودري، جورج أندرسون: عمليات الانتقال الدستوري والانقسامات الإقليمية، ترجمة: نايف الياسين، (السويد: المؤسسة الدولية للديمقراطية والانتخابات "IDEA"، 2015)، ص. 17-18.
- (8) Clarification: Although Spain is not a federal state, it was important to mention it in this paper to tap into its experience in dealing with the secessionist trend, especially at the level of financial and legal measures that it followed to keep this trend in check in Catalonia and Basque.
- (9) (aforementioned source) سوجيت شودري، جورج أندرسون، ص. 19.
- (10) George Anderson: "Yemen's Failed Constitutional Transition: 2011-15", Occasional Paper Series Number 41, (Canada: Forum of Federations, 2019), p. 10.
- (11) جورج أندرسون: مقدمة عن الفيدرالية، ترجمة: مها تكلا، (كندا: منتدى الأنظمة الفيدرالية، 2007)، ص. 18، 67.
- (12) ص. 13، (2015)، "IDEA" الفيدرالية، (السويد: المؤسسة الدولية للديمقراطية والانتخابات
- (13) (aforementioned source) سوجيت شودري، جورج أندرسون: ص. 19.
- (14) جورج أندرسون: مقدمة عن الفيدرالية، ص. 31.

- (15) جورج أندرسون: **الفيدرالية المالية: مقدمة مقارنة**، ترجمة مها تكلا، (كندا: منتدى الاتحادات الفيدرالية، مؤسسة فريد ريش إيبرت (الناشر في اليمن)، 2013)، ص. 18
- (16) (aforementioned source) جورج أندرسون: **مقدمة عن الفيدرالية**، ص. 31
- (17) (aforementioned source). جورج أندرسون: **الفيدرالية المالية: مقدمة مقارنة**، ص. 19، 73-74
- (18) (aforementioned source). جورج أندرسون: **مقدمة عن الفيدرالية**، ص. 67
- (19) There are good reviews on the topic in the following sources:
 عبد الرحيم المصلوحي: "آليات الموازنة الترابية والتوزيع المتكافئ للموارد بين الجهات في النظام الدستوري المغربي، الخصائص والتحديات"، زيد العلي، ومحمد حمد، ويوسف عوف (محررون)، **الكتاب السنوي 2015-2016**، (تونس: المنظمة العربية للقانون الدستوري، 2017)، ص. 375 – 378
- (20) The term "state" (*wilaya*) was adopted for three main considerations: first, since it has been the recognized term for Yemeni governorates, as per the decisions of the Regions' Committee. The second consideration is based on the observation of the experience of several countries which adopted federalism and which were divided into more than 10 units dubbed states: the USA (50 states), Nigeria (36 states), India (28 states), Brazil (26 states), Sudan (26 states), Venezuela (23 states), Russia (22 states), Germany (16 states) and Malaysia (13 states). The third consideration behind the term "state" was a middle ground between the naming of "governorates" used in South Yemen and "provinces" in North Yemen.
- (21) George Anderson: **Op. cit.**, P.16
- (22) Ansar Allah control the governorates of Sanaa, including the secretariat of the capital, Ibb, Hajjah, Dhamar, Raimah, Saadah, Amran and Mahweet, in addition to large parts of Hodeidah, Al-Baidha, Al-Jawf and Taiz.
- (23) Since the so-called Operation Decisive Strom on March 26, 2015, the situation in the south has been under a quasi-total control of southern constituents, be they under the wing of President Hadi's regime or of factions of the Southern Movement. This inclination was cemented with the signing of the Riyadh Agreement on Nov. 5, 2019. The southern constituents agree on adopting the federal model if the South can achieve secession. This proposal grants them the required resolve, but under a wider umbrella, which is the "Federal Republic of Yemen."
- (24) The two treasuries will be supplied by almost similar streams: There are two states generating oil and gas within the Aden treasury (Hadhermout and Shabwah), and two other states in the Ma'rib treasury (Ma'rib and Al-Jawf). The fact that the oil discovered so far is not all the amount that Yemen owns and that it is not in line with its real reserves will be taken into consideration. Besides, the country's wealth is not limited to oil (exhaustible), but the notion of wealth is wider and more comprehensive for countries that do not have oil or gas but are on par with developed countries. The two treasuries will include sea outlets, fisheries, mineral, and agricultural resources. The distribution of the resources of six states in the Aden treasury at a rate of 16% for those states, compared to 9% for the states within the Ma'rib treasury, does not mean that the northern states will get a lower percentage. The number of streams of the Ma'rib treasury reaches 11 states, which can contribute to maximizing the percentage of revenues that will be pumped into the Ma'rib treasury. The balance of the distribution ratio amounting to 9% might then be higher than the 16% distribution share.



**المنظمة العربية
للقانون الدستوري**

The Arab Association of Constitutional Law

For more information about AACL's
publications and activities, you can find us on:

