

NORWEGIAN
REFUGEE COUNCIL

NRC

**REPAIRING FRACTURED LANDSCAPES;
Challenges and opportunities for resolving
disputes over land, housing, water and
other natural resources
in Yemen**



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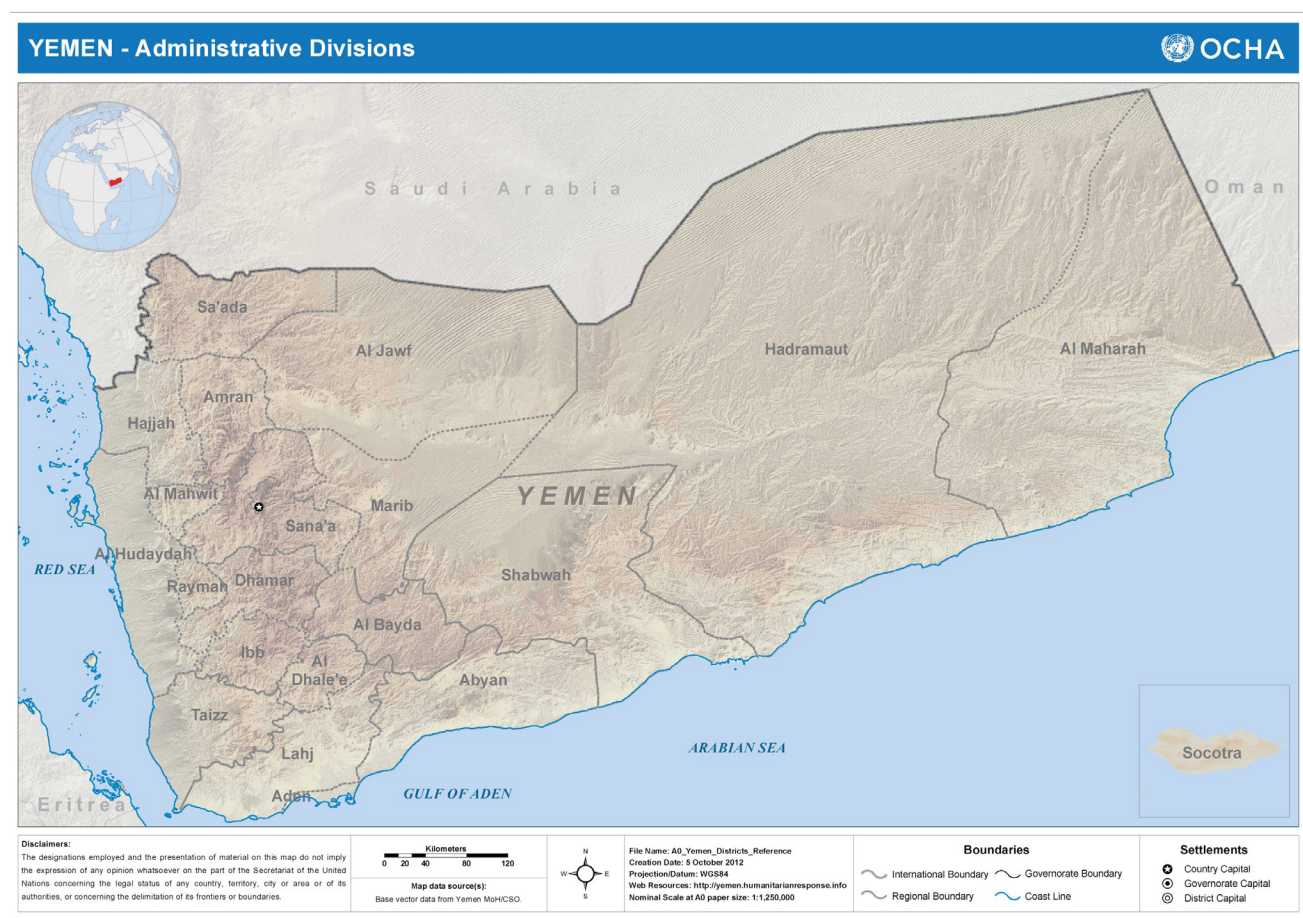


Photo: Map of Yemen/Credit: OCHA

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Front cover: Mediation session being facilitated by a staff of NRC's ICLA project in Yemen

Photographs: Shadi Kamber and Nuhad Mubarak.

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List of Acronyms

- CDR** – Collaborative Dispute Resolution
- CSO** – Civil society organization
- GBV** – Gender-based violence
- IDP** – Internally displaced people
- NGO** – Non-governmental organization
- NRC** – Norwegian Refugee Council
- NWRA** – National Water Resources Authority
- PDRY** – People’s Democratic Republic of Yemen
- RoY** – Republic of Yemen
- SGBV** – Sexual and gender-based violence
- UNDP** – United Nations Development Programme
- UNHCR** – United Nations High Commissioner for Refugees
- USAID** – United States Agency for International Development
- WASH** – Water, sanitation, and hygiene
- YAR** – Yemen Arab Republic
- YR** – Yemeni Riyal
- YSP** – Yemeni Socialist Party

1. Introduction

Unresolved disputes over housing, land, and natural resources increase the vulnerability of people in conflict-affected environments. Disputes can undermine people's access to their basic needs including shelter, water, and food. As Yemen's civil war continues through its fourth year, these types of disputes are the reality that most Yemenis face on a daily basis – and these disputes are among the drivers and amplifiers of the war. However, the parts of Yemen where these disputes are being effectively resolved often form pockets of peace and stability.

This report examines the main types of disputes facing ordinary Yemenis and looks at the effectiveness of the institutions tasked with resolving them, and the obstacles they face in providing justice. More importantly, it disaggregates these issues by gender and by other factors of social vulnerability such as caste – since women and members of historically marginalised populations often face unique types of disputes and obstacles to resolving those disputes. Ultimately, the goal of this report is to contribute to an informational foundation which can support the development of localised peacebuilding and dispute resolution initiatives.

Chapter 2 of this report provides an overview of the qualitative method we used to collect data and some of the challenges we faced. Chapter 3 provides a brief geographical, social, and modern-historical overview of Yemen, looking at the various factors which shaped the pre-war context of housing, land, and natural resource governance. These factors all play an important role in informing the types and scale of disputes during the present civil war. In Chapter 4, we establish a typology of disputes over housing, land, and natural resources which the respondents to this study identified as affecting their daily lives.

In Chapter 5, we present the findings from our discussions with local communities, civil society actors, and local providers of dispute resolution services about their own criteria for what effective dispute resolution services should provide. Getting these perspectives was essential to building a framework for these same actors to evaluate whether the existing systems are responding to the needs of the communities. We end up seeing that whether the dispute resolution systems are customary, formal, religious, or informal, there are important gaps in terms of the legitimacy and coverage of the services they provide.

In Chapter 6, we go into more depth on the specific types of obstacles preventing the effective resolution of disputes. At the heart of these obstacles is the perception by many actors that justice is only available for the most powerful, a tendency that pre-dates the current war. Those who find themselves in a position of relative power over their rivals will exploit these weaknesses in the system to ensure an outcome that suits them.

This approach reinforces and amplifies forms discrimination against women and marginalised castes such as the *muhamasheen*. When women or muhamasheen people try to defy those historical injustices and defend and claim their rights, they are often met with acts of violence. However, with the expansion of the war, violence is increasingly becoming the language of dispute resolution, with tragic consequences.

In spite of these challenges, the findings of this study also build on the body of literature that demonstrates that local institutions and systems of solidarity can often be more adaptive and resilient and can survive large conflicts in ways that state institutions cannot.¹

This report concludes that there is a critical need to support the resolution of disputes related to housing, land, and natural resources (especially water). There are important steps that several actors must take to mitigate the risks from their projects that they will create new layers of conflict. There is also a major risk that the localised drivers of conflict and root causes of the conflict will be excluded from top-down efforts to achieve peace.² Without strategic, concerted, and multi-scalar action on these issues, these conflicts will continue to provide fuel for this war and the next.

2. Methodology

From March-July 2018, the Information, Counselling, and Legal Assistance (ICLA) team in Yemen used a range of qualitative methods to understand the mechanisms used by Yemenis to resolve disputes over housing, land, and natural resources in Sana'a, Aden, Taiz, and Lahji governorates. The selection of these sites was based on the Norwegian Refugees Council's presence in these governorates and our ability to negotiate permission to conduct interviews on this sensitive theme.

The four governorates are particularly interesting since Sana'a and Aden represent the political and administrative centres of 'northern' and 'southern' Yemen respectively. Taiz and Lahji fall on the contested border zones of these historically-significant divisions. The team conducted both remote and in-person interviews with 29 civil society, local authorities, and humanitarian actors.

In Aden, Lahji, and Taiz, ICLA teams conducted focus group discussions with different segments of society to understand how the unique conditions they may face when attempting to resolve housing, land, and natural resource disputes. Specifically, our goal was to compare the perspectives of IDPs and host communities, the perspectives of IDPs in rental arrangements and those in collective settlement sites, the perspectives of marginalised castes such as those from the *muhamasheen* community. For each of these groups, we held separate discussions between men and women to create spaces in which each group might be able to freely debate and exchange ideas, and for us to draw out patterns that affect women and men across the other segments of society. In all, NRC conducted 18 focus groups, with over 213 participants.

We initially had a goal to observe ongoing dispute resolution processes, but we were unable to get those invitations from local authorities within the research period. Ultimately, ICLA was also able to meet with people who had been parties to the same dispute, for recently-closed cases to ask them about their experiences with dispute resolution. We were able to interview ten individuals – all men – for a total of five distinct disputes, with three in Lahji and two in Taiz governorates.

Given the extremely sensitive nature of these findings, all names used within this report are pseudonyms in order to protect the identities of individuals and the organisations they represent. We have endeavoured to remove all significant identifiers from specific cases and anecdotes in order to preserve the confidentiality of our sources. The only real names that we use is for citing authors of published work.

Our qualitative findings were also complemented with an extensive literature review – especially on the historical context as well as to ensure that our findings speak to the existing body of work on local governance in Yemen.

3. Contextual overview

The fractured landscape of land and resource governance in Yemen is the product of decades of political instability and social transformation at multiple scales. One of the primary lines of fracture has been between the 'north' and the 'south'. On one hand, "northern Yemen" and "southern Yemen" are used to reference the area that composed the Yemen Arab Republic (YAR) and the People's Democratic Republic of Yemen (PDRY) until their unification in 1990. These labels persisted even though large parts of "southern Yemen" were actually to the east and north of "northern Yemen." This nomenclature seems to suggest the power of the outsized influence of Sana'a and Aden in terms of defining the political and geographical identity of these regions.



Photo: Effect of deforestation as a result of conflict in Yemen

However, the ‘north’ and the ‘south’ are currently also used as by journalists, NGOs, and Yemenis themselves shorthand to refer to the zones currently under the control of the Ansar Allah forces in ‘the north’, and the UN-recognised government of Yemen and their erstwhile Southern ‘separatist’ allies from ‘the south.’ These territories somewhat reflect the north-south pre-unification divisions, although these boundaries have shifted throughout the conflict. Even within their respective ‘territories’, these parties’ level of control is deeply contested, not to mention the symbolism of calling a part of the country ‘the south,’ which supports the separatist group’s position that Yemen is (at least) two distinct countries.

While the ‘northern’ and the ‘southern’ regions have been intertwined throughout history, they are distinct for several reasons including physical geographies and resource bases, varying forms of traditional social organisation, and different colonisers and post-colonial trajectories. These intersecting processes have left layers upon layers of what are called ‘legacy’ disputes – where parties’ contested rights and grievances have deep roots.

This section will briefly unpack some of the environmental, cultural, and historical factors that have played indelible roles in shaping the contemporary dynamics of housing, land, and natural resource conflict in Yemen.

3.1 Geography

Yemen is neighboured by Saudi Arabia to the north, Oman to the east, the Red Sea to its west, and the Gulf of Aden and the Arabian Sea to its South. Its coast is lined with a very narrow coastal plain, which quickly rises into the mountainous central highlands, both from the coast of the Red Sea and the western Gulf of Aden. These mountains form a semi-arid highland plateau that slowly descends eastward towards the desert. Moisture gets trapped on the seaward side of the mountains as air moves up from the sea to the highlands. Historically, this has enabled communities to develop a system of highly productive agriculture in the central highlands (within the country’s ‘north’), even on steep terrains through the maintenance of terraces. The rains had also fed the country’s aquifers. Changing climatic patterns have led to increasingly erratic rainfall over the past few decades.³ The effects on agriculture and water resources have been amplified by deforestation, the erosion and degradation of the terraces, along with an intensified production of perennial cash crops like qat using mechanised irrigation. We will examine the depleting water supply as a driver of conflict in greater depth in Section 4.6 of this report.

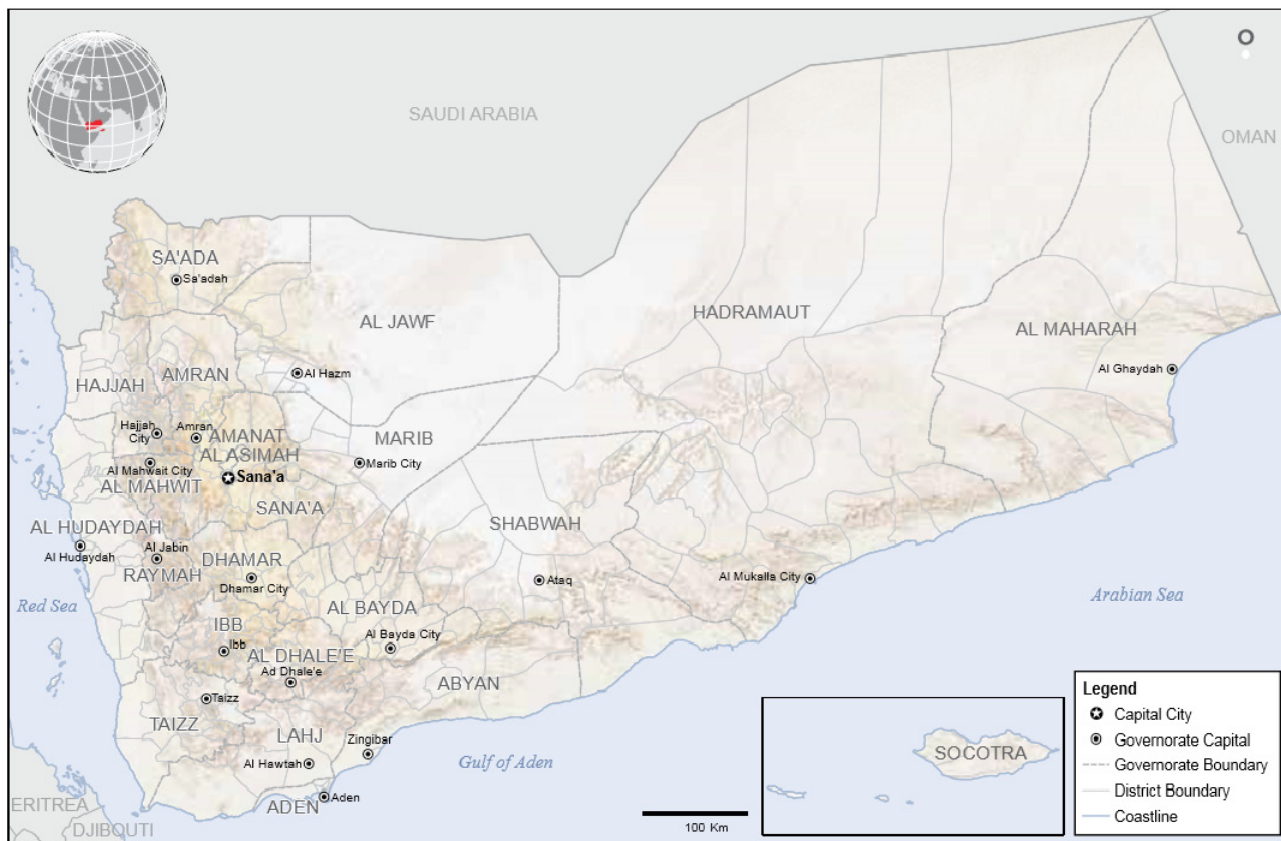


Photo: Map of Yemen/Credit: OCHA

The 'southern' part of Yemen is characterised by dry coastal plains and arid desert towards the north and east. The proportion of arable land is considerably smaller in the 'south'. In the arid eastern parts of the country, nomadic and semi-nomadic herding have prevailed as the main economic activity. While small-scale agriculture and fishing have been the major sources of subsistence along the coast, the south coast has also been a hub for international trade for centuries.

3.2 'Tribal' Organisation

The terms 'tribe' and 'tribal' are particularly laden with conflicting meanings in Yemen. On one hand, they are associated with structures built on values of mutual accountability and solidarity, while on the other, they are seen as archaic and "anti-modern" by many. In spite of these differing views, there are a few points of consensus in the literature:

First: Tribes typically refer to systems of social organisation based on shared kinship. These can be small groups numbering a few dozen people, to tens of thousands. Often, the term 'tribal' is associated with the large confederations of tribes in the northern highlands (Awlaqi, Bakeel, Hashed, and Madhaj), but this characterisation can erase other forms of social organisation that exist or have existed in other parts of the country. Manea adds that while tribal affiliations existed in the south, this form of association was often superseded in importance by a place-based affiliation known as *manatikiah*, which they define as "the individual's strong emotional bond to his (sic) birthplace".⁴ 'Tribal' groups and place-based communities, no matter the size, are often bound by a shared set of principles, rules, or 'customs'. According to Adra, the systems of rules, norms and customs governing the relationships between members of tribes, and with their neighbours, and with 'non-tribal' persons, are known as "'urf," "*ahkām al-aslāf*," or "*sinna (sunna)*".⁵

Second: Tribal or customary systems of authority in Yemen are fluid and dynamic, as are the customs and rules that bind them together. The pressures to change customs and institutions come from opportunities, crises, and demands emerging from both within – from the subjects themselves – and from the outside.

Third: Tribes and their customs are not homogeneous. Various economic, demographic, environmental, and historical processes have shaped these structures. Both Lackner and Adra note that for any characteristic that is typically understood to be ‘tribal’ there are exceptions. Some customary systems have proven to be particularly resilient to the various pressures facing them, while others have weakened, and the fibres that hold those communities together are fraying and/or being recombined into new types of social organisation.

Fourth: Tribal systems of governance are typically weaker and often non-existent in urban areas, where the heterogeneity of the population dilutes the power of a single set of customs or tribal authority, and where a large segment of the population identifies as distinctly “non-tribal.” State institutions and laws have historically prevailed in urban areas. As such, ‘customary’ or ‘tribal’ institutions mainly exercise power over rural areas.

Fifth: Before the revolutions of the 1970s, traditional social structures were based on inherited statuses, often compared the south Asian caste system.⁶ A person’s ‘caste’ often determined the types of occupations they could hold as well as formed the basis of their rights of access and control to land.

The highest caste, alternately called *sada*, *Hashemites*, or *ashraf*, claim descent from the Prophet Mohammed. This caste held roles of religious and political authority and have historically controlled large segments of land. According to Adra, *sada* are often considered to be outside of ‘tribal’ structures.⁷ The next caste level, *qadi*, have “tribal origins” and play roles of judges and bureaucrats.⁸ The majority of the members of tribes appear to form their own caste level. Lackner suggests that before the revolution most members of tribes were “owner-cultivators” although how ownership is constituted within the customs of different tribes remains unclear.⁹ Lackner adds that some may have worked as share-croppers on the lands of more powerful individuals and families. The lower, traditionally non-landowning castes included traders, artisans (*bani khums*), slaves (*abid*), and the marginalised *muhamasheen*. Share-cropping, combined with small land-holding was especially common in the southern agricultural areas.¹⁰ There, a caste of labourers on the land called *fellaheen* came to identify those who were denied any rights to own land.

The revolutions in both north and south Yemen in the 1960s upended many of these traditional hierarchies. This was achieved through deliberate acts of the state, such as the formal abolition of slavery and inherited statuses in the 1970s, as well as the inevitable side-effects of increased mobility of people and ideas. Also, the expansion of land markets in both north and south have, on one hand, created opportunities for people previously excluded from owning land to acquire properties, but also opened avenues for traditional and new elites to expand their landholdings and enclose these holdings from traditional forms of mutual social obligation and resource sharing.

While Adra notes that the boundaries between statuses have become more fluid due to inter-marriage, and that “tribes” have become more inclusive, Lackner adds that although they have changed, that these statuses still hold some significance.¹¹ Our research finds that persisting rigidity of social castes especially affects members of the *muhamasheen* caste, who continue to experience tremendous levels of discrimination. Attempts for *muhamasheen* persons to claim their rights, or engage in social mobility through marriage with members of other castes are often met with extreme violence. We will examine these dynamics in greater depth in Section 6.2.2 of this report.

3.3 Pre-unification ‘north’

The northern part of Yemen’s ‘post-colonial’ period began in 1917 when the Ottoman Empires’ last agents were expelled and the *sada* leaders of the Zaydi religious sect established the theocratic Mutawakkilite Kingdom (or the Kingdom on Yemen). According to Burrows (1991), even though Imam Yahya Muhammad Hamid ad-Din borrowed some of the Ottoman empires administrative structures on which to base his state, the bureaucracy’s reach was quite limited.¹² The Imam’s power came from his ability to negotiate alliances with the leaders of various tribal confederations and maintain loyalty by balancing incentives with threats.¹³

Even though the confederations formed part of the Kingdom, those that supported the monarchy maintained considerable autonomy over the governance of their territories.¹⁴

The Kingdom also established international alliances, joining the Arab League in 1945 and the United Nations in 1947. They bolstered their anti-colonial credentials by supporting efforts to resist the British in the southern regions of Yemen and cultivated the idea of a unified Yemen.

The Kingdom lasted until 1962, when a group of army officers seeking to establish a republic launched a revolution, establishing the Yemen Arab Republic. The revolutionaries were supported by Egypt under President Gamal Abdel Nasser. The monarchists fought back with the support of Saudi Arabia and the country descended into an 8-year civil war, which the monarchists ultimately lost. While some tribes supported the monarchists, others supported the republican revolutionaries. The republicans defeated the monarchists in 1970 and began attempting to build a new state.

One of the major tensions within the early state was if or how to integrate tribal authorities into the state. Ultimately, many of the tribes emerged from the war in a position of strength, and sheikhs were ultimately brought into the national assembly and the national consultative council. They also took control of many of the essential functions of the state, including the army and key aspects of the bureaucracy (including the ministry of agriculture).

The second president of the Yemen Arab Republic (YAR), Ibrahim al Hamdi attempted to curtail the growing power of these tribal elites by driving them out of their positions. According to Burrows, this attempt to increase the power of the state over the tribes ultimately backfired, as the sheikhs rebelled, cutting off the expansion of the state into their territories.¹⁵

After President Al-Hamdi's assassination in 1977, his successor¹⁶, President Ali Abdullah Salih took a different approach towards the tribes, working to weave tribal leaders into the state, expanding the military and bureaucracy throughout the Republic, but increasingly centralising power around himself through his network of political patronage. By using the resources of the state (taxes, oil revenues) to build his patronage network, he created a dependence by the elites on access to these resources, weakening the bonds between various tribes, and between leaders and ordinary tribespeople.¹⁷ This way, if individuals resisted, rebelled, or simply became too powerful, he was able to quickly co-opt or undercut them.

Tribal elites, as well as others who found success in the post-revolutionary state, have used these positions to strengthen their control over water usage (as we will explore in Section 4.6) and increase their landholdings, pushing small-scale farmers out of the countryside and into the cities.¹⁸

Small-scale farmers also faced increasing pressures resulting from population growth. Parcels were divided through inheritance in each passing generation. Furthermore, the land has become less productive due to scarcities in water and increased costs of labour to maintain terraces (which prevented erosion). This contributed to the emergence of new land markets, where small farmers would sell their parcels, feeding into elite accumulation. Perceived and actual scarcities in land and water have been at the root of the proliferation of disputes – including inheritance cases, boundary disputes, and land and water grabs. Lackner notes that the declining quality of life for farmers and the emergence of alternative avenues of social mobility (through participation in commerce, outmigration, or joining the state bureaucracy) has “contributed to undermining the status of tribes as institutions and upholders of principles of social behavior.”



Photo: a small scale farm in Yemen

At the same time, the burgeoning oil economies in Saudi Arabia and the Gulf States, and the opening of Yemen to the outside world created opportunities for young (mostly) men to leave their rural homes. The remittances from these men and new demands for trade goods created new avenues of social mobility – especially from members of former castes that were landless.¹⁹ The fact that young men had alternative sources of income to agriculture also diminished the traditional power of local authorities which was derived from controlling the flows of labour and allocations of land and resources.

3.4 Pre-unification South

The southern part of Yemen was colonised by the British as part of their efforts to control the sea routes to India. Outside of the port of Aden, the British relied on tactics of indirect rule, namely entering into treaties with local rulers (sheikhs and sultans) and facilitating the expansionism of parties who would support British interests, creating “Protectorates.” By empowering their allies with arms and administrative tools, they disrupted customary forms of governance and forms of accountability between leaders and those they ruled.²⁰ Mamdani describes the British colonial model as privileging monarchical, patriarchal, and authoritarian forms of governance – creating a system of “decentralised despotism.”²¹ Manea adds that these leaders were “feudal landlords who possessed between 70 per cent to 80 per cent of the fertile lands of their territory.”²²

Anti-colonial militants inspired by Pan-Arabism, Yemeni nationalism, and Marxism, increased attacks on the British throughout the 1960s, as well as attacking the local leaders and institutions known to support and benefit from British control. The fighting culminated in British withdrawal and with the creation of the newly independent People’s Republic of Yemen in 1967. The name was later changed to the People’s Democratic Republic of Yemen (PDRY).

In 1970, the Yemen Socialist Party (YSP) consolidated its control over the government, imposing sweeping governance reforms. A centrepiece of these reforms was a systematic campaign to dismantle the traditional structures of land and resource governance – which were seen as synonymous with unequal land distribution. Sultans and sheikhs, some of whom were seen as having been agents and beneficiaries of this system, were purged and their lands expropriated.²³ Many of the leaders who survived the purge took refuge in Saudi Arabia, and some went on to fight in Afghanistan with the *mujahideen* against the Soviet-backed government, gaining experience to eventually bring the fight back to Yemen.²⁴

Many of the expropriated lands were turned into state-run farms. The government also transferred some agricultural lands to former sharecroppers, especially people of the former fellaheen caste.²⁵ The regime also tried to organise small landholders into cooperatives. Poor and low-caste urban dwellers also saw increased opportunities to acquire parcels to build their homes.²⁶ Supported by increased access to education, these transformations aimed to dismantle the traditional hierarchies and to create a more egalitarian society.²⁷

The dismantling of traditional structures in PDRY also had an important dimension related to women's rights. According to Wurth, "next to land reform, women's rights were part and parcel of the YSP's anti-colonialist and anti-feudalist rhetoric."²⁸ Their reforms to family established marriage as a consensual union between equal partners, banned child marriage, and provided more protections for women's rights in the context of divorce. While the reforms themselves were radical, the application and enforcement of these reforms were uneven, especially in rural areas.²⁹

3.5 Unification to the present

Even though the YAR and the PDRY fought periodically through the 1970s, their respective governments continued to work towards realising the dream of unification, starting with 1972's Cairo Agreement, and the drafting of a unifying constitution in 1981. However, the convergence of several factors in the 1980s precipitated unification. These factors include the weakening of the ruling Yemeni Socialist Party from an in-party civil war in 1986, the halving of Soviet support for the government of the PDRY in the late 80s, and the discovery of shared oil deposits between present-day Ma'rib and Shabwah governorates.³⁰

In 1990, the countries united with President Salih taking the reins of power over the new Republic of Yemen (RoY) and the General Secretary of the Yemeni Socialist Party, Ali Salem al Beidh as the vice-president. According to Dingli, the unification agreements was poorly thought out in terms of the division of power, the merging of institutions (including the merging of their respective militaries), and was undermined by mutual distrust between northern and southern leaders.³¹ Among the points of contention was merging the two legal frameworks – which had major implications for land rights, especially the rights of segments of the population marginalised before decolonisation in southern Yemen. For women, the rights recognised and protections acquired under the PDRY's family law were severely eroded in the passage of the Personal Status Law in 1992.³² (See Section 6.2.1 for more information on the obstacles to recognising and securing women's housing, land, and property rights.)

Beyond the merging of laws, the southerners felt like their interests were excluded from key decisions. These challenges were exacerbated by an economic and social crisis precipitated by the expulsion of Yemeni expatriates from Iraq and Saudi Arabia following their response to the first gulf war, and the withdrawal of Saudi aid to the government.³³

Relations between the north and the south deteriorated until 1993 when Vice President Al Beidh withdrew from the government in protest. In 1994, tensions erupted into violence, and southern leaders declared independence, launching the country into a civil war. The northern military defeated the south in a matter of a few months, supported by the return of the 'southern' sultans and sheikhs who had gone into exile during the Marxist purge and fought in Afghanistan against the Soviets.³⁴

Following the 1994 civil war, many southern bureaucrats in government services were dismissed from their

positions and replaced by northerners and parties loyal to President Salih. Northern bureaucracies were already stocked with his allies. By putting his clients into these positions, President Salih and his allies were able to undertake major land expropriations and land grabs without checks to their power in both the north and the south.³⁵ However, these effects appear to have been especially concentrated in the south. Unruh notes that:

“southern lands were seen as a form of war booty by northerners who ignored, misused, and ran roughshod over land and property laws, customs, forms of proof, and long-standing claims and occupations of lands.”³⁶

The appropriation of southern lands by “northern” (Salih-aligned) interests remains a major source of grievance in the south today, which is used as fuel by the southern separatists, as well as other militant groups.

In exchange for their support in the 1994 civil war, President Salih seemed to have promised the ‘southern’ Sultans and sheikhs that they would be re-granted most³⁷ of the lands that had been expropriated under the Marxist rule of PDRY. However, this invitation ignored the fact that those lands had been re-allocated under the pre-unification regime, and that some of the beneficiaries of those re-allocations had been previously marginalised and exploited under pre-revolutionary systems of governance. Having been provided with the tools for economic, political, and social self-empowerment over the previous decades, these beneficiaries rejected the claimed authority of the returning sheikhs, many who sought to re-dispossess them of their gains.³⁸ Moreover, some beneficiaries of land distributions had gone on to transfer the land to other parties through sale, rental, lease, or inheritance. As such, many of these disputes were taken to the courts, which are notoriously slow and unreliable. (See Section 5.2.1 for a deeper analysis of the courts).

In unified Yemen, President Salih continued his attempts to co-opt and dilute the power of traditional leaders. Traditional jurisdictions were sub-divided and thousands of sheikhs were appointed by the presidency, granting them full privileges and powers of land allocation over their jurisdictions.³⁹ These, in turn, distributed land through their patronage networks, and at times, stripped previous owners of their rights. Sheikhs who fell out of favour with the President would be removed and replaced – often by actors who paid no attention to/nor enforced the allocations of their predecessors, creating new layers of claimants and grievances. According to Lackner, many sheikhs became “city shaykhs,” staying in the cities to be close to the sites of power and decision-making, only travelling back to their jurisdictions of control, on occasion, creating a backlog in the demand for their services.⁴⁰

While President Salih’s control over the country became more centralised, his rule was contested throughout the 1990s and 2000s through increasing demands for local autonomy. His power was contested in the south through the consolidation of the southern secessionist movement, *Al Hiraak*, the emergence and strengthening of extremist groups such as AQAP. In the north, this resistance especially centred around the revival of Zaydi revivalist movement led by the Houthis.

The passage of the Local Governance Law in 2000 devolved power to governorates, districts, sheikhs, and local elders. This law was seen as a way to appease these tensions, while also creating new avenues to dilute traditional forms of power (appointing new sheikhs). The autonomy of these new structures was also limited in important ways (see Section 5.2.1 for more on this subject). It also enabled the expansion of President Salih’s patronage network as new positions needed to be filled.

Ultimately, the tensions around the sharing of power, massive inequality, the lack of genuine political representation, and other issues culminated in the Arab Spring protests of 2011, which drove President Salih from power. Salih’s former Vice President, Abdrabbuh Mansur Hadi, acceded to power at the helm of a Transitional government.

One of the transitional government’s major actions on land governance was the launch of the Southern Yemen Land Remedies Commission in 2013 to process contested land claims in the south. Within months of it being launched, over 90,000 claims had been filed.⁴¹

In 2015, the northern Zaydi revivalist movement led by the Houthis took advantage of the weakened central government, and launched an offensive against the government under the banner of Ansar Allah, triggering the civil war that persists until today. As with many other essential government programmes and services, the land commissions' work was suspended as soon as the fighting reached the south, and has not yet been revived since the Ansar Allah was pushed back.

In the absence of reliable institutions to resolve land disputes in some areas of the country, militias and extremist groups like Al Qaeda in the Arabian Peninsula (AQAP) have seized on the accumulation of grievances to build bases of power by positioning themselves as arbiters of disputes and enforcers who would protect local interests.⁴² Other militias which have begun operating in the south have also begun to take on this role of defenders of local land and water rights against 'northerners.' Reprisals against 'northerners' in the south have taken place since the outbreak of war, even if lands were acquired through legitimate and legal means.⁴³ One internally displaced person (IDP) of northern origin, but who lived in Hadramut before the war, mentioned that their home and shop were ransacked by militias, and they were threatened with death if they did not flee.⁴⁴ In Taiz, there are reports of communities that have sparred over land disputes allying themselves with opposing factions of the war (Ansar Allah vs Pro-Hadi forces) as a means of taking revenge on their rivals.⁴⁵

4. Typology of housing, land, and natural resource conflicts in Yemen

Based on our interviews with IDPs, host communities, local authorities, and civil society activists, we were able to identify seven 'types' conflicts relating to land, resource, and housing in the four governorates covered by our study.

While some types of disputes can be found in all governorates, others are limited to specific geographical areas. There are also strong gendered and caste-based components to many of these disputes, with differentiated conflict trajectories and impacts between women and women, and between *muhamasheen* peoples and those of other castes.



Photo: Landlord Tenant relations; parties reviewing terms of a tenancy agreement.

Many disputes have emerged because of the displacement, death, economic deprivations, and environmental degradations of the war, but the root causes of most of these disputes are linked to political, environmental and social issues that pre-date the war.

4.1 Overlapping claims

The efforts by the successive governments to control land and distribute resources to favour the advancement of their political agendas have led to a tremendous backlog of overlapping and contested land claims. The weakness of the land registries and bureaucracies due to underinvestment and their inability to act independently of local and national political forces has further contributed to this problem. Lastly, according to USAID, between 80 to 90 per cent of land transactions in Yemen take place outside of statutory structures.⁴⁶ Proof for these transactions is often documents issued by sheikhs or local elders called *basira*, or through informal documents prepared by the parties.⁴⁷

Opportunistic parties throughout the country have been able to take advantage of these institutional weaknesses to sell lands over which they have no legal and/or customary rights, or re-sell the same parcel multiple times. The continued breakdown of governance during the war has amplified this opportunism (colloquially called *al-faed*, or ‘the feeding’) with powerful and wealthy parties using militias to seize lands.⁴⁸ Some of this land grabbing appears to be attempts to settle pre-war grievances, but in many cases, it is simply a question of powerful parties seeing land as war booty, and taking parcels they see are valuable from persons they think will be unable to fight back or even seizing public land and buildings. Some armed groups have been accused of coercing landowners into selling their parcels.⁴⁹ Other militias appear to extort landowners for ‘protection’ instead of seizing the lands.⁵⁰ Our research identified cases throughout the north (Sana’a, Taiz, and Hodeida governorates) and the south (Hadaramut, Lahji, and Aden governorates).⁵¹ Most local authorities (customary and state) expressed a sense of helplessness when it came to addressing these kinds of disputes.

In cases where militias are not involved, elders, sheikhs, and courts are used to resolve disputes, although unequal access to formal documents and forged documents can be an obstacle. Furthermore, given the role of sheikhs in land transactions and allocations, there are cases where they play a direct role and profit from the creation of these overlapping claims. Where sheikhs who have been replaced by their successors do not always recognise or uphold the legitimacy of the transactions in which they were involved or the dispute resolutions that they facilitated. This lack of institutional continuity creates the opportunity for parties to re-open old disputes, or for new disputes to emerge.

Overlapping claims are also emerging in the context of urban IDPs returning to their rural villages attempting to claim land from their families, or finding that parcels they thought were theirs had been occupied by neighbours, militias, sold to new owners, or had been over-divided through inheritance claims and that insufficient land was left. Local authorities in both Lahji and Taiz governorates mentioned that this was a source of increasing tensions within their jurisdictions. In these cases, parties attempt to rely on local customary institutions to resolve disputes, with varying results.

One issue that was not reported by our respondents, but will almost certainly emerge once the fighting has ended and IDPs attempt to return home is the contamination of housing and land with landmines and other explosive remnants of war. Parties to the conflict have been reported to be using landmines in both northern and southern governorates.⁵² Landmine contamination in Yemen is not a new feature of conflict – they were used in each of Yemen’s many previous wars.⁵³

Lessons from these experiences show that mine clearance was often slow, affecting the reintegration and return of displaced peoples, and blocking communities from accessing essential resources for decades. Once the lands were decontaminated, those re-claiming the land were often local elites and wealthy outsiders, rather than the original landowners or the community, demonstrating an inadequate analysis of the underlying tenure rights within those projects prior to clearance and release.⁵⁴ Considering the new layers

of mine contamination, humanitarian organisations working on demining will especially need to improve this aspect in order to avoid creating new layers overlapping claims.

4.2 Boundary disputes

A second important category of disputes is related to contested boundaries between neighbours. As with overlapping claims, the insufficient use of formal cadastres means that other forms of evidence including physical markers (trees, streams, and rocks) and oral history must be used to resolve these issues. These disputes arise not only because of opportunism but also due to changes in the physical environment itself. According to some respondents, land boundaries in rural areas are regularly washed away when heavy rains fall during the monsoon season. Also, lands can be abandoned for long periods of time if landmines are present or the land is not agriculturally productive— boundary markers can disappear, be forgotten, or become overgrown.

In rural areas, local elders often play an essential role in resolving these disputes, often carrying with them historical knowledge of previous disputes and land transactions. Where these elders have been displaced, killed, or have had their power undermined, the body of knowledge they represent disappears, increasing the challenges for resolving these types of disputes.

4.3 Inheritance disputes and divorces

There are no types of disputes that are more local and more personal than a contested inheritance over land, property, and natural resources or the division of these assets in a divorce. Inheritance disputes pit parents against their children, siblings against each other, and the children and spouses of the deceased against the deceased's own siblings. Divorces can similarly pit former spouses against each other. They are the products of the unravelling of the ties of mutual solidarity, interdependence, and accountability that bind families together. Because of this deeply personal and private nature, finding resolutions to these types of disputes can often be more difficult than resolving disputes between neighbours or even between strangers. In the latter cases, there is a clear need for the community at large to come up with rules and norms that govern behaviour and expectations in resolving more “public” disputes. Inheritance and divorce are in a strange grey zone between private and public because they can extend beyond the individual parties, and bring in the interests of their respective kinship groups. When it comes to determining the division or redistribution of precious land, water, and housing resources, tensions can quickly escalate around the perceived loss of assets that were previously held jointly.

As such, customary, religious, and statutory systems of law often provide frameworks for distributing assets and resolving these disputes, but, unless all parties to the dispute invite the third party to intervene, it can be seen as an intrusion into the privacy of the family unit. Whether or not the families involved have the capacity to resolve the dispute peacefully and justly varies by family. But if a family fails in resolving the dispute to the satisfaction of all parties, some parties may seek out specialised services, and therefore expose the family's issues (especially their failure to internally resolve the conflict) to the public realm.

However, in Yemen, there are important taboos related to the exposure of matters that are considered to be ‘private’ to the ‘public.’ Our research found that the enforcement of these taboos with threats and acts of violence especially appear to be used to deter a woman from claiming her rights within a divorce or her rights to an inheritance, which is a form of gender-based-violence (GBV). (See Case Box I; In this box, we focus on three different cases highlighting the various forms of violence that are used to deter women from asserting, claiming, and defending their housing, land, and property rights in the context of inheritance disputes).

BOX 1: CASES ON GENDER BASED VIOLENCE AND INHERITANCE RIGHTS

Case I: Zainab, a woman from Lahj Governorate lost her parents when she was young and was adopted by an uncle who raised her with his sons. The uncle treated her as his own daughter. When her uncles, also her foster father became ill, he prepared a will which included Zainab as a beneficiary of his estate. Before that her relationship with her foster brothers had been positive, but they became hostile towards her when they learned that she was also included in the will. As soon as her foster father died, Zainab's brothers expelled her from the house and threatened to harm her if she claimed her inheritance. She fled to her aunt's house, who later convened family elders to intervene on Zainab's behalf. After reviewing the will, the elders ruled that the original document would be respected. Even after the ruling which was in Zainab's favour, she continues to live with her aunt.

Case II: A representative of the Yemeni civil society reported a case regarding a woman called Khadija, from Sana'a governorate. Khadija brought a lawsuit against her brothers before the Yemeni courts. The case was over the fact that they had denied her the share of their father's inheritance to which she was entitled. One of her brothers assassinated her during the court proceedings. Somehow, this act of violence was considered to be justifiable by the authorities because she had aired what was a private family matter in an open court. It was only after a civil society organisation exerted pressure on the authorities that the man was put on trial for his sister's murder.

Case III: Arwa, another woman shared that when her husband died, her brother-in-law (her late husband's brother) tried to convince her to marry him. When she refused the marriage proposal, he and her father-in-law became hostile towards her and refused to recognise her rights to a share of the land, and even refused to share part of the harvest with her, in violation of religious law and customary norms. When she tried to claim her rights, her brother-in-law claimed that her husband had sold everything to him before he died, declaring that she was not entitled to any of the property or harvest derived from it. While this case did not involve physical violence, the denial of the harvest as a means of coercing Arwa into marrying her brother-in-law and punishing her for claiming her rights is a form of economic and social violence.

Even when the parties to the dispute agree that a specialised provider of dispute resolution services is needed, agreeing to the legal framework on which the resolution is based is also a source of important contestation, especially when it comes to women's rights to land, assets, and support in divorce and inheritance cases. While Islamic law is deeply woven into customary and statutory systems of law in Yemen, there are important distinctions between the systems of law, not to mention the varying interpretations of Islamic Law itself.

These tensions are best captured by Adra, who notes that:

"Among tribes [in al-Ahjur], most women forego their rights to inherit land in return for the promise of lifelong support from their brothers. But not all women do so: some families designate land in the names of daughters, and some women insist on managing their own property. In all cases, customary law requires annual gifts to a married woman from her kin. In practice, both customary and Islamic law assume a woman's dependence on her male kin."⁵⁵

Adra adds that one of the main sources of friction is between the increasing influence of proponents of Salafist interpretations of Islamic law and customary systems of law. Proponents of Salafist teachings "denounce tribalism as un-Islamic and target women's traditional rights and safety nets,"⁵⁶ heightening the complexities around negotiating inheritance rights. It is important to note that Islamic law does recognize women's rights to land and property, even in the case of inheritance, although the shares to which they are entitled are always less than their male peers – however, our cases reflect that neither Islamic legal principles nor customary norms guaranteeing women's rights are always respected. Yemeni statutory law provides even more comprehensive legal protection for women on some points, but in others follows Islamic legal traditions more closely.

However, Adra argues that the obstacles to access the statutory system are so high that customary institutions are often the most relevant platform for advancing and securing the rights of women and other vulnerable populations, even if they aren't "ideal."⁵⁷

In spite of the many apparent obstacles for women to access their rights to land and housing within inheritance disputes and divorce, there seems to be a base of potential ally-ship from some men. In several male focus groups, participants expressed that they would like for increased respect and defence of women's rights in inheritance disputes, especially in accordance with Islamic principles.⁵⁸ Most of these men spoke of having been implicated in disputes where their wives, sisters, and mothers had been denied their rights.

Overall, contested inheritance has been an important source of conflict even before the outbreak of the current war, and for both men and women, the mechanisms to resolve these disputes were often unsatisfactory for the reasons listed above. As with the other types of disputes, the war has amplified these challenges on several levels. For one, the displacement of families from cities to rural areas (their home villages) is causing old inheritance claims to reopen – as urbanites attempt to assert claims over rural land. Our research identified these types of cases in rural parts of Lahji and Taiz governorates.

More acutely, the death of people due to increased violence, poverty, and disease over the course of the war will invariably create a large caseload of inheritance disputes. The loss and destruction of land documents and wills and testaments (or the absence testaments) will add layers of complication to these cases. Support to communities to address these increased caseloads will need to be able to take all of these layers into account to adapt interventions to the needs of specific communities.

4.4 Informal occupation

The informal occupation of land (typically public lands - *aradi al dawla* or *miri*) for housing largely defined urban settlement patterns even before the war began, with an estimated 65 per cent of urban dwellers living in these informal settlements.⁵⁹ According to USAID (2010), these areas were not organised through formal urban planning, and as such, were underserved in terms of access to essential services, including water and sewage systems and were vulnerable to floods and landslides in the monsoon season.

As the conflict erupted, and communities were displaced by violence often had few settlement options due to a combination of factors, and as such, established 'spontaneous settlements' – on whatever lands are vacant at the time. Some spontaneous settlements include caves. Others (four per cent) were housed in ad-hoc 'collective centres', located in schools, health facilities, religious buildings and vacant public and private buildings. These collective centres were often set up as a temporary measure by IDPs and local councils but continue to house over 20 per cent of IDPs in 2017.⁶⁰ According to the UNHCR, IDPs from the *muhamasheen* community are frequently denied access to collective centres – especially in Amran governorate. As such, displaced *muhamasheen* are forced into "spontaneous settlements" where their tenure security is even more precarious.



Photo: *displaced muhamasheen women at a settlement in Yemen, their shelter in the background.*

Spontaneous settlements on private land have often led to conflicts with landowners – who often attempt to evict these occupants - occasionally with violence.⁶¹ Local government authorities and NGOs try to intervene to negotiate with the landlords to allow the IDPs to stay put, but the landlords often impose prohibitions on the building of permanent structures.⁶² While the landowners are attempting to protect themselves against potential adverse possession claims by IDPs in the future, these prohibitions also hamper efforts by government and humanitarian actors to provide adequate sanitation to displaced communities.⁶³ Given the pre-existing complications resulting from poor urban planning preceding the current war, the proliferation of spontaneous settlements is likely to make this situation worse.

Local communities have also expressed frustrations with IDPs occupying public buildings which provide essential services such as schools and health facilities. These tensions appear to increase the chances of conflict between host communities and IDPs over other resources, such as access to water and firewood.

The precarious living situation of IDPs is exacerbated by the fact that Yemen has a “no camp policy” which is a legacy from the days when Yemen was a major recipient of refugees and migrants from the Horn of Africa. Humanitarian actors are trying to negotiate a suspension of this policy on a governorate-to-governorate level, which further reflects a breakdown of any form of centralised governance and order.⁶⁴

It is also important to take into consideration the fact that such a large proportion of the pre-war urban population lived in what is considered to be informal settlements. As such, many of the IDPs who are living with host families or are renting are actually living in some of these pre-war informal settlements. The owners of those properties may not have official documentation, which means other forms of land-rights verification will be required for shelter assistance projects. Further, detailed research will be required to understand the mechanisms through which the return of IDPs who fled pre-war informal settlements will be managed. Given the size of the population and the informal nature of their rights, this is likely to be a very large and very complex caseload.

4.5 Disputes over temporary housing arrangements

While those living in spontaneous settlements and collective centres often face the most difficult living conditions, the vast majority of IDPs in 2017 (over 70 per cent) had found a temporary housing arrangement – either living with host families (50 per cent) or renting (22 per cent).⁶⁵ While their living conditions may be marginally better, they face several challenges in terms of the security of their tenure. In discussions with IDPs across the three governorates, there were respondents who mentioned that they had either been recently evicted, had negotiated a temporary reprieve, and/or were actively being threatened with eviction. Even non-IDPs who are renter agreements noted that they are similarly facing eviction threats. Most, but not all reported disputes between tenants and landlords are over rent. Some emerge out of personality clashes, or arguments between members of each family that escalate.

Given the scale of IDPs in temporary housing arrangements, it is particularly crucial to find mechanisms to improve their security of tenure. If IDPs lose these housing arrangements, it increases the chances that they will either join a spontaneous settlement or be forced to return to their homes before a secure and dignified return can be ensured.

Several factors are contributing to this eviction crisis. The main one is the lack of employment – many Yemenis (especially IDPs) no longer have livelihoods that provide them with a sufficient income to cover rent and other basic needs. According to the Shelter & Camp Coordination cluster “84 per cent of IDPs have been displaced for more than a year suggests a prolonged burden on hosting families and those paying rent.”⁶⁶ Most government employees, many who continue to show up to work, have not been paid for several years (since 2016 in some cases).⁶⁷ Even those who have an income, the rapid inflation of the Yemeni Riyal (YR) means that limited income and savings have to be stretched further and further each day.

A second factor is that displacement, and the destruction and degradation of housing infrastructure are increasing the demand for a limited supply of housing – which pushes up prices. Lastly, not all agreements are written, and when they are, they are based on templates which only vaguely identify the rights and responsibilities of each party.⁶⁸ This means that landlords are able to arbitrarily increase rents – with few enforceable protections available to IDPs. Even where there are legal instruments which might be used the UNHCR notes: “legal institutions have ceased to function or have been significantly compromised. Owing to these factors there is no room to seek legal redress for those IDPs who are faced with eviction.”⁶⁹

As a result, tenants are compelled to find informal means of resolving disputes with landlords. When trying to resolve these disputes, tenants find that they have little leverage – either in terms of financial resources or social ties which would enable them to exert moral pressure on landlords. Those who are able to negotiate for themselves or mobilise a community leader or a relative of the landlord to mediate on their behalf tend to report that rent increases or the collection of overdue rent is simply deferred to a later date, often pushing the resurgence of the dispute or their eviction down the road. Most tenants said that they often had no choice but to accept the rent increases - and cut expenses for other essentials such as food – or to be evicted. Several focus group participants indicated that they would flee the properties with what they could carry – only to find out later that the landlord sold and/or destroyed their remaining possessions.

As with most of the types of disputes encountered by this research, women’s rights and bodies are a major site of contestation (see Case Box II). Humanitarian workers have also expressed concern that women-headed households are exceptionally vulnerable to extortion and sexual exploitation in Yemen – especially in imbalanced power relations such as those with a landlord.⁷⁰ This is especially the case for women who had not been able to leave their homes to find work and/or to obtain an education before or during their marriage. As such, often they do not have marketable skills to find work in an environment where work is already scarce and are therefore unable to pay rent, resulting in women having to resort to negative coping mechanisms and increasing their exposure to sexual and gender-based violence (SGBV).⁷¹

The combination of economic vulnerability, unclear tenancy rights, and obstacles for tenants (especially women) to access justice create situations where landlords can often exploit their relationships with their

tenants. The three following cases stood out as particularly illustrative of the range of precarious relationship between landlords and tenants, and the challenges and risks especially faced by women who live in rental arrangements.

BOX 2: VULNERABILITY OF RENTERS IN YEMEN

Case I: A landlord in Aden tried to coerce a displaced family into letting their daughter marry him and become a fourth wife. When the father of the girl refused, the landlord increased their rent by YR 15,000 and said that the only way to reduce the rent was for the tenant to accept the proposed marriage. Qasim, the father of the girl preferred to be evicted other than marry off his daughter in this way. He was the evicted by the landlord, a powerful businessman hence Qasim was not subjected to a hearing or trial.

Case II: Another landlord in Lahji tried to extract labour from his tenant as a condition for not increasing their rent. One of the tenants mentioned that he was okay working for the landlord but did not want his wife Aisha to work for the landlord as well. The landlord insisted that he wanted both tenants to work for him and failure to do so would mean an increase in rent. Aisha then found a quick solution to this problem, she sent the family to go live with her brother in the village rather than submit to their landlord's demands.

Case III: Fatimah, a widow with limited income, living in Taiz was late with her rent. As a result, the landlord threatened her with eviction. Fatimah sought the help of a male relative to negotiate for more time so she could be able to get some money to cover the rent arrears. However, the landlord refused to listen, this forced her to seek the help of a sheikh who negotiated with the land lord and she was given an extension of two months in which to pay the rent arrears. However, the landlord refused to sign the agreement of extension with her and instead asked to sign with a male relative.

According to UNICEF, (girl) child marriage rates have increased from fifty per cent of girls under 18 years of age to two-thirds of girls since the beginning of the war. Rates are especially high in areas which host large numbers of displaced people due to the economic desperation of parents.

Furthermore, in some parts of the country, women are not allowed to represent themselves in negotiations (with male interlocutors). If they do not have a network of reliable male relatives who are willing and able to represent them, women representing themselves may be accused of violating local norms. Women who are accused of violating these norms are at greater risk of being ostracised and/or denied access to community systems of support.

Cash for Rent Payment Receipt

سند استلام دفعة نقدية لإيجار المأوى

Receipt Serial Number : ID5760015-01
 Receipt Printed On : April 20, 2019

ID5760015-01

Beneficiary Information معلومات المستفيد

Name of Beneficiary			اسم المستفيد
Name of Owner/Lessor			اسم المالك/المؤجر
Governorate			المحافظة
District			المديرية
Area and Location of Premises			عنوان العقار المؤجر

Receipt سند استلام

As agreed in the MoU signed with [REDACTED] having serial number [REDACTED]:

I, the beneficiary named above, am renting premises mentioned above from the Owner/Lessor and I acknowledge that I have received the amount of [REDACTED] YER from organization [REDACTED], as [full/partial] payment of the monthly rent and as assistance in paying the monthly rent of **the month(s) of** [REDACTED]

حسب الاتفاق المنصوص عليه في مذكرة التفاهم الموقعة مع المنظمة [REDACTED] برقم تسلسلي [REDACTED]

أؤكد، أنا المستفيد المذكور أعلاه، أنني مستأجر للعقار المذكور أعلاه من المالك/ المؤجر وأقرّ بأنني استلمت مبلغ [REDACTED] ريال يمني من المنظمة [REDACTED] مقابل (كامل/ جزء من) مبلغ الإيجار الشهري المستحق وهذا المبلغ يُمثل مساعدة لي من أجل دفع إيجار الأشهر [REDACTED].

Paid ☐ Cash ☐ Check
 Check Number
 Check Date
 Check Bank

تم الدفع ☐ نقداً ☐ شيك
 رقم الشيك
 تاريخ الشيك
 شيك مسحوب على

Authentication

The Beneficiary المستفيد

Name الاسم: [REDACTED]
 Date التاريخ: [REDACTED]

المنظمة

Name الاسم: [REDACTED]
 Date التاريخ: [REDACTED]

4.6 Water disputes

Article eight of Yemen's constitution establishes that surface and groundwater resources are communal property. This notion of "collective ownership" or the impossibility of ownership for water resources is also reflected in the Islamic legal concept of *mubah*. However, certain rules and norms established through local customs tend to dictate how water can be accessed and used. These norms and rules include:⁷²

- a) while water cannot be owned, the means of its extraction can be owned by those who sink wells or boreholes,
- b) establish a minimum distance between wells and boreholes specific to certain zones.
- c) those people who own land upstream have priority rights over downstream users
- d) no one can be denied drinking water by another person



Photo: Communal water point in Yemen

As with most commonly held resources, in the absence of effective and fair governance and control over its extraction, water resources can quickly degrade, which is the case in Yemen. Decades before the current war, the management of water shortages in Yemen had been considered to be of critical importance to the country's long-term stability. In 1996, water scarcity was deemed "critical" in the governorates of Sana'a, Taiz, Sada'ah, Amran, and Ma'rib, with extraction rates from local aquifers rapidly outpacing the replenishment of these resources.⁷³

Before the war, approximately 90 per cent of freshwater in Yemen was dedicated to upstream agricultural production – which, as we have discussed, is concentrated in the hands of a few powerful landowners.⁷⁴ According to Negenman (1996), demands for water were also driven by low efficiencies in irrigation and poor water management practices. Given the high cost of extracting water from aquifers, agriculture is mainly cash-crop based (especially qat), which also has major implications for food security in the country.

As early as 1981, the pre-unification government of the Yemen Arab Republic established a High-Water Council as a national-level mechanism to manage water resources. Following unification, the National Water Resources Authority (NWRA) was established with a similar mandate. However, attempts for the government to exercise control over water use were resisted at several levels. According to Zeitoun et al, “large landowners and ‘farmer sheikhs’ benefitting directly from current water use practice are considered to be both the most opposed to reform and the most influential over actual water use.”⁷⁵ Much of this resistance to the government’s attempts to exercise control came through non-compliance with regulations, bribery of officials, the use of political connections to benefit from public subsidies, and the co-optation of NGO and public water projects for communities.⁷⁶

Governance over water was and continues to be highly contested. The means to resolve disputes is often undermined by the fact that the male-dominated traditional leadership have used their positions of power to accumulate lands and become farmers, and thus, are among the largest users of groundwater.⁷⁷ In cases where water use/over-consumption is contested, the persons who are in a position to resolve the dispute are often among the main party to the dispute itself or have an interest in maintaining the status quo. Our interviews in Taiz and Lahji governorates indicated that traditional leaders and other local authorities are not seen as neutral providers of dispute resolution services for water issues and therefore cannot be legitimate. Many respondents said that because of this, they did not know to whom they could reliably bring their complaints and grievances. In the presence of concentrated control of an essential resource and ineffective governance, violent conflicts over water were a common feature in the pre-war landscape in Yemen.

If water governance was weak prior to the outbreak of war, it has virtually evaporated on any coordinated national scale since Ansar Allah launched their offensive and whatever local institutions did function have come under increased stress. As it is with powerful actors and armed groups using the breakdown of the rule of law to grab land, there are indications that “water-grabbing” through illicit bore-hole drilling is also taking place.⁷⁸ Scarcity has also been exacerbated by the destruction of water infrastructure due to the fighting. The norms dictating the rights of all to water have also degraded over the course of the war - those who control water flagrantly violate these norms by selling water, and/or denying access to vulnerable populations.

As such, it is of little surprise that water-related disputes are among the most frequently mentioned types of disputes in our discussions with local communities and authorities – across the governorates. Given the gendered aspects of labour concerning water collection, water disputes were mentioned in almost every women’s focus group across the governorates. The disputes mentioned in these discussions fall into two categories: contested access to reportedly community-owned wells and pumps, and negotiating and maintaining access to privately owned wells and pumps. In the literature, the third type of dispute emerges – between farmers fighting over the allocation of water for irrigation.⁷⁹

For the community-owned wells and pumps (often built by NGOs), conflicts arise over the fact that these are often controlled by local authorities who try to extract fees from the community to use the water. In some cases, they also allegedly sell water to privately-owned tankers that over-extract from the wells, reducing the availability for rest of community. Conflicts also emerge between communities which share access to the same source – in which high levels of demand lead to long lines. Frustrations boil over and arguments break out over who should have priority access to these resources. Similarly, IDPs note that they often face resistance and resentment from local communities who must share water with them.

For those people dependent on accessing wells and pumps which are privately owned, they are dependent on maintaining a good relationship with the owners of those resources – since access is usually determined by oral agreements. If the owners decide for whatever reason to cut off the user’s access, or to levy a fee, they often have no recourse, other than trying to find an informal third party to negotiate on their behalf.

The recurring outbreaks of cholera in the country have also introduced a critical public-health dimension into the conflict over water infrastructure, access, and control. There is a desperate need to quickly build infrastructure that can guarantee people’s access to clean water, while at the same time, being aware of the complicated politics over water use and control. There is also a need to design these projects anticipating the future sustainability of that resource.

4.7 Firewood disputes

Another aspect of environmental degradation linked to the scarcity of clean water is the increasing scarcity of fuel for boiling water to treat it, for cooking meals, and to heat homes in winter months. Before the war, one of the main sources of fuel was propane gas, but supply disruptions and inflated costs have pushed this resource out of reach for most Yemenis, which is prompting a switch to firewood, which is also quite sparse.



Photo: sparse forest cover in Yemen

However, even before the war, Yemen's trees were quite sparse with only one per cent of the total area of the country with natural forest cover, with this concentrated on the western and south-western escarpment and coastal plains.⁸⁰ The re-planting of trees is generally limited to fruit-bearing trees for household use or commercial purposes. In the areas where it is available, wood can be collected or harvested from private lands or communal lands. In Taiz, displaced women said that they faced challenges negotiating access to collection sites and that they regularly faced harassment and resentment from local communities who claimed that they were over-depleting the limited supply. Women attempt to resolve these disputes by negotiating with the parties, and often turn to local elders or informal leaders to negotiate access for them, but given the scarcity of the resource, success is limited.

A member of a village committee in Taiz informed us that the areas which are used for firewood collection were areas that were previously not considered to be useful for agriculture, so the owners did not demarcate the boundaries as clearly, nor would they enforce them regularly. In many ways, these lands became de-facto community commons. However, as firewood is becoming more crucial to people's survival, people are more strongly asserting ownership over these lands, and new conflicts are emerging over contested boundaries.

5. Systems of dispute resolution in Yemen

In this section, we examine the effectiveness of the various approaches used by Yemenis to resolve disputes before the eruption of the current civil war and since it began. At the heart of this analysis is whether the approaches being used by the main providers of dispute resolution services (presiding authorities) are responding to the needs and expectations of users (parties to disputes and communities), so as to identify areas of strength and gaps in terms of trust, legitimacy, and service provision.



Photo: A tribal leader mediating a case involving marital property.

5.1 Attributes of ‘good’ and ‘effective’ dispute resolution

We asked respondents in Lahji, Taiz, and Aden to define what they considered to be the characteristics of a “good” dispute resolution process – regardless of who the provider of that service is. From these responses, we were able to identify patterns of what attributes were most valued by communities, thereby establishing the basis upon which individuals and communities found their notions of what “justice” is, and how outcomes may be seen as legitimate or illegitimate. If justice is perceived to have been served, and the outcome is considered to be legitimate by the parties to the dispute, the parties are more likely willing to honour and implement the outcome. This is particularly essential to avoid parties re-opening or appealing their cases, or deciding to re-ignite the conflict.

Beyond the perceptions of the participants, if the community at large, who are often observers to the resolution of certain disputes, also perceive that the process was just and legitimate, they are also more likely to play a role in upholding the outcome. One concrete example is that in some parts of the northern highlands, there is a social obligation by other tribesmen to assist in the payment of fines or partake in the public rituals to re-establish the balance between the aggrieved parties.⁸¹ Even if one of the parties to the dispute does not think the outcome is fair or just, they may be more inclined to respect the outcome if the rest of their community thought it was fair. Members of the community will also be more likely to bring their own cases to the provider of dispute resolution services in the future because they will trust that they will also receive justice.

On the other hand, if the community thinks that the process was not fair or that an outcome did not reflect

their notion of justice, they will be less likely to play a role in upholding the outcome. In some cases, they may play an active role in spoiling the outcome.⁸² If they realise that the dispute resolution process can be manipulated, or that some groups/individuals receive preferential treatment, they will understand that they must also find a way to manipulate the outcome in their favour in the event of a future dispute. This can create a vicious cycle which erodes the perceived legitimacy of local institutions and authorities as well as undermining respect in the rules and laws that these structures were intended to uphold. More powerful actors will act with increasing impunity – preying on those they see as being weaker than them. Violence becomes a tool for those who are in positions of power to coerce other parties into submission. Violence can also become a tool for those who feel like they are unlikely to receive just treatment from the authorities – they are more inclined to take matters into their own hands.

It is clear that different people may value different things in a dispute resolution process, but focus groups have enabled us to collect a spectrum of views and to observe debates within these groups about which attributes are meaningful to them and why. It also helps us identify points of contestation and geographical variation. The attributes provided by these focus groups can be clustered into two categories: 1) perceptions of the dispute resolution process itself and 2) desires for the outcomes of the resolution process.

5.1.1 Attributes of procedures

Across three governorates,⁸³ the procedural qualities that emerged from groups included notions of:

- Fairness of the process and neutrality of the presiding authorities:
 - o non-discrimination based on gender, race/caste, or class,
 - o presiding authorities listen to all parties and witnesses,
 - o adequate representation of vulnerable groups in the dispute resolution mechanisms, and
 - o authorities refuse bribes and do not abuse their power,
- dispute resolution services are financially and geographically accessible
- a resolution to the case can be quickly found,
- disputes are resolved peacefully and the security of parties is guaranteed, and
- authorities have the competency to resolve disputes.

“Fairness, neutrality, and non-discrimination” encapsulates desire for parties to the dispute to be treated equally by the presiding authority (and the other party). However, the notion of who is deserving to be fairly treated, and what constitutes “fairness” for some categories of people varied at times within and between focus groups.

Several groups defined this more explicitly, stating that there should be no discrimination between women and men, between rich and poor, and between *muhamasheen* communities and members of other, less marginalised castes. While these precisions were mainly provided by focus groups composed of the communities most often subject to discrimination (women, and people from the *muhamasheen* community), several groups of men (mainly in Taiz) also noted that authorities should not discriminate against women. Within groups (both male and female groups), some participants thought that women should be able to represent themselves in a dispute and to speak freely, while in other groups (also male and female groups) some participants thought that “fairness” constituted women being adequately represented by a man. Some parties do not even think that a woman whose case is being heard should be in the same space.

This debate has major implications in terms of if/how verbal evidence is presented and considered – if the evidence presented by a woman, or a person from the *muhamasheen* caste is not considered by the presiding authority to be as reliable, credible, or have the same value as a man’s, this presents an important structural barrier that denies women and/or *muhamasheen* people access to justice. If a witness or a party to a dispute is unable to be physically present during the discussions about their case, it increases the chances that their

views and interests will not be properly represented and defended.

Some respondents took the notion of fairness and representation even further – arguing that qualified women should play an active role in the resolution of disputes – to ensure that they are better represented and that their rights are protected. Similarly, in the focus groups with *muhamasheen* women and in the groups with *muhamasheen* men, participants also noted that qualified representatives from their communities should play an active role in the resolution of disputes when a member of their community was/is concerned.

One of the most frequently recurring attributes speaking to the notion of “fairness” is that the cost of resolving disputes should be accessible to all parties (either being free of charge or low cost). The same fee, equally applied to two parties may mean that while one party is able to pay, the other may be too poor to access that service. In that situation, the poorer party may have to withdraw their claim. Distance to service providers is also a factor, which has hidden costs including transportation, and potentially housing, during the course of a case, not to mention the lost revenue and labour from the time devoted to travel and participation. Also, excessive fees or distance from a service provider may mean that both parties are unable to access dispute resolution services, which may lead to the escalation of the dispute.

Another dimension of “financial fairness” that was cited in all three governorates was the fear that presiding authorities in the formal and customary dispute resolution mechanisms allow bribery or political pressure to influence their decision. Wealthier or more powerful parties are often seen as being able to buy or coerce the outcome of their choosing. Several local authorities said that they would not intervene when an especially powerful party was involved in a case (often involving land grabbing).

The issue of corruption and the abuse of power also intersects with the attributes that ‘a resolution can be quickly found.’ This was especially expressed in terms of accessing the formal court system, where wealthy rivals were seen as having paid bribes for court employees to lose case files, evidence, and/or delay proceedings to exhaust the other party into dropping the case. While this may be partly true, the caseload of specific systems (including, but not limited to formal courts) may exceed their capacity to deal with cases in a timely fashion.

The concern about the imbalance of power is also expressed in the desire for a peaceful resolution, and that the security of the parties is guaranteed. Violence or the threat of violence is a prevailing theme in many of the disputes that we encountered through our research, especially in disputes where one party appears to have more power than the other. We even learned of situations where state structures, such as the police and courts, were often passive and/or complicit in acts of violence against weaker parties. These structures provided neither deterrent nor demonstrated a will to enforce the law in these cases.

The final attribute of effective or good dispute resolution noted by focus groups was the need for presiding authorities to have the right competencies to ensure that they can provide quality services. Some participants felt like the dispute resolution practices often did not reflect the attributes indicated above or in the next section. At the very least, providers of dispute resolution services should aim to ensure that most, if not all of these attributes are reflected in their practice to ensure that their services are seen as legitimate.

In our interviews with informal and customary providers of dispute resolution services, most said that they had learned from other providers of dispute resolution services and through experience. For example, sheikhs, many who inherit the position, often learned from watching and working with their fathers.



Photo: Local sheikh resolving a boundary dispute over land between two neighbours

The transmission of traditional knowledge from one generation to the next is extremely valuable – it provides local service providers with an important understanding of the histories of particular disputes, an understanding of how the physical environment has changed, and an understanding of the social norms dictating dispute resolution, among other benefits. However, the transmission and reproduction of traditional practices may, at times, perpetuate practices that are discriminatory or are no longer seen as relevant. Service providers may benefit from the introduction of new methods and approaches that help ensure that their practice reflects the expectations of their communities. In addition to the transmission of knowledge through traditional methods, some elders and sheikhs mentioned that they had received training from NGOs, and a few sheikhs noted that they studied law and dispute resolution in formal educational institutions. If NGOs decide to provide training, these training should be adapted to reflect the expressed needs of the services providers and communities, are culturally relevant, and advance solutions and changes that are possible to implement with locally available means.

5.1.2 Attributes of outcomes

The respondents did not find the same degree of convergence and consensus regarding the attributes for legitimate outcomes as they did for the procedural attributes. Many of these attributes require trade-offs, especially in terms of what the outcome should symbolically achieve. The attributes identified by focus group participants include:

- guaranteeing the implementation of resolutions,
 - o ability to appeal cases to another entity if at least one party is not satisfied with the outcome
- seeking an outcome that would symbolically:
 - o uphold a set of rules and laws (ensure the even application of those rules),
 - o focuses on the restoration of rights of aggrieved parties,

- o focuses on a compromise between parties,
- o focuses on the improvement of the relationship between the parties to the dispute,
- o focuses on ensuring that parties are held accountable for their actions.

The attribute that was agreed upon by all our respondents was that there can be guarantees to implement the resolution. Without such guarantees, the parties can ignore an outcome and the conflict continues. However, there was less consensus on the need for the ability to appeal a decision. On one hand, an appeal allows a party that feels like they have not received a just outcome to seek an alternative view – which can serve as a release for tension. If they receive the same outcome from a different process which is also seen as legitimate by the wider community, they are unlikely to find much sympathy for their claim that they did not receive justice. If they receive a different outcome, it becomes even more important for both parties and the wider community to recognise that the process was even more legitimate and robust than the first, otherwise, the conflicting outcomes may cause confusion and escalation.

On the other hand, appeals can be a tool for a more powerful party to drag a dispute beyond the means of their rival – with each higher level costing each party more in terms of time and money. A party with financial means and/or political connections may see this as a tactical advantage in which they can exhaust their rivals into withdrawing from the process, or force the dispute to a higher authority whom they have confidence they can influence. This would undermine the perceived fairness of the process as we addressed above. It may also contribute to confusion and escalation. As such, safeguards are required to ensure that appeals contribute to, rather than detract from, the perceived legitimacy of a dispute resolution system. Among these would be to ensure that less powerful parties have equitable access to these systems of appeal.

Beyond the ability to appeal, where the greatest debate remains is what the resolution should symbolically achieve. The most commonly used word by focus groups was that the process should serve “justice.” The participants would often define this as upholding of a set of rules and laws. The question then becomes – which system of justice? In Yemen, there are multiple systems of justice, some which are not always complimentary.

For one, there are national laws, which technically apply to all Yemenis, but in practice, many Yemenis are unaware of their specific rights and obligations. While Yemeni law (especially land and natural resource law) is based on the principles of Islamic law,⁸⁴ it seems that many government authorities and community leaders are also unaware of the content of the laws they are tasked with implementing.⁸⁵ Furthermore, there are several different schools of interpretation for Islamic law that are present within Yemen including more progressive and more conservative forms of interpretation.⁸⁶

Lastly, there is tribal and/or customary law – terms which encompass a diverse range of rules, customs, norms, and institutions which are often specific to certain areas in the country. Where a certain set of customary norms and laws may have meaning in Sa’dah governorate, they may be irrelevant in Hadhramaut. Also, customary laws and norms are often contested internally – and can be subject to revision and adaptations.

It is also important to note that laws and rules from a particular system of justice and may even perpetuate the marginalisation of specific vulnerable communities. This marginalisation can be through explicit forms of discrimination, such as denying women the right to be present for their own case or having laws that note that women are entitled to a smaller share of an inheritance than her brothers. Implicit forms of discrimination include imposing the same fees on all parties, but those fees exceed one party’s ability to pay.

In the same way that found that there is variation in what is considered to be a “fair” process, there was variation in what some focus groups identified as a just outcome. The variation in the desired outcomes may also be a product of the types of disputes which were affecting members of the groups at the time and the characteristics of those disputes, including whether violence was a factor. For instance, some participants focused on the need for the outcome to focus on the restoration of rights to the aggrieved parties, others emphasised that they wanted the resolutions to be based off compromise – where “each party will give something, and in another hand he will get something from the other party which fulfil their needs.”⁸⁷ These two tendencies may be complementary in some cases – for instance, in a case in Lahji where two neighbours

were in a dispute, is over the rights to harvest dates from tree that straddled a property boundary,⁸⁸ the authorities were able to find a compromise that was satisfactory to both parties, while preserving each parties' underlying rights. In that case, the *raawi* presiding over the resolution proposed that each neighbour alternate the year in which they would harvest the tree. Focus group participants facing evictions also tended to value compromises – in which they may alter their payment plans, or negotiate a delay in their eviction so as to have time to find an alternative housing.

However, focusing on compromise may also reinforce the dispossession, for instance, in the case of someone whose land was seized by a more powerful party. In that case, anything less than a full restoration of the initial parties' rights may end up rewarding a predatory act, setting a precedent for future land grabs.

Similarly, while some parties wanted to see an improvement in their relationships with the other parties, while others wanted to focus on ensuring that parties are held accountable for their actions. While these attributes are not necessarily antithetical to each other, focusing on one may end up producing trade-offs for the other. For instance, a 'restorative justice' approach may focus on restoring the relationship between two parties and healing any social rifts created in the community as a result of the dispute. If rights were violated by the parties, accountability is based on the parties' acknowledgement of their responsibilities and taking actions to repair harm. This form of accountability differs from a retributive approach, where blame is attributed, and punishment focuses more on pain (blood feud, capital/corporal punishment) and/or the deprivation of liberties (incarceration).⁸⁹

The variation in the desired outcomes between and within the focus groups demonstrates the need for providers to take approaches specific to the needs of the case, and to work towards outcomes that fulfil the needs of the community at large. The various approaches to dispute resolution in Yemen demonstrate that the full range of outcomes is theoretically possible – depending on which provider is used, and their effectiveness.

5.2 Providers of Dispute Resolution Services

The resolution of a dispute can be as simple as two people sitting down and talking through their issues until they find a solution. However, this is not always possible and if the two parties are not making progress, or are unable to even speak to each other anymore in a respectful way, the dispute may call for the presence of specialised service providers, who can facilitate those discussions. Depending on the availability of these services and the perception of their legitimacy, parties to disputes can choose dispute resolution providers from state institutions, customary institutions, and informal institutions. As we will explore in this section, each type has its own advantages and disadvantages, as well as approaches to dispute resolution.

As we saw in Section 4 of this study, there are many different types of disputes, and resolving each may require a different set of methods, or different types of specialists to support the process. Beyond the people who serve as judges, arbiters, or mediators, some cases also require complementary support skills such as investigators, legal experts,⁹⁰ counsel to the parties to the disputes, and enforcement actors. Some people inhabit many of these roles. In other cases, roles are filled by distinct specialists.

This section will look at the various services provided under state, customary, and informal systems of dispute resolution, and examine whether they are responding to the needs of their communities.

5.2.1 State

The main state institutions involved in preventing, mitigating, and or resolving land and natural resource disputes in Yemen include the local governorate, district, and village councils, the police, and the courts.

The district and governorate councils are 'elected' bodies,⁹¹ created through the 2000 Local Governance

Law, and Village Councils (also called community committees). These were created by the Social Fund for Development in 2013, in some governorates (including Lahji and Taiz). Counsellors at all levels are tasked with the proposal and oversight of development projects and services in their areas of jurisdiction. District and governorate counsellors also have fiduciary responsibilities and the ability to generate revenue.⁹² In the oversight of development projects, they play a role in verifying the impacts of proposed infrastructure projects and have a responsibility to consult and negotiate with landowners and users to ensure that their concerns are considered.

The autonomy of these institutions has been undermined since their creation, both by legal ambiguities and contradictions, and direct interference from the central government.⁹³ Since the outbreak of the war, their revenues have mostly declined, and fighting factions – in both the north and the south - have attempted to impose controls over them.⁹⁴ In Hujariah, Taiz, some members have even actively supported the different factions of the conflict, fracturing the Council.⁹⁵ However, in many parts of the country, councils have proven to be surprisingly resilient to the disruptions of the war. Chatham House found that in Ma'rib, people even believe that governance and service delivery has actually improved since the beginning of the war.⁹⁶

In terms of resolving disputes, our research shows that some councillors have taken a pro-active role in attempting to speak with the various parties and mediate a resolution when disputes over development projects emerge. Humanitarian workers appear to heavily rely on councils to conduct their work in negotiating projects with communities. The cases we encountered in our research seem to suggest that these approaches typically seek compromise – while trying to ensure that the underlying rights of the parties involved remain largely intact. Furthermore, the Sanaa Center (2016) reports that councillors in Ibb governorate have played crucial roles in mediating ceasefires between militias.⁹⁷

While the Councils tend to fulfil a conflict mitigation role, the police are the investigative and enforcement arm of the state, and officially represent a retributive form of justice. They have the ability to detain and interrogate suspects. Police in Yemen often exceed their official roles and mete out punishments which are outside of their legal and legitimate purview – through acts of torture, arbitrary detention, and other forms of extrajudicial violence.⁹⁸ Respondents also reported that police use detention as a form of extortion. If a party to a dispute is being detained, they will be kept in prison until the person's family and/or community can come up with funds to release them, even if there is no reason for them to continue. Similarly, criminal suspects may mobilise the funds to bribe police to release them, even if the police do not have the authority to do so. Adra notes that these sorts of illegal payments to the police were “so widespread that it was described to (her) wryly as the “government has to claim its due (al-ḥukūma lāzim tākhudh ḥaqqahā).”⁹⁹

At the heart of the state judicial system are the courts, and also typically represent a form of retributive justice – and outcomes, especially over land, housing, and water disputes try to ascertain who is ‘right’ or ‘wrong’ and who is ‘innocent’ or ‘guilty.’ Unfortunately, the court system in Yemen does not seem to act independently from external pressures nor provide a guarantee of justice for users. This means that those found by the process to be ‘guilty’ may not actually be the ‘guilty’ party. There seems to be a broad consensus both from our interviews and the literature, that the courts in Yemen are often ineffective. At their worst, the courts are complicit to the abuses of power.¹⁰⁰ A report by USAID from 2010 captures both dimensions:

“The formal court system requires a significant commitment of time and money and offers no guarantee of a fair result. The system suffers from inadequate administrative support, poorly trained staff, lack of appropriate education for the judges, burdensome caseloads, inadequate physical facilities, and widespread corruption.”¹⁰¹

Furthermore, there are important structural barriers to accessing courts including distance from rural areas, high rates of illiteracy, and the costs of ensuring adequate representation, which made them virtually inaccessible “to the rural poor and women.”¹⁰² However, in urban areas, courts were pretty much the only stable provider of dispute resolution services – for those with the means.

Respondents indicated that the types of cases that they would present to courts (before the war) included:

multiple claims on the same parcel, land disputes, and inheritance disputes. In spite of the challenges for people to access courts, land and property cases were overwhelmingly the most prevalent cases presented to the courts. In 2011, between 50 and 85 per cent of all cases in Yemen's primary courts were over land and water.¹⁰³ Each respondent who mentioned having relied on courts claimed that their cases had stalled – often for years– for reasons including that their files/and or evidence had been lost, to the proceedings being regularly rescheduled. No respondents mentioned finding an adequate resolution to their land disputes through the courts. When asked if there were any positive qualities of the courts, the answer was always “none.” The main perception of the cause of this dysfunction was corruption – that the other party had bribed the judges, the prosecutors, or clerks to delay the proceedings as a means to exhaust their resources and force the withdrawal of the case. Courts were even found to fail in providing security, much less justice, for users, as the case we previously examined in Case Box I above where one woman was assassinated in the courtroom by one of her brothers who she was suing over an inheritance.

As one focus group participant (Maria, a *mohamasheen* woman from Lahji) said, “the police and courts are an institution of last resort when traditional authorities have failed.” This perception was reflected in almost every focus group in each area of study – regardless of whether respondents were women or men, IDPs or host communities, *muhamasheen*, or from another caste. Given the barriers of access and the widespread perception that courts are ineffective at providing justice, it is safe to say that if customary or informal attempts to resolve disputes fail, people often have no reliable alternative to access or protect their rights.

And if things were bad for the courts before the war, they have only gotten worse since its outbreak. Services have completely ceased in some parts of the country, while in others, state agents have been demoralised by the fact that salaries have not been paid in several months.¹⁰⁴ According to UNHCR: “amidst ongoing conflict, legal institutions have ceased to function or have been significantly compromised.”¹⁰⁵ While some parties continue to try to resolve disputes over land in the courts, it is the party with the most money and/or with the most weapons that seem to prevail.

The absence of a coherent and common legal and normative order is being felt most acutely in urban areas. While alternative systems of dispute resolution (those provided by customary structures) exist in rural areas, in urban areas, these are virtually non-existent in any coherent way. The absence of functioning legal institutions is a major obstacle to protecting the rights of IDPs and other tenants who face eviction. It also provides little recourse for those facing the seizure of their properties by powerful actors including militias.

Perceptions of state institutions (police and courts) were almost universally negative, and yet, when these same focus groups were asked what would be needed to improve access to justice, many of the groups called for the police and courts to be reinstated as sources of security and stability. As reports from throughout the country indicate, if the state does not provide that source of security, then communities turn to militias, political movements, and extremist groups who can.¹⁰⁶

5.2.2 Customary

As we noted in the context section of this report, the line between state and customary institutions has become increasingly muddled. Customary systems of governance and dispute resolution have been both integrated into state structures as part of attempts to formally decentralise power¹⁰⁷ and altered through interference by state and non-state actors.¹⁰⁸ The effects of the integration and interference have varied throughout the country, but in comparison to state structures like courts and police, customary institutions in rural areas have generally proven to be far more resilient following the outbreak of the war. Even so, these institutions are facing increasing difficulties in executing their functions and facilitating the resolution of disputes that local communities see as fair and just.

When referencing customary authorities who provide dispute resolution services, the main actors include *aqil*, *aleadl*, *alqadi*, *raawi*, and *sheikhs*.

Aqil, aleadl, alqadi, and raawi, are the various terms used in our areas of study to refer to local (typically male) officials and elders who play a role in the local administration. The titles attributed to specific dispute resolution roles vary widely throughout the country. Even when the same titles are used, the roles and responsibilities of these individuals also vary. Their duties include the management of daily community affairs, civil documentation, and land and water governance, among other responsibilities. In addition to recognising their official role in other administrative functions, the Local Governance Law (2000) officially recognised the role of elders as providers of dispute resolution services. As such, they represent the first official level of dispute service provision.

The sheikh¹⁰⁹ is also a formally recognised role within the state structure. Even though their title is typically conferred through heredity, although there are multiple examples of sheikhs being appointed and elected.¹¹⁰ Sheikhs have jurisdiction over sub-districts, and they play a crucial role in resolving disputes between members of their communities. Sheikhs also have the power to arrest parties, impose fines, and also play a crucial role in the allocation of land and water resources. *Dhaman sheikhs* are the highest level of customary authority and can have jurisdiction over both district and sub-district levels. Their main role is to represent their tribal group in relationships with other tribes, as well as to oversee the other sheikhs of their tribe.¹¹¹

Because this study was unable to examine customary laws or practices for dispute resolution in depth in any of the four governorates, we focus our analysis on certain features, and patterns appeared to recur in these different places.

One recurring pattern in many (but not all) customary dispute resolution systems is that women are often excluded from many of these processes, even if they are a key party to the dispute or a critical witness. As such, women are often put into a position of dependence on a male relative (or legitimate surrogate)¹¹² to represent them in the proceedings. If a qualified and reliable male representative cannot be found, women can be denied access to justice through this discriminatory feature of many customary systems of dispute resolution. There are important exceptions to this in some customary systems. We will elaborate the ways in which women play an active role in dispute resolution in section 5.3 of this report.

A second recurring pattern is that elders are typically the first point of contact within the customary system for dispute resolution. If one party calls on the elder to intervene on their behalf, the elder's role can take on the characteristics of being a partial negotiator. The parties may pro-actively call upon them to intervene as a mediator, or they may offer mediation services if they see that a dispute is escalating beyond the parties' capacity to manage the dispute themselves.

Depending on the case, the elders will meet with each of the parties to assess their positions, interview witnesses, visit the sites, and review available documentation if it exists. The elder may invite the parties to the dispute to his *diwan*, a space in his home in which (men) can sit and discuss issues while consuming refreshments and chewing qat.

Diwans are a semi-public space, in that any party interested in the dispute may enter the space and listen to the proceedings, and may even comment on the case if they feel like they have relevant information or perspectives to contribute.

The style of dispute resolution appears to vary based on the customary authorities' capacities, experiences, and preferences, rather than a deliberate process of consulting the parties about their own preferences. Some tend to encourage parties to propose their own solution, while others propose a resolution based on their understanding of the facts of the case.

Being a customary institution, the outcome normally reflects customary norms and rules specific to that area. However, as we previously noted, customary laws are often contested within societies. Also, authorities can apply custom in inconsistent ways, privileging certain interests over others and even create new forms of discrimination in contravention of customary norms. Furthermore, participants in several focus groups expressed that they would prefer if elders and sheikhs based the resolutions on Yemeni law, instead of custom. Again, it does not appear that customary authorities consult parties beforehand to determine which

type of law they would prefer or if the parties would like to focus on a particular type of outcome. This form of dispute resolution is widely acknowledged to be quick, low cost, and accessible to most parties.

However, outcomes from elder-facilitated resolutions are typically non-binding since the elders have no formal enforcement power. Adherence to the resolutions requires either voluntary action by the parties themselves or socially-imposed pressure on the parties to respect the outcome. This social pressure can come from the presence of witnesses during the finalisation of the agreement – the parties present can play a role in holding parties accountable to the outcome. Depending on the agreement and the type of dispute, members of each parties' families may also have a role to play in implementing the outcome, including the payment of fines, or contributing to meals. This approach can serve as a verification as to whether one finds the outcome legitimate since its implementation requires the contributions of the broader community. It also seems that it is fairly common for agreements to be written, which helps provide a common point of reference for all parties, even if many Yemenis are illiterate.

Sheikhs are typically called upon when elders are unable to find a resolution, or if violence has erupted between the disputing parties. They also serve as an appeals court within the customary system. While our research often shows sheikhs attempting to negotiate on one party's behalf, this seems to be an informal expression of their authority, rather than them playing the 'expected' role of an impartial arbiter or mediator.

Unlike the elders, sheikhs can leverage the threat of fines and or imprisonment on parties to compel them to participate in the dispute resolution process and enforce the outcomes from the process. However, like the elders, sheikhs do not appear to consult the parties regarding their preferences for the procedures, the system of justice upon which the outcome should be based, or what the outcomes should symbolically achieve. They are instead guided by their experience, preferences, and their interpretation of 'custom.'

A few 'customs' seem to play central roles in the resolution of disputes across the four governorates where NRC was able to collect data. The first such custom is the practice of *yaqsim* (translated as 'oathing') where the parties swear to Allah that they will present their cases truthfully and honourably. This tool is so symbolically powerful that some parties prefer to withdraw their complaint rather than perjure themselves before Allah. Furthermore, if someone is found to have lied after swearing an oath, they can be fined and face social ostracisation and shaming.

The second customary instrument found across the four governorates studied is called *adoul*, *adala*, or *adal*, which Adra translates as 'equivalence.'¹¹³ Historically, this practice compelled parties to disputes to hand over their ceremonial daggers (*jambiya*) in the case of men. Women would normally be asked to contribute jewellery or watches. This act was a symbolic gesture of submission to the presiding authority (sheikhs, elders or others). These items would be returned to the parties once the agreement was implemented – serving as a form of insurance. If the agreement was not implemented, these items may be kept by the sheikh or are forfeited to the other party as compensation.

However, the practice (at least in the way it is used by some sheikhs) seems to require men to contribute guns or deposit cash amounts ranging from YR 100,000 to YR 200,000 YR. In section 6.3 we will discuss the potential for this practice to also serve as a basis to guarantee the security of the parties throughout the dispute resolution process. While this is distinct from the payment for the service itself, some parties interpreted it as a way for the sheikh to ensure that they would be paid. Rather than holding the asset (gun or jewellery) until the resolution was implemented, the sheikhs would only return them if the party paid for the service.

One of the challenges associated with this practice is that cash or asset-poor households may not have the means to provide this "insurance," much less provide payment for the sheikh's services. On one hand, the high costs associated with bringing a case to the sheikh can be seen as diversionary to encourage people in the community to rely on other available dispute resolution mechanisms, like the elders. In comparison to the large sums required by some sheikhs, elders are typically paid token amounts by the parties (one *raawi* in Lahji mentioned that he usually accepts between YR 500-3,000). Payments to elders can also be provided as food or through labour. On the other hand, if these costs of dispute resolution services are not graduated

for the capacities of the various parties to the dispute, it can create a prohibitive barrier for people in need to access justice, especially those from poor or marginalised communities or with weak social ties (such as IDPs). This is a classic case of equal treatment perpetuating inequitable outcomes.

If it is known that a sheikh will only participate in the resolution of a dispute if both parties can contribute the same assets, a wealthier party may insist that only the sheikh can resolve the dispute, thereby forcing the other party to borrow money, sell key assets, or withdraw their case, as we often found in our research. While some sheikhs do not require large sums of money to provide their services (or adjust on a case-by-case basis), customary dispute resolution services have become sufficiently monetised throughout Yemen for a pattern of abuse to emerge. In one particularly egregious example in Taiz, focus groups informed us that some sheikhs required as much as ten per cent of the contested land (or the value of the land) as payment for their services, which demonstrates a clear abuse of their position to accumulate wealth.

Furthermore, if dispute resolution services are seen as a form of income generation or land accumulation, it can increase competition between the providers, rather than coordination. This is especially concerning since sheikhs often rely on the support of local elders to serve as expert witnesses, case investigators, and counsellors to the dispute resolution process. One sheikh in the Almwasit District of Taiz even mentioned that he would ask elders from a neighbouring community to serve as counsel so as to reduce the perception of bias. Coordination also happens with the courts, which can provide an option for appeal if customary resolution fails, and with other informal and religious providers of dispute resolution services.

While most of our interviews with service providers found that they try to coordinate with each other, one elder in Lahji mentioned that the sheikh systematically undermined his work because the elder was cutting into the sheikh's revenues from providing dispute resolution services.

When considering the criteria proposed by the focus groups themselves for 'effective' dispute resolution, the views on customary institutions vary widely. Among the points of consensus are that customary institutions (in rural areas) are relatively accessible in terms of distance and are generally less expensive than the courts, although the sheikhs' services were often cited as being too expensive for vulnerable parties.

Another frequently recurring positive view was that cases are often quickly resolved. However, this particular view came with important caveats. In cases where particularly powerful actors (politically connected, military actors, economic elites) were parties to disputes, customary authorities would often refuse to intervene at all.

In terms of fairness of the process and neutrality of the presiding authorities, perceptions from participants also varied widely. In the few cases where we were able to talk to multiple parties of the same dispute, we observed that when parties seemed to have similar levels of power within society (male landowners), they tended to note that they were treated fairly. However, when imbalances of power between the parties are apparent the weaker parties can be actively discriminated against – even beyond the structural discriminations built into customary systems, as is illustrated in Case Box III below.

BOX 3: STRUCTURAL DISCRIMINATION AGAINST MUHAMASHEEN

In Taiz, a muhamasheen man called Umar negotiated an agreement with a local landowner to enable him build a house on the land. The land owner died a few years later and the land was inherited by his son. The son then asked Umar to demolish the home and vacate the premises immediately. Umar refused to vacate the land, he insisted that this had been home to his family for several years and he had no other place to go. Umar then chose to proceed with the case in court.

The inheritor preferred to have the case resolved by a local sheikh. In order to force Umar to drop the case, the inheritor threatened Umar with violence and fired several rounds of ammunition from an AK-47 gun into his compound, injuring one of his children. Seeing that he had no other option, Umar took the case to the local Sheikh.

Dispute resolution before the Sheikh was a difficult experience for Umar, throughout the process the inheritor used abusive and derogatory language, calling Umar akhdam and interrupting him as he gave his testimony. Not only did the Sheikh fail to intervene to create a conducive environment for dispute resolution, the Sheikh also used abusive language towards Umar, effectively denying him justice throughout the process even before the verdict was issued.

Respondents also revealed that many people had concerns that customary authorities accepted bribes, or that parties who paid more for the dispute resolution service would get more favourable treatment by the presiding authorities. Our data showed that the perceptions of effectiveness also varied by governorate – according to respondents in Lahji governorate, customary institutions seemed to have more legitimacy and even were pro-active in defending the rights of women and *muhamasheen* people, but in Taiz, the focus groups tended to see customary institutions as less effective and more corrupt. A more expansive study would probably find variations of these perceptions within governorates, districts, and even within specific towns and villages.

In our interviews with customary authorities in governorates, they tended to claim that they were quite effective in resolving disputes within their jurisdictions. Their main limitations were increased caseloads (especially with urban IDPs returning to their ancestral villages and getting into disputes with their families and neighbours), increasing insecurity (armed groups creating their own rules), and lacking the financial means to implement their work.¹¹⁴ While these views align on some levels with those of the people living in their jurisdictions, there is also a disconnect between their perceptions of their own effectiveness and legitimacy and the population's perceptions of these institutions.

5.2.3 Religious

Islamic laws and norms are deeply ingrained within formal and customary forms of governance in Yemen, but the systems remain distinct. As we previously noted, there are several different schools of interpretation of Islamic law which differ on various issues related to land and property rights, most notably inheritance and divorce.¹¹⁵ However, religious authorities were rarely cited by parties to inheritance disputes as playing a crucial role in dispute resolution on these subjects. Occasionally, imams were noted to play supporting roles to sheikhs and elders on these types of cases.

A few people facing evictions mentioned that they asked an imam to intervene on their behalf in negotiations with their landlord. This tactic appears to be an informal exercise of the imam's moral status as a means to gain some leverage over the landlord, rather than the invocation of religious principles as a basis to protect the rights of IDPs. That being said, UN Habitat's 2011 study on Islamic principles and land proposes that:

“Islamic law, if interpreted and implemented according to its principle of equity, has the potential of strengthening land rights for internally displaced persons and other vulnerable sections of society in the same way as for refugees and migrants.”¹¹⁶

The reasons why religious authorities were not mentioned as playing a larger role in the resolution of (especially) inheritance disputes requires more analysis since no system appears to have a strong ability to intervene on this important and growing type of dispute.

5.2.4 Informal

The category of ‘informal’ providers of dispute resolution services is a bit of a catch-all, encompassing:

- bilateral negotiations between parties,
- asking a trusted family member to negotiate on one’s behalf (women are often expected to ask a male relative to represent them in negotiations and other forms of dispute resolution),
- asking a relative to mediate an internal family dispute (inheritance or divorce)
- asking a member of the community (elder, sheikh, or imam) or an ally (a politically powerful patron, or an NGO) to informally negotiate or advocate on one’s behalf
- asking a third party to mediate a dispute (anyone who is not in an official state, religious, or customary role).

Given the range of potential informal arrangements, deeper analysis into each of these methods would be needed to understand their processes and outcomes, but some features are common to almost all of these approaches.

First, informal approaches to resolving disputes are mostly dependent on the leveraging of personal relationships (as opposed to leveraging the formal power of an institution like a sheikh or a court) to try to achieve an outcome. As such, having good relationships and strong social networks is essential for success. This approach can be positive when or if both parties are able to call upon shared systems of solidarity and can help strengthen and improve relationships. In the case of third-party intervention, the success of the process is dependent on both parties acknowledging the legitimacy of the person negotiating or mediating. Otherwise, there is very little that can compel the parties to participate in the process.

Second, dispute outcomes in informal systems are mostly enforceable through a combination of willingness and good faith by the respective parties to disputes, but there are no codified structures or laws that can ensure compliance. Social pressures can play a role as well in helping to enforce the resolution, if there is broad-buy into the process from these supporting actors (the expectation by family, neighbours and members of the community for parties to honour their word).

But informal solutions can also be profoundly coercive – where one party uses violence or the threat of violence to compel the other to accept the outcome. If the other party also responds with violence, the conflict can quickly escalate. These expanded conflicts can bring in members of the original parties’ extended kinship networks and tribes into the disputes. As we have previously noted, parties hiring or mobilising processes and militias is unfortunately common, and these approaches often exceed the capacity of local leaders to contain them or resolve the disputes.

5.3 Women’s roles in resolving conflicts

While we have already examined cases where women have taken direct actions to resolve disputes on their own behalf, we have not yet looked at the role of women as third-party providers of dispute resolution services. The role of women in resolving disputes varies widely but our research adds to a growing body of literature that shows that there are many examples of women playing active roles as mediators, case investigators, and advocates in the state, customary, and informal dispute resolution settings across the country, in both urban and rural settings.

For example, in Hajjah and Hodeidah, Al-Dawsari found that the wives of *aqils* and sheikhs often played a complementary role to their husbands, conducting case intake and investigation for cases involving women.¹¹⁷ Adra, working in a rural area just north of Sana’a, identified cases where women organised discussions pertaining to on-going disputes which affected the community as a whole in parallel to the discussion organised by men. She notes that “Children, who move easily between the men’s and women’s gatherings

are marvellous messengers, providing verbatim accounts of the proceedings to both sides. In the evening, families discuss the case. The next day, men bring the opinions of their wives, mothers and sisters with them to the discussion.”¹¹⁸

In Ma’rib and Lahji, Heinze and Stevens noted that women civil society organisations, activists, and leaders were playing an even more direct role. Their research identified women taking proactive roles in governance, humanitarian distributions, and resolving disputes within families, within communities, and those between tribes. They found that this level of engagement was particularly strong in Ma’rib, “where tribal customs provide a clear role for women in this arena”.¹¹⁹ They cite one case in Ma’rib, a group of trained mediators negotiated a ceasefire between two tribes by “staying under the sunlight refusing hospitality invitations from the tribal leaders until their call for a ceasefire was accepted.”¹²⁰ Others shamed armed groups with public actions like shaving their hair, and even publicly beating those bearing arms.

We also found many examples of women playing active roles in dispute resolution. For instance, we interviewed a woman who was elected to a community committee in Taiz governorate. When the committee was presented with disputes, she would coordinate with her male colleagues to determine how to approach the issue dividing tasks based on their respective skills and the spaces they could more easily access. For instance, she said that she would often serve as a mediator for disputes between women (over inheritance, water and firewood et al).

In Sana’a, we interviewed a woman, Basma (pseudonym), who plays an active role in mediating inter-tribal disputes over land and other resources throughout the north. She cited one case from Hajjah where a dispute erupted between members of two different tribes over an overlapping claim which involved potentially fraudulent land documentation. The tension between the two parties escalated into a full armed battle between members of each parties’ tribe – leading to over 60 deaths. In order to get parties to accept mediation, she worked with local leaders (local councils, members of parliament) who were able to encourage or put pressure on the parties to accept her services. Basma was able to convince these leaders to mobilise and impose a peacekeeping force – a third-party militia to camp out on the contested parcel of land until a resolution could be found. Each tribe was responsible for contributing money to pay the peacekeepers. The high costs of maintaining the peacekeeping force ultimately contributed to the parties’ willingness to accept her mediation services.

In Sana’a and Aden, we encountered the Yemeni Women’s Union who provide direct legal aid to women facing inheritance disputes. These services include: providing sensitisation of communities on women’s right to land under sharia, offering mediation services between the parties to the dispute, as well as supporting women’s legal representation needs if cases go to the courts. The Union also provides psychological and health care support to victims of gender-based violence.



Photo: a female legal aid worker visiting the locus of a land dispute to establish the facts and advise on available options.

In spite of these important examples of women playing critical roles in the resolution of disputes, there remain important barriers for women to access justice, which we will examine in further depth in Section 6.2.1. In spite of the challenges they face, the women we interviewed mentioned that they were able to transcend some of the resistance they faced from men because of their education (almost all were university educated). In one case, the committee member in Taiz was also able to draw authority from the fact that she was the daughter of a respected sheikh. These examples are important reminders that social class and higher education (which is typically more available to wealthier Yemenis) can be an important mitigating factor against other gender-based discrimination, but that these tools are not available to most Yemeni women.

6. Obstacles to effective dispute resolution

If Yemenis were dissatisfied with their options for dispute resolution before the war, and conditions for effective dispute resolution have gotten worse since. Many of these obstacles point to the erosion of the basic rules underpinning the functioning of society (not only relating to the governance of land, housing and water) which undermines trust between people and undermines people's trust in their institutions.

In this section, we will examine the four dimensions of these obstacles, first: the exploitation of imbalances in power; second: the discrimination against vulnerable communities; third: the proliferation of violence as a means to resolve disputes, and fourth: the disruption of existing institutions.

6.1 Exploitation of perceived imbalances of power

A recurring theme in our research was how one party to a dispute viewed their position of power relative to the other party. While none of our respondents appeared to identify themselves as 'more powerful' than their rival, many participants in focus groups saw themselves as 'less powerful.' IDPs perceived themselves to be less powerful than host communities and tenants perceived themselves in positions of less power than landlords. Women often perceived themselves as less powerful than men, and *muhamasheen* perceived themselves as having less power than other castes. Other factors influencing the perception of power imbalance include the perceived wealth and better social or political connections of the other party.

To conform to the criteria for 'good and effective' dispute resolution proposed by ordinary Yemenis, providers of dispute resolution services would have to work extra hard to ensure that both parties felt that they would not be swayed by power differentials, effectively being seen as 'impartial' or 'non-discriminatory.' This may mean that creating conditions which allow the weaker party to be more powerful than their prescribed social status allowed outside of the negotiation/mediation/arbitration.

However, when the conditions of inequality are perpetuated within the dispute resolution process as they often are in Yemen, it reinforces the idea that the resolution mechanism favours the powerful, and creates a crisis of legitimacy for those institutions. This perception has been created through a variety of factors including:

- merely by establishing a basic cost to access the service which is too high for one party to access,
- not allowing both parties to represent themselves and/or have reliable representation,
- the perception that the 'informal' exercise of power – leveraging relationships, giving bribes, etc. hold sway.

Ultimately, it creates a perception that dispute resolution systems are adversarial – that to get a favourable outcome for themselves, each party must do everything they can to put themselves in an advantageous position over their rival, rather than trust that they will get a fair outcome if they just play by the rules. The use of violence is also often used to gain an advantage in a dispute, which we will examine in more detail in section 6.3. What emerges from this is a cycle of rule-breaking which concentrates and reinforces power among the elite, and denies justice to the majority.

More rarely, we encountered situations where all the parties to a dispute saw the other as having an equivalent level of power. In these cases, (always men, who appeared to be of the same caste or similar socio-economic status) they were able to accept the use of mediation or arbitration (typically by an elder or a sheikh) and appeared quite satisfied with the outcome.

One finding that particularly stands out in the examination of inequality is that the courts regularly appeared to be a preferred service provider for 'weaker' parties to seek out justice, especially when a court was sufficiently close. This is a particularly strange finding since the courts were overwhelmingly perceived as being corruptible and subject to undue political influence. While further research would be needed to confirm this hypothesis, one compelling reason is that these parties see the legal framework of state law

as less discriminatory than customary law, and are willing to take their chances in terms of getting a better outcome in the courts, in spite of the costs. Our research found several cases where women and people from the *muhamasheen* community were threatened with violence as a means to try to deter them from using courts instead of customary mechanisms.

6.2 Discrimination against vulnerable communities

Beyond the exploitation of perceived power inequalities between parties, it is also important to examine the deeper, more structural forms of discrimination that exist in Yemeni society. The two segments of the population that appear to experience the highest levels of discrimination are women, and people from the *muhamasheen* community.

6.2.1 Discrimination against women

The rights of women and their accepted role in society is a source of profound contention in Yemen. In this debate are perspectives informed by different interpretations of Islamic law, the different legal traditions from the ROY and the PDRY, the insertion of international human rights law and norms, as well as the persistence and evolution of customs throughout the country.

As we saw in Section 5.3, there are examples of women playing active roles as peacemakers throughout the country, drawing on each of these cultural and legal traditions to claim those roles. However, important structural obstacles remain in place, thwarting women's access to justice.

One of the main issues is illiteracy. While men's illiteracy rates were estimated in 2007 to be 30 per cent of the male population, over two-thirds of adult women are estimated to be illiterate.¹²¹ Not only does this provide an important obstacle for women to access information to know and understand and exercise their rights, but it also imposes important limitations on their economic self-sufficiency. For instance, according to USAID, even though the law allows for land documents to be issued with both a man and a woman's name, "the vast majority of land is titled in the name of the male head of household or extended family. Women with individual title to land tend to be wealthy or educated urban residents."¹²² That being said, there is evidence that courts in urban areas were often used more often by the poor rather than the wealthy, and by women more than men. Wurth found that three-quarters of litigants in the primary court in the south of Sana'a from 1983-1995 were women.¹²³ Even though this data is outdated, it is revealing that in spite of these structural obstacles, poor women found ways to try to access their rights. It would be interesting to have more updated data from the years preceding the current war but our research seems to indicate that the courts continued to be seen as a service provider where 'weaker' parties would try to access justice.

The laws (state, customary, and Islamic) themselves are often very discriminatory towards women's rights. For instance, under some interpretations of Islamic law: "daughters inherit half the share of property received by sons. Women receive a one-eighth share of their husbands' property and one-sixteenth of their sons' property, should the sons predecease the mothers."¹²⁴ Some interpretations also entitle women to economic support from the other beneficiaries of inheritance, but those interpretations still create or perpetuate women's dependence on men to access her basic needs.

The laws of the RoY also contain some discriminatory provisions towards women. For instance, the post-unification Personal Status Law of 1992 dismantled many of the protections that the PDRY's family law had built in for women. For one, it established that a woman's main obligation in marriage was to be obedient her husband, rather than the husband and wife being consensual partners with equal responsibilities to the other. In the case of divorce, a man can unilaterally call for a divorce, but a woman needs the court's permission. In the former case, if a woman wanted compensation for her husband leaving her, "a woman had to file a separate suit (...) proving that the divorce was not her fault and that it harmed her."¹²⁵

Furthermore, in many parts of the country, there are important social taboos associated with women speaking with men to whom they are not related. These taboos create serious barriers toward women being able to represent themselves in the resolution of disputes. If they are unable to find a reliable male relative to represent their cases, they may be denied access to justice entirely, especially if the case involves a male member of their family such as the inheritance cases we examined in Box I. Even when they do access judicial processes, a woman's testimony is not always valued as much as a man's,¹²⁶ and their safety is not always guaranteed.

Women who do speak up, claim their rights and are active in the public sphere also become targets for harassment and violence. Heinze and Stevens identified that due to the presence of extremist groups, engaging women in many civic activities in Taiz governorate was particularly difficult.¹²⁷ However, even there, our research encountered women actively defying these risks and resolving disputes. What Heinze and Stevens capture in their report are the risks associated with engaging in public, but women also face risks of more intimate forms of gender-based violence when they claim their rights within their own families, again as we saw in the cases highlighted in the inheritance section (4.3) of this report.

If we are to use an intersectional approach to analysing these challenges, women who are distant (geographically or estranged) from their networks of social support and/or whose social networks are from disadvantages castes such as the *muhamasheen*, are least likely to access justice.

6.2.2 Discrimination against the muhamasheen community

As we noted earlier in the context section, inherited statuses or "castes" were officially abolished in both northern and southern parts of Yemen after the Republics came into existence. While some mobility between castes has taken place and other opportunities for accumulating wealth outside of traditionally prescribed roles, the lowest castes, especially the *muhamasheen*, continue to face discrimination until today. While in the PDRY, some of the lowest former castes were provided with land and access to education, many of those opportunities did not materialise for *muhamasheen* in the north. Even in the south, discrimination persists.

Before the war, many *muhamash* peoples lived in segregated slums on the outskirts of Yemen's main urban centres and had access to only the most difficult and menial jobs. Access to land came from negotiation between individuals and landowners, as we saw in the case of Umar in box III, being allocated public or religious lands, or through simple informal occupation – often on lands that are unsafe for human habitation (vulnerable to landslides or floods, and/or near waste sites).

The UNHCR's 2016 protection report indicates that physical segregation continues into the present conflict. The report states that:

"these problems have emerged mainly in Amran governorate, where the muhamasheen have been prevented by IDPs from occupying collective centres despite other non-muhamasheen IDPs being allowed to do so. Where muhamasheen IDPs have settled on open land, they have faced hostility from members of the local community, as well as the landowners, who in some cases have resorted to violence in order to evict them."¹²⁸

Our research also found multiple serious cases of discrimination against the *muhamasheen* in Taiz. We found that when *muhamasheen* claim their rights, stand up for themselves in a dispute or even engage in acts of social mobility, they are the victims of violence. (See Case Box IV) Umar's case where his house was fired upon during a dispute (injuring one of his children) from box III is another example of this.

In addition to the case from Box III, where a landowner fired his gun into a muhamasheen home to discourage them from taking a dispute to court, we identified several other cases where violence (or the threat of violence) was used as a means to deter or even punish muhamasheen people from claiming or defending their rights.

BOX 4: SYSTEMATIC VIOLENCE AS AN OBSTACLE TO MUHAMASHEEN RIGHTS

Case I: In one case, a Muhamasheen girl called Asma was fetching water at a well when a non Muhamasheen child came to the same well and demanded that Asma fetch water for her first. The non Muhamasheen child used abusive language. Asma refused to respond to the non Muhamasheen child and they both got into a fight. When the non-Muhamasheen community got involved in the case, they demanded that Asma be imprisoned for hitting the other child. That night a lynch mob formed outside the prison demanding that Asma be handed over to them, to which they complied and Asma was murdered.

Case II: In yet another case, when Yousef, a Muhamasheen man presented himself as a candidate for the election of community committees, he began to receive death threat, when he refused to withdraw his candidacy, armed forces came to his house. When he went to one Sheikh to complain, he was told that 'he is the only servant who wants to compete with his masters' (khadim wayurid munafasatan sayidatan) and was told to drop his candidacy. He went to yet another Sheikh who also counselled him to withdraw from the election but told him that if Yousef withdrew from the process and asked other Muhamasheen to vote for the Sheikh, then he would represent the interests of the Muhamasheen community. Discouraged, Yousef accepted the last Sheikh's offer, withdrew his candidacy and endorsed the Sheikh

Case after case, we see examples of customary and state authorities failing in their duties to protect the lives and rights of vulnerable groups such as the *muhamasheen* community. When they approach these institutions (police, sheikhs, courts), *muhamasheen* often face verbal abuse from these parties.



Photo: muhamasheen woman and her children living in a makeshift shelter, spontaneous settlement, Yemen

6.3 Prevalence of violence

In Yemen, the use of violence, or the threat thereof, is an essential tool to influence the outcome of disputes at a variety of scales. While one of the Weberian features of the state is the monopoly over the use of force, it can be argued that the Yemeni state has not fully exercised this capacity in recent history. Furthermore, its proliferation should not only be seen as a breakdown of the power of the state, but also an unravelling of the power of the traditional (non-state) institutions which had customarily regulated the use of force.¹²⁹ Even before the current war, the use of violence to resolve disputes – from those between tribes to inheritance disputes between siblings was prevalent.

The availability and access to guns are widely linked to the rapid escalation of conflicts into violence, resulting in injury and death.¹³⁰ In 2007, Yemen was estimated to be the country with the second most guns per capita after the United States. Pre-war estimates ranged from anywhere between 6 million and 17 million guns¹³¹ – a legacy of decades punctuated by armed conflict.¹³² Specifically, the Small Arms Survey cited in 2010 that “social conflicts—primarily over land and water—reportedly account for some 4,000 violent deaths every year.”¹³³ Since the start of the war, the increased supply of guns and ammunition has actually caused prices to fall across the country.¹³⁴

Having a gun is seen as crucial to the defence of one’s home, family, and property – and deeply intertwined with the Yemeni masculine identity. In the northern governorates and in a few southern governorates, men have traditionally carried ceremonial daggers (*jambiya*), whose use was governed by customary laws. In the past decades, guns have supplemented the daggers within the masculine arsenal, but customary norms and laws governing the use of weapons have degraded.¹³⁵ The degradation of these norms is evidenced by the widespread use of violence against women and children, who are protected within many customary norms.

According to our interviews with civil society actors, the use of violence – especially gun violence – to initiate (through land seizure) and settle disputes seems to have increased since the outbreak of the war, although further data would be necessary to confirm this perceived increase. One humanitarian worker lamented that “our communities here prefer to use their guns more than their tongues.”¹³⁶ This use of violence in land and natural resource disputes is both collective and individually based.

Both tribes and non-tribal groupings are taking advantage of the collapse of the state to use established militias and creating ad-hoc militias to defend their interests, to seize land and resources, intimidate rivals in a dispute, settle scores, and to conduct lynching. Well-armed militias and forces can be quickly assembled if parties have access to cash and/or influence.¹³⁷

In an inversion of expectations about who has access to violence as a tool, the mobilisation of guns and violence can also be employed by groups often perceived to be “weaker.” One woman in Taiz hired a militia at the cost of YR 500,000 to drive off an aggressor’s militia which had occupied her land. The militias had a stand-off, but after a week, the woman had exhausted her resources and was unable to continue to fund her militia. While this case should be seen more as an exception than a norm, but it indicates that perceived power imbalances based on gender can be neutralised through the exercise of financial power and the power of having strong social and political ties. Similarly, in Sana’a, we learned of a situation where third-party militias are brought in by mediators to disputes to occupy disputed parcels to serve as a peacekeeping buffer between two factions.¹³⁸ Both parties were made responsible by local power brokers for contributing to paying the peacekeepers – and ultimately, the high costs of maintaining these peacekeepers are eventually what brought the parties to the dispute to advance the mediation.

Violence is also individualised, and at times very intimate. Several respondents mentioned that rival parties to disputes would spray their houses with bullets to get them to drop a case. Violence to deter parties from claiming their rights appears to be especially used against *muhamasheen* (men and women) and women in general (as we discussed in Section 6.2).

Unfortunately, very little data exists about the prevalence of gender-based violence and intimate partner violence in Yemen. Most NGOs we interviewed mentioned that the subject is considered to be a private family

matter and powerful taboos dictate the limited circumstances in which private matters may be discussed. As a result, obtaining permission from local authorities to collect data and testimonials, as well as identifying study participants who are willing to speak about the issue is notoriously difficult. The cases examined earlier in Section 4.3 particularly illustrates the toxic nexus of gender-based-violence being used as a means of enforcing those taboos.

However, the use of violence is not exclusively exercised against women – displaced men, men who were from the North but lived in the South, or men who do not have access to powerful political-military patrons or social support networks also report having violence and intimidation used against them in disputes.

Therefore, it can be surmised that violence or the threat of violence is a tool for one party to express their power over a party that is perceived to be weaker and more isolated- and therefore less likely or able to retaliate against aggression. Equally-matched parties are more likely to grind each other down into stalemates when violence is used, and therefore may have more incentive to seek peaceful resolution of their disputes.

In the context of resolving disputes, it appears logical for customary authorities such as the sheikhs to demand that parties provide guns as a form of insurance for the dispute resolution in the practice known as *adoul*, *adala*, or *adal*. As we noted in Section 5.2.2, the customary symbolism of this practice is one of submitting to a presiding authority, the added benefit is that it removes the means for these parties to attempt to settle the dispute through violence, assuming the parties only have one gun.

However, this implies the loss of an important household asset for the poorest, contributes to a greater sense of vulnerability/inability to defend themselves, and in some cases, a sense of emasculation of men who have linked part of their masculine identity – namely the ability to defend one’s land and family - to the possession of guns.¹³⁹

Identifying locally-relevant strategies to mitigate the risks associated with the presence and availability of weapons will be an important hurdle for any attempts to promote and support the collaborative resolution of disputes.

6.4 Disruptions of existing structures

As we established in Section 3 of this report, the disruption of previously established structures has been a recurring feature throughout Yemen’s recent history. These changes to local institutions, especially when they are imposed by outside forces, can profoundly undermine people’s confidence in the institutions themselves. However, in places like Ma’rib, we see that local institutions can really thrive when they are free from external interference, even in the midst of a civil war.¹⁴⁰

In rural areas, the regular disruptions to customary institutions are bypassing communities’ own internal mechanisms to hold leaders accountable and undermine the predictability of if or how disputes will be resolved. This conflict has only worsened this trend in some areas; for example, in a village in Lahji, the sheikh of their village was seen to be allied with the Ansar Allah movement when they passed through. However, when the southern resistance forces expelled Ansar Allah, the sheikh fled, fearing reprisals. Instead of consulting the community broadly as to how they wanted to proceed, the southern resistance forces appointed a new sheikh. The new sheikh declared that all the verdicts that were reached by the previous sheikh were not valid and if any side felt unsatisfied about the verdicts, they could re-open the case, which created a cascade of resurgent disputes.¹⁴¹

The disruption of dispute resolution institutions is being felt particularly acutely in urban areas, where courts had typically been the only official institution. While court cases often took a long time even before the war, the fact that many courts are no longer even operating has further delayed and potentially derailed justice for those people whose cases were being considered. For urban communities especially, that leaves few alternatives for resolving disputes, which favours the proliferation of informal methods, including the use of violence.

But disruptions are also taking place because demand on existing institutions is being stretched beyond the capacity (financial, logistical, and time) of the service providers. The proliferation of disputes and the increased cost of basic goods means that service providers do not have as much time to invest in each case in the same way they used to, or the means to travel to the sites of disputes to examine evidence and interview parties.

Together, these indicators show a system in crisis and in need of support but on the terms of the communities themselves to ensure that aid goes where it is most needed.

7. Building on Solidarity and Support

In times of protracted conflict, it is often easy to focus on the stories of despair. When asking questions about disputes, it is almost certain that people will end up sharing stories of disappointment, betrayal, brutality, and corruption, which may create the impression that this is the only reality for Yemenis. But the truth is, while it may be the case for many, it is not for all.

Even though life is increasingly difficult for ordinary Yemenis, there are important reasons for hope. For one, the fact that over 50 per cent of IDPs are living with host families (members of extended families, neighbours, and friends) is a major indicator of the prevalence and importance of solidarity.¹⁴² These arrangements have lasted for months, if not years. IDPs have also been welcomed into new communities, and strangers have shared basic necessities with those facing desperate situations.

Respondents also occasionally shared stories where they were able to avoid or resolve disputes because of acts of genuine kindness and solidarity.

- In Lahji, a woman whose free access to a private water source was cut off by the owner of that well after their children got into a fight, a local imam negotiated for her to regain access. The well's owner agreed to renew her access but imposed a monthly fee, which she could not pay. The imam offered to pay on her behalf.
- In another area (also in Lahji), a displaced family had been able to find a house to rent in a village. Shortly after they settled in, one of the members of the family became very ill, increasing the financial stress of the family, and they were unable to pay the rent. The landowner refused to grant them a temporary reprieve nor an extension, even after the local sheikh intervened to negotiate on behalf of the family. The sheikh ended up paying a year of rent for the family.
- In Lahji, an IDP family were settled in an empty house in a village. When the owner returned, he evicted them, but the local sheikh offered the IDPs one of his houses.

As mentioned earlier, many local systems of governance are actually beginning to thrive and act with greater effectiveness due to the collapse of the state. Without the interference of predatory state actors and with greater autonomy, local authorities and communities are actually able to build new systems of solidarity and create islands of peace. It doesn't mean that these institutions do not face enormous challenges, but their resilience is a source of hope.

Unfortunately, the goals of this research were not to collect more of these stories, but it will be important to do more work to find these and amplify them within Yemen in the coming months and years as a basis to rebuild the norms and values that bind society. Rebuilding Yemeni society and institutions will need to start locally – and what better place to start than building on the bonds and structures that people already have.

8. Conclusion and recommendations

The network of institutions that resolve disputes over land, housing, and water in Yemen are in crisis. While this crisis pre-dates the current war, the war has contributed to their degradation and the further fracturing of Yemeni society, making the resolution of small disputes even more complicated. Even the institutions that have demonstrated resilience and continue to function through this crisis are being weakened by the ongoing conflict and displacement.

Supporting the resolution of these disputes, including addressing their root causes cannot wait until the war ends. In order to address these local grievances and conflicts, we propose the following recommendations:

1. Engage with and invest in local housing, land and natural resource governance institutions

Such investments can contribute to the stabilisation of communities and building peace from the local community-up. However, it is important to tailor approaches to the specific needs and aspirations of communities. Engaging communities in inclusive and public exercises to determine their own criteria for 'effective' dispute resolution and governance can establish new foundations upon which communities can hold their local leaders accountable.

If organisations decide to invest in 'capacity-building' these initiatives should be adapted to reflect the expressed needs of the services providers and communities, must be culturally relevant, and promote solutions that can be implemented with locally available means.

Finally, investments in these initiatives must overcome the short-term limitations of humanitarian funding, meaning that organisations and donors must commit themselves to these kinds of initiatives so as to ensure continuity and to develop a relationship of trust with local communities.

2. Address the root environmental and economic causes of many disputes

The war is exacerbating many of the environmental and economic challenges related to inadequate and unsafe housing, land degradation, deforestation, mine contamination, and water scarcity that contributed to the war in the first place. Investments in restoring water, lands, and forests may be an essential tool for building peace and trust between communities and actors who must share access to these essential resources while improving the overall availability of said resources. While these projects usually fall under the category of "development" our research shows that these issues cannot wait for an end to the fighting.

The degradation of water, land, and forests is contributing to conflicts between IDPs and host communities throughout the country. Failure to address the root causes of these issues means that these problems will only amplify the vulnerability of these communities and that the challenges of rebuilding these resource bases after the war ends will only be more challenging. Furthermore, as we have already seen in Yemen with the impending famine, cholera epidemic, and fights over scarce fuelwood resources, resource governance issues can actually contribute to prolonging the war and driving displacement.

However, efforts to work on such projects require careful conflict analysis and "due diligence" so as to ensure that projects do address resource scarcity and degradation does not create new layers of conflicts.

3. Ensure that land and natural resource governance are substantively addressed in peace negotiations

Land, natural resources, and the environment issues play important roles in every phase of most conflicts, from driving local grievances against government or other communities, to the capture of valuable resources by armed groups to fund their efforts, to the settling of scores over previous disputes that preceded the war, to the heaps of environmental impacts of the war itself. As we have demonstrated, Yemen's current and past wars have been no exception to this dimension.

However, a recent study found that only 15 per cent of peace agreements since 1945 actually deal with natural resources in any way, which means that these agreements often fail to address some of the important 'root causes' and/or major disruptive impacts of their wars.¹⁴³ Given the centrality of land

and natural resources (especially water) in the Yemeni conflict, any eventual peace agreement will need to have concrete, actionable provisions on these issues, and be backed by international pressure and support to ensure that these are implemented. This is essential to avoid that these issues provide fuel for a future conflict.

In the short term, political actors must also secure commitments from military and political leaders controlling specific territories to cease all land and water seizures, and to for these actors to take concrete actions to curtail the use of independent/ad hoc militias from doing the same. These actors must also play a constructive role in supporting the resolution of local land, housing, water, and resource disputes.

4. Invest in initiatives that specifically address the obstacles to women and marginalised communities

The involvement of women and marginalised communities should be transversal for all of the previous recommendations. Women and marginalised communities should play central roles in the re-establishment of local resource governance institutions. Their inputs and involvement are also essential to the sustainable design of initiatives to restore degraded land and other natural resources – especially water and firewood.

Finally, when women play a central role in negotiating peace agreements, chances of actually reaching an accord substantially increases over situations when women did not participate. When it comes to implementation and the durability of peace, once again, substantive women's engagement usually translates to more positive outcomes.¹⁴⁴

However, beyond all of those the transversal initiatives including women and marginalised peoples, initiatives specifically tailored to address the structural challenges which often keep women and marginalised communities out of these processes need to be developed and supported. Already, there are several organisations in Yemen working specifically to promote the rights of women and marginalised peoples to defend their rights. However, existing institutions cannot be everywhere to respond to the scale of the needs and are often unable to provide women with the security needed to ensure that they can safely claim their rights.

As such, additional investments are required to:

- a) Increase knowledge of women's rights. In our discussions, both men and women lamented that customary and state authorities often did not uphold the rights of women established through Sharia.
- b) Increase knowledge of the rights of muhamasheen people. Inherited statuses have been abolished in Yemen for generations, yet state and customary authorities, as well as everyday Yemenis, continue to
- c) Increase opportunities to access rights. This means finding ways to overcome the issues of inadequate representation in disputes – especially those in the 'private realm such as divorces and inheritance cases' - and ensuring the protection of those who do choose to claim and defend their rights.
- d) Increase economic opportunities. Both women and muhamasheen communities are often unable to act on their knowledge of their rights because of economic vulnerability. Involving women and muhamasheen communities in projects to restore degraded lands and resources will not only increase their representation in the governance of these resources but may also increase their own revenues.

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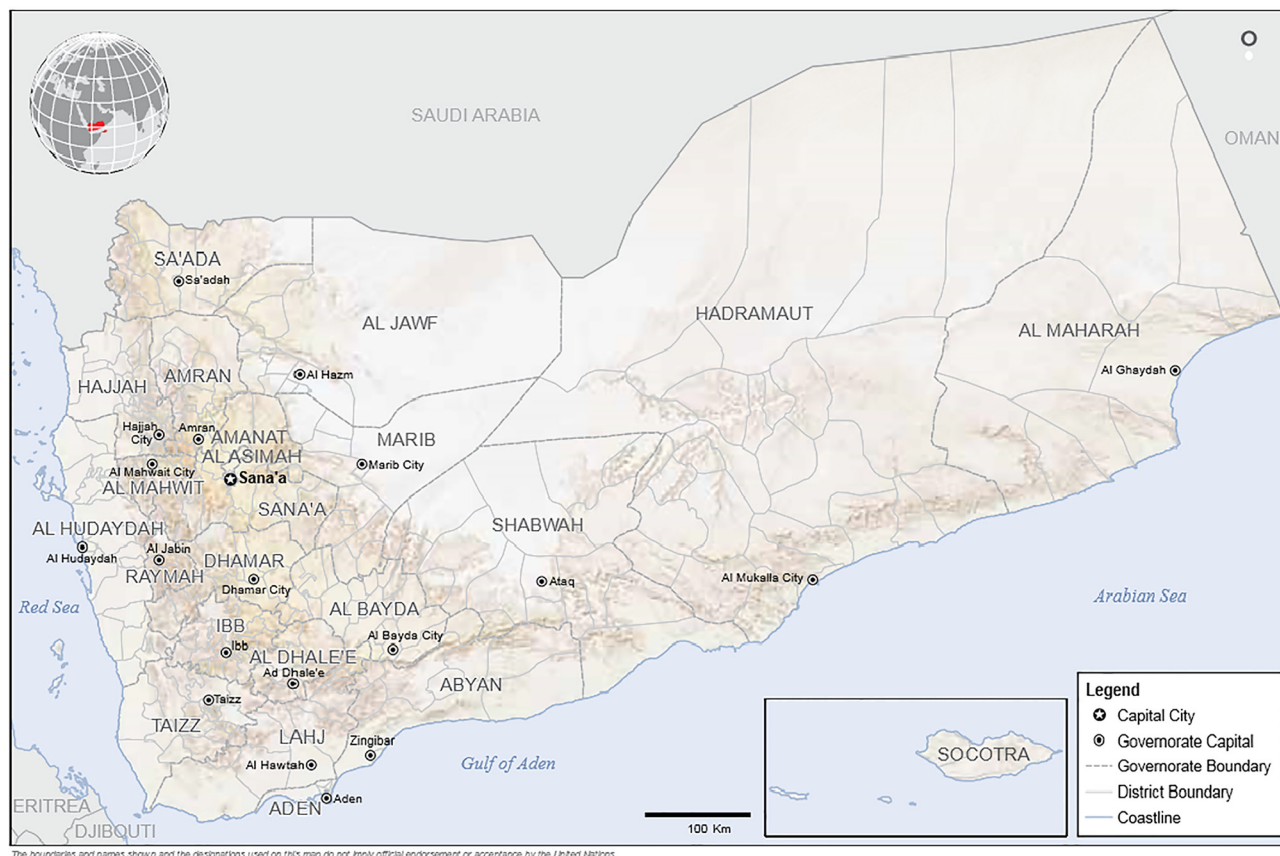


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