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RIGHTS AND DUTIES

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The lines engraved on this paper are a humble effort dedicated to:
All my country's girls, young girls, young women as well as worn out, poor and distressed women in both rural and urban communities, in each corner of this country, dreaming of the dawn of equality, justice and equity to break soon, and it is indeed soon.

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TOWARDS NEW SOCIAL CONTRACT IN YEMEN

This short addendum sheds light on the developments that followed the 2011 Yemeni revolution, mainly the transition period that lasted from March 2011 till January 2015. The political disagreements and the 2015 armed conflict disrupted the constitutional making process. Though, post 2011 developments opened a new window for writing a new social contract where women and men are equally represented.¹

The National Dialogue Conference (NDC) was the flagship for Yemen's transition process, allowing all sectors in society to be represented, including women. Many lauded it as a positive model for Arab countries, and women – together with youth – were considered the ultimate winners of this process. This, of course, was not possible without the effective participation of women in the 2011 events and in the structural dialogue led by women groups and notably by the women's alliance in the Watan Coalition for Social Peace (WCSP).²

In the consultative meetings, WCSP participants emphasized equal citizenship and referred to the collective demand for a representation quota of minimum 30 percent women in all state structures. This was later manifested in the "Time for Equality" document. The Yemeni women's movement worked on enforcing all women related rights, including those mentioned in UN resolutions. For instance, WCSP referred to the 2014 UN Security Council resolution on the participation of women in peace processes, and their efforts did not go unnoticed.

The WCSP's clear position on equal participation manifested itself in the Gulf implementation mechanism³ that dealt with women's participation in government bodies, including representation in the government of national unity; participation in the NDC; women's issues in the NDC agenda and participation in all institutions referred to in the implementation mechanism.

¹ The author is currently writing on an independent study that presents her personal participation as member of the four main structures before, during and after the National Dialogue Conference (NDC), namely: the National Revolutionary Council of the Popular Youth Revolution (NRC), the Technical Preparatory Committee (TPC) for the NDC, the State Building: Basis & Principles of the Constitution thematic Working Group of the NDC & the National Authority for Monitoring Implementation of the NDC Outcomes (NAMI) respectively.

² Watan Coalition for Social Peace is a network of women's NGOs, women's human rights defenders and activists from the North and the South. It was established in 2006 to support women in local council elections.

³ The formal name is "Agreement on the Implementation Mechanism for the Transition Process in Yemen in Accordance with the Initiative of the Gulf Cooperation Council (GCC)". The agreement can be found here: <http://peacemaker.un.org/yemen-transition-mechanism2011>

The Gulf implementation mechanism created new institutions for Yemen's transition period. The inclusion of women in this mechanism contributed to setting a governmental agenda of respect for gender equality, and women succeeded in securing participation in fundamental institutions of the transitional period, namely: the Government of National Unity; the military affairs committee for security and stability; the NDC; the constitution drafting committee; the supreme committee for general elections and referenda; the illustration committee and the parliament.

As members in the Technical Preparatory Committee (TPC), women emphasised their participation in the NDC and all its committees. This encouraged a strong focus on gender equality, witnessed e.g. in the committees' recommendations on the development of women's status in Yemeni society. The constitutional drafting committee, among others, used these recommendations as parameters for its work.

It was unfortunate that this political process was stalled by the conflict between the two government parties. However, while the presented constitutional draft seems more progressive than other constitutions mentioned in this study, it is too early to draw conclusions on this unfinished process. When the dust settles, we will be able to properly evaluate the effect of government policies on women during and after the 2011 revolution.

TIME LINE: EVENTS THAT AFFECTED THE STATUS OF YEMENI WOMEN 2011-2015

November 23, 2011: The Gulf Cooperation Council (GCC) initiative signed by Saleh and other Yemeni stakeholders. The GCC initiative established a two-year political transition process in which a new constitution would be drafted. The GCC initiative stipulates that "Women shall be appropriately represented in all of the institutions referred to in this Mechanism."⁴

May 6, 2012: Hadi issued Presidential Decree No. 13 to establish a liaison committee to build bridges with all political parties, youth, civil society and women in order to mobilize support and ensure their participation in the conference. The liaison committee comprised eight members, including two women (Mrs. Rakia Hemidan and Mrs. Nadia Abd El Aziz Al Sakaf).⁵

July 14, 2012: Hadi issued Presidential Decree No. 30 of 2012 to establish a technical committee for the preparations and organization of the conference. The technical committee comprised 25 members representing all sectors of society (General People's Congress party and its allies, opposition coalition parties, other political entities, youth movements, Southern mobility movement, houthis, NGO and women). Six women were

⁴ GCC initiative and its implementation mechanism (English translation). Source: <http://goo.gl/XqrdQk>

⁵ Presidential Decree No. 13 of 2012. Source: <https://goo.gl/9pxXay>

represented (Amal Basha, Tawakkul Kerman, Raqia Hemidan, Radhia Al Motawakel, Lisa Mohamed and Nadia Al Sakkaf).⁶

August 6, 2012: The technical committee commenced its activities. The committee embarked on designing a comprehensive process with wide representation of all regions and social groups in order to enable members of the Conference to engage in free conversation regarding Yemen's future.

December 2012: The technical committee finalised its work by adopting the following ratio 30:20:50 of participation to represent the South, youth and women respectively. In addition, the committee formulated the 20-point Action Plan as a confidence building measure to create a positive atmosphere for NDC and for the political transitional process as a whole⁷.

January 18, 2013: Hadi issued Presidential Decree No. 5 of 2013 establishing the general secretariat for NDC. Mr. Ahmed Bin Mubarak appointed as chair of the general secretariat and Mrs. Afrah Al Zourba and Mr. Yassir Al Raeeni as deputies.⁸

March 18, 2013: 565 delegates, including an unprecedented number of women, took part in NDC. Nine thematic working groups were created and there were a condition that women and youth to be represented in the chairs of these working groups.

Early August 2013: Southern representatives within NDC boycotted the remaining sessions unless their demands over the Southern issue were met.

September 2013: A small sixteen-person sub-committee of representatives from the main political parties and al-Hirak, members of the NDC working group on Southern Issue, known as 8+8, formed to develop solutions for the Southern issue. After months of negotiations, the subcommittee along with NDC leadership and president Hadi managed to avoid Southern secession by agreeing that Yemen would become federal state with greater local autonomy and control developed to the regions including the South.

January 21, 2014: NDC concluded its work by adopting final NDC document including nearly 1800 recommendations. In addition, NDC representatives approved what is called "guarantee document" that extends the transitional period for at least one more year. The guarantee document adopted many provisions that highlight gender equality while building Yemen founding institutions.

March 8, 2014: Hadi issued Presidential Decree No. 27 of 2014 establishing the constitution drafting committee with 30% representation of women (Dr . Olfat Mohamed, Dr. Intilak Al Motawakel, Dr. Nihal Al Awlaki and Randa Abdo).⁹

⁶ Presidential Decree No. 30 of 2012. Source: <https://goo.gl/lv8kM9>

⁷ 20-points action plan. Source: <http://goo.gl/OKxais>

⁸ Presidential Decree No. 5 of 2013. Source: <https://goo.gl/cvhzyG>

⁹ Presidential Decree No. 25 of 2014. Source: <https://goo.gl/3Syy15>

August 18, 2014: The Houthis demonstrated against increase of fuel prices.

September 21, 2014: The Houthis took control of Sanaa.

January 3, 2015: The Houthi rebel group refused the proposed constitution draft.

January 15, 2015: The constitutional drafting committee finalised Yemen's draft constitution. One of the main achievements in this draft is guaranteeing the equal citizenship principle. Article 76 stipulates that "to give effect to the principle of equal citizenship, the state shall enact legislation and take measures, to achieve effective political participation for women to ensure access to at least 30% in various authorities and bodies."

Another example is Article 128 that guarantees full rights for women. It stipulates that "1. Women have full civil, political, economic, social and cultural rights without discrimination. The state shall be committed to empower women to exercise the rights of equal citizenship, and protect them from all forms of violence, all inhuman practices and enable them to reconcile between their family duties and the requirements of their job. Legislation shall be enacted accordingly to realize these aims. 2. The law shall determine the labor and maternity leaves for women."¹⁰

February 6, 2015: The Houthi Revolutionary Committee issued a Constitutional Declaration to organize the foundations of governance during the transitional period in Yemen.

March 26, 2015: The Saudi Arabia-led intervention in Yemen in response to requests for assistance from the Yemeni government of President Abd Rabuh Mansur Hadi. The intervention to Yemeni civil war (ongoing).

¹⁰Yemen 2015 draft constitution. Source: <http://goo.gl/X6VnpM>

INTRODUCTION

INTRODUCTION

Imprints of women's struggles across the globe may have become more visible in modern history but their battles to achieve equality, equity and justice have been long. They have been fighting discrimination and condescension from patriarchal societies ingrained with a negative value system that holds the concept of masculinity high while belittling femininity. Those perceptions and values are reflected in a society's changes in legislation, public policies, institutional structures and in the distribution of roles and responsibilities between the sexes, including their access to power, resources, division and control. Thus, the power relations between the two sexes in both public and private domains are defined.

Like other women worldwide, Yemeni women in the country's north and south parts have experienced the realities of discrimination, exclusion and marginalisation throughout history. However, in the last quarter of the British occupation of the south, and during the independence stage in particular, women in the southern part of Yemen acquired more rights. Women were granted legal rights to varying degrees between the north and south depending on the historical development, the impact of various external and internal factors, and the political philosophies and ideologies adopted by the regimes in each region.

The British Empire controlled Yemen in the south from 1839 until an armed struggle culminated in the October Revolution of 1963. In 1967, the south gained independence. During the British occupation, specifically from 1938, southern Yemen knew the laws and constitution of the Colony of Aden, the constitutions of six emirates, sultanates and sheikhdoms, and the constitution of the Federation of Arab Emirates of the South.

In the north, Yemen was subject to three military campaigns launched by the Ottoman Empire; the first ended with the occupation of Sana'a in 1547, and the second and third took place in 1771 and 1872 respectively. Northern Yemen remained an Ottoman state until the Turks withdrew in the wake of the First World War, and the Mutawakkilite Kingdom was declared an independent state in 1919. The North was governed until the 1948 Constitutional Revolution during the Ottoman occupation. However, the revolution failed when its key figures were eliminated by legislations codified in the Royal Affair magazine, released by the Astana¹¹, with provisions deriving from the *Hanafi* School of

¹¹ Dr. Mot-har Muhammed Islamil Al Ezzi: The Constitutional Development in the Arab Republic of Yemen, Sana'a University, Sana'a, 1985. P. 18

Islamic Jurisprudence. After the failed coup the Mutawakkilite Kingdom was re-established, and it continued until the creation of the Yemen Arab Republic in 1962. Northern and southern Yemen remained sundered until 1990, when they were united as the Republic of Yemen.

To examine the situation of women in a given country and determine the extent to which they enjoy equality, justice and equity with men, it is imperative to look at the state's constitution. This pivotal document can be seen as a social contract regulating the country's political, legal, social, economic and cultural realities, as well as shaping the state's form, identity and the philosophy of its governing system. The state's constitution determines the nature of the rights and freedoms safeguarded for citizens and the rights and duties of both the state and citizens, in addition to regulating their powers and setting their mandates and interrelations.

A nation's constitution expresses and reveals the philosophy of the regime and its perspective on gender power relations. For example, in democratic and law-governed societies and systems, men and women enjoy equal citizenship and non-discrimination is legislated. The only exception would be positive discrimination and binding procedural measures sensitive to gender specificities and needs in a manner that ensures a gradual closing, rather than widening, of the gender gap.

From that point of departure, this paper attempts to examine the constitutionally enshrined rights of women through reading and analysing the constitutional provisions, amendments and declarations dealing with gender from over 40 documents. As enacted in the north and south of Yemen, extending over a span of 174 years -from 1839 to 2001.¹²

THE IMPORTANCE OF THIS PAPER

The significance of this research lies in the fact that it is perhaps the first academic and methodological study that is founded on a comprehensive review, thematic analysis and comparison of the constitutional discourses pertaining to gender equality in north and south Yemen under different political regimes before and after unification. The Researcher intends to determine whether they recognised or denied the principle of equality by identifying, analysing and tracking the development of relevant provisions. The purpose is to identify whether legal provisions towards equality and discrimination are: fair, specific, clear and direct; discriminatory, restrictive, and special; or indirect and not covered at all.

The structure, philosophy and ideology of the various regimes are outside the scope of this paper, which has as its focus 18 constitutions and laws of constitutional nature.

¹² Yahya Qassim Sohail: The Yemeni Constitutional Experience: Challenges and Prospects, A paper presented in a roundtable entitled "The Constitutional Experience in Yemen: Challenges, Imbalances and Reform Requirements, organised by the Civil Awareness and Rule of Law Current, 5-6 June 2012. P. 3

The scarcity of research material was challenging indeed. Only three brief papers were found. The first provides quick and incomplete statistical information about some articles of the constitutions adopted by the Arab Republic of Yemen, the Popular Democratic Republic of Yemen and the Unity Constitution without analysing or reviewing the earlier constitutional documents or their relevant provisions¹³. The second is a working paper which in part discusses some articles contained in selected constitutions¹⁴, while the third is equally incomplete and selective but in addition lacks any analysis of constitutional provisions.¹⁵

Some feminist organisations and official bodies recently conducted many legal studies on key laws relevant to women's rights, empowerment and protection against violence. In particular, light is shed on the Family Law of 1974 in the South, the Personal Status Law of 1992 for the Unified Yemen, the Criminal and Penal Code of 1994, the Nationality Law no. 6 of 1990, the Evidence Law no. 31 of 1992, and the Civil Code. However, the organic relationship among the constitutional provisions has not yet been addressed, particularly in the Unity Constitution of 1990, the Amended Constitution of 1994 and subsequent laws.

The approach adopted by many feminist researchers is to dismiss the constitutions as elitist documents without paying much attention to them in their research. There are no serious attempts to examine the constitutional provisions from a comprehensive, integrated, feminist and rights-based stance with the aim to analyse the direct and indirect text, and they fail to scrutinise the extent of the drafting similarities or dissimilarities. Neither do they track the relevant impact on subsequent legislation that has affected the realities of women and their level of empowerment in all walks of life, reflecting the degree of their participation in building the state and furthering the development of their equality before the law as citizens in both public and private domains.

Yemen is currently going through an important transition, which was sparked by a popular youth revolution on 11 February 2011. On 23 November 2011 the Gulf Initiative and its Implementation Mechanism were signed aiming at arranging a peaceful transfer of power. As a milestone, a transitional authority called the National Dialogue Conference (NDC) convened on 18 March 2013, initially for six months. This was later

¹³ Iman Shaeif Alkhateeb: Women's Rights in the Yemeni Constitutions and Legislation, a paper published on the House of Representatives Website, Sana'a, 24 February 2013, p. 2. See <http://almotamer.net/news/2017.htm>

¹⁴ Ahmed Ali Al-Wadei': Shortcomings and Flaws of the Yemeni Constitution and its Oversight; a paper presented in a seminar on the Constitutional Experience in Yemen: Challenges, Imbalances and Reform Requirements, organised by the Civil Awareness and Rule of Law Current, 5-6 June 2012. P.7

¹⁵ Shaza Mohamed Naser Mohamed: Women's Rights in the Yemeni Constitution, a paper presented in a training workshop on qualifying female lawyers to support the human rights movement. The workshop was organised by the Sisters' Arab Forum for Human Rights, Sana'a, 16 - 18 June 2003. P. 4

extended to two years. One of its outcomes was to lay the foundation for drafting a new constitution based on principles of equal citizenship, justice and the rule of law.¹⁶

A constitution, as argued above, is meant to be a guarantee for equal rights; it is the highest national legislative authority. To demand those rights, feminist organisations and the human rights movement need to be able to lobby for the elimination of discrimination contained in the nation's laws through challenges to their constitutionality. They should advocate eradication of discrimination within institutional structures and state institutions and identify fair and comprehensive solutions to end the culture of discrimination, exclusion and marginalization.

The current importance of this paper lies in its possible publication and implementation of its findings and recommendations. It can contribute to raising awareness in civil society institutions and the feminist movement; the findings can be taken into account and integrated into the body of new laws that must comply with the new draft constitution of January 2015, which includes provisions safeguarding equal citizenship and women's rights to equality, justice and equity as well as adopting interim measures, procedures and positive discrimination with specific implementation mechanisms. This research can thus have a positive and fruitful impact on the lives of many women. More generally, the society will benefit from women's talent that, if invested in as a national human resource, will help achieve progress and prosperity for everyone.

THE RESEARCH METHODOLOGY

The paper employs the methods of content analysis to discuss and compare provisions in all the Yemeni constitutions except the January 2015 draft, including the constitutions that were enacted in the south and north since the middle of the last century; from the colony of Aden's laws between 1936 and 1958 to the constitutional amendment by the Republic of Yemen in 2001 (The Unity Constitution). I review and discuss the constitutional provisions that set forth equality and non-discrimination based on gender or those providing for discrimination against women during the division of Yemen or the unification thereof in 1990.

The paper is divided into three chapters. In the first chapter I discuss equality and discrimination discourses in constitutional developments in southern Yemen, beginning with the British occupation and ending with the People's Democratic Republic of Yemen. In Chapter 2 I discuss equality and discrimination discourses in the north. In Chapter 3 I discuss these discourses in Yemen's Unity Constitution of 1990 and its two amendments. This is followed by a Conclusion and list of recommendations.

¹⁶ The Gulf Initiative to Peacefully Transfer the Power in Yemen and its Implementation Mechanism, 2011. P. 6

CHAPTER 1

1 EQUALITY AND DISCRIMINATION IN THE CONSTITUTIONS OF YEMEN IN THE SOUTH

Chapter 1 is divided into two sections. The first examines and analyses the constitutional documents issued under the British occupation of the south until 1967, while the second looks at the independence era, which commenced with the Constitution of 1970 and was followed by the Amended Constitution of 1978 for the People's Democratic Republic of Yemen.

1.1 THE BRITISH OCCUPATION STAGE

Although the British occupation of the south lasted for almost 139 years, there were no constitutional laws or modern constitutions except when the laws of the Colony of Aden were enacted and enforced –between 1936 and 1958. Constitutions specific to the sheikhdom and emirates include the Qu'aiti Constitution of 1940, the Al Lahji Constitution of 1951, the Constitution of the Federation of Arab Emirates of the South in 1951 (which comprised six emirates, sultanates and sheikhdoms: the Emirates of Ad-Dali' and Beihan, the Sultanates of Al-Auzali, Fadhli and Lower Yafa, and the Awalik Sheikhdom) and the Constitution of the Dthaina. The Constitution of the Colony of Aden of 1962 was enacted by the British Crown. Such constitutional experiences had accumulated under the British occupation of the south as of 1839 until independence in 1967¹⁷. These constitutions and laws explicitly provided for discrimination, remained silent regarding equity for women or set forth partial equality, as I discuss below.

1.1.1 THE LAWS OF THE COLONY OF ADEN

The laws of the Colony of Aden (1936 - 1958) that were of a constitutional nature were enacted to regulate administrative life and the formation of the government, legislature and judiciary. No gender issue is addressed, other than in Article 7 (b) of the Legislative Council Law no. 19 of 1956, which enshrined discrimination against women in terms of political rights; it excluded women from membership of the legislature. The article explicitly stipulates that members of the elected Legislative Council must be male and over 21 years old.¹⁸ Article 21 elaborates on economic rights:

“No citizen of His Majesty the King shall be prevented from assuming any position in the Colony based on his religion, place of birth, colour or origin, nor, for the aforementioned reasons, be banned from accessing the Colony or from owning, possessing or selling any

¹⁷ Dr. Mohamed Tarboush: *Yemeni Constitutional Documents*, 1st Edition, Al Orwa Al Wusta Library, 2003. P.

¹⁸ *Ibid*: *The Laws of the Colony of Aden, The Legislature Laws 1956*. p. 45

property or real estate nor from working any job such as working in trade or practicing any other profession in the Colony”¹⁹.

1.1.2 THE CONSTITUTION OF THE COLONY OF ADEN, 1962

The Constitution of the Colony of Aden, 1962, is considered the first constitutional document in the south that directly provides for equality in rights and non-discrimination based on gender. Nonetheless, this gender equality was restricted to civil rights such as the rights to life, security and the protection of the law, as well as to freedom of conscience, expression, assembly and association, and the protection of property. Article 1 reads: “Any person in Aden shall enjoy the fundamental rights and freedoms irrespective of his/her race, origin, political affiliation, colour, or religion be it a male or female.”²⁰ These rights were granted to the wives of the British nationals as per Article 12 (4/C) and Article 9/13 (C). However, Article 34 (B) perpetuates the political discrimination of the 1956 Legislative Council Law by retaining the requirement that Legislative Council candidates be male.²¹

1.1.3 THE CONSTITUTIONS OF THE SULTANATES, EMIRATES AND SHEIKHDOMS OF THE SOUTH

Neither these five constitutions, in force since the middle of the last century (Qu’aiti, Al-Lahji, Al Khathiri, Dthaina and Yafa), nor the Federal Constitution for the six Arab Emirates of the South, refer in any of their articles to gender equality or positive or negative discrimination. However, the Al-Lahji Constitution of 1951 was the exception. Using generic language, Article 4 of the Lahji Constitution set forth: “The Lahji nationals are equal before Islamic Sharia law and the law. They shall equally enjoy all rights and perform the duties.”²²

Most of the aforementioned constitutions fail to use phrases like “non-discrimination based on gender” or “equality without discrimination based on sex”. No feminine terms such as women, woman, female or even mother are used. The terms are always generic: the people, the individual, the person, the upper class. The concept of linguistic inclusiveness – i.e. addressing everyone with generic terms to include both males and females – is dominant. Arabic uses both affixes to distinguish between males and females, as well as pronouns and names. Since the Holy Quran is the source of legislation, its verses addressed to women use these feminine language indicators (believers, men and women). The Quran mentions the biographies of women, for example Mary, peace be upon her, and in Surat Al Mujadila (The Pleading Woman). Women are mentioned by their names in the Quran and its Chapter 4 is called Surat An-Nisa (The Women).²³

¹⁹ Ibid: The Laws of the Colony of Aden, 1962. P. 104

²⁰ Ibid, The Laws of the Colony of Aden, 1936 - 1958. P. 27

²¹ Ibid, The Laws of the Colony of Aden, 1962. P. 104

²² Ibid. P. 121

²³ Ibid, the Lahji Constitution of 1951. p. 63

1.2 THE INDEPENDENCE STAGE

Between the independence of the south in 1967 and the unification of Yemen in 1990, the People's Democratic Republic of Yemen enacted two constitutional documents - a constitution in 1970 and an amended constitution in 1978. Both are considered landmarks for their clear and specific provisions on equality and non-discrimination. Such clarity leaves no room for interpretation or structural ambiguities. The constitutions are supportive of and fair to women as they inscribe in their provisions equality and protection of children, mothers and women in all of their social and reproductive roles. Five articles in the Constitution of 1970 and six in the Amended Constitution of 1978 contain provisions on the rights of women in general. They also provide specifically for the protection of women's rights in the political, economic and social domains in roles such as activist, worker, producer, mother and, in particular, wife. The articles identify a clear mechanism to enhance women in all walks of life.

1.2.1 THE CONSTITUTION OF THE PEOPLE'S DEMOCRATIC REPUBLIC OF YEMEN, 1970

The Constitution of 1970 provides for women's equity and empowerment as well as the protection of their rights. It strictly prohibits gender discrimination in public and private domains. Five of its articles clearly set forth equality, protection and care in both public and private domains through identifying mechanisms for positive discrimination. Article 7 states: "The strong alliance among the working class, the peasants, intellectuals and the junior bourgeoisie is the solid political foundation for the national democratic revolution in the People's Democratic Republic of Yemen. The historical role of the working class is growing until eventually it will become the leading class in the society. Soldiers, women and students are part of that alliance as they belong to the productive forces of the people."²⁴ This provision recognises the national political role of women in protecting the revolution, along with groupings like soldiers and students. The constitution did not overlook the positive role of women in caring for the family and raising future generations and paid attention to the family as a social entity. It guaranteed protection to mothers and their role in raising children. It also protected children – boys and girls – as a vulnerable group. Article 28 stipulates: "The State shall undertake to support the family and to protect motherhood and childhood."²⁵

Article 34 prescribes equality and non-discrimination among citizens, listing seven bases on which discrimination is prohibited: "All citizens are equal in terms of rights and duties regardless of their sex, origin, religion, language, educational background or social status."²⁶ Not only did the constitution contain this broad provision, but Article 36 states:

"The State shall undertake to safeguard equal rights for men and women in all fields of the political, economic and social life, and shall proactively fulfil the requirements

²⁴ *Ibid*, The Constitution of the People's Democratic Republic of Yemen, 1970. p. 196

²⁵ *Ibid*, p. 200

²⁶ *Ibid*, p. 202

necessary to protect children and working women, and shall provide otherwise methods of care specified by the law”.²⁷

Article 58 stipulates:

“The Women Organization shall unify women and girls to raise their political awareness so that they could play a productive role in the society, to fulfil the educational and cultural tasks within the family and to assist them to enjoy their rights as specified in the Constitution on equal footing with men.”²⁸

1.2.2 THE AMENDED CONSTITUTION OF 1978

Six articles of the Amended Constitution of 1978 for the People’s Democratic Republic of Yemen provide for equality and safeguard the rights of women, mothers and children, in particular, identifying state-binding special measures and mechanisms including:

- Article 26: “The State shall work for the support of the family and shall protect mother and child. It shall take the political, economic, social and cultural measures necessary for the proper constitution of the family to enable it to perform its function.”²⁹
- Article 27: “The State shall encourage marriage and the constitution of the family. The law shall regulate family relations on the basis of equality between man and woman in the rights and duties.”
- Article 35: “All citizens are equal in their rights and duties irrespective of their sex, origin, religion, language, standard of education or social status.”
- Article 36: “The State shall ensure equal rights for men and women in all fields of life, the political, economic and social, and shall provide the necessary conditions for the realisation of that equality. The State shall also work for the creation of the circumstances that will enable women to combine participation in productive and social work and her role within the family sphere. It shall render special care to the professional development of working women.”
- Article 60: “All citizens are obliged to strengthen social and family relations. Parents are obliged to raise their children and to prepare them for socially beneficial work, and it is the duty of the children to care for their parents and to render to them assistance whenever it is needed.”
- Article 63 sets forth that the state shall support the people’s organisations including the feminist ones: “The State shall guarantee the right of association in mass organisations which serve the aims of the Constitution and being at the forefront of

²⁷ Ibid, p. 204

²⁸ Ibid, o. 204

²⁹ The Amended Constitution of 1978, published by 14 October, p. 14

which are the General Confederation of Trade Unions of the Republic's Workers, The Yemeni Socialist Youth Union, The General Union of the Yemeni Women.... The State shall support the mass organisations with the aim of elevating their role and effectiveness in all social activities, developing democracy and organisation and mobilisation of workers, peasants, fishermen, women, youth and all the toiling masses for struggling for the continuous progress of the society and defending the gains of the revolution."

- Article 67 specifies an implementation mechanism to empower women: "The General Union of Yemeni Women shall consolidate, regulate and direct the activity of the Yemeni Women with the aim of augmenting their role in the struggle towards resolving the joint causes in collaboration with all mass organisations and resolving issues pertaining to the women's movement. The General Federation of Yemeni Women shall undertake to engage Yemeni women largely in economic, social and political life and to build a new life and to enhance their educational, cultural and professional level. The Federation shall work hard to entrench and protect the rights safeguarded for women by the Constitution and laws on an equal basis."³⁰

All the aforementioned provisions from the Constitution of 1978 show undeniable political commitment to and belief in equality and non-discrimination, taking into account the specificities and needs of women in all public and private political, economic and social roles.

³⁰ Ibid, p. 30

CHAPTER 2

2 THE EQUALITY AND DISCRIMINATION DISCOURSE IN THE CONSTITUTIONS OF THE NORTH

This chapter is divided into two sections. The first provides an overview of the constitutional situation during the Mutawakkilite Kingdom prior to the revolution of 26 September 1962 in northern Yemen, while the second reviews the constitutional experiences of the Arab Republic of Yemen formed after the revolution. Five constitutions were issued: the Interim Constitution of 1963, followed by the Permanent Constitution of 1964, the Interim Constitution of 1965, the Interim Constitution of 1967 and finally the Permanent Constitution of 1970.

2.1 THE MUTAWAKKILITE KINGDOM OF YEMEN

The Mutawakkilite Kingdom existed in the north for 43 years – from its declaration in 1919 until the revolution on 26 September 1962. The north had no constitution during the rule of Imam Yahya Muhammad Hamid ed-Din from 1919 to 1948, when he was assassinated, or under the reign of his son Imam Ahmed, who succeeded him after cracking down on the constitutional revolution of 1948. The only exception was the Sacred National Charter for the Constitutional Revolution of 1948.³¹

In 1919, Imam Yahya declared the independence of the Mutawakkilite Kingdom of Yemen upon the withdrawal of Turks from Yemen in the wake of the First World War. He was able to fully control all regions in the north of Yemen. He ruled and adjudicated by Islamic Law, Sharia, as per the Zaidiyyah Al-Hadawiyah school³². His son, Imam Ahmed, adopted the same school of jurisprudence until the revolution of 26 September 1962.³³

After Imam Yahya was assassinated in 1948, the first constitutional document in the north was enacted, namely the Sacred National Charter. It provided for a reign based on a Shura (consultative council), but this lasted only 25 days before Ahmed put an end to the constitutional revolution and declared himself the Imam of the kingdom as a successor to his father.³⁴

³¹ Dr. Yahya Kasseem Sahl, *Ibid*, p. 3

³² Dr. Saleh Ben Ali Ad-Deibani: *Judiciary and Sharia-based Evidence in Islamic Jurisprudence and Yemeni Law*, 5th Edition, 2011, p. 105

³³ Dr. Mot-har Muhamed Islamil Al Ezzi, *Ibid*, p. 125

³⁴ *Ibid*, p. 124

2.1.1 THE SACRED NATIONAL CHARTER (SNC) OF 1948

The Sacred National Charter (SNC) of 1948 is deemed the first constitutional document issued in the north. It set forth a Shura-based and constitutional system of governance, but Article 7(A) stipulated that only men could be members of the Shura Consultative Council. It stated: "Each male believer of at least 20 years of age and not sentenced in a crime under Sharia Law is entitled to election"³⁵

Article 29 stipulates: "People's property, honour and souls shall be protected unless otherwise required in a legal matter or by an Islamic Law. The members of the Yemeni people shall enjoy absolute equality unless in matters related to talents and business. Everyone shall be subject to the proper lenient Islamic Law, which shall be applicable to the old and young equally."³⁶ The concept of *absolute equality* seems to mean equality among males and not between males and females. As Article 7 indicates, the SNC excluded women from the membership of the Shura Council even though Article 29 sets forth absolute equality in a blatant contradiction, unless the article means absolute equality amongst men only.

2.1.2 DRAFT CONSTITUTION OF THE SHURA-BASED REIGN FOR 1952

"Our Hopes and Aspirations" document is a letter sent by the poet Muhammed Mahmoud Al-Zubairy on behalf of the Yemeni Federation in 1952 to Imam Ahmed Bin Yahya Hameid Ad-Din; attached thereto was a draft of the Shura Consultative Constitution. The letter states: "Agreement and understanding have been reached by the sons of Yemen that the good sons of Yemen shall be united and governed by the sublime national values and shall enjoy equality regardless of their classes, tribes and areas."³⁷

Article 8 (C) of Part Three of the Shura draft constitution stipulates: "During the first three years, the Shura Council shall draft provisions for a comprehensive system for the country, seeking the assistance of the elite of the statesmen to detail the broad system and make it comprehensive and complete to cope with the laws of modern nations; provided that it shall be derived from the Sharia of Allah and be consistent with the spirit of the era."³⁸ Article 3 of Part Four addresses civil equality by defining it as follows:

"It is the equality among the sons of Yemen before the Islamic Law and the judiciary and in payment of taxes and assumption of the different public positions; the only requirement, however, is efficiency."

The draft concludes by defining equality as "the equality of all sons of Yemen before the Islamic Sharia and judiciary and in state positions and every duty irrespective of the regions, tribes or sects".³⁹ The draft constitution and the attached letter are characterised by blatant discrimination because both adopt the masculine discourse;

³⁵ The Sacred National Charter of 1948, Dr. Qaed Tarboush, Ibid, p. 58

³⁶ Ibid, p. 61

³⁷ The draft Shoura-Reign Constitution of 1952, Ibid, Dr. Qaed Tarboush, p. 70

³⁸ Ibid, p. 75

³⁹ Ibid, p. 76

they repeatedly use terms like sons and men as generics for humanity and urge elimination of discrimination based specifically on three factors only: geography, tribe and sect, or class.

2.1.3 THE DRAFT NATIONAL CHARTER OF 1956

Signed by Noaman and Al-Zubairi, this draft national charter is deemed the second attempt, in 1956, to adopt a constitutional system. Its Article 4 stipulates:

“Every Yemeni individual shall enjoy all inalienable rights and freedoms specified in this Charter; equality in dignity, rights and duties. All life opportunities in all of its types shall be provided without discrimination based on a doctrinal, regional or tribal reason, lineage or social, economic or political status.”⁴⁰

It is clear that the article specifies sect, region, tribe, lineage, social, economic and political status as invalid bases for discrimination, yet it overlooks gender.

2.2 THE ARAB REPUBLIC OF YEMEN

The Arab Republic of Yemen was established in the north in 1962 and dissolved 28 years later, in 1990, with the declaration of the unification of Yemen. During this time five constitutions were enacted, three of which were interim and two permanent. Such a high number reflects a state of constitutional restlessness and political instability. Following is an overview of the five constitutions.

2.2.1 THE FIRST INTERIM CONSTITUTIONAL OF 1963

Article 17, the only article in the first interim constitution of 1963 to address equality, states: “The Yemenis are equal before the law. They are equal in public rights and duties. They shall not be discriminated against based on sex, origin, language, doctrine or faith.”⁴¹ The Constitution of 1963, half a century ago, was the first in the north to include women in its stipulation of equality for all, and to prohibit discrimination based on sex. It specifies “legal equality between males and females” in a general provision. The constitution does not contain a provision that is restrictive or discriminatory of a woman’s rights. This is how it looks from the first glance; however, if one reflects further on the text, particularly “Yemenis are equal before the Law”, then the law could be read as being phrased as a condition for equality. Accordingly, we understand that the legislators may have linked the prohibition of gender-based discrimination to what the law specified and the legislators enacted. This condition could be seen as a cunningly drafted legal loophole.

2.2.2 THE FIRST PERMANENT CONSTITUTION OF 1964

This Constitution includes three articles with varying provisions. The first sets forth positive discrimination, the second retracts the Constitution of 1963 and the third contains explicit negative discrimination against women.

⁴⁰ The draft National Charter of 1956, Dr. Qaed Tarboush, Ibid, p. 135

⁴¹ The First Permanent Constitution of the Arab Republic of Yemen, 1964. Dr. Qaed Tarboush, Ibid. p. 143

Article 13 stipulates: “The State shall, by the law, undertake to support the family and protect mothers and children⁴².” Incorporating a special provision to support the family and protect motherhood and childhood is positive discrimination.

Article 22 is in place of Article 17 of the Interim Constitution of 1963 quoted above, but it has been amended to read: “Yemenis are equal before the law. They are equal in public rights and duties. They shall not be subject to discrimination.⁴³”. It is notable that the rest of the article – which explicitly prohibited discrimination based on sex, origin, language, doctrine and faith – is absent.

Article 47, however, flagrantly discriminates against women. It states:

“The Shura Council shall be composed of members to be selected from amongst men and male intellectuals of Yemen. The Law shall specify the number of members and the membership requirements and shall determine the method of appointment.”⁴⁴

Thus the constitution contains a provision to exclude women from the legislature via the legislative Shura Council. The omission of the last part of Article 17 and rephrasing of it undoubtedly corresponds to the legislators’ intention towards gender-based discrimination, which is later emphasised by the special discriminatory provision in Article 47.

2.2.3 THE SECOND INTERIM CONSTITUTION OF 1965

Article 44⁴⁵ of the Second Interim Constitution of 1965 is an exact copy of Article 22 of the Permanent Constitution of 1964. Unchanged, it states: “Yemenis are equal before the law. They are equal in public rights and duties. They shall not be subject to discrimination.”

2.2.4 THE THIRD INTERIM CONSTITUTION OF 1967

The Third Interim Constitution makes no changes to any equality and non-discrimination provisions. Article 38⁴⁶ is an exact copy of Article 22 in the first Permanent Constitution of 1964 and Article 44 in the Second Interim Constitution of 1965: “Yemenis are equal before the law. They are equal in public rights and duties. They shall not be subject to discrimination.”

2.2.5 THE SECOND PERMANENT CONSTITUTION OF 1970

The Permanent Constitution of the Arab Republic of Yemen, 1970, contains six different articles, some of which stipulate equality, some positive discrimination and some negative discrimination.

⁴² The First Permanent Constitution of the Arab Republic of Yemen-, 1964. Dr. Qaed Tarboush, Ibid. p. 144

⁴³ Ibid, p. 145

⁴⁴ The Second Permanent Constitution for the Arab Republic of Yemen, 1970. Dr. Qaed Tarboush, Ibid. P. 181

⁴⁵ Ibid. P. 157. The Second Interim Constitution of 1965.

⁴⁶Ibid, p. 165

Article 19 states: “Yemenis are equal in public rights and duties.”⁴⁷ The phrase “equal before the law” that was mentioned in the four preceding constitutions is absent. Second, Article 34 sets forth: “Women are the sisters of men. They shall have rights safeguarded by and undertake duties required by Islamic Sharia Law and the law.”⁴⁸ For the first time, the legislators have incorporated Sharia in the discourse with the provision that women shall enjoy the rights specified by Islamic Law, and as sisters rather than citizens. The term “sisters” is from the Prophetic Tradition (*Hadith*), which states “women are sisters of men”. The legislators have restricted women’s rights and duties to those granted by and required by Sharia. The obligation here is proved by conclusive evidence from the Quran and Sunna. This provision is deemed blatant discrimination because it does not require males to exercise their rights and duties as granted and required by Sharia. Men are given this right based on the rule of permissibility in the religion, rather than on a jurist’s rule of the necessity to prove with a conclusive text from Sharia.⁴⁹

The third restriction imposed on women’s rights is the requirement of the law to specify what those rights are. It is known that a special provision takes precedence over a general one. Article 34 has excluded women and restricted their rights in three ways: 1) Sharia should have granted them, 2) those rights are required by Sharia and 3) the law must enshrine them. This threatens to deny women the rights granted and required by Sharia if the law does not specify them. The legislators restrict all rights of women to those mentioned by manmade laws; thus rights that are granted and required by Sharia, but not restated in the manmade laws, are denied, including women’s political rights. Excluding women from public positions and reserving the positions for men only is a controversial issue among the jurists. Exclusion contradicts Article 19, which is a general provision stating “Yemenis are equal ...”

Article 35 stipulates: “The State shall, by the law, undertake to support the family and protect mothers, children, people with disability and the elderly.” This provision was mentioned in Article 13 of 1964 Constitution; however, this provision has two additional categories: people with disabilities and the elderly. This positive discrimination caters to the specificities and needs of these groups. The article refers to the law that details the forms of such support.

I argue that the most serious restriction in the 1970 Constitution is Article 37, which stipulates: “Partisan activities, in all shapes and forms, shall be prohibited.”⁵⁰ Prohibition of partisan activities, which is a political right, is denied to everyone, men and women alike. It is an unfair prohibition. This provision is deemed an obstruction to the democratic development of the political system through openly active political parties. It

⁴⁷ The Second Permanent Constitution of the Arab Republic of Yemen, 1970, *Ibid*, p. 181

⁴⁸ *Ibid*

⁴⁹ Lamyā’ Ahmed Abdul Rahman Sharf Ed-dein: *Women’s Political Rights in the Islamic Sharia and their Modern Applications*, Dar An-Nahda Al Arabiyah, Cairo, 2008, p. 54

⁵⁰ Dr. Qaed Tarboush: *Ibid*, The Second Permanent Constitution of the Arab Republic of Yemen, 1970. p.182

pushed people to undertake party activities in a clandestine environment surrounded by fear. It negatively affected the ability of groupings like women to be active in politics for fear of the consequences, including criminal prosecution, persecution and oppression of those affiliated with secret political parties and organisations, similar to the period leading up to unification.

Article 43 says: “The State shall not discriminate, in humanitarian rights, based on religion, colour, sex, language, country or profession.”⁵¹This Article contradicts Article 34, which constrains the rights of women, and this underpins a confusion regarding the concept of protection of human rights in times of peace and the concept of humanitarian rights in times of armed conflict.

⁵¹ Ibid.

CHAPTER 3

3 EQUALITY AND DISCRIMINATION IN THE UNITY CONSTITUTION AND ITS AMENDMENTS

This chapter is divided into two: the first section addresses the provisions pertaining to equality/discrimination in the Unity Constitution of 1990, while the second examines the same provisions in the constitutional amendments of 1994 and 2001.

3.1 THE UNITY CONSTITUTION OF YEMEN, 1990

The unification of the north and south of Yemen was finally declared in 1990 after the leaders of the Arab Republic of Yemen in the north and the People's Democratic Republic of Yemen in the south agreed to unify their states and become one single national entity. Thus, the Republic of Yemen was born.

In 1990 - 21 years after the first talks about unity were initiated - the Constitution of the Republic of Yemen was adopted. This was followed by an amendment in 1994 and another in 2001. The Unity Constitution was the first ever to be put to referendum, and on 15-16 May 1991, 98% of Yemeni voters – male and female – voted in favour of it. Article 27 of Part II, entitled “The Citizens’ Fundamental Rights and Freedoms”, states: “All citizens are equal before the law and equal in public rights and duties. It is prohibited to discriminate among them based on sex, colour, language, profession, social status or faith.”⁵² The provision directly prohibits gender-based discrimination in absolute terms, and hence it is free from any legislative flaw in the form of another restrictive or conflicting provision. However, the Constitution does not provide for positive discrimination in favour of women, female workers or mothers, although they were in need of it in both public and private domains.

A comparison between the Unity Constitution of 1990 and the Constitution of the People's Democratic Republic of Yemen of 1978 shows that the former has regressed in terms of women's rights, regardless of the 22-year time difference. Given the requirements of the unification and the historical developments, both constitutions should have been similar with regard to ensuring and emphasising equality, together with a degree of positive discrimination that takes into account the deteriorating situation of women in all fields, particularly women of the north. The Unity Constitution includes one general provision that uses the term “citizens” found in Article 27. No feminine terms such as women, woman, female, mother, girl, or working woman are used anywhere else. The Unity Constitution fails to provide for an implementation mechanism for positive discrimination or clear measure for positive discrimination

⁵² Dr. Qaed Tarboush, *Ibid*, the Republic of Yemen's Constitution of 1990, p. 258

similar to the People's Democratic Republic of Yemen's Constitution of 1970, the Amended Constitution of 1978 or the second Permanent Constitution of the Arab Republic of Yemen of 1970. The latter, in addition to prohibiting gender-based discrimination and regardless of the contradiction with some of its other provisions, granted special protection for women, mothers, the family, children and the elderly in times of conflict, as previously elaborated.

The Unity Constitution uses masculine language. It fails to feminize any of the job titles available in the Arabic language. Article 27 mentions "citizens" – a term that is understood as comprehensive of both sexes, although the Arabic language has a feminine version of the term "citizens" that could have been used to include women. To elaborate, Law no. 13 of 2001 on General Elections and Referenda clarifies in Article 2 (B) that "the term 'citizen' shall mean every male and female Yemeni". This law was designed to encourage women to take part in elections but to vote for male candidates rather than female candidates. Article 7 encourages women to exercise their electoral rights. Women's participation in elections, as voters, slightly exceeded 44% of the total number of eligible voters, while women candidates did not exceed 1% of the total number of candidates.

Moreover, the constitution does not identify any interim measures to eliminate the existing gender-based discrimination in other applicable laws, policies and procedures. This shortcoming, I argue, has contributed to the drastic inequity in women's representation in decision-making positions in the legislative, executive and judicial authorities. Women, in the three authorities, represent less than 1% and men the remaining 99%.

In the current parliament, only one woman out of 301 seats is a member in the elected House of Representatives and two women are members in the appointed Shura Council out of 111 members. In the legislative authority, there are 40 female judges out of nearly one thousand. In the executive authority, women representation does not exceed 1% in any of the decision-making and power positions.

Article 4 stipulates that the people of Yemen are the source and owners of power and shall exercise it directly, through elections and referenda, and indirectly, through the three authorities; the legislative, the executive and the judicial. The question is, do women indeed make up for half of the People; the People who are the source and owners of powers and shall exercise such power directly and indirectly in the manner specified by the Constitution? If so, how could this constitutional provision be activated and enforced?

The legislators have left the issue of achieving gender equality to time. It is a key issue. The reality affirms that the current gender gap is huge with regard to access to health services and education, participation in decision-making and policy formulation, work, public life and private family relations.

The final observation pertains to Article 22, which indicates that citizens are equal in terms of public rights and duties. It is noteworthy that the term "public" specifically

precedes rights and freedoms – i.e. the private domain, which includes family relations, marriage, divorce, custody, alimony and so on, is excluded. This segregation of rights and freedoms was translated in practice by the approval of the House of Representatives on the Personal Status draft law of 1992 - immediately upon the unification. It is an exact replica of the discriminatory personal status law that was applicable in the Arab Republic of Yemen in the north. This Law abolished all the constitutional and legal gains made for women by the Family Law no. 1 of 1974 in the south; a true translation of the People’s Democratic Republic of Yemen’s Constitution for 1970 as amended in 1978.

3.2 THE CONSTITUTIONAL AMENDMENTS

3.2.1 THE AMENDED CONSTITUTION OF 1994

In the summer of 1994, soon after a three-month civil war between the south and north – specifically, on 29 September – the House of Representatives rushed to introduce many amendments to the 1990 Constitution. Below I review five key amendments, four of which are related to equality, a decline in women’s rights and discrimination against women. One article, however, provides for positive discrimination.

The first amendment was introduced to Article 3 of the Constitution of 1990, which had stipulated that Sharia was the *main* source of legislation. Amended, the Article reads: “The Islamic Law is the source of *all* legislation.”⁵³ In other words, the rights that women acquired in the past are no longer granted unless required under the Sharia law. “Many people replace this provision with another to the meaning that all laws must be derived from the Quran and Sunna; their source must be in evidence from the Islamic Law. This is wrong and unfair to Sharia,” said Mr. Ahmed Al-Wadei’⁵⁴.

The second amendment introduces Article 31, which stipulates: “Women are sisters of men and shall be entitled to the rights and duties granted and required by the Sharia law and specified by the Law.”⁵⁵ This is a copy of Article 34 in the second permanent Constitution of 1970 of the Arab Republic of Yemen. As argued above, this article restricted ⁵⁶women’s rights with three constraints; 1) what the Sharia guarantees, 2) what Sharia requires by a conclusive text, and 3) what the law specifies. The last constraint refers to all of the sisters’ rights in the Law, overlooking the rights required by the Sharia. Instead of incorporating a Hadith Prophetic Tradition into the body of the constitutional document, it could have been replaced by a Quranic verse, which is a definite text with a definite meaning, and which is generally inclusive of equality in duties such as “the believing men and believing women are allies of one another”. If the legislators had intended to achieve the principle of gender equality, they would have made the substitution. Yet, the constitutional discourse on rights of women describing

⁵³ The Amended Constitution of the Yemeni Republic for 1994, Khalid Ibn Al-Walid Library, 2001, p.2

⁵⁴ Ahmed ali Al-Wadei’: The Constitutional Impasse in Yemen, 1st edition, Al Afif Cultural Foundations, Sana’a, 2007, p. 54

⁵⁵ The Amended Constitution of 1994, Ibid, p.15

⁵⁶ Surat At-tawbah, verse no. 71

them as sisters is intended to relate women's rights to the private nature of family ties, rather than to the principle of equal citizenships, female vs. male citizens. In a patriarchal society, the men/brothers' share of rights is far larger than the women/sisters' share.

The third amendment was introduced to Article 27 of the Unity Constitution, which had stated that all citizens were equal before the law and in public rights and duties with no discrimination based on sex, colour, origin, profession, social status or faith. The amendment was integrated under Article 40: "All citizens are equal in public rights and duties." The remaining part of the article, which had specified which bases for discrimination were disallowed, is omitted.

The fourth amendment is related to the location of Article 31 on the rights of women as sisters. The article can be used in a fair or unfair way as per the interpretation of judges and law enforcement officers because it falls under Chapter Three on the Social and Cultural Foundations, Part I on the Pillars of the State, instead of Part II on the Fundamental Rights and Duties of Citizens. Placing the article on women's rights (as sisters) in any part of the document other than the Rights and Duties of Citizens is deemed discrimination. Similarly, in Article 40, the change of place is the same form of discrimination as it fails to recognise women's rights as fundamental rights of citizens, and instead places them with social and cultural norms.⁵⁷

The Fifth Amendment is the only positive one. Article 30 was introduced to require the state to undertake the protection of motherhood and childhood and provide care for the youth. This positive discrimination is slightly flawed; all vulnerable groups needing protection were crammed in one article. It would have been more useful if each group – mothers, children and youth – each had their own article; this would have highlighted a political commitment towards the rights of each of those groups. In addition, this article reveals that the Constitution Drafting Committee wanted to emphasise its perspective on the importance of women's traditional reproductive role and their responsibility through direct discrimination in favour of that role, at the expense of others; in other words, at the expense of the perspective that life and development require the participation of women in all walks of life, including the caregiving and reproductive roles.

3.2.2 THE CONSTITUTIONAL AMENDMENT OF 2001

The Constitutional Amendment of 2001 made no changes to the amended constitution of 1994 pertaining to equality or discrimination. The Amendments extended the term of presidency from five to seven years, and the term of the House of Representatives from four to six years. Another amendment on the local council was also introduced. A referendum was conducted on the amended articles, with a turnout of less than 75%. Therefore, the constitutional amendments of 2001 are not dealt with in this paper because they are irrelevant to the topic.

⁵⁷ Ahmed Ali Al-Wadei': Shortcomings and Flaws of the Constitution, Ibid, p. 8

CONCLUSION

CONCLUSION

This paper has reviewed the Yemeni constitutional instruments issued in the north and south of Yemen: 18 constitutions or constitutional documents, two draft constitutions and several constitutional amendments during the different regimes covering the north and south and under the unified state, throughout 174 years. This review of the various constitutional experiences in chronological order has revealed that the issue of gender equality and the elimination of discrimination faced several gigantic challenges. Sometimes women's rights are acknowledged, other times they are marginalised and denied, particularly when it comes to political rights like representation in the legislature. Political rights, like all the other rights, must be incorporated. Women's rights are always faced with resistance and push-and-pull reactions. If a positive step is taken at a certain stage, it is met with many steps back.

This paper has traced the development of the constitutional discourse through tracking and reviewing the changes at the level of constitutional provisions in the north and south and under a unified state. Constitutional laws emerged during the British occupation of the south, while the Mutawakkilite Kingdom in the north had no constitution on which the governing system was founded. Upon the declaration of the Arab Republic of Yemen in the north and the People's Democratic Republic of Yemen in the south, there were various constitutional experiences characterised by massive inequities in terms of rights and freedoms granted to both sexes.

In this light, I argue that the Constitution of the People's Democratic Republic of Yemen, as amended in 1978, is the best Yemeni constitution to date. It included direct, specific and multiple provisions on equality between men and women in the public and private domains. In addition it provided for the protection of women and enabled them to perform both public and private roles, including those of activists, workers, mothers and girls. To guarantee those provisions, the Constitution specified certain implementation mechanisms, which reflected a serious political will and commitment towards enabling women to enjoy their rights on an equal footing with men.

The Constitution of the Republic of Yemen of 1990 affirms equality and the abolition of gender-based discrimination in one article only. The amendments of 1994 retract both, and this document is considered a severe setback at the level of the constitutional discourse, namely the provisions prohibiting discrimination. In order to restore the constitutional and legal gains for Yemeni women accomplished during the 1980s, a best-case scenario requires massive efforts to achieve additional gains. In none of the

constitutional drafting processes was there any evidence indicating that women took part in the drafting process, nor were they consulted in the amendment. The constitutional drafting process was an exclusively male activity⁵⁸; even in the south, though its political system presented an advanced discourse on social justice, equality and non-discrimination based on gender.

⁵⁸ In March 2014 President Abd Rabbu Mansour Hadi formed a 17-member committee to draft the new constitution. Four of its members were women. This decision falls in line with NDC outputs and the 30% representation quota for women in legislative and leadership positions at all levels.

RECOMMENDATIONS

RECOMMENDATIONS

- *Many of these recommendations need to be updated in light of the new draft constitution of 15 January 2015*
- Organize grassroots campaigns to demand the participation of women in drafting the new constitution through appointing women as members on the Constitution Drafting Committee with a representation percentage of not less than 30% of the total number of members.
- Demand a reduction in male-dominated language used in the Constitution, and as much as possible, feminize the constitutional discourse.
- Demand the amendment of Article 3 of the Amended Constitution of 1994 so that it once again states that the Sharia is the main source of legislation, as it did in the Constitution of 1990, which was put to a referendum. The word “tolerant” should be added as a modifier to the term “Islamic Sharia”.
- Abolish Article 31 of the 1994 amended constitution – which restricts women’s rights by a special provision – in light of the existence of Article 3, which has a comprehensive provision for the rights of all men and women.
- Demand the re-introduction of Article 27 of the Unity Constitution of 1990 in the new constitution: “All citizens are equal before the law and equal in rights and duties without discrimination based on sex, colour, origin, language, profession, social status or faith.”
- Increase the representation of women in decision-making positions in the legislative, judicial and executive authorities with a percentage of not less than 30% by way of positive discrimination to achieve equality.
- Mobilize and prepare to ensure women are represented in the upcoming parliament; in both of its chambers, with a percentage of not less than 30% so that they are able to take part in legislating women-sensitive and equitable laws that meet women’s needs.
- Increase constitutional referrals to the law and insist that the law must reflect, rather than restrict, the spirit of the constitution.

- Disseminate awareness with regard to the culture of human rights through both online and offline media outlets.
- Train and qualify women and youth on issues of equality and non-discrimination in rights and duties.
- Build the capacities of women in NGOs and civil society organisations involved in communication, advocacy and interaction between civil society and government agencies.
- Conduct legal studies and research by specialised think tanks and civil society organisations and disseminate their findings through the different media outlets.
- Develop an enlightened religious discourse to enable female activists to challenge extremist faith-based movements.
- Support government and non-government organisations, as well as feminist NGOs, to launch and activate issue-based advocacy programmes to harness solidarity and support for women’s rights.
- Organise seminars and lectures at the faculties of Sharia and Law within the different public and private universities to disseminate awareness of laws and rights among male and female students as well as relevant stakeholders.
- Encourage male and female students of law and Sharia to conduct studies and allocate prizes and monetary awards for research that supports women’s rights.

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