

REPUBLIC OF YEMEN
Comprehensive Development Review - PHASE I

Judicial and Legal System Building Block

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Legal Department

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I. Overview

1. This paper was prepared as part of the stock-taking phase of the Comprehensive Development Review (CDR). The paper simply provides an overview of the key topics and issues that fall under the judicial system and land law rubrics. The paper was initially expected to cover, in addition to the judicial system and the legal framework governing land, the legal framework for business, economic and financial activities. Given, however, the breadth of the subject and the linkages with many other building blocks, it has been omitted from this paper but will be tackled under the next phase of the CDR exercise. At this early stage of the CDR process, the focus of this paper is on consolidating information rather than on an analysis of key constraints and recommended policy changes. Section II covers the judicial system, highlights performance problems and identifies some of the enduring challenges to reform. Section III discusses aspects of land law, and land registration and transfer, and outlines the adverse impact of such a flawed system on the economy as a whole.

II. Judicial System

2. The legal and judicial framework in Yemen is still in a state of transition, following the 1990 unification of North and South Yemen, each of which had different legal regimes. While North Yemen's legal system drew heavily on legal traditions of the Ottoman system, South Yemen's system had a distinct common law influence resulting from decades of British mandate. The Reunification Constitution of the Republic of Yemen espoused the principle of independence of the judiciary. The judicial system of North Yemen has become increasingly influential in the southern part of the country since the end of the civil war in 1994.

3. The main problems currently facing the Yemeni judiciary may be summarized as follows: (i) poor legal and administrative performance of the judiciary and administrative personnel due to lack of motivation and requisite education and skills; (ii) absence of proper administrative systems (file keeping, registration of contracts, regulation of fees, etc.); (iii) dilapidated court buildings; and, above all (iv) a lack of probity at all levels.

A. Governing Bodies

4. **The Supreme Judicial Council.** The Supreme Judicial Council (SJC) appoints, promotes and dismisses judges, approves the judiciary's budget prior to submitting it to the Ministry of Finance for inclusion in the overall Government budget. The SJC is chaired by the President of the Republic. Membership of the SJC includes: (a) the President of the Supreme Court (who also acts as Deputy Chairman), the Minister of Justice, the Attorney General, the two Deputies to the President of the Supreme Court, the Chairman of the Authority, the Deputy Minister of Justice, three (3) senior Supreme Court judges.

5. The functions of the SJC are provided for under the Constitution and the Judicial Authority Law. In essence, the SJC is the governing body for the judiciary. Its main responsibilities consist of: (a) reviewing and approving the draft budget of the judiciary (the Supreme Court, the Appeals

Courts, the District Courts, the Public Prosecutor's Office, the Ministry of Justice, the Judicial Inspection Authority and the Supreme Judicial Institute), prior to submitting the draft budget to the Ministry of Finance as part of the overall Government budget; (b) defining and formulating policies for the development of the judiciary; (c) considering the draft laws in connection with the functioning of the judiciary; (d) considering reports submitted by the Judicial Inspection Authority relating to judges and prosecutors' performance; and (e) if need be, granting permission to arrest a judge (except that no such permission is needed if the judge is caught *in flagrante delicto*).

6. **The Judicial Inspection Authority.** The Judicial Inspection Authority (the Authority) was established in accordance with the Judicial Authority Law of 1991. It consists of Chairman, a Deputy-Chairman and several experienced judges whose appointment to the Authority is approved by the SJC. The Chairman must be a senior judge of the Supreme Court. The main responsibilities of the Authority consist of: (a) inspecting the work of all judges, except Supreme Court judges; (b) assessing the professional performance and conduct of judges; (c) preparation of disciplinary cases against judges; and (c) considering applications regarding extradition of criminals. Regular inspections on judges take place at least once a year and every six (6) months on judges under probation.

7. **The Ministry of Justice.** While the Ministry of Justice (MOJ) has no direct supervisory or administrative authority over the judicial branch, it plays an important role in the administration of justice. The Minister of Justice is a member of the SJC. MOJ is also responsible for the upkeep and repair of court facilities, and for the training of judges and court personnel. [THE MANNER IN WHICH SJC AND MOJ PERFORM THEIR RESPECTIVE FUNCTIONS, INCLUDING OVERLAPS IN JURISDICTION, SHOULD BE FURTHER INVESTIGATED].

B. The Court System

8. **The Constitution.** The Re-unification Constitution of 1990, which was promulgated in 1990, and amended in 1994, provides that the judicial authority is an autonomous authority in its financial and administrative aspects, and that the public prosecutor's office is one of its organs. Judges are independent and not subject to any authority, except that of the law. No other body may interfere in any way in the affairs of the judiciary. Shari'a law is officially the sole basis for legislation.

9. Members of the judiciary and the public prosecutor's office are dismissed only under the conditions stipulated under the law. They may not be transferred to non-judicial posts except with their own consent and the approval of the SJC. Hearings are open to the public unless the court concerned decides, for reasons of security or public morals, to hold the trial *in camera*. In all cases, verdicts are made public in open court.

10. The Judicial Authority Law, promulgated on January 10, 1991, establishes a court system consisting of a plethora of district courts (also called courts of first instance) which deal with disputes of all types (civil, commercial, criminal, family and administrative). District court decisions may be appealed before an appeal court. There is at least one such court in every governorate of

the country. There are five commercial courts at the district level in each of Sana'a, Aden, Taiz, Hodeida and Hadramawt. The Supreme Court is the highest judicial authority.

11. **The Supreme Court.** The Supreme Court of the Republic sits in Sana'a. The jurisdiction of the Supreme Court is limited to the interpretation and application of the law. It does not look into the facts of a case. The Supreme Court is composed of the President of the Court (or the Chief Justice), two deputies to the President and around fifty (50) judges. The Supreme Court is divided into the following eight (8) Divisions: (a) the Constitutional Division; (b) the Civil Division; (c) the Commercial Division; (d) the Family Division; (e) the Administrative Division; (f) the Criminal Division; (g) the Military Division; and (h) the Appeals Scrutiny Division. Each Division consists of five (5) judges except the Constitutional Division which consists of seven (7). The Presidents and Members of these Divisions are selected by resolution of the SJC. Supreme Court decisions are not printed in bound volumes.

12. **The Appeals Courts.** There are eighteen (18) provinces in the Republic of Yemen, out of which seventeen (17) are called Governorates (Muhafazat, each a Muhafaza), and with the eighteenth (18th) being the capital city, Sana'a. Theoretically, there ought to be an Appeals Court in each of the provinces. The volume of judicial business, however, justifies only sixteen (16) Appeals Courts. The number of Divisions within each Appeals Court varies in accordance with the volume and nature of cases within the governorate. Here is a detailed break-down: (a) four (4) Divisions (one for civil law cases, another for criminal law cases, a third for family law cases and a fourth for commercial law cases) within the Appeals Court of the city of Sana'a and the Appeals Court of the governorate of Aden; (b) three (3) Divisions (civil law, criminal law and family law) within the Appeals Courts for each of the governorates of Sana'a & Al-Jowf, Ta'iz, Lahej, Hodeida, Abyan, Ibb, Hadhramawt, Hajjah and Sa'dah; (c) two (2) Divisions (civil and family law, and criminal law) within the Appeals Courts for each of the governorates of Shabwah & Ma'rib, Dhamar, Al-Baydah and Al-Mahweet; and (d) one Division (that looks into civil, criminal and family law cases) within the Appeal Court for the governorate of Al-Mahara. The total number of Appeals Court judges in Yemen is therefore one hundred thirty-two (132). The number of Divisions within an Appeals Court and, consequently the number of judges, is determined by resolution of the SJC, after considering joint proposals to this effect from the President of the Supreme Court and the Minister of Justice. The jurisdiction of an Appeals Court covers appeals against the decisions of a District Court with respect to issues of law, as well as issues of fact, and any jurisdiction on any matter conferred upon it by law.

13. **The District Courts.** Typically located in the commercial center of a District, a District Court's jurisdiction is specialized in that it covers cases relating to one area of the law. There are District Courts that look into civil cases, criminal (public property, traffic and juveniles) cases, family law cases and commercial cases. District courts that entertain commercial cases are found only in the city of Sana'a, together with the governorates of Aden, Ta'iz, Hadhramawt and Hodaida. There is one District Court in each of the city of Sana'a and the governorate of Aden that entertains cases pertaining to customs duty and taxation. Six (6) District Courts have been established in the city of Sana'a and the governorates of Sana'a and Al-Jowf, Aden, Ta'iz, Hadhramawt and Hodaida. The first District Court looking into juveniles cases was established in the governorate of

Aden in 1992. The number of District Courts, their location, the number of judges to be selected and appointed for such courts and the territorial jurisdiction of each such Court are all determined by a resolution of the SJC, after considering joint proposals to this effect by the President of the Supreme Court and the Minister of Justice. District Courts have jurisdiction in all cases. Depending on the monetary value of the case, a single judge (also called magistrate) or a full court of three (3) judges may hear the case in a District Court.

14. **The Commercial Courts.** Law No. 40/1976, promulgated on March 8, 1976, established the District Commercial Courts in the city of Sana'a, and the governorates of Ta'iz and Hodeida. Two such courts have since been established in the governorates of Aden and Hadhramawt. Each such court consists of a President and two members. The court's jurisdiction extends over all cases of a commercial nature and other laws dealing with commercial matters. The number of commercial court judges does not exceed forty (40).

C. Personnel Issues

15. **Tenure.** Judges are appointed for life. They are selected, promoted and removed by the SJC. The compulsory retirement age is sixty-five (65). A judge's tenure is subject, of course, to the judge being in good standing. In addition to the SJC, disciplinary functions within the judiciary are performed by the Authority.

16. **Selection.** Section 57 of the Judicial Authority Law mandates that a person to be appointed to the bench: (a) be of sound mind; (b) be at least thirty (30) years of age; (c) be a graduate of the Supreme Judicial Institute (the only judicial training institute in the country); (d) be of good moral character; and (e) not have been convicted of any offense denoting dishonesty or lack of integrity. Every person fulfilling the above conditions may, therefore, be appointed to a magistrate position at a District Court.

17. **Promotion.** Section 58 of the Judicial Authority Law prescribes the various judicial posts and grades. There are nine (9) grades in total. To be promoted to a higher grade, a judge should at least have spent two (2) years in the lower grade. Supreme Court judges may not be removed from their posts before at least three (3) to five (5) years have elapsed from the date on which they assumed their responsibilities. Seniority is a decisive factor in promotions within the District Court system. The President of a District Court is the senior-most judge in that court. Judges and magistrates who have worked enough years in all grades in the District Courts may, depending on the availability of vacancies, be promoted and appointed to a judicial post in one of the Appeals Courts in any of the governorates or the city of Sana'a. The same is true of the Appeals Court judges to be promoted to a Supreme Court judge position. Judicial promotions, lateral transfers, retirement and dismissal of judges take place at least once every three (3) to five (5) years. The Authority makes certain recommendations and discusses its recommendations with the Minister of Justice and the President of the Supreme Court. The recommendations are then submitted to the SJC for consideration and approval. Promotions and transfers are thereafter issued by Presidential Decree.

18. **Removal.** Judges may be removed from office (a) as a result of a disciplinary action instituted by the Authority; and (b) with the prior consent of the SJC. Removal is substantiated by resolution of the SJC. Disciplinary proceedings are instituted against a judge if he or she is found guilty of: (a) an act involving dishonesty, the taking of a bribe or bias; (b) lack of punctuality in holding hearings without reasonable cause; (c) delay in disposal of cases; and (d) disclosing State secrets. The disciplinary penalties range from a warning to removal, including a reprimand, withholding of allowance, being put on compulsory, temporary leave, delaying a promotion and transfer to a non-judicial job.

19. **Court Personnel.** Court administrative personnel consists of clerks, registrars, prosecution aides, typists and bailiffs. Court personnel, with the exception of bailiffs, carry out their duties under the supervision of a senior clerk, whereas bailiffs operate under the supervision of a senior bailiff. All members of court personnel operate under the auspices of the President of the court. Court personnel functions include, without limitation: (a) taking delivery of, and recording, documents and papers relating to new or on-going cases; (b) filing and archiving same; and (c) collecting court fees and fines. Clerks who attend court-trials are expected to keep accurate records the court's proceedings. Court personnel are under an obligation not to reveal details about cases or share files pertaining to such cases except as provided for under the law. The President of the Appeals or District Court, as the case may be, has the authority to institute disciplinary measures against any member of the courts' personnel, if he or she violates the rules and procedures governing the discharge of his or her professional duties.

20. **Planning and Statistics.** The Authority keeps data regarding the number of cases filed and disposed of on a yearly basis. The same goes for pending cases. Statistical information on court costs, however, including operating expenses and salaries, is collected by MOJ. MOJ also collects information about court facilities and equipment, and it is MOJ that is responsible for the upkeep and repair of court facilities. The court system is not computerized. The lack of computerization and standardized administrative and case maintenance software within the court system, and the lack of a suitable manual substitute, makes for administrative problems. There is also little or no coordination for future planning. The SJC has the responsibility for the budget but has no staff with budgetary expertise [TO BE CONFIRMED]. MOJ has staff with budget expertise but does not have authority to make related budget or staffing decisions except for court facilities and judicial training [TO BE CONFIRMED]. Nor are the SJC and MOJ sufficiently coordinated to make the best use of their collective information.

21. **Remuneration.** Despite the fact that all judicial branch professionals obtain blanket job security and receive both civil and criminal immunity [TO BE CONFIRMED], a large percentage of people would leave these positions if given a chance. These jobs are very poorly paid, with salary ranges between _____ and _____. Almost any lawyer can make more money than a judge or prosecutor. The average judge's salary is barely sufficient to meet housing, qat and food expenditures. All other basic expenditures and any "extras" have to be paid from a non-salary source. This explains why it is quite common for judicial branch personnel to accept bribes in order to feed their families.

D. Judicial Education

22. The quality of judges can be directly affected by the quality of general legal education. This is particularly true in a country like Yemen where the curriculum offered at law schools and at the Supreme Judicial Institute is not comprehensive enough or modern enough to warrant the graduation of judges fluent in English and able to understand and resolve disputes involving international business transactions. The issues faced by law faculties in Yemen are identical to those faced by the Supreme Judicial Institute.¹ The curriculum is not suitable, nor does it compare favorably to curricula in other Middle Eastern law faculties, let alone western European ones. The Yemeni legal education system faces many of the problems that many civil law systems have faced in their recent evolution (i.e. moving away from strictly didactic teaching methods and limiting the number of students admitted to popular faculties such as law). There has been no updating of teaching methods to speak of, nor has practical training become a larger part of the curriculum. Furthermore, the inability of most Yemeni judges to speak and write in English, not to mention their lack of international exposure, remains a major source of concern to the international business community.

23. After three (3) years of theoretical (and some practical) studies at the Supreme Judicial Council, judicial candidates must serve a one-to-two year apprenticeship period before starting their professional life on the bench. During that time, they are supposed to learn practical skills like legal research and writing and the detailed procedural functioning of the courts. Many believe that this period is not optimized and may, in certain cases, prove to be a waste of time. The skills learned during the apprenticeship year are not adequate due to deficiencies in the apprenticeship program attributed to: (a) too many graduates seeking apprenticeships each year, resulting in space and mentor time constraints; and (b) lack of incentives for the judges and other court employees to devote the time and effort to providing the apprentices with useful experience.

24. Until the approval of IDA's Legal and Judicial Development Project, judicial training was something totally unheard of in Yemen. The overwhelming majority of judges never took a refresher course during their judicial career. The same could be said for newly appointed judges. Areas where training is most required include, without limitation: (a) the enhancement of the knowledge, skills, techniques and awareness required to perform judicial responsibilities fairly, correctly and efficiently; and (b) the strengthening of the judges' ability to administer justice, including the fair and efficient management of trials and the reduction of court delays; and (c) the promotion of judges' commitment to the highest standards of personal growth, official conduct and social awareness.

E. Alternative Dispute Resolution Mechanisms

25. The reforms in the judiciary could usefully be complemented by the creation and use of modern alternative dispute resolution (ADR) methods, in particular private arbitration and the development of a "small claims" court with simplified procedures and shorter deadlines. These

¹ It is required, under the Credit Agreement for the Yemen Legal and Judicial Development Project, that the Supreme Judicial Institute modify and modernize its curriculum by June 30, 2001.

would provide efficient additional mechanisms for resolving civil disputes. There are some ADR methods currently employed in Yemen. However, their use is extremely limited and ought to be expanded. Arbitration has been used for many years by agreement of the parties mainly in commercial contracts.

26. **Private Arbitration.** Since 1997, there has been a growing awareness of the importance of arbitration in Yemen. A group of jurists and other professionals, in cooperation with the Association of Banks and the Federation of Chambers of Commerce and Industry, founded the Yemeni Center for Conciliation and Arbitration. Although no restrictions exist, this remains the only permanent specialist arbitration institution in the country. Arbitration is regulated under the Arbitration Act, dated March 29, 1992 (the Act) which allows for both institutional and *ad hoc* arbitration and permits parties to choose rules of procedure, as well as the applicable law. Arbitration can be initiated only with the prior written agreement of the parties. There are a number of disputes which cannot be submitted to arbitration such as the dissolution of a marriage, disputes against judges and disputes over the procedures of compulsory enforcement of a court judgment. Judges are barred from acting as arbitrators in cases pending before them, even if the parties so agree. Many judges are not necessarily keen on arbitration given the adverse impact it has on their ability to manipulate cases and secure additional income.

27. **Government Arbitration.** Disputes between two or more State agencies are settled either by the issuance of a legal opinion by the Ministry of Legal and Parliamentary Affairs, which binds both parties to the dispute, or by resorting to Government arbitration which is governed by the Public Authorities, Corporations and Companies Law of 1991. The Ministry of Legal and Parliamentary Affairs handles all Government arbitration. Its awards are final.

28. **Tribal Arbitration.** It is believed that around seventy percent (70%) of disputes in Yemen are settled through tribal arbitration (though this number was never tested rigorously to ascertain its accuracy). Most people who choose tribal arbitration do so as a matter of habit (not having been used to going to court to settle disputes). A minority, however, does so on account of the rife corruption in the court system. The Arbitration Act of 1992 takes note of the tribal structure and carefully accommodates tribal arbitration. A tribe is typically represented by one of its qualified elders. Accordingly, tribal functionaries continue to play a crucial role in dispute settlement, for, if the parties so agree, these tribal functionaries would be empowered as full-fledged arbitrators.

29. **Mediation.** Mediation is another alternative to court litigation. It is a process by which an impartial third party promotes an exchange among the parties to a dispute and suggests possible solutions. Mediation is voluntary and the parties are not required to reach agreement unless they so desire. The Civil Procedures Act prohibits judges from acting as mediators in cases pending before them. However, judges are under an obligation to close any case pending before them if such a case has been settled out of court. Currently, there is not a single mediation center in Yemen.

30. **Small Claims Courts.** Yemen's judicial system features no small claim courts. These are courts that deal with small monetary claims and have simplified procedures and limited appellate

rights. It is a system that would assist the regular courts in delivering swifter justice by shouldering a fair amount of work pending before them with efficiency and speed.

F. Enforcement of Judgments

31. The efficient and reliable enforcement contracts and property claims is a fundamental element of a functioning economy. Enforcement of judgments in civil cases in Yemen is widely recognized as being highly ineffective. This impression is shared both within the judiciary, MOJ and the business community alike. Once a party has obtained an order for judgment before the courts, an application to the office of the execution judge is made. The execution judge then serves a summons for voluntary execution giving the losing party a deadline to pay the judgment order. At this time, bank accounts of the debtor are frozen. After the expiry of the deadline, the judge can commence action for involuntary execution and can proceed against the debtor's assets. Estimates as to the average execution time for a judgment vary. According to all estimates, however, this exercise involves much more time and effort that is warranted and is replete with corruption.

32. In addition to enforcement of judgments of Yemeni courts, the enforcement by a Yemeni court of a judgment rendered by a non-Yemeni court is possible in Yemen provided the following requirements have been met: (a) the judgment has been rendered by a court that had subject matter jurisdiction; (b) the judgment is final; (c) the judgment is based on legal principles consistent with the general principles of international law; (d) the judgment does not violate any principle of Shari'a; and (e) the judgment does not contravene public order in Yemen.

G. Access to Justice

33. It appears that elements of the Yemeni public are aware of their legal rights and that the court system is used by some to settle disputes. The level of court fees does not appear to deter the public from using the courts. In civil cases, where a monetary amount is specified, the court fees are set by law under which a common tariff is published intermittently. Tariffs are approved by executive decree. Court fees are collected by the courts and paid to the central government.

34. In civil cases, individuals appear to be using the court system with or without legal representation. It is estimated that only in _____ percent (--%) of civil cases before the courts were the parties represented by lawyers. The level of legal fees varies among governorates but remains, in large measure, accessible. The state provides a legal aid system under criminal cases. No such system is available in civil cases.

H. Public Perception of the Judiciary: Issues of Corruption

35. Very little respect for the law and legal institutions exists in Yemen, and even less respect is accorded the individual judges and prosecutors. The justice system receives a very low measure of trust both from the public at large and from other state institutions. It is popularly believed to be inefficient and corrupt. This perception of the court system has undoubtedly been assisted by a

somewhat active press which helps increase the awareness of the citizenry of the problems affecting the judiciary.

36. The consequence of the extremely low pay, poor working conditions and the lack of respect for the judicial branch's employees are many-fold. First, few highly competent lawyers are attracted to this work. Second, according to strong anecdotal information, most judges and prosecutors often resort to corruption in order to meet their basic living expenses. There remains a very small cadre of extremely dedicated and competent professionals who are strong supporters of change in the judicial branch. The large balance of remaining judicial branch employees are often not motivated to move their caseloads along, are not well-trained or otherwise informed about the law, or are directly susceptible to bribery. This problem is equally great for the court personnel. Almost all concerned complain about the lack of competent and honest staff. The court personnel are not properly trained in their functions, not motivated to serve as part of a system which resolves disputes and paid extremely low salaries. It is commonly known that clerks are paid small sums to hide files or to move files up on a judge's calendar, and that larger sums are paid for a file to be completely lost. No efforts are made to retain or reward competent staff. Their working conditions are poor, especially in the busier court systems. Nor are the judges able to terminate incompetent workers without facing civil and administrative claims.

37. An analysis of the manner in which the SJC performs its supervisory functions reveals serious deficiencies that undermine the efficiency of the judicial branch. The SJC has a broad-based administrative mandate but lacks the resource and capacity to execute its functions. It has the clear constitutional responsibility and right to supervise and discipline all judicial branch employees. However, given the lack of any system through which disciplinary matters are reported and investigated, or any clear set of guidelines for the conduct of employees, corruption often goes unpunished. Additionally, the SJC does not have expert staff whose responsibility would be to deal with disciplinary cases.

38. Furthermore, there are no written standards of conduct for prosecutors. Since these judicial employees are so poorly paid, and since they receive little training (and no training on ethics), the usual result is that a variety of ethical breaches (by Western standards) are quite common. There is also very substantial anecdotal information that case decisions are commonly resolved through bribery of the judges and court administrative personnel.

39. The president of each court is responsible for reporting disciplinary matters to the SJC, where the president has determined that specific disciplinary measures are warranted, but without standards or administrative support for this function, this step is very rarely taken. Another strong reason for the lack of disciplinary measures is that few judges desire to expose the corruption or inefficiency of their colleagues for fear that attention will be turned to their own conduct. Without an administrative structure and standardized rules of conduct, there is little impetus or pressure to refer judges or other judicial branch personnel for serious discipline.

I. Sector Financing.

40. TO BE COMPLETED.

III. LAND LAW

A. The Fundamental Issue

41. Investment in Yemen is severely curtailed by the inability to acquire secure title to land. The existing land registration system is ineffective. The large number of disputes relating to land overburdens the judicial system (80% of the cases before the court system relate to land disputes), results in a loss of revenue to the Government and stunts direct investment and the credit market. The absence of an adequate land registration system undermines the security, predictability and certainty of commercial transactions, a pillar for a functioning market economy. The ensuing distortions are grave. It is not uncommon to learn that the same piece of land has been sold by its owner several times to different buyers, or that an individual has sold a piece of land he does not lawfully own. There is very little public confidence in the land registry as registration does not, in itself, secure title. Worse even, most land transactions are not registered in the land registry.

B. Recording Rights to Land: Different Systems

42. There are three (3) internationally recognized systems of recording rights to, and over, land: private conveyancing, registration of deeds and registration of title. All three systems are in use in various countries and in different forms and combinations, though the latter two are the more prevalent. Transfer of land means the transfer of certain interests temporarily enjoyed in and over the land. Ownership of land means ownership in perpetuity. Ownership for a limited period of time is called leasehold. Minor interests, known as encumbrances, can also be imparted on land. These may restrict the physical enjoyment (right of access, water or conditions of use) under certain circumstances. Examples of encumbrances include rent and mortgages. Interests in land may also be exercised by horizontal strata. Someone, other than the person having surface rights, may have mining or oil rights.

43. **Private Conveyancing.** Under this system, registration and recording of rights to and over land are based on the claims presented by the person occupying the land. Interests in land are transferred by signing, sealing and delivering a private deed. The conveyance stating the owner's claim to the parcel of land, an abstract of all documents referring to said parcel, a description of the parcel and a contract of sale relating to the parcel are all that is needed to complete the transfer transaction. Weaknesses of this system include a lack of duplicate title deed, an absence of physical examination or survey of the parcel of land and a lack of public registration of the transaction. No safeguards or protection exist as the transfer is based on a personal claim, rather than good marketable title.

44. **Registration of Deeds.** This system is similar in many respects to the private conveyancing system but differs in its requirement that the transaction be registered for the interest of the public at

large. Registration is carried out by a public officer who copies or abstracts the deed in an official registry. Title to a given parcel of land is proven through a search in the deeds registry against the names of all individuals who may have formerly enjoyed ownership rights over the parcel. The success of the search depends on the thoroughness of the registration process. Yemen applies this system. The deeds registry is a record of transactions in rights and not of the rights themselves, as the registrar has no way of knowing if the owner is justified in claiming the alleged property rights. Registration was introduced to prevent fraud in conveyancing, reduce time-consuming and costly searches and bring order into the land transfer market. It is limited to recording private conveyances but does not extend into investigating the validity of the documents that are produced. A deed which was registered first has priority over a deed registered at a later point in time. Although a better system than private conveyancing, it still lacks an element of certainty and uniformity. This system has been adopted by France, Italy, Holland, Greece, India, Turkey, South Africa, Pakistan and parts of the United Kingdom.

45. **Registration of Title.** Widely believed to be the best land registration system, registration of title is an authoritative system of recording interests in land at a public office. The identification of the parcel, the nature of the rights enjoyed over it and the identity of the beneficiaries of such rights is the basis of the registration. Every transaction impacting on title to the parcel is registered. A cursory examination of the title at the land registry reveals all that needs to be known about any given parcel. The validity and legality of the information provided by the land registry are government guaranteed. Title registration, however, depends on an efficient system of cadastral surveying whose prohibitive cost has been one of the main reasons why many countries have not opted for title registration as their land registration system. A cadastral survey would describe and determine, beyond doubt, the boundaries of a given parcel of land. This system has been adopted by such countries as Switzerland, New Zealand, Australia, the states of New York and California, Lebanon, Syria, Tunisia, Algeria, Morocco, Egypt, Sudan, Scotland, Kenya and Malaysia. One system of registration of title, the Torrens system, first introduced in South Australia in 1858 and in New Zealand in 1870 had outstanding success and has since been adopted by many countries worldwide.

C. Legal Framework Governing Land Tenure and Registration

46. There are three (3) formal types of land tenure in Yemen: Waqf land, Government land and private land. Waqf land is land held in permanent trust by the Ministry of Waqf for the benefit of moslem religious institutes and charitable purposes (hospitals, schools and mosques). This type of property is classified into three (3) main types: Inner Waqf, consisting of all mosques and their land held in cities and towns or properties held in the rural areas whose revenues are used for the benefit of the town mosques. Outer Waqf consists of all mosques and their land in rural areas for the upkeep of religious institutes in villages. Private Waqf is land in private ownership where a portion of the income from land is donated for religious purposes and remains an encumbrance on the land for perpetuity.

47. Government land is land which was previously the property of the former royal family and was taken over by the state upon the formation of the Yemen Arab Republic in 1962. Urban land

records are kept in the Ministry of Finance, Department of Public Domain, and the land is administered by the Ministry of Municipalities and Housing through its city and town municipal authorities, and in rural areas by tribal or village leaders. Land may be purchased or leased from the Government. The original deeds of this land are kept in the Central Bank of Yemen, and registers of transactions, sales, purchases leases are kept in the provincial offices of the Ministry of Finance. Government land consists of large areas of open land, land for military use, land on which public service buildings (schools, hospitals and ministries) are built and land granted by the Government for public utility, i.e. roads and streets.

48. Private land covers all land held in private ownership, urban and rural, which neither Waqf land nor Government land. Private land is subject to Shari'a law which ensures that the direct descendants of the owner, and failing that the indirect descendants, inherit the estate upon the owner's death. Private land may be freehold in which case certain interests are owned in perpetuity, or leasehold in which certain interests are for a strictly limited period.

49. Land registration, however, is governed by the Law No. 12, dated February 8, 1976 (Law No. 12), which establishes a system for the registration of real property rights. Law No. 12 requires the maintenance of the following registers: (a) a register book containing all land parcels and their description; (b) a daily journal featuring daily applications for registration; (c) an index of proprietors featuring a list of the names of owners entered into the register book; (d) a deeds register featuring all official records of parcels not owned by private persons (i.e., owned by the Ministry of Waqf and the Department of Public Domain). The Ministry of Public Works is the agency charged with implementing the Law No. 12 through the Land Registration Authority (LRA). It is also the agency in charge of issuing implementing regulations to ensure the full attainment of the objectives of Law No. 12. The Ministry is required to maintain official registers and regional offices, and to provide technical mapping for all land parcels. Land registration is not compulsory in Yemen.

50. The main objective of Law No. 13, dated January 24, 1977, was to control land speculation by restricting ownership of land by a single person to 2,200 square meters in rural areas. Rural offices of LRA are required to maintain registers for all transactions involving parcels of land whose size is inferior to 2,200 square meters. Courts and Government authorities were not to recognize, nor were commercial banks supposed to grant mortgages for, land transfer transactions unless the land had been registered with LRA. Law No. 12 has been deemed by experts to be an ambiguous text that falls short of providing an adequate framework for land registration. The lack of suitably qualified staff to implement the law and the lack of regulations defining the exact working procedures undermined the impact of Law No.12. Implementation of Law No. 13, however, has been more successful in that it has led to a registration of deeds system, though many experts would argue that impact on the ground is far from adequate.

51. Laws No. 12 and 13 have been supplemented by Decree No. 65, issued in May 1991, whose main objective is to ensure, following unification in 1990, the return of land in the former Yemen Democratic Republic (South Yemen) nationalized after 1967 to its former lawful owners. The poor implementation of Decree No. 65 has unfortunately led to some form of "land grab" with

corrupt practices and general disorder (this and other issues relating to the return of land in the former South Yemen are addressed under the IDA-financed Southern Governorates Rural Poverty Alleviation Project).

D. Methods of Land Transfer

52. To buy and sell private real property, both the seller, with his deed, and the buyer should report to a notary public's office. The notary draws up the sale contract. A new deed is prepared and features a full description of the property, including area, neighboring parcels, boundaries and measurements. The property is paid for and the new deed is signed by both parties and by the witnesses. The old deed is endorsed by the seller with a statement declaring the change of ownership, and handed over to the buyer. The deed must be registered in the office of the notary public and the LRA agent. LRA collects these records on a quarterly basis.

53. Nowadays, many sales of land are concluded without registration with the LRA. Reasons range from people's ignorance of the requirements of the law to their lack of confidence in the LRA and their wish to avoid paying transfer taxes. Given that proof of registration is required by commercial banks prior to financing a mortgage, and by the Ministry of Construction, Housing and Urban Planning prior to granting building permission, only those affected by these requirements have an incentive to register. Others have little incentive to do so as registration does not provide secure title and triggers collection of sales tax and the religious tax, called zakat.

E. Fiscal Aspects of Land Transfer

54. **Transfer Taxes.** Unlike most countries, property taxes based on the property's value are collected neither at the local nor at the national level. In urban areas, the equivalent tax to support the functions of local authorities in a given governorate is appended to electricity bills. In rural areas, no property taxes are imposed and, should they be imposed, such taxes may well be resisted. In any case, the Government does not appear intent on imposing such taxes in rural areas. Raising revenue through property is a normal economic justification for systematically registering land titles. As this is not planned for rural areas it makes it impossible to justify, from a purely economic perspective, a sweeping land registration program.

55. Transfer taxes are set at three percent (3%) of the sale price, as stated in the sale contract. Parties to a sale contract often agree to understate the sale price to avoid paying full taxes. Three percent (3%) is an internationally used levy that should not inhibit the land market nor prevent registration if marketable security were provided through the land registration system. In addition to the transfer tax, zakat is imposed at the rate of two and a half percent (2.5%) and charged on the profit made on the sale (the difference between the purchase price for the property and its sale price).

56. Registration in the southern governorates is mainly concerned with land allocation and restitution following the requirement to return nationalized land to its initial owners and provide land to the landless. The tax laws in the Southern Governorates are not conducive toward encouraging

registration of land transactions. Land is allocated at a nominal price but the transaction costs can reach up to seventeen and a half percent (17.5%) of the land's value. Clearly, such a high tax rate constitutes a disincentive for registration.

F. Lost Revenue

57. Given the sorry state of land registration, only a small fraction of revenue that should accrue from the land market is actually collected by the Government. Apart from the estimated half a billion Rials "lost" to the Government on a yearly basis, more is "lost" to the economy as a whole through lack of investment and the glut of land disputes. It would obviously be advantageous to register every parcel in the country and have clear ownership details. This, however, would require, in each case involving a land dispute, a full scale adjudication of title, including a survey, a review of existing documentation, evidence gathering from owners and those who own neighboring parcels and the preparation of complete records for all privately-owned land. The adjudication process would resolve all outstanding disputes. Registries and registration maps would then be developed.

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