

Regulatory Reform and Improving the Quality of Legislations in Yemen

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Introduction

Yemen represents the single largest development challenge in the Middle East: it is a country of deep rooted tradition endowed with limited resources notably scarce water, limited arable land and declining oil reserves; a country that has experienced dramatic internal and external shocks in the last two decades; the only low-income country in a rich region; and a young country with nearly 50 percent of its population below 15 years and population expected to double in the next 20 years.

Despite these constraints, Yemen developed a multi-party democratic system and a relatively free press ahead of other countries in the region. After the civil war of 1994, Yemen undertook painful economic reforms and saw the benefits through a healthy growth in per capita incomes. Beginning with the implementation of delayed economic reforms in July 2005, the situation has begun to slowly improve. Two recent developments provide the first significant window of opportunity since the successful growth episode of 1995-1999. First, the Government has started implementing long delayed reforms and in particular is confronting the task of reforming Yemen's governance systems. Second, neighboring countries are offering Yemen the long-term prospect of regional integration and, during the transition period, funding to develop institutions, infrastructure and human capacities. International experience has demonstrated that, in addition to the economic benefits of regional integration, the process of integration has often been an incentive for reform.

Since the unification of Yemen in 1990 the country was engaged in promoting laws and regulations for the new State which reflects a process of democratization and economic liberalization. The main characteristics of these legislations are the adoption of the free market economy and the multi-party democracy. This was reflected in the first constitution and its following amendments the repeal of the previous legislations which provided for a system of licenses for the importation of goods (liberalization of foreign and internal trade), the promulgation of new legislations for political parties, free press and guaranteeing free economic competition, free and multi-party parliamentary, presidential and local elections, decentralization and councils for local authority.

This presentation is mainly based on extracts from a World Bank paper (2006) and an ESCWA paper (2005) in addition to an ambitious programme of the Yemeni Ministry of Legal Affairs aiming to improve the quality of legislations.

1- Governance and Public Sector Management

Good governance is a central element of the development process. Like in many developing countries, the Government of Yemen has commenced the move to a system based on rule of law and predictable funding of local authorities based on legally defined responsibilities. This transition holds the promise of reducing opportunities for corruption and poor governance but it will be challenging to the status quo as it could impact on the role of "Shaykhs" who are community leaders playing an important role for the Government in conflict resolution and mobilizing local communities; and similarly, affect consensus building which is often achieved through a process of negotiation where allegiance is accorded to the State in exchange for benefits. Progress in governance is currently assessed on three broad

dimensions: voice, accountability and political stability; government effectiveness, regulatory burden and rule of law; and control of corruption.

1-1 Yemen's Governance Indicators

According to the World Bank and ESCWA papers Yemen's Governance Indicators are as follows:

. Decentralization.

Yemen is divided into 21 governorates and the governorates are divided into districts.

A 2000 Local Authority Law mandated decentralization to elected councils at governorate and district levels; local council elections were held for the first time in 2001 and are giving greater voice to citizens, especially those living in rural areas. By the end of 2005, there are local accountant offices at governorate and district levels and the local budgets for 2005 were prepared fully and directly by local authorities. The pace of implementation of the fiscal decentralization process has been slow and local governments have limited resources over which they have discretion. In order to make progress the Government would need to further explore revenue and expenditure assignments within the intergovernmental fiscal system. The latest local elections were held last year (2006).

It is worth noting that despite extensive internal discussion during the latest local and presidential electoral campaigns in 2006, there is still a lack of consensus on key points such as whether to appoint or elect top governorate and district officials and the extent to which sub-national governments will be given financial responsibilities. Recently the ruling party in Yemen, the People's General Congress has formed a committee to study the question of electing the Governors of the Governorates either through direct local elections or through voting in the local councils and to submit recommendations on the financial and administrative competences of the local council.

. Public Sector Reform.

Government effectiveness indicators (which measure the competence of the bureaucracy and the quality of public service delivery) have remained low reflecting growing impatience of the public over the state of public administration.

The Public Administration workforce is large (at 725,000 persons including civil servants, security forces and other employees) and underpaid but the large wage bill (at about 13 percent of GDP) has meant substantially increasing pay scales would not be fiscally affordable without an effective Human Resource policy. After an initial implementation delay, there has been some progress recently. In July 2005, a comprehensive wage reform strategy was approved by Parliament and implementation has begun: most allowances were merged into a basic salary; around 60,000 individuals receiving salaries inconsistent with their jobs and qualifications were removed from the payroll; minimum salary levels were increased to slightly above the poverty line; and wage increases were provided only to those civil servants who have been confirmed not to be ghost workers. Work is well advanced on a civil servant identification system (utilizing biometric identification methods) which is expected to become operational in the second quarter of 2006 and thereafter result in further reduction of ghosts and double dippers. This has been complemented by sector reform activities; for example, a Cabinet approved regulation to tie teaching posts to the school rather than to the individual teacher (234,000 members of the civil service in 2004) should address a significant bottleneck to the delivery of quality education services in the rural areas.

. Regulatory Reform.

Low percentile rankings of regulatory burden indicators (which measure the incidence of market-unfriendly policies) and the rule of law indicators (which measure the quality of contract enforcement, the police, and the courts, as well as the likelihood of crime and violence) are confirmed by recent country sector work (the Investment Climate Assessment) which points to administrative burden and discretion in implementing regulation and taxation as among the top constraints to private sector development.

. Anti-Corruption.

Yemen has seen a deterioration in control of corruption indicators. Transparency International's corruption perception index declined from 2.6 in 2003 to 2.4 in 2004 before recovering to 2.7 in 2005 when Yemen was ranked 103rd out of 159 countries. Clearly, the problems with administrative discretion have a direct impact on corruption but grand corruption is also perceived to cause a major drain on public resources. In addition, weak Government procurement and financial management systems also contribute to administrative corruption.

The Government has prepared a national strategy to fight corruption and bolster the role of the Central Organization for Control and Auditing. The strategy provides the Organization with the power to send those who are found to be involved in illicit activities before the courts of public funds. At the same time, the strategy provides for developing the judiciary and detention organizations, in order to help implement procedures and ruling related to the fight against corruption. The Central Bank has passed a law against all forms of money-laundering, and has been instructed on how to proceed when such cases come to light. But according to ESCWA, the practical application of the relevant laws, resolutions and policies still falls well below the minimum level that would be required to achieve any tangible improvement in the fight against corruption.

2- Commencing the Implementation of Good Governance Measures.

The Government has begun to implement several delayed reforms including macro-economic reforms; public financial management; improving the quality of regulatory reform and public sector reform. Finally, in January 2006, the Government has proposed a comprehensive governance reform agenda through a Cabinet approved **National Agenda For Reform/Matrix of Good Governance Measures** including:

An anti-corruption legislative framework consistent with commitments made under the UN Convention Against Corruption; joining the Extractive Industries Transparency Initiative; increasing transparency in public procurement and financial management; and ensuring greater independence of the judiciary and the supreme audit institution from the executive branch. This National Agenda for Reform has become a central focus of a new Cabinet appointed in February 2006 which is closely monitoring its implementation.

2-1 Short-Term National Agenda for Reform/Matrix of Good Governance Measures

In January 2006, the Government adopted and commenced implementing its National Agenda for Reform which includes concrete actions in twenty focal areas including:

• Anti-Corruption.

Laws on Anti-Corruption and Financial Disclosure to reduce conflict of interest and put in force commitments included in the UN Convention Against Corruption; National Corruption Record; and confidential reporting mechanism and protection for whistleblowers. Recently the Parliament has passed a law imposing on top administrative and judicial officials to disclose their properties and another law establishing a Superior National Committee to Fight

Corruption of thirty members to be nominated by the Shoura Council and voted by the Council of Representatives.

• **Revenue Transparency.**

Join the Extractive Industries Transparency Initiative (EITI) which supports improved governance in resource-rich countries through the full publication and verification of company payments and government revenues from oil, gas and mining.

Studies have shown that when governance is good, such revenues can foster economic growth and reduce poverty.

• **Procurement reform.**

Cabinet approval of National Procurement Manual and Standard Bidding documents (completed); establishment of a tracking system to monitor all public procurement; invitation of international experts and local external observers to participate as observers in the High Tender Board; and amendment of the Public Tenders Law to better define the role of the HTB, require disclosure of public procurement information, mandate disclosure of income and assets of individuals with public procurement roles, require disclosure from bidders of close relationships with decision-makers in public procurement.

• **Public Financial Management.**

Implement the Public Financial Management Strategy; amend the law of the external audit entity to ensure its independence from the Executive Branch and establish mechanisms for its reports to be published; and expedite Parliamentary approval of Public Debt Management Bill (completed).

• **Civil Service Reform.**

Prepare an Action Plan to implement the Civil Service Reform strategy and publish guides for government services and fees.

• **Private Sector Development.**

Revise laws and regulations to reduce cost and time required to establish a new business and prepare a comprehensive report of all changes required to improve government services provided to applicants for new businesses; reduce time taken for customs clearance and inspection procedures from 8 to 4 days; review and amend tax code to be in conformity with international norms; develop information system to automate transactions of the Tax and Customs Authority; and require the Central Bank to enforce compliance with Basel prudential guidelines. Recently the President of the Republic has issued directives to merge the General Authority for Investment and the Free Zone Authority.

• **Judiciary.**

Amend the law of Judicial Power to ensure: separation of powers from the executive and ensure administrative and financial autonomy of the justice system and develop and implement an action plan to improve court performance. Recently the Superior Judicial Council has formed a committee from its members to prepare a Bill to replace the law for the Judicial Power.

• **Press.**

Complete the preparation of a new draft Press Law aimed at protecting rights and public liberties and take actions against those who harass or abuse journalists.

• **Law and Order.**

Passage of Regulation of Weapons Possession Bill through Parliament.

2- Improving the Quality of Regulatory Reform

Role of the Ministry of Legal Affairs

The Government, through the Ministry of Legal Affairs endeavours to improve the quality of its legislations. In this regard the Ministry of Legal Affairs plays a central role in drafting the different legislations, rendering legal opinions to the different State agencies and ministries, drafting the contracts and agreements in which the State or one of its agencies is a party and representing the State or its agencies in judicial and arbitral courts. In addition the Ministry controls the work of the legal departments in the other ministries and public agencies. It is also assigned to prepare the regulatory reform and improve its quality.

Recently at the end of 2006 the Ministry of Legal Affairs has prepared a **General Program to modernize and develop the legal and legislative framework and process in the Republic of Yemen.**

The program is composed of four axes. In this presentation I will expose the first axe in details because although the other axes are related to regulatory reform and policy, but the first axe illustrates in details this subject. The first axe is relevant to the following legal and legislative with subjects:

A: Modernize and develop the styles and mechanisms of legislative work which includes the following subjects:

- 1- Activate the role of the Ministry and guarantee its participation in the primary process of preparing and drafting the legislations;
- 2- Activate the procedures of preparing, drafting and reviewing the legislations;
- 3- Activate the role of legal opinions in the vague legal matters.
- 4- Activate the role of the Ministry in preparing and reviewing the contracts and agreements.

B: Identify all the laws and legislations in the purpose of :

- 1- revoking contradictory stipulations and provisions;
- 2- introducing amendments if necessary;
- 3- Identifying the laws which provides for the promulgations of bylaws and regulations and identify those that were promulgated;
- 4- Preparing a work plan to promulgate those bylaws and regulation with the help and coordination with the relevant authorities;
- 5- Following up all the laws and legal amendments related to Good Governance provided in the governmental reforms adopted by the Council of Ministers.

C: Introduce the Scientific Method in preparing, drafting reviewing and amending the legislations which is based on the studies, researches, exploration, induction or inference and the observation, analysis, programming and conclusion of the results of legal phenomenons and opinions through:

- 1) Preparation, drafting, review and evaluating the legislations which include:
 - a) Questionnaire
 - b) Survey of opinions and tendencies
 - c) Studies and researches
 - d) Organizing seminars and workshops
 - e) Reports of the legal departments in the government agencies

f) Reports of the experts and the specialized committees

2) Preparing and drafting the legislative projects:-

- a) Extraction of the results of the evaluation of the legislations in force and that intended to be promulgated and the results of the studies, survey and examination of opinions and adopting those that are beneficial in preparing the legislation whether it is a law a bylaw or a regulation.
- b) Concluding the final draft of the legislations

D: Procedures regarding Contracts and Agreements:

- 1- Guarantee that the Ministry shall participate in preparing the contracts and agreements in which the government is a party and in drafting its final conditions and the necessity to get the written approval of the Ministry regarding their signature.
- 2- Identify all the contracts and agreements entered into by the Government or its different agencies and to follow up the collection of their originals in the ministries and different agencies and to review them and know their consequences such the obligations of the Government and their due dates etc.
- 3- Keep and file all the agreements and contracts entered into by the Government or its different Agencies.
- 4- Complete the establishment in the Ministry of the General Department for Contracts and Agreements and provide it with the technical legal cadres.

E: Procedures and Measures related to rendering legal opinions:

- 1- Study the possibility of establishing a Council for giving legal opinions consisting of efficient legal employees in the Ministry
- 2- Making legal rules which organizes the giving of legal opinions and promulgating directives and circulation regarding this matter.

The headings of the other axes are as follows:

Second Axe: Reinforcement of the legal protection for the rights, properties and interests of the State.

Third axe: Legal control awareness and legal studies and researches.

Fourth Axe: Completion of the institutional and organizational construction of the Ministry of Legal Affairs in the Governorates and Districts.

3- Effects of Adopting the Charter For Regulatory Reform.

It is expected that by adopting the Charter For Regulatory Reform Yemen will:

- a) continue to adopt at the political level broad programmes of regulatory reform that establish clear objectives and frameworks for implementation;
- b) Assess impacts and review regulations systematically to ensure that they meet their intended objectives efficiently and effectively in a changing and complex economic and social environment;
- c) Ensure that regulations, regulatory institutions charged with implementation and regulatory process are transparent and non discriminatory;

- d) Review and strengthen where necessary the scope, effectiveness and enforcement of competition policy;
- e) Design economic regulations in all sectors to stimulate competitions and efficiency, and eliminate them except where clear evidence demonstrates that they are the best way to serve broad public interests;
- f) Eliminate unnecessary regulatory barriers to trade and investment through continued liberalization and enhance the consideration and better integration of market openness throughout the regulatory process, thus strengthening economic efficiency and competitiveness;
- g) Identify Important linkages with other policy objectives and develop policies to achieve those objectives in ways that support reform.

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