



## International Justice and the Prevention of Atrocities

### Case Study: International Intervention, Justice and Accountability in Yemen

by Ibrahim Sharqieh

ECFR background paper, November 2013<sup>1</sup>

---

The Yemeni popular uprising of 2011 ended with a negotiated settlement when on November 23 President Ali Abdullah Saleh signed a Gulf Cooperation Council (GCC)-brokered deal in Riyadh. The deal mandated the transfer of presidential power to Saleh's deputy, Abd Rabbu Mansour Hadi, in return for immunity against legal prosecution. The GCC initiative confirmed that "the Parliament, including the opposition, shall adopt laws granting immunity from legal and judicial prosecution to the President and those who worked with him during his time in office."<sup>2</sup> The deal was backed in equal measure by the United States and Saudi Arabia, whose King Abdulla oversaw the signing ceremony. With the early (and temporary) exception of Qatar, the GCC member states recognize that Saudi Arabia considers Yemen a matter of national security and acquiesced to Saudi priorities.

For its part, Washington wholeheartedly endorsed the deal, including its amnesty provision; on May 12, 2011, for example, the State Department "commend[ed] the efforts" of the GCC and strongly urged all parties "to sign and implement the terms of the agreement now to ensure an

---

<sup>1</sup> This paper was prepared as part of a project of the European Council on Foreign Relations to compare the experience of different situations where international responses to crises involving mass atrocities have faced the dilemma of seeking accountability while trying to bring the crisis to an end. Please cite fully in the event of reference or quotation.

<sup>2</sup> International Crisis Group, "Yemen: Enduring Conflicts, Threatened Transition," Middle East Report No. 125, July 3, 2012.  
<http://www.crisisgroup.org/~media/Files/Middle%20East%20North%20Africa/Iran%20Gulf/Yemen/125-yemen-enduring-conflicts-threatened-transition.pdf>

orderly, peaceful transition of power.”<sup>3</sup> That orderly, peaceful transition produced a blunt trade-off between peace and justice. Saleh would surrender the presidency to avoid the risk of the country of sliding into a potentially vicious civil war. The opposition meanwhile gave up the right to pursue justice and accountability regarding possible human rights violations committed during the 33-year-long rule of the former regime.

Saleh’s rule was filled with incidents and issues on which justice has not been served. On his arrival to power in 1978, he ordered the execution of 30 individuals who had been accused of orchestrating a coup against him. At the same time, an unknown number of individuals associated with the coup were “forcibly disappeared.” Their families continue to call for justice today. Uniting Yemen’s South by force, Saleh waged a 3-month-long war that resulted in over 10,000 casualties and left that part of the country with deep social, political, and economic grievances. Six wars with the Houthi rebellion in the north (from 2004 to 2010) also left many open wounds that remain in dire need of healing through justice. Saleh’s long and repressive rule involved a number of further human rights violations – from the detention of political prisoners to torture and forced disappearances – all of which are serious issues requiring justice. Most recently, over 2,000 people were killed and an estimated 22,000 injured during the 2011 revolution. On March 18, 2011 – a day known as the Friday of Dignity – pro-government snipers killed 45 people and wounded over 200. Human Rights Watch has said there are indications that former and current government officials were involved in the massacre, but not a single person has been charged.

Under the terms of the GCC initiative, the former president and his aides possess immunity on charges related to these and other issues. In backing a negotiated settlement, the main objective of the U.S., Saudi Arabia, EU, and Yemen’s parliamentary opposition – the Joint Meeting Parties - was to establish an orderly transition that they believed would secure their interests in the Yemeni conflict. Achieving justice and addressing the regime’s long record of human rights violations were the least of their concerns. The negotiated settlement as a result opted for regime renovation over regime change.

Genuine regime change in Yemen would have meant Saleh stepping down, the establishment of transitional justice laws, free and fair elections, far-reaching institutional reform, and an inclusive national dialogue process. It would not have allowed, as the GCC initiative did for the former ruling party to be represented with 50 percent of the seats in the new government with no accountability to reform of the party itself. True, regime change would have been harder and riskier. Over the course of 2011, Yemen’s dueling factions had reached an internal stalemate that, had it continued, threatened a turn towards violence and possibly a civil war. Still, international pressure could have broken that stalemate and tipped the balance towards

---

<sup>3</sup> See <http://www.state.gov/r/pa/prs/ps/2011/05/163220.htm>

genuine regime change, which would have eventually promised a more sustainable peace. It is important to mention that this international preference for regime renovation was significantly bolstered by the position of the Yemeni Parliamentary opposition – the Joint Meeting Parties – who too opted for a safer and less risky path of regime renovation over change. Revolutionary youth who congregated at what was dubbed “Change Square” were however broadly opposed to the power transition deal.

Saudi Arabia’s main concern was to maintain its influence in Yemen through some old regime figures and other tribal leaders who are part of the new political arrangement. That objective would have been made significantly more difficult in the event of a revolution that removed the old regime in its entirety and held it accountable for past violations. In addition, only an orderly transition could help ensure the maintenance of security on Saudi Arabia’s southern border with Yemen – unquestionably the ultimate goal of Riyadh’s Yemen policy.

The United States’ obsession with an orderly transition superseded all other issues, including accountability and justice. The U.S. believed only a negotiated settlement would allow it to keep intact all its past security investments in the fight against al-Qaeda in the Arabian Peninsula (AQAP). From Washington’s perspective, maintaining functioning security units such as the Republican Guards and Central Security under the trusted leadership of the old regime was more important than issues of accountability and justice. The chief goal of the UK – another major player in Yemeni politics – was also stability. From the start, the UK was a vocal proponent of the GCC initiative. After an April 2011 meeting with the foreign minister of the United Arab Emirates, for example, Minister for the Middle East Alistair Burt said that the UK “warmly welcomes the proactive role of the GCC” and that “the GCC initiative represents our best hope for a constructive and peaceful way forward in Yemen.”<sup>4</sup> The UK strongly pushed for and reportedly drafted successive versions of UN Security Council Resolution 2014, which encouraged Saleh to sign and implement an agreement based on the GCC initiative. In addition, the UK has served as one of the three permanent co-chairs<sup>5</sup> (alongside Saudi Arabia and Yemen itself) of the “Friends of Yemen,” an international grouping meant to support the GCC initiative’s planned transition. The UK, like the rest of Europe could not afford another Somalia on the other side of the Bab al-Mandab Strait. Preventing state failure and potential piracy and securing transportation to South East Asia were far more important to the UK than ensuring transitional justice.

By abolishing the principle of accountability and granting immunity from domestic prosecution to the entire former regime, the international community may have structurally affected the

---

<sup>4</sup> See <https://www.gov.uk/government/news/uk-supports-gulf-co-operation-council-initiative-to-resolve-crisis-in-yemen>

<sup>5</sup> For more on UK priorities in Yemen, see <https://www.gov.uk/government/news/uk-priorities-in-yemen>

future course of the conflict in Yemen. One immediate outcome of such measures is to encourage the tolerance and legitimization of the idea of immunity from prosecution in Yemeni society. The fact that no one has been charged in the Friday of Dignity massacre is damaging for the collective conscience of Yemeni society. Yemenis may draw the wrong lessons from such a deal, understanding, for instance, that human rights violations can eventually be settled without punishment as long as you have enough power to negotiate. What makes such conclusions more alarming is the fact that immunity was granted to Saleh and his regime by the highest legislative power in the country – the Parliament –with the approval of all opposition’s parliamentary political parties (revolutionary youth in Change Square opposed the amnesty deal). Immunity against legal prosecution on this level may very well encourage future resolution efforts that seek to leverage deals and settlements at the expense of addressing the underlying causes and conditions of conflict.

Unless certain measures are taken to address the concept of justice in post-settlement Yemen, these immunity laws could contribute to a new reality that perpetuates conflict rather than achieving the stability sought by international players. That is, the Yemeni public in general and the victims of abuse in particular need to know the truth about the past and need to be confident that the perpetrators will be identified and held accountable. Preventing the Yemeni public from coming to terms with their past in this way will hinder a healing process that is desperately needed in Yemen before the people can move on. In this case, the open wounds of the past will continue to present a source of conflict for future generations. The best evidence of this can be found in Yemen’s own history; none of Yemen’s recent civil wars and conflicts in 1978, 1986, 1994, or from 2004 to 2010 were followed by a healing process and an effort to come to terms with the past. The end result, as is now clear, was only a recurrence of instability and violence. In just one example, we can expect cases of forced disappearance to continue to breed conflict as long as they remain unresolved.

The establishment of an orderly transition devoid of justice and accountability has profound implications for Yemen’s Southern issue. Yemeni Southerners have deep social, political, and economic grievances that emerged largely through a forced unity agreement with the North in 1994. Many Southerners believe thousands of their loved ones were killed in an unjust war that Saleh launched against them. Additional grievances include the loss of their properties and the forced retirement of tens of thousands of Southerners in the military, as well as broad discrimination against them in the public sector. If the perceived perpetrators of these injustices are allowed to remain in power – as a result of the GCC initiative’s “orderly transition” – we should not be surprised to see a resurgence of Southern calls for separation in the future.

Sustainable peace and stability in Yemen will require a healthy transition, not one that achieves “orderliness” at the cost of the principle of accountability. Guided by their own narrow

agendas, international players sacrificed justice for the sake of stability. This shortsighted approach – if not adjusted – could potentially lead to a loss of both stability and justice. A healthy transition would require first and foremost that Yemeni people are able to come to terms with what happened in their country’s past, holding accountable those who committed abuses and adequately compensating the victims and their families. The current government has accomplished a great deal of security reform, but further institutional reform – particularly in Yemen’s judiciary and corruption-wracked civil service – is necessary to prevent a recurrence of past abuses. A solid transitional justice law that accounts for all these angles of healthy transition would be a suitable starting point.

To support transitional justice now, and especially in the absence of accountability provisions, the international community could engage in serious dialogue with the former ruling party, the General People’s Congress, to encourage them to implement deep party reform including, for example, revision of the party’s charter, expelling party leaders that their names were associated with corruption or human right violations, and possibly changing the party’s name for what it stands for in the collective memory of the Yemeni people. Such serious reform could in part address the victims need for justice when they see the perpetrators substantially changing. The immunity condition of course cannot prevent deep party reform.

Unfortunately, the international community has been only half-hearted in its efforts to help establish a transitional justice law in Yemen. When mentioned, transitional justice is always referred to in terms of compensation to the victims and their families; nothing is said about historical truth, accountability, or the identification of perpetrators. Such an approach constitutes not transitional justice, but rather buying the silence of the victims and their families. As Sarah Leah Whitson, Middle East and North Africa director at Human Rights Watch, puts it, “redress is an essential component of justice, but a truth commission without the judicial power to learn the truth is an affront to victims...burying the mistakes of the past is a sure path toward reinforcing impunity.”<sup>6</sup>

Financial approaches such as this that do not seek truth and accountability generally fail to change the conditions of the victims and can end up prolonging their suffering. First of all, it is doubtful whether money can really compensate for the children of Yemenis who were disappeared some 30 years ago. Those children lost opportunities in terms of upbringing, education, and employment that are hardly calculable in financial terms. Further, studies of transitional justice show that many of those who receive financial compensation spend it soon after and then simply return to their miserable conditions. The truth of past violations in Yemen must be exposed, even if the results do not involve anyone going to jail. The GCC initiative’s

---

<sup>6</sup> “Yemen: Transition needs accountability, security reform”, Human Rights Watch. April 6, 2012, available at <http://www.hrw.org/news/2012/04/06/yemen-transition-needs-accountability-security-reform>

immunity provisions only prevent prosecution, not truth-seeking; a truth and reconciliation commission should be established immediately with the capacity to document the past and crucially identify the perpetrators behind past offenses. The Yemeni people deserve to know the truth about this chapter of their country's history and displaying that truth is important both for their healing and for national reconciliation. Given that Yemen will likely only be able to muster scant resources for financial compensation, it is vitally important that past offenders be encouraged to issue public apologies - and that victims and their families be encouraged to embrace forgiveness.

The international community must work with their Yemeni partners to take these steps and in so doing achieve more just transition. Being selective in the application of transitional justice and offering compensation while ignoring truth, accountability, and institutional reform, will only complicate Yemen's future and might in the long term undermine, rather than ensure, a stable transition.

*Ibrahim Sharqieh is a Foreign Policy Fellow at the Brookings Institution and Adjunct Professor at Georgetown University in Qatar.*