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ASSESSING THE IMPACT OF YEMEN LEGAL SYSTEM ON ECONOMIC AGREEMENTS AND FOREIGN INVESTMENTS

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Abstract

This paper presents a theoretical analysis of the Yemeni legal system and how it affected the economic agreements and direct foreign investment prior to the 2014 crises. Specifically, we shall be looking at bilateral and multilateral trade agreements by the Yemeni government between 2000 to 2014, the internal bureaucratic processes involved in these agreements, the roles of the various arms of governments in the development and implementation of these agreements, direct foreign in Yemen during this period and the successes and challenges of these international agreements. This analysis is important because economic hardship was one of the driving factors leading to the escalation of the Yemen crisis in 2014. Thus, based on this analysis we shall understand how the Yemen legal system contributed to the current crises despite the glimpse of economic hope prior to 2014. We find that the absence of a properly functioning legislative and judiciary institutions have undermined the government prospects, also the weakness of the legal institutions in implementing the rules and regulation which enhance the foreign investment. Finally, enhancing the role of legislative and judiciary institutions in implementing the government planes could positively influence the investor confidence in the political and economic regime and thus, enhancing the foreign investment and economic growth in Yemen.

Keywords: Yemen legal system, economic reforms, trade agreements, direct foreign investment, economic crises

INTRODUCTION

Yemeni has a complex legal system which takes its antecedents from Islamic law (shari`a), tribal laws (`urf qabalî), excerpts from Egyptian and other Arab laws, and international principles (Michaelle, 2007; Nageeb, 1994). Evidence of these pluralistic sources can be seen across various fundamental codes such as the Yemeni Constitution, the Personal Status Code, the Civil Code, the Criminal Code, and the Arbitration Code (Kassim, n.d). The Yemeni legal system cuts across all three arms of government through special roles and mandates given to various state institutions. Under the executive key institutions include Justice, Interior, Legal Affairs, and Human Rights ministries (Nageeb, 2011).

The Yemen legislature consists of two houses: The House of Representatives (or Parliament), whose members are elected by universal adult suffrage every six years, and the Shura (Consultative) Council, whose members are appointed by the President. The Constitution grants the Parliament extensive powers (Articles 62 to104 of Yemen Constitution, 2001). These powers include: the power to initiate laws in all policy jurisdictions (Articles 62 and 85 Yemen Constitution, 2001); to approve the general budget (Articles 62, 87 to 91 of Yemen Constitution, 2001); to ratify international treaties and conventions (Article 92 of Yemen Constitution, 2001); and to summon officials from the executive branch, either in plenary sessions or before investigative committees (Articles 93 to 99 of Yemen Constitution, 2001). Members of parliament (MPs) enjoy broad immunity from arrest or criminal prosecution (Article 82 of Yemen Constitution, 2001). However, the legislature is subject to a number of important limitations by the executive branch: Ministers may serve simultaneously as MPs; the Parliament cannot impeach the President or replace the Prime Minister; also, the Parliament has no oversight over the intelligence services, the secret police and the military law enforcement agencies. Perhaps the most worrying limitation of the legislature is the rather broadly defined provision of the Yemeni constitution (Article 101 subsection *a* and *b,* 2001) which grants the President the power to dissolve Parliament with or without a national referendum (AL-Shebami, 2013).

Under the Judiciary arm the administration of justice is carried out by Courts. The court system is based on an independent and integrated judiciary, as laid down in the Constitution (Articles 149 to150, 2001) and the Law on Judicial Power (1/1991, hereafter: LJP, 2001). This means that, in theory, the law precludes exceptional courts for military trials, religious courts, a constitutional court, and other such courts. All cases are to be brought before the official courts, which when necessary are subdivided into special chambers to handle cases concerning personal, civil, criminal, administrative, or summary justice. The LJP, however, does provide for the establishment of separate courts of first instance “whenever needed” (Article 8 subsection b of Yemeni Constitution, 2001), and explicitly designates courts for juvenile cases (Articles 49 of Yemen Constitution, 2001) (AL-Shebami, 2013; Anwar, 2015).

The court system consists of three tiers: Courts of First Instance, Courts of Appeal, and the Supreme Court. Yemen has no small claims courts to deal with small monetary claims with simplified procedures and limited rights of appeal. The jurisdiction of the courts, their composition, and their competence are regulated by the LJP, as stated in the Constitution (Article 153 of Yemen Constitution, 2001). The LJP does not determine the number of First Instance and Appeal Courts, but entrusts this to the Minister of Justice, after approval from the Supreme Judicial Council (Articles 39 and 45 of Yemen Constitution). The LJP allows other forms of dispute resolution, insofar as these are consistent with the officially prescribed rules and procedures. Such alternative dispute settlement is laid down in the Arbitration Law (2001).

The Yemeni Reforms

Having talked about the framework and players of the Yemeni legal system, we shall also look at the Yemeni reform efforts before and after 2000. Prior to 1995 Yemen had a closed and protected economy characterized by high tariffs and restrictions on foreign goods. These policies were directed towards creating revenues for the government (Anwar, 2015). After 1994 crisis, there was enormous international pressure on the Yemen to adopt new economic reforms in order to avert a failing state. Since then Yemen has stride with reforms aimed at liberalizing and diversifying its economy. On paper, these efforts say a major boost starting from 2000 when Yemen formally requested to join the World Trade Organization (WTO) till 2014 it became a full member of WTO. In the run up to the WTO accession significant adjustments were made to the certain Yemeni laws and policies aimed at meeting WTO and world regional standards. For instances in 2001, Yemen joined the Integrated Framework which was an instrument to create wealth and fight poverty. In 2004 the Yemeni cabinet approved a Diagnostic Trade Integration Study (DTIS, 2013) aimed at addressing issues related to WTO accession [10]. From 2000 to 2005 a Five-Year Development Plan was also implements aimed at poverty reduction. From 2006 to 2010 a National Development Plan for Poverty Reduction was implemented. And the National Reforms Agenda in to achieve the Millennium Development Goals (MDGs) by 2015 was also well on course during this period (UNCTAD, 2013).

Economic Agreements

In a broad sense an Economic Partnership Agreements can be referred to as an intensive alliance, signed by two or more countries seeking to enhance reciprocal economic integration and participation. Economic agreements have become necessary and popular among countries seeking to survive or competing favorable on global arena. As such in the preceding subsections we shall be looking at the multilateral and bilateral economic agreements Yemen is a party to, the internal bureaucratic processes involved in making these agreements and the roles of the various arms of government in developing and upholding these agreements.

Multilateral Agreements

In an effort to make economic reforms and promote sustainable development the Yemeni government entered into more than 60 commercial and industrial agreements at both multilateral and bilateral levels leading to the creation of two free zones at Aden and Hodeida. On a multilateral level, Yemen became a member of the WTO on June 2014, 13 years later after it formally applied membership in 2000 (Musibah, 2014; DTIS, 2013). In principle, the Yemeni market became opened to foreign products on one hand by the reduction of tariffs and application of WTO measures on customs valuation, price controls, state enterprises, technical barriers to trade and others. And on the other hand, Yemeni products were also opened to new markets with the elimination of any discriminatory, restrictive and overburden hurdles Yemeni products would have face in other WTO markets.

Secondly, Yemen also joined the Greater Arab Free Trade Area (GAFTA, 2005) which aimed to create Common Arab Market. This agreement took effect on January 2005 and Yemen products were allowed immediate full exemption on customs duties and charges while the Yemeni market was to allow full open access to other GAFTA members later in 2010.This was a concession given to Yemen because of its LDC (Least Developing Country) status. Yemen is also member of other trade blocks including the following (UNCTAD, 2011; DTIS, 2013):

- Pan Arab Free Trade Area (PAFTA, 1981): Yemen is a member of the PAFTA that was established in 1981. The agreement is based on facilitation and development of trade among Arab states with the aim of eliminating custom duties and tariffs.
- Council of Arab Economic Unity (CAEU, 1957): Yemen is an active member of the (CAEU) which was established on June 1957. It became effective in 1964 with the ultimate goal of achieving economic unity among its member states.

Bilateral Agreements

On a bilateral level, Yemen also made some efforts to strengthen its economic relations with countries such as Turkey, Bulgaria, Ethiopia and Tanzania and various economic and trade cooperation were reached (Cho, 2004; DTIS, 2013) The bilateral agreements of Yemen include:

- European Union: The EU is ranked as one of Yemen's main trading partners with the bilateral trade growing over the years through a Development Cooperation Agreement with North Yemen which was extended in 1995 to cover the entire country following 1990 unification. The relations between EU and Yemen are governed by a framework cooperation agreement which covers commercial, development and economic issues and came into force in 1998.

- Gulf Cooperation Council (GCC): The primary trading partners of Yemen are the GCC countries. The GCC secretariat and Yemen have signed numerous economic and commercial agreements and protocols and have established joint ministerial councils, committees and working groups to study the commercial legislative and legal aspects in Yemen and GCC states.
- Trade and Investment Work Agreement (TIFA, 2004): In 2004 Yemen signed TIFA with United States creating a joint council for discussing a wide range of commercial issues and permanent dialogue with the aim of strengthening bilateral trade and investment between US and Yemen.

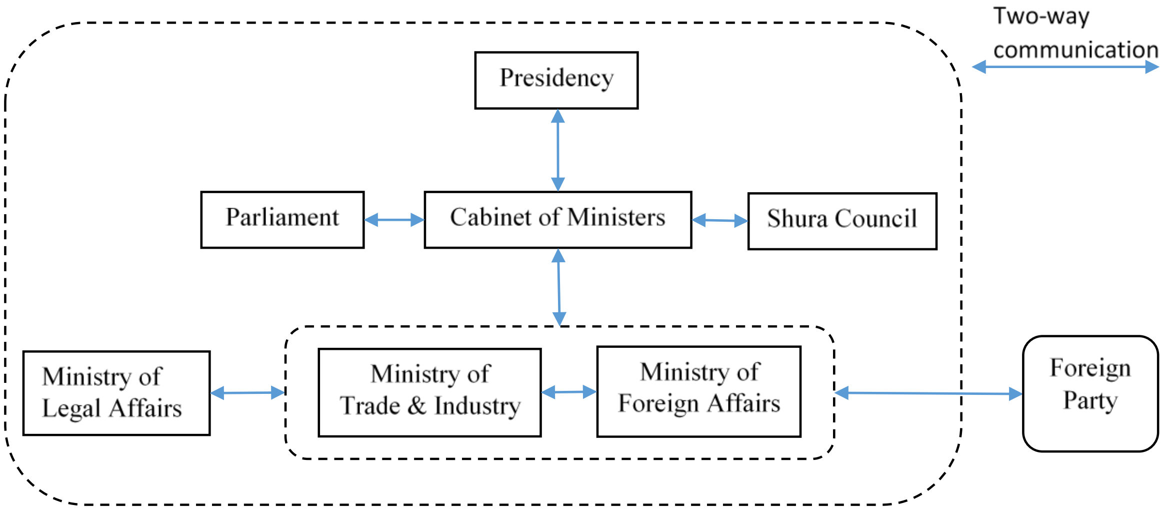
Bureaucratic Processes

Making economic agreement often involve external negotiations and internal processes aimed at advancing the national interest of respective countries. In the proceeding subsections, we shall be looking the internal processes involved in the development of economic agreements in Yemen as of 2000.

Development Process

The development of proposed economic agreements is spearheaded by the executive branch under the auspices of the presidency, the various ministries in consultation with Shura (advisory) council and with the approval of the legislature. To begin the process, drafted proposals are developed at ministry level by a by Ministry of Trade and Industry in consultation Ministry of Legal Affairs and the Ministry of Foreign Affairs. The drafted proposal is then submitted to the cabinet of ministers for further deliberations who also consults the “Shura” council before submitting it to the house of representative who may approval. Upon approval, the document is finally endorsed by the President to bring it into force (Central Bank of Yemen, 2010). Figure 1 is the process development diagram.

Figure 1: Process development diagram



Implementation Process

After the approval of the document by the House of Representatives and the endorsement by the President the next step is the finalized the agreement with the external party which marks the beginning of the implementation process. The implementation process is carried out by the ministry of trade and industry finalizes the negotiations with the external party by signing a legal binding document to commission the implementation of the agreement. The agreements are signed under the guidance of competent legal intuitions capable of handling legal matters fairly between the two parties. After commissioning the agreement, the ministry Trade and Industry publishes the agreement in Yemen and oversees the enforcement of the agreement locally (UNCTAD, 2011).

Impact Evaluation

Between 2000 and 2014 a lot of reforms and policy initiates were implemented in Yemen aimed at liberalizing trade. This section seeks to assess the impact these major reforms from the dimension of direct foreign investment (DFI). We selected DFI as our measure because the override objective of the Yemeni reforms was to diversify the economy and promote sustainable developments. DFI is commonly defined as a cross-border investment made by an enterprise directly in a production facility or in the marketing of a product (Anyanwu, 2012). DFI is a core element of the global economy and it characteristic features include stock purchases, earnings reinvestment, and lending of funds to foreign subsidiaries. Both IMF and the World Bank view

DFI as a vehicle of globalization in the 21st century (Duce, 2003: Temiz, 2014; Rajana 2008). The advantages of DFI are a many fold especial to developing countries. These advantages include foreign exchange improvement, technology transfer, improvement of management and marketing methods, improvement human capital via job training and HRM strategy, improvement in the balance of payment, job creation and promotion of the exports and many and so on (Shahzad et al., 2013; UNCTAD, 2011; Crespo & Fontura, 2007; Gorg & Greenaway, 2004; Brooks et al., 2003).

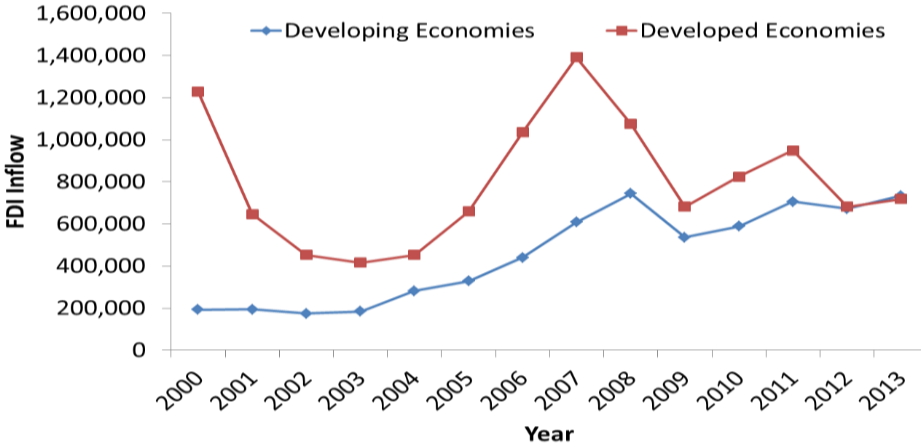
Having identified DFI as an important measure for assessing the impact of economic reforms, we shall look at the DFI performance in Yemen between the period of 1999 and 2014 when massive liberal economic reforms also took place in Yemen. Based on the performance of DFI we can be able to understand the impact of the Yemeni Legal System on the opportunities provided by the reforms. This is because economic reforms and strong legal system goes hand-in-hand in promoting in attracting foreign economic investments. Investors make rational decision and no matter the attractive reforms they will only be willing commit significant investments to an economy if they have confidence in the legal system. Table 1 presents the Yemeni FDI inflows between 1999 and 2014 with comparisons to worldwide figures.

Table 1: Worldwide FDI between the period of 1999 and 2014

Year	World	Developing Economies	Developed Economies	GCC	Yemen
2000	1,418,788	192,178	1,226,610	391	6
2001	839,780	193,559	646,221	1,957	155
2002	625,815	173,726	452,089	1,515	114
2003	598,860	183,285	415,574	6,134	-89
2004	733,597	280,770	452,827	14,145	144
2005	986,853	328,655	658,197	28,318	-302
2006	1,474,955	440,201	1,034,754	39,232	1121
2007	1,999,074	607,681	1,391,393	48,405	917
2008	1,817,004	742,906	1,074,098	61,698	1554
2009	1,216,805	535,798	681,007	51,441	129
2010	1,411,137	587,632	823,505	41,258	189
2011	1,654,283	706,035	948,248	26,275	-518
2012	1,353,930	671,825	682,105	26,368	-529
2013	1,451,676	733,135	718,541	23,888	-133

Sources: UNCTAD 2013

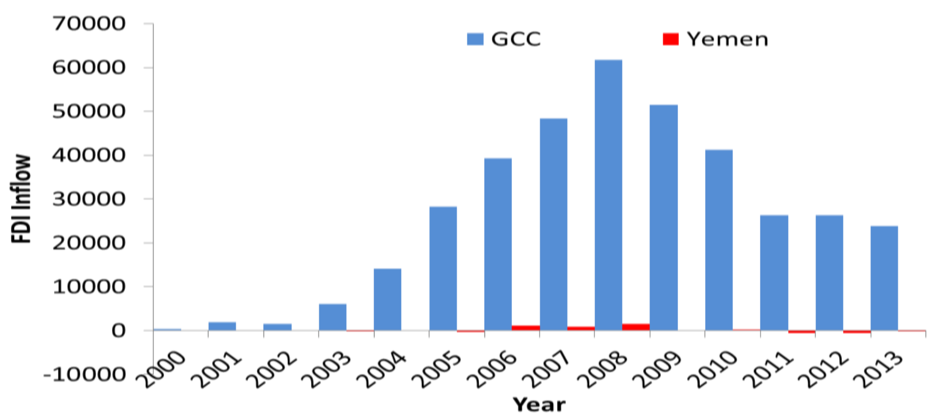
Figure 2: Comparison of DFI inflow between Developed and Developing countries



Source: World Investment Report 2013

Figure 2 shows the trend of DFI inflow between developed and developing countries from 2000 to 2013. And from the figure it can be observed that DFI inflow in developed countries has significantly higher than that of the developing countries except for 2012 and 2013 when they all recorded the same values. The developed countries have also experienced the most dramatic fluctuations with the lowest recorded in 2003 and highest recorded in 2007. With the developing countries, the lowest was in 2002 a year before that of the developed countries and the highest was in 2008 a year after that of the developed countries. However, the direction of the trend has been quite the same, so even when there is a sharp fall in the FDI of the developed countries it doesn't necessarily translate in a rise in the developing countries. Yemen and its neighboring Gulf Cooperation Council (GCC) countries are categorized under the developing countries; however, there is a sharp contrast between the FDI values of Yemen and the GCC countries.

Figure 3: Comparison of FDI Inflow between Yemen and Gulf Cooperation Countries



Source: World Investment Report 2013

From figure 3 it can be observed that the GCC far outperforms Yemen in terms of FDI inflows. However, the directions of upward and downward inflows trends of both Yemen and GCC are consistent with the overall trend of the developing countries. Like the GCC the maximum FDI performance for Yemen was recorded in 2008 even though.

DISCUSSION

Successes

Since 2000 when Yemen began the WTO accession processes the investment climate in the was beginning to improve with DFI inflow reaching as high as 1554 in 2008, the highest it has ever been before it plunged into negatives in 2011 (Musibah, 2014). Even with trend expectations were still high that the Yemeni will grow its economy by 5.0 percent in 2014. Yemen final accession to WTO in 2014 also brought some at a time when the country needed it most. Yemen became free market and Yemeni products were also free to compete in WTO member's states without unfair restrictions. There was also hope that the market policies will attract DFI into Yemen, revamp the economy, create job opportunities and promote living condition. More importantly, Yemen steady efforts to joined WTO also attracted a lot of donor support. International donors alone pledged $7.8 billion in assistance to Yemen in 2012, with segments of the funding intended for large infrastructure projects (Republic of Yemen, 2006). However, these expectations and prospects were short lived and never really fully materialized due to a host of reasons including insecurity and failure of the legal system create the needed confidence for DFI inflow.

Challenges

Legal challenges are one of the major obstacles that impeded the realization of the economic boom in Yemen despite the economic reforms prior to the 2014 crises. Even with the reforms the political climate in Yemen was still characterized by weak institutions making it difficult for the legal system to function (Comprehensive Development Review, 2000). This factor among many others discouraged foreign investment in Yemen because it is just rational for investors to avoid committing meaningful investment into an economy with weak legal institutions and in security. Unfortunately, this was the case in Yemen at the time. On paper the Yemeni laws may measure up to international standards, however, the weakness in the judiciary and the legislative branches greatly undermines investor confidence in the reform policies.

Another issue is the lack of competent judiciary to handle commercial matters. Even though there are people trained on commercial matters there is still a cloud of skepticisms among even Yemenis with regard to the competence of judiciary. The best legal minds are usually dominated by inferior ones because of the power executive influence. As such it is believed that those at the helm of affairs in the commercial courts simply lack good acquaintance of special international provisions involving commercial activities like the conditions of sea transport contracts and many others. Besides that, lack capacity building courses to acquaint legal practitioners with latest developments involving investments and the delay of trail procedures add up the tray of challenges (Comprehensive Development Review, 2000; Nageeb, 2011)

Yemen has two courts of arbitration responsible for handling commercial disputes involving foreign parties. But even with that the medium of communication in those courts is only Arabic so there is bound to be to dissatisfaction and communication setbacks in handling commercial issue. This factor is a great disincentive for patronage of Yemeni commercial courts by foreign parties. And even more challenging factor is the instability of Yemeni law and the overlapping involving different judicial systems will create a lot of problems and the investment issues will be circulating between them (Hesham, 2004; Amnesty International, 2010; World Bank ,2000). There is also no execution for the issued judgments, particularly when a government institution is involved in the case, thus causing investor's rights to be lost.

Yemeni citizens are theoretically equal before the law, but in practice punishments are unevenly applied with little possibility of recourse, particularly when the ruling class is involved. The executive regularly intervenes in judicial procedures, and judges tend to be politically appointed, which further skews the legal balance in favor of the ruling class. It is virtually impossible to seek legal redress under this system without the protection of personal relationships. Yemenis' attachment to their formal legal institutions is not nearly as high as in some other Arab states, such as Egypt, and remolding them is not inconceivable, particularly if the benefits of doing so are clear. Again, the difficulty lies in the unwillingness of those at the top to reform a system from which they draw personal benefit (Hesham, 2004; Amnesty International, 2010).

CONCLUSION

Theoretically the Yemeni policies and economic reforms since 2000 have had the potential of attracting foreign and domestic investment. However, the absence of a properly functioning legislative and judiciary institutions have undermined these great prospects. The weakness of these institutions from our understanding has been mainly due to the influence of a very powerful executive arm of government that spares no effort in trying to avoid checks and balances. Hence the legal instructions like many others are often packed with government loyalists who do not uphold checks and balances required in a free society.

Based on our analysis, these weak institutions without any doubt have had an impacted the investment climate in Yemen as reflected in the FDI figures of from 2000 to 2013.We believe that foreign investors are rational people and before they make investment in an economy they have to evaluate the risks and benefits. And unfortunately, in the case of Yemen the security risk was high despite the good reforms on paper. Based on the FDI trends, we believe that going forward Yemen will need strong and independent legislative and judiciary institutions to supplement the economic reforms and trade liberalization initiatives in order to restore investor confidence in the Yemeni economy.

The fact of the matter is that, Yemenis themselves do not have confidence in their formal legal system. According to the World Bank estimates only about 30 percent of Yemenis relies on the formal judiciary, while the rest call upon tribal sheikhs to settle their disputes. Yemenis prefer their tribal justice system to that of the state system, where corruption is rampant, and verdicts are poorly enforced. With the current status quo, local Yemeni investors will prefer investing their resources overseas than in their local economy. In short, we believe that having strong legal system foundation for economic prosperity and Yemeni economic reforms should go hand in hand with building strong legal institutions.

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