

Overall Score:

46 - Very Weak

Legal Framework Score:

66 - Weak

Actual Implementation Score:

23 - Very Weak

Category I. Civil Society, Public Information and Media

I-1. ³⁶Civil Society Organizations

1. Are anti-corruption/good governance CSOs legally protected?

100

1a. In law, citizens have a right to form civil society organizations (CSOs) focused on anti-corruption or good governance.

YES | NO

Comments:

The International Center for Non-Profit Law, ICNL, an organization that helps governments set up appropriate legal frameworks for a sound civil society, conducted a workshop (Nov 17-18, 2007) to come up with recommendations for reforming Law No. 1. The recommendations would have given greater strength and momentum to civil society, but nothing materialized.

The Executive Procedures have further restricted nongovernmental organizations (NGOs) activity. Independent studies such as the Carnegie report highlight the difficulties: While there is legal space for NGOs, the regime's redlines are perpetuated by a civil society aware of the consequences and of the probable futility of aggressive dissent, as well as of the rewards of at least partial compliance. Yemen's economic turmoil compounds this situation because, although the background threat of political violence remains, economic scarcity makes government offers of financial assistance hard to turn down"

Earlier this year, a Danish Institute of Democracy sponsored workshop organized by HOOD (a Yemeni Human Rights NGO) came up with a new Law for Civil Society.

References:

Constitution of the Republic of Yemen, Article 58

Law No.1 2001 (Law of Associations and Foundations Executive Procedures of Law No. 1, 2004)

Carnegie Report on Yemen 2004, Page 8, http://www.carnegieendowment.org/files/cp_80_phillips_yemen_final.pdf

<http://www.icnl.org/programs/location/mena/sanaa/index.htm#conclusions>

<http://www.icnl.org/programs/location/mena/sanaa/recs-en.pdf>.

YES: A YES score is earned when freedom to assemble into groups promoting good governance or anti-corruption is protected by law, regardless of political ideology, religion or objectives. Groups with a history of violence or terrorism (within last ten years) may be banned. Groups sympathetic to or related to banned groups must be allowed if they have no history of violence.

NO: A NO score is earned when any single non-violent group is legally prohibited from organizing to promote good governance or anti-corruption. These groups may include non-violent separatist groups, political parties or religious groups.

1b. In law, anti-corruption/good governance CSOs are free to accept funding from any foreign or domestic sources.

YES | NO

Comments:

Special provision is made for civil society organizations (CSOs) that are of an advocacy nature. The war in Sa'ada was against CSOs said to be supported from the outside, when they were actually supported by the government. The government encourages foreign support to organizations that it favors or whose activities are backed by the President. In order for Yemen to accept mediation of Qatar in the Sa'ada War, Qatar was asked to support the construction of a grand mosque being built by an NGO that had been set up by the President or bore his name.

References:

Law No.1 2001, on Associations and Foundations

Law No. 66 1991

Draft Law on Organized Demonstrations, 1993

Draft Law Regulating Social and Cultural Associations, Federations, Forums, Professional Unions, and Charitable Societies 1997

YES: A YES score is earned if anti-corruption/good governance CSOs face no legal or regulatory restrictions to raise or accept funds from any foreign or domestic sources. A YES score may still be earned if funds from groups with a history of violence or terrorism (within last ten years) are banned.

NO: A NO score is earned if there any formal legal or regulatory bans on foreign or domestic funding sources for CSOs focused on anti-corruption or good governance.

1c. In law, anti-corruption/good governance CSOs are required to disclose their sources of funding.

YES | NO

Comments:

Nongovernmental organizations (NGOs) can accept money and assistance from foreign sources without government permission, although they are required to inform the government that such assistance has been given. However, before undertaking an activity based on a request or assignment from an external [foreign] entity, an NGO must obtain approval of Ministry of Pensions and Social Affairs (MPSA)."

References:

Law No. 1 2001, Article

9, <http://www.icnl.org/knowledge/pubs/ArabStates.pdf#search=%22Sources%20of%20Funding%20NGO%20Yemen%22>

YES: A YES score is earned if anti-corruption/good governance CSOs are required to publicly disclose their sources of funding.

NO: A NO score is earned if no such public disclosure requirement exists.

2. Are good governance/anti-corruption CSOs able to operate freely?

25

2a. In practice, the government does not create barriers to the organization of new anti-corruption/good governance CSOs.

Comments:

As the second and third references above indicate, activists can still organize to defend human rights and fight corruption, but the registration process can be difficult, depending on the nature of the organization and who is behind it.

References:

Executive Procedures for Law No. 1 2004

<http://www.arabic.abudhabi.mepi.state.gov/yemenjac.html>

<http://www.newyemen.net/view.php?sid=886>

100: CSOs focused on promoting good governance or anti-corruption can freely organize with little to no interaction with the government, other than voluntary registration.

75:

50: CSOs focused on promoting good governance or anti-corruption must go through formal steps to form, requiring interaction with the state such as licenses or registration. Formation is possible, though there is some burden on the CSO. Some unofficial barriers, such as harassment of minority groups, may occur.

25:

0: Other than pro-government groups, CSOs focused on promoting good governance or anti-corruption are effectively prohibited, either by official requirements or by unofficial means, such as intimidation or fear.

2b. In practice, anti-corruption/good governance CSOs actively engage in the political and policymaking process.

Comments:

Law No.1 contradicts the Constitution by placing obstacles and hindrances on the right of association guaranteed by the Constitution that render this right non-existent.

Yemeni nongovernmental organizations may not be involved in political activities." From Carnegie Endowment

References:

Alwasat article on nongovernmental organizations (NGOs) rights, Feb. 7, 2007

<http://www.carnegieendowment.org/publications/index.cfm?fa=view&id=16918>, Page 12

100: Civil society organizations focused on anti-corruption or good governance are an essential component of the political process. CSOs provide widely valued insights and have political power. Those CSOs play a leading role in shaping public opinion on political matters.

75:

50: Anti-corruption/good governance CSOs are active, but may not be relevant to political decisions or the policymaking process. Those CSOs are willing to articulate opinions on political matters, but have little access to decision makers. They have some influence over public opinion, but considerably less than political figures.

25:

0: Anti-corruption/good governance CSOs are effectively prohibited from engaging in the political process. Those CSOs are unwilling to take positions on political issues. They are not relevant to changes in public opinion.

2c. In practice, no anti-corruption/good governance CSOs have been shut down by the government for their work on corruption-related issues during the study period.

YES | NO

Comments:

Law No.1 contradicts the Constitution by placing obstacles and hindrances on the right of association guaranteed by the Constitution that render this right non-existent.

Yemeni nongovernmental organizations may not be involved in political activities." From Carnegie Endowment

Needless to say, many Zeidi religious institutes were closed, some of which were engaged in political activities. Although the issue of licensing and permits for these institutions was used as a rationale in this case, it is not an issue for Salafi (fundamentalist extremist) institutions..

References:

Alwasat article on nongovernmental organizations (NGOs) rights, etc., Feb. 7, 2007

<http://www.carnegieendowment.org/publications/index.cfm?fa=view&id=16918>

YES: A YES score is earned if there were no CSOs shut down by the government or forced to cease operations because of their work on corruption-related issues during the study period. YES is a positive score.

NO: A NO score is earned if any CSO has been effectively shut down by the government or forced to cease operations because of its work on corruption-related issues during the study period. The causal relationship between the cessation of operations and the CSO's work may not be explicit, however the burden of proof here is low. If it seems likely that the CSO was forced to cease operations due to its work, then the indicator is scored as a NO. Corruption is defined broadly to include any abuses of power, not just the passing of bribes.

3. Are civil society activists safe when working on corruption issues?

0

3a. In practice, in the past year, no civil society activists working on corruption issues have been imprisoned.

YES | NO

Comments:

Several reporters were imprisoned or harassed by authorities, and several government opposition and independent websites were blocked.

Cases of government repression against journalists and operators of websites includes closure of the Yemenportal.net website, created and run by Walid Al-Saqqaf. His car was also attacked and broken into. For more information on the Al-Khaiwani case, search the Internet for "Khaiwani," and you will get thousands of articles, statements by Human Rights groups and even government statements of condemnation.

Now an internationally known case, Abdulkarim Al-Khaiwani was sentenced to six years on bogus charges of aiding the insurrection in Sa'ada. This was in addition to several cases of repression against journalists and other advocates of human rights and sound governance.

Even satirists were not spared the long arm of government repression, as Fahd Al-Qarni was arrested and sentenced for mocking government corruption.

References:

<http://www.hrinfo.net/yemen/makal/2008/pr0521.shtml> (May 2008)

<http://yementimes.com/article.shtml?i=1180&p=front&a=2> (bottom of page)

YES: A YES score is earned if there were no CSO activists imprisoned because of their work covering corruption. YES is a positive score.

NO: A NO score is earned if any activist was jailed in relation to work covering corruption. The causal relationship between the official charges and the person's work may not be explicit, however the burden of proof here is low. If it seems likely that the person was imprisoned due to his or her work, then the indicator is scored as a NO. Corruption is defined broadly to include any abuses of power, not just the passing of bribes. "Imprisoned" is defined here as detention by the government lasting more than 24 hours.

3b. In practice, in the past year, no civil society activists working on corruption issues have been physically harmed.

YES | **NO**

Comments:

Mohammed Miftah, a Zeidi religious scholar openly critical of government corruption, was shot at and arrested by the Political Security Office (April 2008) as he was going home, reportedly with wife and his children in the car with him. He previously had been arrested in 2005 and charged with supporting the Houthi insurrection in the north. He was initially arrested and tried for leading a rally against the war in Sa'ada. The last arrest came after he was released from jail after he and another Zeidi scholar were sentenced to eight years imprisonment and death, respectively. (Amnesty International appealed for their release. Miftah was released, and the other scholar was pardoned). Both men and many more are still under arrest even though the war has ended.

References:

<http://www.hrinfo.net/yemen/makal/2008/pr0521.shtml> (May 2008)

<http://yementimes.com/article.shtml?i=1180&p=front&a=2> (bottom of page)

YES: A YES score is earned if there were no documented cases of CSO activists covering corruption being assaulted in the specific study period. A YES score can be earned if there was an attack but it was clearly unrelated to the activist's work. YES is a positive score.

NO: A NO score is earned if there were any documented cases during the study period of assault to an activist who covers corruption. Corruption is defined broadly to include any abuses of power, not just the passing of bribes.

3c. In practice, in the past year, no civil society activists working on corruption issues have been killed.

YES | **NO**

Comments:

There were deaths during protest marches in Aden earlier this year, when southern pensioners, retired government employees and members of the armed forces demanded equal treatment for all government employees and armed forces personnel. The most obvious reason those in the military were not getting their pensions is because the commanders of their respective units were swallowing the pensions. Surely this is as obvious a case illustrating the prevalent corruption as could be found in the armed forces. The protests in Aden (as is the case in Sa'ada and elsewhere in the country) were not just for the sake of pensions but also against the all-around state of corruption that is rampant in all spheres of government.

References:

<http://yementimes.com/article.shtml?i=1089&p=local&a=4>

http://www.newssafety.com/index.php?option=com_content&view=article&id=8518:Yemen%20police%20disperse%20new%20protest%20in%20south&catid=security&Itemid=100387

<http://mynetjawa.mu.nu/archives/189242.php>

YES: A YES score is earned if there were no documented cases of CSO activists being killed because of their work covering corruption in the specific study period. YES is a positive score.

NO: A NO score is earned if there were any documented cases during the study period where a person was killed related to a corruption trial, scandal or investigation. The relationship between a mysterious death and an individual's history may not be clear, however the burden of proof here is low. If it is reasonable that a person was killed in relation to his or her work on corruption issues, then the indicator is scored as a NO. Corruption is defined broadly to include any abuses of power, not just the passing of bribes.

4. Can citizens organize into trade unions?

63

4a. In law, citizens have a right to organize into trade unions.

YES | NO

Comments:

The Constitution and the Labor Law guarantee workers' right to organize. However, there is strong infiltration of labor unions by government staff and officials, and the Federation of Labor Unions and Syndicates is, for all practical purposes, a government entity with a government-appointed chairman and employees. Severe obstacles hinder the work of unions, and labor law for the most part favors employers.

References:

Constitution

Labor Law

Law No. 35 2002, Concerning the Regulation of Labor Unions

Law No. 5 1995, Concerning Labor

YES: A YES score is earned when trade unions are allowed by law, regardless of political ideology, religion or objectives. Groups with a history of violence or terrorism (within last ten years) may be banned. Groups sympathetic to or related to banned groups must be allowed if they have no history of violence.

NO: A NO score is earned when any single non-violent trade union is legally prohibited by the government from organizing.

4b. In practice, citizens are able to organize into trade unions.

100 | 75 | 50 | 25 | 0

Comments:

This reference date cannot be determined, but is still worth quoting, as it is still valid today:

United Yemen enacted a new labor code in 1995 (amended in 1997) that guaranteed the rights of unionization and collective bargaining. The government restricts this right by placing government officials in union positions of prominence. The Yemeni Confederation of Labor Unions, the country's only labor confederation, had 350,000 members in 14 unions in 2002. A limited right to strike exists. All collective bargaining agreements must be reviewed by the minister of labor."

The second source provides the most recent assessment of the relationship between the law and labor:

The labor law applies to all workers except public servants, foreign workers, day laborers and domestic servants. The law provides workers with the right to organize and bargain collectively. The government permitted these activities; however, it sought to influence them by placing its own personnel inside groups and organizations. The Ministry of Labor has veto power over collective bargaining agreements, a practice criticized by the International Labor Organization (ILO).

References:

<http://www.nationsencyclopedia.com/Asia-and-Oceania/Yemen-LABOR.html>

<http://www.state.gov/g/drl/rls/hrrpt/2004/41736.htm>

100: Trade unions are common and are an important part of the political process and political discourse. Trade union organizers have widely understood rights. Trade unions are free from intimidation or violence.

75:

50: Trade unions exist, but are not always relevant to politics or policy debates. Barriers to organizing trade unions exist, such as intimidation at work, or retribution firings. Trade union organizers have some rights, but these may not be commonly known, or are difficult to defend.

25:

0: Trade unions are rare. Significant barriers to organization exist, including direct violence. Rights of union organizers are not widely known, or are ineffective in protecting organizers.

I-2. Media

5. Are media and free speech protected?

100

5a. In law, freedom of the media is guaranteed.

YES | NO

Comments:

Many newspapers were either shut down, or their editors were arrested or roughed up. The law guarantees freedom of the press, but, for all practical purposes, the law is meaningless, especially as there are heavy restrictions on independent or opposition party media, barring independent or private media channels.

Freedom of broadcast media is non-existent.

There are now some independent satellite TV channels, but they are owned by elements of the establishment, including the ruling party or well-placed dignitaries, who are partners with the ruling regime.

References:

http://news.bbc.co.uk/1/hi/world/middle_east/country_profiles/784383.stm

<http://yementimes.com/article.shtml?i=1094&p=front&a=1>

<http://www.yemenpost.net/19/Reports/20082.htm>

YES: A YES score is earned if freedom of the press is guaranteed in law, including to all political parties, religions, and ideologies.

NO: A NO score is earned if any specific publication relating to government affairs is legally banned, or any general topic is prohibited from publication. Specific restrictions on media regarding privacy or slander are allowed, but not if these amount to legal censorship of a general topic, such as corruption or defense. A NO score is earned if non-government media is prohibited or restricted.

5b. In law, freedom of speech is guaranteed.

YES | NO

Comments:

The authorities were accused of using excessive force against protesters and rioters demonstrating against fuel-price increases in 2005; more than 40 people were killed and hundreds were injured in the violence." From Freedom House

The report also notes serious infringement on the freedom of expression envisioned by the New Press and Publications Law:

"Government authorities continued to use the Press and Publications Law to restrict press freedom. By the end of 2005, the Ministry of Information had presented a new draft press law to the Majlis al-Shura that would end the jailing of journalists for press offenses. However, restrictions concerning criticism of the president or offense to the national interest remain, and the requirements for practicing journalists have been stiffened. The Yemeni Journalists Syndicate objected to the draft law, saying it aimed to further restrict press freedom in Yemen. The government in May 2006 suspended the initiative until such objections could be resolved."

The government is adamantly pushing for the amended law, and in all likelihood it will pass.

References:

Yemeni Constitution

Press and Publications Law No. 25 1990

<http://yementimes.com/article.shtml?i=1094&p=front&a=1>

http://www.youtube.com/watch?v=ZL342_aJsq4

Freedom House Report 2007

YES: A YES score is earned if freedom of individual speech is guaranteed in law, including to all political parties, religions, and ideologies.

NO: A NO score is earned if any individual speech is legally prohibited, regardless of topic. Specific exceptions for speech linked with a criminal act, such as a prohibition on death threats, are allowed. However, any non-specific prohibition earns a NO score.

6. Are citizens able to form print media entities?

38

6a. In practice, the government does not create barriers to form a print media entity.

100 | 75 | 50 | 25 | 0

Comments:

Restrictions and obstacles get harder as time goes on, and requirements increase from year to year. Financial requirements make it difficult now for many people to set up a newspaper (which the proposed new draft Press and Publications Law sets as being up to 5,000,000 rials (US\$24,869) for individuals and 15,000,000 rials (US\$74,608) for corporations or collective groups large sums for most aspiring journalists or journalist establishment in Yemen).

Media amalgamations are almost impossible, unless they are associated with government entities or the ruling party.

Al-Diayar newspaper has had many difficulties getting printed. Even after obtaining a license, only 60 issues have been issued in three years.

International reaction to the governments proposed amendments to Yemen's Press and Publications Law has been unanimous in condemning the measure as a mechanism of heightened censorship and an infringement on the rights of the Yemeni public.

The Committee to Protect Journalists (CPJ) recently issued an alert outlining numerous and often violent attacks on Yemeni journalists. CPJ noted that journalists have been stabbed, shot, bombed, arrested, kidnapped and threatened. Newspapers have been fined, closed and cloned, that is to say that the government establishes "similarly titled and similar-looking newspapers to undercut them and confuse readers." A transcript of a journalist's tapped telephone conversation with his wife was circulated via e-mail. According to CPJ research, "Witnesses and evidence point to involvement by government officials and suspected state agents in a number of brutal assaults"

References:

<http://www.worldpress.org/Mideast/2264.cfm>

100: Print media entities can freely organize with little to no interaction with the government. This score may still be earned if groups or individuals with a history of political violence or terrorism (within last ten years) are banned from forming media entities.

75:

50: Formation of print media groups is possible, though there is some burden on the media group including overly complicated registration or licensing requirements. Some unofficial barriers, such as harassment of minority groups, may occur.

25:

0: Print media groups are effectively prohibited, either by official requirements or by unofficial means, such as intimidation or fear.

6b. In law, where a print media license is necessary, there is an appeal mechanism if a license is denied or revoked.

YES | NO

Comments:

In most cases, revoked licenses were revalidated, but only after ardent efforts to revitalize the publication. However Al-Shura and Al-Umma Newspapers are still banned to this day.

The only viable channel for appeals, in practice, is the courts, but then only when pressure from the international community and public support have caused the executive branch to give its nod of approval, as it did in the case of Alwasat and Yemen Observer.

References:

<http://armiesofliberation.com/archives/2007/08/11/press-freedom-in-yemen-semi-annual-report/>

<http://armiesofliberation.com/archives/2008/05/03/al-wasat-reinstated/>

<http://www.yementimes.com/article.shtml?i=1152&p=local&a=1>

YES: A YES score is earned if there is, in law or in accompanying regulations, a formal process to appeal a denied print media license, including through the courts. A YES score is also earned if no print license is necessary.

NO: A NO score is earned if there is no appeal process for print media licenses.

6c. In practice, where necessary, citizens can obtain a print media license within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

The new press law would certainly add more difficulties, especially with the increased requirements and joining the Yemen Journalists Syndicate (YJS) membership being mandatory. The YJS chairman is currently the head of Saba News Agency, a government news agency.

Even now there are hindrances to getting a license.

References:

<http://www.worldpress.org/Mideast/2264.cfm>

<http://armiesofliberation.com/archives/2007/05/03/newspaper-license-denied-in-yemen/>

100: Licenses are not required or licenses can be obtained within two months.

75:

50: Licensing is required and takes more than two months. Some groups may be delayed up to six months.

25:

0: Licensing takes close to or more than one year for most groups.

6d. In practice, where necessary, citizens can obtain a print media license at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

Freedom House clearly finds the licensing of print media not so easy:

While a number of licenses for new print media were attained during the year, over 60 requests have been denied since 2006.”

Sometimes even the prime minister’s interference is not helpful (see last link).

References:

<http://magic.wordpress-158395-729720.cloudwaysapps.com/socialScientist/surveyQuestions.cfm?questionID=17&subCategoryID=7&answerID=&status=notsubmitted>

<http://www.yemenpost.net/14/Reports/5.htm>

<http://www.article19.org/pdfs/analysis/draftyemen-press-and-publications-law.pdf>

<http://yementimes.com/article.shtml?i=1050&p=front&a=4>

Report 2008, Freedom House

100: Licenses are not required or can be obtained at minimal cost to the organization. Licenses can be obtained on-line or through the mail.

75:

50: Licenses are required, and impose a financial burden on the organization. Licenses may require a visit to a specific office, such as a regional or national capital.

25:

0: Licenses are required, and impose a major financial burden on the organization. Licensing costs are prohibitive to the organization.

7. Are citizens able to form broadcast (radio and TV) media entities?

0

7a. In practice, the government does not create barriers to form a broadcast (radio and TV) media entity.

100 | 75 | 50 | 25 | 0

Comments:

No independent or opposition-party broadcast media are licensed. Even ham radios cannot be set up. The few nongovernmental channels open on satellite TV are operated from overseas, and they are mostly sponsored by the ruling party or by well-placed "trusted" dignitaries or businessmen. .

A law that will permit broadcast has been proposed, but it is still on the drawing board.

References:

http://www.irex.org/programs/msi_MENA/2006/yemen.asp

<http://www.yobserver.com/front-page/10014314.html><http://www.yemenpost.net/19/Reports/20082.htm>

100: Broadcast media entities can freely organize with little to no interaction with the government. Media groups have equal access to broadcast bandwidth through a reasonably fair distribution system. This score may still be earned if groups or individuals with a history of political violence or terrorism (within last ten years) are banned from forming media entities.

75:

50: Formation of broadcast media groups is possible, though there is some burden on the media group including overly complicated registration or licensing requirements. Some unofficial barriers, such as harassment of minority groups, may occur. Division of broadcast bandwidth is widely viewed to be somewhat unfair.

25:

0: Broadcast media groups are effectively prohibited, either by official requirements or by unofficial means, such as intimidation or fear. This score is appropriate if the division of broadcast bandwidth is widely viewed to be used as a political tool.

7b. In law, where a broadcast (radio and TV) media license is necessary, there is an appeal mechanism if a license is denied or revoked.

YES | NO

Comments:

No broadcast media are allowed, not even ham radios.

Studies done by numerous international human rights groups and international agency show that independent broadcasting is not allowed. The government has a monopoly on TV and radio broadcasting, which reaches a significantly greater segment of the population than do printed media.

References:

<http://dx-hamspirit.com/2007/06/17/why-cant-yemeni-7o-issue-licenses/>

<http://www.yementimes.com/article.shtml?i=1094&p=front&a=1>

YES: A YES score is earned if there is, in law or in accompanying regulations, a formal process to appeal a denied broadcast media license, including through the courts. A YES score is also earned if no broadcast license is necessary.

NO: A NO score is earned if there is no appeal process for broadcast media licenses.

7c. In practice, where necessary, citizens can obtain a broadcast (radio and TV) media license within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

The state has a total monopoly on broadcast media. Some satellite TV channels are now being run on an experimental basis, but they are run from overseas:

Unlike newspapers and electronic websites, the official authorities still maintain a complete monopoly of TV satellite channels. This prompted different businessmen and parties, after failing to convince authorities, to seek establishing new TV satellite channels and to telecast their programs from outside the country, as is the case with Al-Saeeda and Saba, due to be launched soon." From Yemen Post

References:

<http://dx-hamspirit.com/2007/06/17/why-cant-yemeni-7o-issue-licenses/>

<http://www.yementimes.com/article.shtml?i=1094&p=front&a=1>

http://news.bbc.co.uk/2/low/middle_east/country_profiles/784383.stm

<http://www.yemenpost.net/19/Reports/20082.htm>

100: Licenses are not required or licenses can be obtained within two months.

75:

50: Licensing is required and takes more than two months. Some groups may be delayed up to six months.

25:

0: Licensing takes close to or more than one year for most groups.

7d. In practice, where necessary, citizens can obtain a broadcast (radio and TV) media license at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

The state exercises a monopoly on broadcast stations and does not allow private media to have their own channels."

References:

<http://www.yobserver.com/front-page/10014314.html>

<http://www.yemenpost.net/14/Reports/5.htm>

Global Campaign for Free Expression, Article 19

100: Licenses are not required or can be obtained at minimal cost to the organization. Licenses can be obtained on-line or through the mail.

75:

50: Licenses are required, and impose a financial burden on the organization. Licenses may require a visit to a specific office, such as a regional or national capital.

25:

0: Licenses are required, and impose a major financial burden on the organization. Licensing costs are prohibitive to the organization.

8. Can citizens freely use the Internet?

25

8a. In practice, the government does not prevent citizens from accessing content published on-line.

100 | 75 | 50 | 25 | 0

Comments:

Walid Al-Saqqaf is the creator and owner of blocked Yemenportal.net. He has launched a campaign to seek freedom for electronic news reporting and other activist website activities. The car belonging to the website office was vandalized, but no staff member was hurt. His website still cannot be reached in Yemen.

Blogs emanating from overseas, such as the websites of Jane Novak (Armies of Liberation and My Pet Jawa Reports) are also blocked.

References:

Interview with Walid Al-Saqqaf, 2007

http://66.102.9.104/search?q=cache:iaOvkxcZntkJ:portal.unesco.org/ci/en/files/22107/11476875851presentation-Walid_Al_Saqqaf.doc/presentation-Walid%252BAI%252BSaqqaf.doc+Walid+Saqqaf&hl=en&ct=clnk&cd=5

http://www.rsf.org/article.php3?id_article=26300

Personal efforts to reach blocked websites

100: The government does not prevent Internet users from accessing online content. While some forms of content may be illegal to download or own (such as child pornography), the government does not manipulate networks to prevent access to this information. This indicator addresses direct government intervention in the transfer of information, not indirect deterrents such as intimidation, surveillance or technical difficulties in countries with poor infrastructure.

75:

50: Internet users are prevented by the government from reaching online content in some cases. Government tactics may include firewalls preventing access to networks in other countries, or manipulating search engine results to exclude politically sensitive topics.

25:

0: Internet users are routinely prevented from accessing online content. Government restrictions are in place at all times for certain topics. Government tactics may include firewalls preventing access to networks in other countries, or manipulating search engine results to exclude politically sensitive topics.

8b. In practice, the government does not censor citizens creating content on-line.

100 | 75 | 50 | 25 | 0

Comments:

This is true as long as the content is not in violation of Islamic doctrine" and does not touch upon high government officials.

References:

Interview with Walid Al-Saqqaf, 2007

http://66.102.9.104/search?q=cache:iaOvkxcZntkJ:portal.unesco.org/ci/en/files/22107/11476875851presentation-Walid_Al_Saqaf.doc/presentation-Walid%252BAI%252BSaqaf.doc+Walid+Saqqaf&hl=en&ct=clnk&cd=5

http://www.rsf.org/article.php3?id_article=26300

100: The government never removes online information or disables servers due to their political content. All political speech is protected with limited exceptions, such as legitimate intellectual property restrictions; direct calls to violence; or pornography.

75:

50: In some cases, the government restricts political speech by its citizens on the Internet. This is accomplished either directly by controlling servers hosting restricted content, or indirectly through threats or intimidation against the persons posting political content.

25:

0: The government regularly restricts political speech by its citizens on the Internet. This is accomplished either directly by controlling servers hosting the restricted content, or indirectly through threats or intimidation against the persons posting political content.

9. Are the media able to report on corruption?

8

9a. In law, it is legal to report accurate news even if it damages the reputation of a public figure.

YES | NO

Comments:

The 1990 Yemeni Press Law remains a formidable threat to press freedom." From Free Media

The Khaiwani case indicates that the law is far from being a guarantor of press freedom, as the case is exactly the reverse of what the question entails (see third link).

The law bans any discussion of named officials involved in corruption, and no press reports can touch the president or any highly placed members of the ruling regime.

References:

http://www.freemedia.at/cms/jpi/freedom_detail.html?country=KW0001/KW0004/KW0108/&year=2005

<http://www.cpj.org/attacks07/mideast07/yem07.html>

<http://bamapachyderm.com/archives/2008/06/10/abdukarim-al-khaiwani-sentenced/>

Press Law of 1990

YES: A YES score is earned if it is legal to report accurate information on public figures regardless of damage to their reputations. Public figures are defined broadly, including anyone in a position of responsibility in the government or civil

service; any political leader; leaders of civil society groups including religious groups, trade unions, or NGOs; leaders or officers of large businesses. A YES score can still be earned if a reckless disregard for the truth (i.e. slander) is prohibited.

NO: A NO score is earned if privacy laws protect any public figures (as defined in the YES coding) from accurate information.

9b. In practice, the government or media owners/distribution groups do not encourage self-censorship of corruption-related stories.

100 | 75 | 50 | 25 | 0

Comments:

Yemen's situation led Interior Minister Rashad Al-Alimi and Information Minister Hasan Al-Lawzi to direct strong and threatening messages to journalists and website editors to stop what they call the beyond-the-limit writings that target high-ranking officials and damage national unity and security." From Yemen Post

Even with self-censorship, it is difficult to know where the line should be drawn.

References:

<http://www.cpj.org/attacks96/countries/middleeast/yemenlinks.html>

<http://www.yemenpost.net/19/Reports/20082.htm>

100: The government, its proxies, or media ownership/distribution groups make no attempt to restrict media coverage of corruption-related issues through unofficial means.

75:

50: The government, its proxies, or media ownership/distribution groups make some attempts to restrict media coverage of corruption-related issues through unofficial means, such as restricting access by disfavored media outlets, or other short-term consequences. Violent reprisals against media outlets are rare.

25:

0: The government, its proxies, or media ownership/distribution groups actively use illegal methods to restrict reporting of corruption-related issues. This may include harassment, arrests, and threats. Journalists and publishers take a personal risk to report on corruption, and media outlets who commonly report on corruption face long-term consequences or violent reprisals.

9c. In practice, there is no prior government restraint (pre-publication censoring) on publishing corruption-related stories.

100 | 75 | 50 | 25 | 0

Comments:

While this maybe not the case in the independent press, the government is subject to pre-censorship.

There is some prior censorship of another kind, as the last source shows: Yet many visitors said that the (book) fair was subjected to prior censorship and believed that this was behind the absence of books on politically sensitive issues such as Shiite doctrine."

References:

Interviews with government media media

<http://ambassadors.net/opinions2.htm>

100: The government never prevents publication of controversial corruption-related materials.

75:

50: The government prevents publication of controversial corruption-related material in cases where there is a strong political incentive to suppress the information. This score is appropriate if in countries where illiteracy is high, the government may allow a free print press but censor broadcast media.

25:

0: The government regularly censors material prior to publication, especially politically sensitive or damaging corruption-related material. This score is appropriate even if the government restricts only politically damaging news while allowing favorable coverage.

10. Are the media credible sources of information?

40

10a. In law, print media companies are required to publicly disclose their ownership.

YES | NO

Comments:

Owners must be revealed as individuals, corporations, organizations, etc., and their identity must be authenticated to ensure that they are Yemeni citizens.

References:

Law No. 20 for Press and Publications 1991, Article 46

YES: A YES score is earned if print media companies are required by law to publicly disclose all owners of the company.

NO: A NO score is earned if there is no such requirement or if the requirement is optional, only partially applicable, or exempts certain types of entities or agents from being publicly disclosed.

10b. In law, broadcast (radio and TV) media companies are required to publicly disclose their ownership.

YES | NO

Comments:

There is talk of possible private media being permitted, but there is no concrete law to regulate the ownership of private media channels, since they are banned altogether.

References:

<http://www.yobserver.com/front-page/10014314.html>

YES: A YES score is earned if broadcast media companies are required by law to publicly disclose all owners of the company.

NO: A NO score is earned if there is no such requirement or if the requirement is optional, only partially applicable, or exempts certain type of entities or agents from being publicly disclosed.

10c. In practice, journalists and editors adhere to strict, professional practices in their reporting.

100 | 75 | 50 | 25 | 0

Comments:

The organizational by-laws of the Yemeni Journalist Syndicate does not contain any professional guidelines or ethical standards from the perspective of a modern free press.

References:

http://yemenjournalist.org/view_sec.asp?sec_no=16

100: Editors and journalists at the major media outlets abide by a strict journalistic code of conduct and are unwilling to alter their coverage of a particular issue, event or person in exchange for money, gifts, or other favors or remuneration.

75:

50: Editors and journalists at the major media outlets generally avoid altering coverage in exchange for favors but some exceptions have been noted. Not all newsrooms abide by a formal journalistic code of conduct.

25:

0: Editors and journalists are widely known to sell" favorable or unfavorable coverage in exchange for money, gifts, or other remuneration. The major media outlets do not abide by any formal journalistic code of conduct.

10d. In practice, during the most recent election, political parties or independent candidates received fair media coverage.

100 | 75 | 50 | 25 | 0

Comments:

Although some coverage was given to other candidates for president in 2006, it was neither fair nor equal. The dominant press organs (backing the government and the ruling party) spared no effort to harness the most time, space, energy and resources for the incumbent.

References:

<http://yementimes.com/article.shtml?i=983&p=front&a=3>

http://www.accessdemocracy.org/library/2053_ye_preelection_081606.pdf

http://www.newsyemen.net/en/view_news.asp?sub_no=3_2008_11_26_7529

100: All political parties and independent candidates have some access to media outlets. Individual media outlets may have biases, but on balance, the national media coverage reflects the interests of the electorate. Media groups generally act as disinterested parties in an election. In places where a government is popular with the public, opposition viewpoints can access the public via media outlets.

75:

50: Major popular media outlets have a persistent bias regarding some parties or independent candidates. Some major parties may be partially excluded from media coverage, or draw more negative coverage. Media sectors may have distinct biases, such as newspapers favoring one party, while radio favors another.

25:

0: The mass media, on balance, have clear preferences in election outcomes and coverage is driven to achieve these goals. Some major parties or independent candidates are excluded or consistently negatively portrayed by mass media. Dissenting political opinions are only found on fringe or elite media outlets, such as Web sites.

10e. In practice, political parties and candidates have equitable access to state-owned media outlets.

100 | 75 | 50 | 25 | 0

Comments:

Although some coverage was given to other candidates for president in 2006, it was neither fair nor equal. The dominant press organs (backing the government and the ruling party) spared no effort to harness the most time, space, energy and resources for the incumbent. Moreover, political parties have no access to publicly owned media. They cannot approach public media channels to ask for coverage or to complain about equal time or equal coverage, or the lack of it.

While the Election Law grants candidates and parties the right to equal media access and requires a minimal level of media coverage of individual candidates, it does not require the state media to cover candidates neutrally or grant them a minimum amount of airtime. Some provisions on media coverage of elections are unclear or restrictive, for example local and provincial radio stations are prohibited from covering the campaigns of local election candidates. It is also unclear if candidates or parties can place paid advertising in the media." From News Yemen

Managers of these organs decided how much time other political parties were allotted, and the decisions were deliberately made to not highlight any positive attributes of the other contender for the presidency in 2006.

References:

<http://yementimes.com/article.shtml?i=983&p=front&a=3>

http://www.accessdemocracy.org/library/2053_ye_preelection_081606.pdf

http://www.newsyemen.net/en/view_news.asp?sub_no=3_2008_11_26_7529

100: The government ensures that equal access and fair treatment of election contestants is provided by all state-owned media outlets, including all electronic and print media. This obligation extends to news reports, editorial comment, and all other content. All parties and candidates are offered consistent and equivalent rates for campaign advertising on state-owned media outlets.

75:

50: The government generally ensures equal access and fair treatment of all candidates and parties by state-owned media outlets but some exceptions exist. State-owned media may occasionally discriminate against particular parties or candidates and advertising rates may be confusing or non-transparent.

25:

0: The government uses state-owned media to routinely discriminate against opposition candidates and parties. Advertising space may be denied to opposition candidates and parties or higher rates may be charged.

11. Are journalists safe when investigating corruption?

33

11a. In practice, in the past year, no journalists investigating corruption have been imprisoned.

YES | **NO**

Comments:

In addition to Al-Khaiwani, arrests of journalists include the following, as reported by Arabian News: In addition, the editor and a freelance journalist of the daily Al-Sharea have also been arrested and are being prosecuted for disseminating reports liable to undermine army morale, according to the group Reporters Without Borders.”

Other journalists were arrested for laughing in court at the trial of another journalist, Mohammed Al-Makaleh, who was sentenced to 14 hours but was not released until he had spent more than two months in jail, as the judge refused to accept his release on bail. From Foreign Affairs

References:

<http://hub.witness.org/en/node/7891>

<http://www.state.gov/g/drl/rls/hrrpt/2007/100610.htm>

http://www.freemedia.at/cms/pi/statements_detail.html?ctxid=CH0055&docid=CMS1214323175490

<http://foreignaffairs.house.gov/110/cam012208.htm>

<http://www.arabianbusiness.com/514377-yemen-intensifies-media-oppression>

YES: A YES score is earned if there were no journalists imprisoned related to work covering corruption during the study period. A YES score is positive.

NO: A NO score is earned if any journalist was jailed because of his/her work covering corruption during the study period. The causal relationship between the official charges and the journalist's work may not be explicit, however the burden of proof here is low. If it seems likely that the journalist was imprisoned due to his or her work, then the indicator is scored as a NO. Corruption is defined broadly to include any abuses of power, not just the passing of bribes. Imprisoned” is defined here as detention by the government lasting more than 24 hours.

11b. In practice, in the past year, no journalists investigating corruption have been physically harmed.

YES | NO

Comments:

All journalists who are arrested, including Khaiwani, are usually subjected to physical assault and rough manhandling. There were attacks, both direct and by proxy, on assets and offices.

References:

http://www.freemedia.at/cms/pi/freedom_detail.html?country=KW0001/KW0004/KW0108/&year=2007

http://yemenportal.net/english/index_e.php?source=yemenpost_eng&condition=image&menu=1&start=3

<http://www.newssafety.com/hotspots/countries/yemen/miscagencies/yemen030308.htm>

<http://committeetoprotectbloggers.org/2008/02/11/yemenportals-editor-attacked/>

YES: A YES score is earned if there were no documented cases of journalists being assaulted during the specific study period for their work covering corruption issues. A YES score is positive.

NO: A NO score is earned if there were any documented cases of assault to a journalist covering corruption during the study period. Corruption is defined broadly to include any abuses of power, not just the passing of bribes.

11c. In practice, in the past year, no journalists investigating corruption have been killed.

YES | NO

Comments:

A guard was killed as gunment tried to attack the editor of Al-ayyam. The attack by armed men presents a likely possibility of death.

References:

http://www.sky2space.com/view/One_killed_attack_Yemen_170442/

<http://www.cpj.org/news/2008/mideast/yemen12feb08na.html>

YES: A YES score is earned if there were no documented cases of journalists being killed because of their work covering corruption-related issues during the study period. A YES score is positive.

NO: A NO score is earned if there were any documented cases where a journalist was killed in relation to his or her work covering corruption-related issues in the study period. The relationship between a mysterious death and an individual's work may not be clear, however the burden of proof here is low. If it is a reasonable guess that a person was killed in relation to his or her work on corruption issues, then the indicator is scored as a NO. Corruption is defined broadly to include any abuses of power, not just the passing of bribes.

35
I-3. Public Access to Information

12. Do citizens have a legal right of access to information?

33

12a. In law, citizens have a right of access to government information and basic government records.

YES | NO

Comments:

The Press and Publications Law indicates there is, but the other sources above says there is no specific law to regulate the right to access to information.

References:

<http://www.al-bab.com/yemen/gov/off4.htm>

<http://yementimes.com/article.shtml?i=1166&p=local&a=2>

<http://www.u4.no/training/incountry-open/yemen-docs/access-information-ngo-media-drborayhi.pdf>

YES: A YES score is earned if there is a formal right to access government documents, including constitutional guarantees. Exceptions can be made for national security reasons or individual privacy, but they should be limited in scope. All other government documents should be available upon a public request.

NO: A NO score is earned if there is no such right.

12b. In law, citizens have a right of appeal if access to a basic government record is denied.

YES | NO

Comments:

No law speaks to access to information except the Press and Publications Law, and no specific law regulates access to information.

The Press and Publications Law restricts it. There is no law to prevent appeal, but what would guarantee results, when bureaucrats are not authorized to reveal any information to anyone without authorization?

Much would be left to individual officials' discretion.

References:

<http://yementimes.com/article.shtml?i=1166&p=local&a=2>

http://www.irex.org/programs/msi_MENA/2006/yemen.asp

YES: A YES score is earned if there is a formal process of appeal for rejected information requests. A YES score can still be earned if the appeals process involves redress through the courts rather than administrative appeal.

NO: A NO score is earned if there is no such formal process.

12c. In law, there is an established institutional mechanism through which citizens can request government records.

YES | NO

Comments:

The Law for Access to Information is being discussed in Parliament.

To quote from second source: The law requires a degree of transparency and public access to information, and the Press and Publications Law provides journalists with some access to government reports and information; however, in practice, the government offers few procedures to ensure transparency, open bidding or effective competition in awarding government contracts. Detailed accounting of expenditures rarely occurs in a timely fashion."

References:

<http://www.yemen-nic.info/news/detail.php?ID=18211&PHPSESSID=cc30f7652b51d8ff66b465f84561a1d9>

YES: A YES score is earned if there is a formal government mechanism/institution through which citizens can access government records available under freedom of information laws. This mechanism could be a government office (or offices within agencies or ministries) or an electronic request system.

NO: A NO score is earned if there is no such formal mechanism or institution.

13. Is the right of access to information effective?

20

13a. In practice, citizens receive responses to access to information requests within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

From my own experience both as a government employee and a journalist, if you have contacts (and these days, money), you might be able to get some information as long as it is not sensitive. Annual or periodic reports are issued by the Ministry of Finance and some other ministries. There is talk of electronic government, but it is still a nightmare to get some information on the Internet about certain ministries.

The project would be the first step in the establishment of an e-government in Yemen using up-to-date information technology; new ideas, standards, techniques and styles; and establishing a data-processing network. From Yemen Web

References:

Interviews with correspondents of the Yemen Times

<http://www.yemenweb.com/>

Personal observation

100: Records are available on-line, or records can be obtained within two weeks. Records are uniformly available; there are no delays for politically sensitive information. Legitimate exceptions are allowed for sensitive national security-related information.

75:

50: Records take around one to two months to obtain. Some additional delays may be experienced. Politically-sensitive information may be withheld without sufficient justification.

25:

0: Records take more than four months to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records. National security exemptions may be abused to avoid disclosure of government information.

13b. In practice, citizens can use the access to information mechanism at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

Without Internet access, the cost would not be reasonable, especially because government records are not uniformly kept. Despite the idea of electronic government being around since 2002, there has been very little progress in improving the availability of information.

References:

<http://www.freedomhouse.org/template.cfm?page=140&edition=7&ccrcountry=143§ion=73&ccrpage=31>

http://findarticles.com/p/articles/mi_hb6465/is_200210/ai_n26292283

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

13c. In practice, citizens can resolve appeals to access to information requests within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

Most likely, there has been no case of appeals.

References:

Interview with Ministry of Justice officials

100: The agency/entity acts on appeals quickly. While some backlog is expected and inevitable, appeals are acknowledged promptly and cases move steadily towards resolution.

75:

50: The agency/entity acts on appeals quickly but with some exceptions. Some appeals may not be acknowledged, and simple issues may take more than two months to resolve.

25:

0: The agency/entity does not resolve appeals in a timely fashion quickly. Appeals may be unacknowledged for many months and simple issues may take more than three months to resolve.

13d. In practice, citizens can resolve appeals to information requests at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

It would be counterproductive to seek an appeal. One should only exhaust all available information, such as annual accounts, government financial statistics, etc. One should not expect to get any more.

Without a law allowing free access to information, there is little basis for appealing denied requests.

References:

No documented or press sources could be found.

Interviews with Ministry of Justice Official (Chief of Judicial Inspection)

Personal observation

100: In most cases, the appeals mechanism is an affordable option to middle class citizens seeking to challenge an access to information determination.

75:

50: In some cases, the appeals mechanism is not an affordable option to middle class citizens seeking to challenge an access to information determination.

25:

0: The prohibitive cost of utilizing the access to information appeals mechanism prevents middle class citizens from challenging access to information determinations.

13e. In practice, the government gives reasons for denying an information request.

100 | 75 | 50 | 25 | 0

Comments:

There is no reason to believe this has improved. Rather, it's gotten worse, as security became the excuse for all denials for information in the wake of the Sa'ada war.

Efforts to allow journalists to get a first-hand view of the war situation in Sa'ada were fruitless, even when backed by appeals from international organizations, including Amnesty International and the Red Cross.

References:

<http://www.hoodonline.org/det.php?lng=english&sid=1308>

Report 2006 on Yemen, Global Integrity

<http://thereport.amnesty.org/eng/regions/middle-east-and-north-africa/yemen>

100: The government always discloses to the requestor the specific, formal reasons for denying information requests.

75:

50: The government usually discloses reasons for denying an information request to the requestor, with some exceptions. The reasons may be vague or difficult to obtain.

25:

0: The government does not regularly give reasons for denying an information request to the requestor.

Category II. Elections

II-1. ¹⁶ Voting & Citizen Participation

14. Is there a legal framework guaranteeing the right to vote?

100

14a. In law, universal and equal adult suffrage is guaranteed to all citizens.

YES | NO

Comments:

The probation period" for newly acquired citizenship is not dealt with in any of the proposed amendments, so Yemeni citizens who have acquired citizenship must still wait 15 years before being able to participate in any political activities.

References:

Constitution of Yemen, Article 43

Nationality Law, Article 23

Proposed Amendments to the Election Law

Proposed Amendments to the Constitution of the Republic of Yemern (Arabic version: <http://www.almotamar.net/dostor/59986.htm>)

YES: A YES score is earned if the right to vote is guaranteed to all citizens of the country (basic age limitations are allowed). A YES score can still be earned if voting procedures are, in practice, inconvenient or unfair.

NO: A NO score is earned if suffrage is denied by law to any group of adult citizens for any reason. Citizen is defined broadly, to include all ethnicities, or anyone born in the country. A NO score is earned if homeless or impoverished people are legally prohibited from voting.

14b. In law, there is a legal framework requiring that elections be held at regular intervals.

YES | NO

References:

Constitution of Yemin

Proposed Election Law Amendments

Elections Law (Law 13 for 2001) and By-Laws

1999 Amendement to Constitution, Article 112

YES: A YES score is earned if there is a statutory or other framework enshrined in law that mandates elections at reasonable intervals.

NO: A NO score is earned if no such framework exists.

15. Can all citizens exercise their right to vote?

50

15a. In practice, all adult citizens can vote.

100 | 75 | 50 | 25 | 0

Comments:

Local civil society organizations (CSOs) reported some hindrances in voting, and there was some manipulation of votes (handouts in return for votes).

Election observers with the European Union Election Observation Mission said that there were shortcomings like overcrowding, breaches in voting secrecy, illegal assistance to voters and underage voters." Second reference

Of the 9.2 million registered voters, only 6 million voted in the presidential elections of 2006. Third source.

"Voter turnout was 65 percent (for the presidential election), compared to 77 percent for the 2003 parliamentary elections." Fourth Source

References:

Human Rights in Yemen, Yemen Tiimes, <http://yementimes.com/article.shtml?i=1054&p=local&a=4>

<http://www.fas.org/sgp/crs/mideast/RS21808.pdf>

<http://www.pogar.org/countries/theme.asp?th=3&cid=22>

<http://aceproject.org/today/feature-articles/yemen-elections-highlight-continued-progress>

100: Voting is open to all citizens regardless of race, gender, prior political affiliations, physical disability, or other traditional barriers.

75:

50: Voting is often open to all citizens regardless of race, gender, prior political affiliations, physical disability, or other traditional barriers, with some exceptions.

25:

0: Voting is not available to some demographics through some form of official or unofficial pressure. Voting may be too dangerous, expensive, or difficult for many people.

15b. In practice, ballots are secret or equivalently protected.

100 | 75 | 50 | 25 | 0

Comments:

There have been increasing reports of prepared ballots being given to military and even civilian voters, who were given handouts in return for their votes. Others report being made to swear to the way they voted or will vote.

References:

Interviews with a random selection of voters from different categories (military, civilian, civil servants, poor citizens, etc)

<http://www.pogar.org/publications/other/elections/ifes/yemen-electionlaw-reform05.pdf>

<http://www.fas.org/sgp/crs/mideast/RS21808.pdf>

<http://www.nytimes.com/2006/09/24/world/middleeast/24yemen.html?fta=y>

<http://www.fas.org/sgp/crs/mideast/RS21808.pdf>

<http://www.nytimes.com/2006/09/24/world/middleeast/24yemen.html?fta=y>

100: Ballots are secret, or there is a functional equivalent protection, in all cases.

75:

50: Ballots are secret, or there is a functional equivalent protection, in most cases. Some exceptions to this practice have occurred. Ballots may be subject to tampering during transport or counting.

25:

0: Ballot preferences are not secret. Ballots are routinely tampered with during transport and counting.

15c. In practice, elections are held according to a regular schedule.

100 | 75 | 50 | 25 | 0

Comments:

Elections are usually regular and, at times, even somewhat competitive, but officials are much less focused on policy formulation than on building and reinforcing patronage links between themselves and society." From Carnegie

References:

Freedom House Report 2007, <http://yementimes.com/article.shtml?i=1094&p=front&a=1>

Carnegie Report on Yemen, http://www.carnegieendowment.org/files/cp_80_phillips_yemen_final.pdf

100: Elections are always held according to a regular schedule, or there is a formal democratic process for calling a new election, with deadlines for mandatory elections.

75:

50: Elections are normally held according to a regular schedule, but there have been recent exceptions. The formal process for calling a new election may be flawed or abused.

25:

0: Elections are called arbitrarily by the government. There is no functioning schedule or deadline for new elections.

16. Are citizens able to participate equally in the political process?

35

16a. In law, all citizens have a right to form political parties.

YES | NO

Comments:

While the Constitution stipulates the right to form political parties, one finds that the intended democratic purpose of the existence of such a right is compromised in practice by the following argument:

Like many states in the Arab world that have embarked on a process of limited reform, Yemen developed a political system best described as pluralized authoritarianism. The regime is authoritarian, and although some space is granted for alternative voices, there are severe restrictions on the establishment of alternative institutionalized power centers that might threaten the elite.

In addition sustainability of political parties is hindered by the many restrictions in some of the relevant laws:

"In 1995, many of the small parties that had been active were unable to satisfy the conditions for licensing and disappeared."

Cloning of aggressively active political parties is also practiced by the regime, thus undermining the political legality of licensed political parties. In addition, the government abolished the al-Haq political party in March 2007, reportedly for not meeting political party law requirements (it was suspected of affiliation with the Houthi rebellion, according to some members). From last source

References:

Constitution of Yemen, 1994 and 2001 amendments

Political Party and Organizations Law 66 of 1991

http://www.carnegieendowment.org/files/cp_80_phillips_yemen_final.pdf

<http://www.yementimes.com/article.shtml?i=1034&p=front&a=2>

<http://armiesofliberation.com/archives/2007/03/18/al-haq-political-party-illegally-disbanded-by-authorities/>

Arab Political Systems: Baseline Information and Reforms Yemen

www.carnegieendowment.org/arabpoliticalsystems

www.fride.org/eng/Publications/Publication.aspx?Item=787

<http://armiesofliberation.com/archives/2008/07/24/clone-opposition-coalition-signs-pact-with-ruling-party-endorsing-all-policies/>

<http://www.state.gov/g/drl/rls/irf/2007/90224.htm>

YES: A YES score is earned if citizens have the right to form political parties without interference from government. A YES score may still be earned if groups or individuals with a history of violence or terrorism (within last ten years) are banned from forming political parties. Non-discriminatory minimal criteria (e.g. minimum age) are also allowed.

NO: A NO score is earned if there are any legal or regulatory restrictions or prohibitions barring any types of political parties from being formed.

16b. In law, all citizens have a right to run for political office.

YES | **NO**

Comments:

The fourth source gives some of the steps required for candidates seeking elections in accordance with the law.

Efforts to amend the Nationality Law have not changed the ability of naturalized citizens to run for office before the 15 year probationary" period has passed.

The legal ability for women to run has not improved.

Efforts to reform the Elections Law were defeated in Parliament by the ruling party.

References:

Elections Law (2001) and By-Laws

Constitution of the Republic of Yemen

Political Parties and Organizations Law No. 66 (1991) By-Laws

<http://www.state.gov/g/drl/rls/hrrpt/2006/78867.htm>

Nationality Law

http://www.carnegieendowment.org/files/cp_80_phillips_yemen_final.pdf

http://www.dailystar.com.lb/article.asp?edition_id=10&categ_id=2&article_id=95137

YES: A YES score is earned if all citizens (citizen is defined broadly, to include all ethnicities, or anyone born in the country) have the right under law to run for political office. A YES score may still be earned if individuals with a history of violence, terrorism, or criminality are banned from running for office.

NO: A NO score is earned if there are any legal restrictions barring certain individuals or groups from running for political office.

16c. In practice, all citizens are able to form political parties.

100 | 75 | 50 | **25** | 0

Comments:

There is a problem of sustainability and the interference to which several parties have been subjected, such as fragmentation or cloning by the establishment of duplicate political parties under the aegis of the regime.

In May 2005 the president publicly accused two minor parties of attempting to overthrow the government by fomenting the al-Houthi uprising. The headquarters of the Union for Popular Forces was seized by armed men, and the party was forcibly recreated under dubious circumstances (cloning)." From last source

References:

Arab Political Systems: Baseline Information and Reforms Yemen

<http://www.carnegieendowment.org/arabpoliticalsystems>

<http://www.fride.org/eng/Publications/Publication.aspx?Item=787>

<http://www.state.gov/g/drl/rls/hrrpt/2006/78867.htm>

100: While there is no guarantee of electoral success, political parties can form freely without opposition.

75:

50: Some barriers to formation are present, such as burdensome registration requirements that may not be fairly applied. Some parties' political viewpoints may draw pressure from the government, such as surveillance or intimidation. Some political parties or organizations may have extra barriers to getting on a ballot.

25:

0: Some political parties are effectively barred from forming through some manner of official or unofficial pressure. This may include threats, arrest, or violence from competing parties or other groups.

16d. In practice, all citizens can run for political office.

100 | 75 | 50 | 25 | 0

Comments:

Most observers saw the presidential election of 2006 as giving greater opportunity for opposition and independent candidates to be heard and seen, but the ruling party continued to enjoy the use of state resources, and there were election-related killings and violence. The ruling party also refused to allow Parliament to pass amendments to the Elections Law, which had included the recommendations of the Opposition Bloc.

From the regime's side, there is little to suggest that electoral politics and managed pluralism have been intended to greatly expand the circle of decision-makers. From Carnegie

There is still a strong emphasis on maintaining the status quo by not allowing equal opportunity for all candidates running for office.

References:

http://www.carnegieendowment.org/files/cp_80_phillips_yemen_final.pdf

<http://www.state.gov/g/drl/rls/hrrpt/2006/78867.htm>

100: While there is no guarantee of electoral success, anyone can run for office under transparent and equitable guidelines. There is a formal process for access to the ballot which is fairly applied. The costs of running a campaign are reasonable and do not deter candidates from entering a race.

75:

50: Some barriers exist to getting on the ballot and bureaucratic or regulatory requirements for doing so may be unfairly applied. The costs of running a political campaign are significant and result in dissuading some candidates from running for office. A system of party lists may discourage or prevent independent candidates from running for office.

25:

0: Citizens can effectively be barred from the ballot through government abuse of official rules and/or unofficial pressure. The costs of running a campaign are extremely high and result in most average citizens being unable to run an effective campaign for office.

16e. In practice, an opposition party is represented in the legislature.

100 | 75 | 50 | 25 | 0

Comments:

The ruling Party has 238 members. The Islah Party (Yemeni Congregation for Reform, formerly a coalition partner with the General People's Congress, later turned member of the Joint Meeting Bloc of Opposition Parties) is the only other party to have a significant number of members in Parliament: 46 out of 301 members. The rest of the seats are scattered among the other member parties of the JMP Block and independents.

However, due to the limited legislative and oversight powers of the House of Representatives, there is no significant opposition presence.

References:

<http://www.state.gov/g/drl/rls/hrrpt/2006/78867.htm>

<http://yemenparliament.com/member.php>

100: The opposition party always has some influence on the proceedings of the legislature. The opposition party can introduce legislation or bring pending matters to a vote without the consent of the ruling party.

75:

50: The opposition party has influence on the proceeding of the legislature, but it is limited in scope. The opposition's ability to force votes or publicly debate certain topics may be limited.

25:

0: The opposition party has only token participation in the legislature's proceedings and cannot advance legislation or force a debate.

II-2. Election Integrity

18. Is the election monitoring agency effective?

40

18a. In law, the agency or set of agencies/entities is protected from political interference.

YES | NO

Comments:

The Supreme Committee for Elections and Referenda (SCER) is legally supposed to be independent and unbiased, and the law guarantees such independence. But the SCER has been known to be under the strong influence of the dominant party the General People's Congress, especially since 2001, as the president appoints its chairman.

References:

Political Parties and Organizations Law

Law of Elections and Referenda 2001

<http://www.scer.org.ye/english/observationmanual.htm>

YES: A YES score is earned only if the agency or set of agencies/entities has some formal organizational independence from the bodies contesting in the election. A YES score is still earned even if the entity is legally separate but in practice staffed by partisans.

NO: A NO score is earned if the election monitoring agency or set of agencies/entities is legally tied to bodies contesting the election (i.e. an executive branch agency such as the Interior Ministry, or a committee of the legislature). A NO score is automatically earned if there is no domestic election monitoring agency.

18b. In practice, agency (or set of agencies/entities) appointments are made that support the independence of the agency.

100 | 75 | 50 | 25 | 0

Comments:

As time progresses, the Supreme Committee for Elections and Referenda (SECR) is more under the control of the ruling party.

The SCER is appointed by presidential decree. This has often meant that even appointees from the opposition parties are decided by the Executive Branch.

References:

<http://yementimes.com/article.shtml?i=1185&p=local&a=1>

<http://www.yobserver.com/front-page/10014837.html>

100: Appointments to the agency or set of agencies/entities are made based on professional qualifications. Individuals appointed are free of conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed usually do not have clear political party affiliations.

75:

50: Appointments are usually based on professional qualifications. However, individuals appointed may have clear party loyalties.

25:

0: Appointments are often based on political considerations. Individuals appointed often have conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed often have clear party loyalties.

18c. In practice, the agency or set of agencies/entities has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

Comments:

There is a permanent secretariat and other permanent staff, However, leadership of the Supreme Committee for Elections and Referenda (SECR) is highly politicized and under the control of the General People's Congress (GPC).

The ruling party has greater control over the SECR and appoints its chairman and most of its members.

At decentralized levels, the SCER has not yet succeeded in building a core team of permanent and skilled staff. For the implementation of field electoral operations, the SCER relies on temporary staff." From third source

References:

<http://www.scer.org.ye/english/generalelectionslaw.htm>

<http://www.scer.org.ye/english/politicalpartieslaw>

http://www.idea.int/publications/emd/upload/EMD_CS_Yemen.pdf

<http://www.scer.org.ye/english/observationmanual.htm>

100: The agency or set of agencies/entities has staff sufficient to fulfill its basic mandate.

75:

50: The agency or set of agencies/entities has limited staff, or staff without necessary qualifications to fulfill its basic mandate.

25:

0: The agency or set of agencies/entities has no staff, or such a limited staff that is clearly unqualified to fulfill its mandate.

18d. In practice, the agency or set of agencies/entities makes timely, publicly available reports following an election cycle.

100 | 75 | 50 | 25 | 0

Comments:

There are always complaints about the timing of the reports and irregularities in the counting.

The Supreme Committee for Elections and Referenda (SECR) needs to deal with technical issues such as the counting/reporting processes and improving disabled peoples access to the electoral process. Finally, the SCER needs to be more determined to enforce the election law, to be seen as more independent and to be more open and transparent, particularly in its relations with political parties. From Ace

References:

<http://www.scer.org.ye/english/generalelectionslaw.htm> (Article 106)

<http://aceproject.org/today/feature-articles/yemen-elections-highlight-continued-progress>

100: Reports are released to the public on a predictable schedule, without exceptions.

75:

50: Reports are released, but may be delayed, difficult to access, or otherwise limited.

25:

0: The agency or set of agencies/entities makes no public reports, issues reports which are effectively secret, or issues reports of no value.

18e. In practice, when necessary, the agency or set of agencies/entities imposes penalties on offenders.

100 | 75 | 50 | 25 | 0

Comments:

Penalties resulting from violations of the Election Law shall be applied exclusively by courts. The Public Prosecutors Office shall undertake all inquiries and investigation in accordance with the provisions of the Code of Criminal Procedures. The Supreme Elections Committee; main, supervisory and sub-committees; and any voter with a vested interest shall have the right to file lawsuits at office of Public Prosecutions or at any court of competent jurisdiction against any individual accused of committing a criminal electoral offense in accordance with the provisions of this law. From Ace

The Supreme Committee for Elections and Referenda (SECR) may present violations to the courts.

References:

<http://aceproject.org/epic-en/countries/YE>

Law of Penalties and Law of General Elections and Referenda (2001)

100: When rules violations are discovered, the agency or set of agencies/entities is aggressive in penalizing offenders and/or in cooperating with other agencies in penalizing offenders.

75:

50: The agency or set of agencies/entities enforces rules, but is limited in its effectiveness. The agency may be slow to act, unwilling to take on politically powerful offenders, reluctant to cooperate with other agencies, or occasionally unable to enforce its judgments.

25:

0: The agency or set of agencies/entities does not effectively penalize offenders and/or cooperate with other agencies in penalizing offenders. The agency may make judgments but not enforce them, or may fail to make reasonable judgments against offenders. The agency may be partisan in its application of power.

19. Are elections systems transparent and effective?

54

19a. In practice, there is a clear and transparent system of voter registration.

Comments:

There were far too many irregularities reported in 2006 that affected hundreds of thousands of voters (see the Voter Registration List in the first source).

In addition, many constituencies were redistricted a month before the election in a manner that was not transparent to the public, international observers or the opposition parties." Redistricting is a part of the voter-registration effort. From second source

Because the Supreme Committee for Elections and Referenda (SECR) has not undergone any significant reform to strengthen its transparency and accountability, one is compelled to note that the commission has become merely a tool for the regime to maintain tight control of the electoral process, from registration to declaration of the results.

References:

http://www.accessdemocracy.org/library/2053_ye_preelection_081606.pdf

<http://www.state.gov/g/drl/rls/hrrpt/2006/78867.htm>

100: There is a transparent system of voter registration that provides voters with sufficient time to understand their rights, check the accuracy of their registration, and ensure that errors are corrected before they vote.

75:

50: There is a transparent voter registration system that provides voters with sufficient time to understand their rights, check the accuracy of their registration, and ensure that errors are corrected before they vote but there are some problems. Voters may have not access to registration lists with sufficient time to correct errors before voting or registration lists may at times be inaccessible.

25:

0: The system of voter registration is incomplete or does not exist. Government may routinely falsify registration lists to affect voting patterns and limit access to the polls. Double voting and ghost" voting by non-existent voters is common.

19b. In law, election results can be contested through the judicial system.

YES | NO

Comments:

Any voter with a vested interest shall have the right to file lawsuits at office of Public Prosecutions or at any court of competent jurisdiction against any individual accused of committing a criminal electoral offense in accordance with the provisions of this law. Any election official accused of negligence or professional misconduct shall also be subject to the provisions of this article. The aggrieved shall have the right to sue for compensatory damages. Such cases shall be dealt with instantly in courts of competent jurisdiction.

References:

General Elections and Referendum Law 2001, Article 127

<http://aceproject.org/epic-en/countries/YE>

<http://www.undp-pogar.org/publications/judiciary/nbrown/yemen.html> (Structure of Judicial System)

YES: A YES score is earned if citizens or political parties can challenge allegedly fraudulent election results through the courts or other judicial mechanisms.

NO: A NO score is earned if there is no legal right for citizens or political parties to challenge allegedly fraudulent election results in the courts or other judicial mechanisms.

19c. In practice, election results can be effectively appealed through the judicial system.

Comments:

The judiciary did not thoroughly and carefully review election disputes; it responded to 56 separate complaints in the post-election period, taking only three days to issue its rulings, 35 which prompted complaints that the merits of different election disputes were not carefully considered." From first source

The 2006 election did not produce any disputes to speak of.

There have been a few cases related indirectly to elections, such as the one referred to in the above Yemen Times articles, where the judiciary was not deemed to be as supportive of citizen's rights as it should be.

References:

http://www.mhryemen.org/contents/active_detail_en.php?n_no=266

<http://yementimes.com/article.shtml?i=1049&p=local&a=1>

<http://yementimes.com/article.shtml?i=635&p=local&a=11>

100: The electoral appeals mechanism takes cases from both candidates complaining of flaws in the electoral process as well as citizens bringing complaints related to denial of suffrage or registration errors. There is an expedited process for resolving such complaints to avoid delaying a timely announcement of electoral results.

75:

50: The electoral appeals mechanism takes complaints from both candidates and voters but may not always act on complaints promptly. The appeals mechanism may be abused at times by parties or candidates seeking to delay the announcement of electoral results.

25:

0: The electoral appeals mechanism rarely or never acts on complaints brought by candidates or citizens. Citizens may not be able to bring complaints related to denial of suffrage or voter registration errors.

19d. In practice, the military and security forces remain neutral during elections.

Comments:

Historically, Yemen s elections have been marred by violence and allegations of misconduct by military personnel stationed at polling centers, the National Democratic Institute stated. From Irin News

Army vehicles deliver most of the ballot papers, and the military has total control over communications and an operations room on elections day.

While the military may be the best prepared to handle the complex logistics of the elections, International Foundation for Electoral Systems (IFES) said their pervasive involvement could compromise the impartiality of the elections.

On the other hand, it is clear that many opinion-makers in print as well as in symposia see the military as being involved in political affairs beyond reasonable limits. From second source

References:

<http://www.irinnews.org/report.aspx?reportid=61832>

<http://yementimes.com/article.shtml?i=1124&p=local&a=6>

100: The military, military officers, and other security forces refrain from overtly supporting or opposing political candidates or commenting on elections. The military or security forces refrain from physically interfering with political campaigns, rallies, or voting.

75:

50: The military, military officers, and security forces may be known to unofficially support or oppose particular candidates or parties. The military or security forces generally refrain from the use of force to support or oppose particular candidates or parties but there are exceptions.

25:

0: The military or other security forces are an active and explicit player in politics and overly support or oppose particular candidates or parties. The military or security forces routinely exercise the use of force to support or oppose parties or candidates.

19e. In law, domestic and international election observers are allowed to monitor elections.

YES | NO

Comments:

International observers have publicly been giving nod to the Yemeni elections but showing their criticism in written reports.

Local organizations have been able to monitor elections almost from the start of elections in 1993

References:

Constitution and General Elections and Referenda Law 2001

YES: A YES score is earned if domestic and international election observers are allowed to monitor the electoral process.

NO: A NO score is earned if there are any legal or regulatory prohibitions on the monitoring of the electoral process by domestic or international election observers.

19f. In practice, election observers are able to effectively monitor elections.

100 | 75 | 50 | 25 | 0

Comments:

European election monitors visited about 20% of the polling centers and evaluated voting procedures as good or very good in 82% of them. Unfortunately, local observers' findings are either not given the attention they deserve or have little capability of getting their observations to the world. From World Press

There was some harassment or exclusion. From Ace

There were reports of monitors being harassed.

References:

<http://www.worldpress.org/Mideast/2540.cfm>

http://www.google.com/search?sourceid=navclient&ie=UTF-8&rlz=1T4ADBR_enYE276YE279&q=election+monitors+harassed+Yemen

http://www.demcoalition.org/pdf/35_Yemen.pdf

<http://aceproject.org/today/feature-articles/yemen-elections-highlight-continued-progress>

100: Election observers have unfettered access to polling sites, counting stations, and voters themselves. The government does not interfere with the observers' activities.

75:

50: Election observers generally have access to polling sites, counting stations, and voters but encounter restrictions in certain areas. The government may impose burdensome regulatory or bureaucratic requirements on observers to discourage their involvement.

25:

0: Election observers' movements are significantly limited by the government and many polling and counting sites are restricted or barred from observers. The government imposes so many bureaucratic or regulatory burdens on the observers that their mission is rendered ineffective.

17. Is there an election monitoring agency or set of election monitoring agencies/entities?

100

17. In law, is there an election monitoring agency or set of election monitoring agencies/entities?

YES | NO

Comments:

The Supreme Elections and Referenda Committee oversees all elections proceedings. Monitoring is also undertaken by candidates or their parties and by local and foreign monitors (nongovernmental organizations and regional blocs such as the European Union).

References:

General Election and Referendum Law (13) 2001 of the Republic of Yemen and By-Laws

YES: A YES score is earned if there is a domestic agency or set of domestic agencies/entities formally assigned to ensure the integrity of the election process.

NO: A NO score is earned if no domestic agency or set of domestic agencies/entities exists that monitors elections. A NO score is earned if elections are only monitored by an agency informally, such as poll booth monitoring by the police, only by international observers, or only by NGOs. A NO score is earned if the domestic election agency or set of domestic agencies simply facilitates the process of voting but is not empowered to report violations or abuses.

65
II-3. Political Financing

20. Are there regulations governing the financing of political parties?

43

20a. In law, there are regulations governing private contributions to political parties.

YES | NO

Comments:

The law restricts foreign contributions to political parties.

References:

Law No. 66, 1991, Political Parties and Political Organizations

YES: A YES score is earned if there are any formal rules (by law or regulation) controlling private contributions to political parties, including prohibitions against foreign donations.

NO: A NO score is earned if there is no regulation of private contributions to political parties.

20b. In law, there are limits on individual donations to political parties.

YES | **NO**

Comments:

Foreign donations are not allowed. Individual Yemenis may donate, and the law sets no limit.

References:

Law for Political Parties No. 66, 1991, Chapter 4, Article 17

YES: A YES score is earned if there are any limits in size on individual contributions to political parties. A YES score is also earned if individual contributions are prohibited.

NO: A NO score is earned if there are no limits on contributions from individuals. A NO score is also earned if limits are applied by the government on opposition parties in a discriminatory manner.

20c. In law, there are limits on corporate donations to political parties.

YES | **NO**

Comments:

No stipulations exist.

References:

Law for Political Parties No. 66, 1991

Law of General Elections and Referenda Law

YES: A YES score is earned if there are any limits in size on corporate contributions to political parties. A YES score is earned if corporate contributions are prohibited.

NO: A NO score is earned if there are no limits on corporate contributions to political parties. A NO score is also earned if limits are applied by the government on opposition parties in a discriminatory manner.

20d. In law, there are limits on total political party expenditures.

YES | **NO**

Comments:

No legal provisions exist in relevant law.

References:

Political Parties and Organization Law

Law of Elections and Referenda

YES: A YES score is earned if there are any limits in size on political party expenditures. A YES score is earned if all party expenditures are prohibited.

NO: A NO score is earned if there are no limits on political party expenditures. A NO score is also earned if limits are applied by the government on opposition parties in a discriminatory manner.

20e. In law, there are requirements for the disclosure of donations to political parties.

YES | NO

Comments:

To make sure there are no violations of the law

References:

Law for Political Parties No. 66, 1991, Chapter 4, Article 25

YES: A YES score is earned if there are any requirements mandating the disclosure of financial contributions to political parties.

NO: A NO score is earned if there are no requirements mandating the disclosure of contributions to political parties, existing regulations do not require a donor's name or amount given, or the regulations allow for anonymous donations.

20f. In law, there are requirements for the independent auditing of the finances and expenditures of political parties.

YES | NO

Comments:

No specific statute on audits exists. However, donations over 100,000 rials (US\$500) should be reported.

References:

Elections and Referenda Law

Political Parties and Organizations Law

YES: A YES score is earned if there is a legal or regulatory requirement for the independent auditing of party finances and expenditures. The auditing is performed by an impartial third-party.

NO: A NO score is earned if there are no legal or regulatory requirements for the independent auditing of political parties' finances and expenditures or if such requirements exist but allow for parties to self-audit.

20g. In law, there is an agency or entity that monitors the financing of political parties.

YES | NO

Comments:

Political Parties and Organizations Board

References:

Political Parties and Organizations Law No 66, 1991, Article 18, Chapter IV

YES: A YES score is earned if there is a domestic agency or set of domestic agencies/entities formally assigned to monitor and enforce laws and regulations around the financing of political parties. A YES score is earned even if the agency/entity is ineffective in practice.

NO: A NO score is earned if there is no such agency or entity.

21. Are there regulations governing the financing of individual political candidates?

21a. In law, there are regulations governing private contributions to individual political candidates.

YES | NO

Comments:

Donors can direct funding from donations, advertisements, the government, subscriptions and, sometimes, indirect funding from investments.

References:

Law No 66, 1991, Concerning Political Parties and Organizations, Article 17

YES: A YES score is earned if there are any formal rules (by law or regulation) controlling private contributions to individual political candidates, including prohibitions against foreign donations.

NO: A NO score is earned if there is no regulation of private contributions to individual political candidates.

21b. In law, there are limits on individual donations to political candidates.

YES | NO

Comments:

No legal stipulations exist.

References:

Law of Elections and Referendum 2001

Political Party Law 2001

YES: A YES score is earned if there are any limits in size on individual contributions to political candidates. A YES score is also earned if individual contributions are prohibited.

NO: A NO score is earned if there are no limits on contributions from individuals. A NO score is also earned if limits are applied by the government on opposition candidates in a discriminatory manner.

21c. In law, there are limits on corporate donations to individual political candidates.

YES | NO

Comments:

No legal stipulations exist, except the prohibition on foreign funding.

References:

Law No 13, 2001, General Elections and Referenda

Political Parties and Organizations Law No 66, 1991

YES: A YES score is earned if there are any limits in size on corporate contributions to individual political candidates. A YES score is earned if corporate contributions are prohibited.

NO: A NO score is earned if there are no limits on corporate contributions to individual political candidates. A NO score is also earned if limits are applied by the government on opposition candidates in a discriminatory manner.

21d. In law, there are requirements for the disclosure of donations to individual political candidates.

YES | **NO**

Comments:

For individual candidates no legal provisions, except for foreign funding, exist.

Disclosure of Presidential candidates is not to the public but to the Supreme Committee for Elections and Referenda (SECR) only.

This was one recommendation presented for the reform of the Election and Referendum Law:

Issue 15: Should the SCER have to make public the notifications it receives of donations to presidential candidates?
Option 1: No change. Notifications to the SCER of donations received by presidential candidates are not disclosed publicly.
Option 2: Require the SCER to publicly disclose the amount donated and the name of any person or organization that makes a single donation to a presidential candidate of 100,000 rials (US\$500) or more or that makes donations to a presidential candidate that exceeds 200,000 rials (US\$1,000) in total." From the Election Law.

There is currently no public disclosure.

References:

Law 13, 2001, Elections and Referenda

Political Parties and Organizations Law No. 66, 1991, Chapter 4, Article 17

Election Law Reform in Yemen: Final Report in the Public Policy Dialogues, January 2004-January 2005

YES: A YES score is earned if there are any requirements mandating the disclosure of financial contributions to individual political candidates.

NO: A NO score is earned if there are no requirements mandating the disclosure of contributions to individual political candidates, existing regulations do not require a donor's name or amount given, or the regulations allow for anonymous donations.

21e. In law, there are requirements for the independent auditing of the campaign finances of individual political candidates.

YES | **NO**

Comments:

No legal stipulations exist. A committee is designated for checking for any improprieties of funding (no foreign funding), but it is not an audit per se.

References:

Elections and Referenda Law No. 13, 2001

Law for Political Parties and Organizations No. 66, 1991, Chapter 4, Article 18

YES: A YES score is earned if there is a legal or regulatory requirement for the independent auditing of an individual candidate's campaign finances and expenditures. The auditing is performed by an impartial third-party.

NO: A NO score is earned if there are no legal or regulatory requirements for the independent auditing of an individual candidate's campaign finances and expenditures or if such requirements exist but allow for candidates to self-audit.

21f. In law, there is an agency or entity that monitors the financing of individual political candidates' campaigns.

YES | NO

Comments:

A committee is designated for checking for any improprieties of funding (no foreign funding) to political candidates.

The Committee for Parties and Political Organizations, once having approved the annual report of accounts, has the right to inspect the books and review the expenditures and revenues to determine their legality. The committee may assign a specialized team — provided a copy of the team's report is given to the party — or a political organization to do this job, provided complete secrecy is guaranteed except if a violation is discovered, in which case the matter is reverted to judicial authorities. From Article 25

The Supreme Committee for Elections and Referenda (SECR) also monitors donations for presidential candidates. However, there is no known monitoring of other election candidates.

References:

Law for Political Parties and Organizations No. 66, 1991, Chapter 4, Article 18; Article 25

YES: A YES score is earned if there is a domestic agency or set of domestic agencies/entities formally assigned to monitor and enforce laws and regulations around the financing of individual political candidates' campaigns. A YES score is earned even if the agency/entity is ineffective in practice.

NO: A NO score is earned if there is no such agency or entity.

22. Are the regulations governing the political financing of parties effective?

0

22a. In practice, the limits on individual donations to political parties are effective in regulating an individual's ability to financially support a political party.

100 | 75 | 50 | 25 | 0

Comments:

There have been suggested reforms of donation rules (by foreign organizations), but they have not been implemented, nor has there been any serious effort to delve into the matter by either the opposition or the independent press.

One cannot help but quote the item pertaining to political donations:

Gifts and donations. The party or political organization may not accept donations from non-Yemeni individuals or parties (even if they acquired Yemeni nationality)." From law No. 66. Note that having passed the required number of years of acquired citizenship is not a factor in equal citizenship rights.

References:

Elections and Referenda Law No. 13, 2001

Law for Political Parties and Organizations No. 66, 1991, Chapter 4, Article 18

http://aceproject.org/ero-en/regions/mideast/YE/04_19_05_Yemen_ROL_Report.pdf

http://www.idea.int/publications/dem_yemen/upload/Yemen_country_report_English.pdf

100: Existing limits represent the full extent to which an individual can directly or indirectly financially support a political party. Limits are reasonably low enough in the context of the total costs of running a campaign.

75:

50: Existing limits generally represent the full extent to which an individual can directly or indirectly financially support a political party. However, exceptions and loopholes exist through which individuals can indirectly support political parties above and beyond those formal limitations. Such loopholes could include making donations to third-party groups that advocate on behalf of (or against) a particular party; unregulated loans to parties (rather than direct donations); or in-kind support that is not explicitly regulated by laws or regulations. The limits may be too high in the context of the overall costs of running a campaign.

25:

0: Existing limits are routinely bypassed or willfully ignored. The vast majority of individual contributions to a political party are made outside of the formal limitation system. There is no enforcement of violations. Limits are so high that they are meaningless in the context of the overall costs of running a campaign.

22b. In practice, the limits on corporate donations to political parties are effective in regulating a company's ability to financially support a political party.

100 | 75 | 50 | 25 | 0

Comments:

There have been suggested reforms of donation rules (by foreign organizations), but they have not been implemented, nor has there been any serious effort to delve into the matter by either the opposition or the independent press.

One cannot help but quote the item pertaining to political donations: Gifts and donations. The party or political organization may not accept donations from non-Yemeni individuals or parties (even if they acquired Yemeni nationality)." From law No. 66. Note that having passed the required number of years of acquired citizenship is not a factor in equal citizenship rights.

Efforts to find discussions of political donations did not produce any substantive material, even among the independent or opposition press.

References:

Elections and Referenda Law No. 13, 2001

Law for Political Parties and Organizations No. 66, 1991, Chapter 4, Article 18

http://aceproject.org/ero-en/regions/mideast/YE/04_19_05_Yemen_ROL_Report.pdf

http://www.idea.int/publications/dem_yemen/upload/Yemen_country_report_English.pdf

100: Existing limits represent the full extent to which a company can directly or indirectly financially support a political party. Limits are reasonably low enough in the context of the total costs of running a campaign to be meaningful.

75:

50: Existing limits generally represent the full extent to which a company can directly or indirectly financially support a political party. However, exceptions and loopholes exist through which companies can indirectly support political parties above and beyond those formal limitations. Such loopholes could include making donations to third-party groups that advocate on behalf of (or against) a particular party; unregulated loans to parties (rather than direct donations); or in-kind support that is not explicitly regulated by laws or regulations. The limits may be too high in the context of the overall costs of running a campaign.

25:

0: Existing limits are routinely bypassed or willfully ignored. The majority of corporate contributions to political parties are made outside of the formal limitation system. There is no enforcement of violations. Limits are so high that they are meaningless in the context of the overall costs of running a campaign.

22c. In practice, the limits on total party expenditures are effective in regulating a political party's ability to fund campaigns or politically-related activities.

100 | 75 | 50 | 25 | 0

Comments:

There have been suggested reforms of donation rules (by foreign organizations), but they have not been implemented, nor has there been any serious effort to delve into the matter by either the opposition or the independent press.

Law does not provide triggers for legal enforcement or avenues for dealing with irregularities, and, except for financial disclosure provisions, there are no limitations to speak of.

References:

Elections and Referenda Law No. 13, 2001

Law for Political Parties and Organizations No. 66, 1991, Chapter 4, Article 18

http://aceproject.org/ero-en/regions/mideast/YE/04_19_05_Yemen_ROL_Report.pdf

http://www.idea.int/publications/dem_yemen/upload/Yemen_country_report_English.pdf

100: Existing limits represent the full extent to which political parties are able to finance their activities. Limits are reasonably low enough in the context of the total costs of running a party to be meaningful.

75:

50: Existing limits generally represent the full extent to which a political party can finance its activities. However, exceptions and loopholes exist through which parties can generate revenue or finance their activities beyond the scope of existing regulations. Such loopholes could include taking loans that are outside of the scope of regulations covering direct donations; links to revenue-generating business activities that are beyond the scope of electoral or campaign-related regulations; or accepting in-kind support that is not explicitly regulated by laws or regulations. The limits may be too high in the context of the overall costs of running a party

25:

0: Existing limits are routinely bypassed or willfully ignored. The majority of expenditures are made outside of the formal limitation system. Limits are so high that they are meaningless in the context of the overall costs of running a party.

22d. In practice, when necessary, an agency or entity monitoring the financing of political parties independently initiates investigations.

100 | 75 | 50 | 25 | 0

Comments:

There have been suggested reforms of donation rules (by foreign organizations), but they have not been implemented, nor has there been any serious effort to delve into the matter by either the opposition or the independent press.

No investigations for violations have been reported.

References:

Elections and Referenda Law No. 13, 2001

Law for Political Parties and Organizations No. 66, 1991, Chapter 4, Article 18

http://aceproject.org/ero-en/regions/mideast/YE/04_19_05_Yemen_ROL_Report.pdf

http://www.idea.int/publications/dem_yemen/upload/Yemen_country_report_English.pdf

100: The agency or entity aggressively starts investigations into allegations of wrong doing with respect to the financing of political parties. The agency is fair in its application of this power.

75:

50: The agency or entity will start investigations, but often relies on external pressure to set priorities, or has limited effectiveness when investigating. The agency, though limited in effectiveness, is still fair in its application of power.

25:

0: The agency or entity rarely investigates on its own, or the agency or entity is partisan in its application of this power.

22e. In practice, when necessary, an agency or entity monitoring the financing of political parties imposes penalties on offenders.

100 | 75 | 50 | 25 | 0

Comments:

There have been suggested reforms of donation rules (by foreign organizations), but they have not been implemented, nor has there been any serious effort to delve into the matter by either the opposition or the independent press.

The Political Parties Committee does not have any powers beyond a registration role for new political parties and a reporting role. No substantive reports have been made public by the committee, even of its routine activities.

References:

Elections and Referenda Law No. 13, 2001

Law for Political Parties and Organizations No. 66, 1991, Chapter 4, Article 18

http://aceproject.org/ero-en/regions/mideast/YE/04_19_05_Yemen_ROL_Report.pdf

http://www.idea.int/publications/dem_yemen/upload/Yemen_country_report_English.pdf

100: When rules violations are discovered, the agency or entity is aggressive in penalizing offenders.

75:

50: The agency or entity enforces rules, but is limited in its effectiveness. The agency or entity may be slow to act, unwilling to take on politically powerful offenders, or occasionally unable to enforce its judgments.

25:

0: The agency or entity does not effectively penalize offenders. The agency or entity may make judgments but not enforce them, or may fail to make reasonable judgments against offenders. The agency or entity may be partisan in its application of power.

22f. In practice, contributions to political parties are audited.

100 | 75 | 50 | 25 | 0

Comments:

There have been suggested reforms of donation rules (by foreign organizations), but they have not been implemented, nor has there been any serious effort to delve into the matter by either the opposition or the independent press. The reforms call for the institution of audit mechanisms. The Political Parties Committee does check for violations, and to date, no financial violations have been made public by the committee, if they exist.

References:

Elections and Referenda Law No. 13, 2001

Law for Political Parties and Organizations No. 66, 1991, Chapter 4, Article 18

http://aceproject.org/ero-en/regions/mideast/YE/04_19_05_Yemen_ROL_Report.pdf

http://www.idea.int/publications/dem_yemen/upload/Yemen_country_report_English.pdf

100: Political party finances are regularly audited using generally accepted auditing practices. This includes the auditing of nominally independent financial organizations that act as financial extensions of the party.

75:

50: Political party finances (as defined) are audited, but audits are limited in some way, such as using inadequate auditing standards, or the presence of exceptions to disclosed contributions. Contributions to the political party may be sufficiently audited, but the auditing of nominally independent extensions of the party may not be.

25:

0: Party finances are not audited, or the audits performed have no value in tracking contributions. Audits may be performed by entities known to be partisan or biased in their practices.

23. Are the regulations governing the political financing of individual candidates effective?

0

23a. In practice, the limits on individual donations to political candidates are effective in regulating an individual's ability to financially support a particular candidate.

100 | 75 | 50 | 25 | 0

Comments:

There have been suggested reforms of donation rules (by foreign organizations), but they have not been implemented, nor has there been any serious effort to delve into the matter by either the opposition or the independent press.

References:

Elections and Referenda Law No. 13 for 2001

Law for Political Parties and Organizations No. 66, 1991, Chapter 4, Article 18

http://aceproject.org/ero-en/regions/mideast/YE/04_19_05_Yemen_ROL_Report.pdf

http://www.idea.int/publications/dem_yemen/upload/Yemen_country_report_English.pdf

100: Existing limits represent the full extent to which an individual can directly or indirectly financially support a political candidate. Limits are reasonably low enough in the context of the total costs of running a campaign.

75:

50: Existing limits generally represent the full extent to which an individual can directly or indirectly financially support a particular candidate. However, exceptions and loopholes exist through which individuals can indirectly support particular political candidates above and beyond those formal limitations. Such loopholes could include making donations to third-party groups that advocate on behalf of (or against) a particular candidate; unregulated loans to candidates (rather than direct donations); or in-kind support that is not explicitly regulated by laws or regulations. The limits may be too high in the context of the overall costs of running a campaign.

25:

0: Existing limits are routinely bypassed or willfully ignored. The vast majority of individual contributions to a particular political candidate are made outside of the formal limitation system. There is no enforcement of violations. Limits are so high that they are meaningless in the context of the overall costs of running a campaign.

23b. In practice, the limits on corporate donations to individual candidates are effective in regulating a company's ability to financially support a candidate.

100 | 75 | 50 | 25 | 0

Comments:

There have been suggested reforms of donation rules (by foreign organizations), but they have not been implemented, nor has there been any serious effort to delve into the matter by either the opposition or the independent press.

References:

Elections and Referenda Law No. 13, 2001

Law for Political Parties and Organizations No. 66, 1991, Chapter 4, Article 18

http://aceproject.org/ero-en/regions/mideast/YE/04_19_05_Yemen_ROL_Report.pdf

http://www.idea.int/publications/dem_yemen/upload/Yemen_country_report_English.pdf

100: Existing limits represent the full extent to which a company can directly or indirectly financially support an individual candidate. Limits are reasonably low enough in the context of the total costs of running a campaign to be meaningful.

75:

50: Existing limits generally represent the full extent to which a company can directly or indirectly financially support an individual candidate. However, exceptions and loopholes exist through which companies can indirectly support individual candidates above and beyond those formal limitations. Such loopholes could include making donations to third-party groups

that advocate on behalf of (or against) a particular candidate; unregulated loans to candidates (rather than direct donations); or in-kind support that is not explicitly regulated by laws or regulations. The limits may be too high in the context of the overall costs of running a campaign.

25:

0: Existing limits are routinely bypassed or willfully ignored. The majority of corporate contributions to individual candidates are made outside of the formal limitation system. There is no enforcement of violations. Limits are so high that they are meaningless in the context of the overall costs of running a campaign.

23c. In practice, when necessary, an agency or entity monitoring the financing of individual candidates' campaigns independently initiates investigations.

100 | 75 | 50 | 25 | 0

Comments:

There have been suggested reforms of donation rules (by foreign organizations), but they have not been implemented, nor has there been any serious effort to delve into the matter by either the opposition or the independent press.

References:

Elections and Referenda Law No. 13, 2001

Law for Political Parties and Organizations No. 66, 1991, Chapter 4, Article 18

http://aceproject.org/ero-en/regions/mideast/YE/04_19_05_Yemen_ROL_Report.pdf

http://www.idea.int/publications/dem_yemen/upload/Yemen_country_report_English.pdf

100: The agency or entity aggressively starts investigations into allegations of wrong doing with respect to the financing of individual candidates' campaigns. The agency is fair in its application of this power.

75:

50: The agency or entity will start investigations, but often relies on external pressure to set priorities, or has limited effectiveness when investigating. The agency, though limited in effectiveness, is still fair in its application of power.

25:

0: The agency or entity rarely investigates on its own, or the agency or entity is partisan in its application of this power.

23d. In practice, when necessary, an agency or entity monitoring the financing of individual candidates' campaigns imposes penalties on offenders.

100 | 75 | 50 | 25 | 0

Comments:

There have been suggested reforms of donation rules (by foreign organizations), but they have not been implemented, nor has there been any serious effort to delve into the matter by either the opposition or the independent press. We are not aware of any substantive action by the Political Parties Committee for such violations. There are doubts about the committee's ability to enforce any rulings or actions against violators.

References:

Elections and Referenda Law No. 13, 2001

Law for Political Parties and Organizations No. 66, 1991, Chapter 4, Article 18

http://aceproject.org/ero-en/regions/mideast/YE/04_19_05_Yemen_ROL_Report.pdf

http://www.idea.int/publications/dem_yemen/upload/Yemen_country_report_English.pdf

100: When rules violations are discovered, the agency or entity is aggressive in penalizing offenders.

75:

50: The agency or entity enforces rules, but is limited in its effectiveness. The agency or entity may be slow to act, unwilling to take on politically powerful offenders, or occasionally unable to enforce its judgments.

25:

0: The agency or entity does not effectively penalize offenders. The agency or entity may make judgments but not enforce them, or may fail to make reasonable judgments against offenders. The agency or entity may be partisan in its application of power.

23e. In practice, the finances of individual candidates' campaigns are audited.

100 | 75 | 50 | 25 | 0

Comments:

There have been suggested reforms of donation rules (by foreign organizations), but they have not been implemented, nor has there been any serious effort to delve into the matter by either the opposition or the independent press. The Political Parties Committee's role is to check for violations, but there is doubt if that constitutes a real audit function.

References:

Elections and Referenda Law No. 13, 2001

Law for Political Parties and Organizations No. 66, 1991, Chapter 4, Article 18

http://aceproject.org/ero-en/regions/mideast/YE/04_19_05_Yemen_ROL_Report.pdf

http://www.idea.int/publications/dem_yemen/upload/Yemen_country_report_English.pdf

100: The finances of individual candidates' campaigns are regularly audited using generally accepted auditing practices.

75:

50: The finances of individual candidates' campaigns are audited, but audits are limited in some way, such as using inadequate auditing standards, or the presence of exceptions to disclosed contributions.

25:

0: The finances of individual candidates' campaigns are not audited, or the audits performed have no value in tracking contributions. Audits may be performed by entities known to be partisan or biased in their practices.

24. Can citizens access records related to the financing of political parties?

8

24a. In practice, political parties disclose data relating to financial support and expenditures within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

Disclosure of revenues and expenditures is mainly made to the Political Parties Committee. In such cases, the committee can withhold government contributions to the party if it does not file its annual donations and expenditure report as the bylaws of the Law of Political Parties and Organizations stipulate. The reports, however, are not made public.

References:

Elections and Referenda Law No. 13, 2001

Law for Political Parties and Organizations No. 66, 1991

Executive Procedures (Bylaws) for Law of Political Parties and Organizations

100: Political parties disclose their sources of funding and expenditures at least every quarter.

75:

50: Political parties disclose their sources of funding and expenditures only one or two times per year. Delays may occur when sensitive political information is involved.

25:

0: Political parties never publish their sources of funding or expenditures or publish that information only rarely with more than a year in between publication. Politically sensitive information is regular withheld from public disclosure.

24b. In practice, citizens can access the financial records of political parties within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

Disclosure of revenues and expenditures is mainly made to the Political Parties Committee. In such cases, the committee can withhold government contributions to the party if it does not file its annual donations and expenditure report as the bylaws of the Law of Political Parties and Organizations stipulate. The reports, however, are not made public.

The article speaks of warnings being given to political parties that have not submitted their final accounts vis a vis contributions and donations.

References:

Elections and Referenda Law No. 13, 2001

Law for Political Parties and Organizations No. 66, 1991, Chapter 4, Article 18

Bylaws for Law of Political Parties and Organizations

<http://www.26sep.net/newsweek.php?lng=arabic&issue=1271&tid=1>

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take two to four weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. There may be persistent delays in obtaining politically sensitive records.

24c. In practice, citizens can access the financial records of political parties at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

No legal stipulation to make such information accessible to public exists.

Only the Committee of Political Parties and Organizations has access of these records, and then only to contributions and expenditures.

References:

Elections and Referenda Law No. 13, 2001

Law for Political Parties and Organizations No. 66, 1991, Chapter 4, Article 18

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

25. Can citizens access records related to the financing of individual candidates' campaigns?

0

25a. In practice, individual political candidates disclose data relating to financial support and expenditures within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

There is no legal stipulation for this disclosure.

References:

Elections and Referenda Law No. 13, 2001

Law for Political Parties and Organizations No. 66, 1991, Chapter 4, Article 18

100: Individual candidates disclose their sources of funding and expenditures at least every quarter.

75:

50: Individual candidates disclose their sources of funding and expenditures only one or two times per year. Delays may occur when sensitive political information is involved.

25:

0: Individual candidates never publish their sources of funding or expenditures or publish that information only rarely with more than a year in between publication. Politically sensitive information is regular withheld from public disclosure.

25b. In practice, citizens can access the financial records of individual candidates (their campaign revenues and expenditures) within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

There is no legal requirement to give citizens access. Party candidates fall under the requirement for political parties to disclose such information to the Political Parties Committee.

References:

Elections and Referenda Law No. 13, 2001

Law for Political Parties and Organizations No. 66, 1991, Chapter 4, Article 18

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take two to four weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. There may be persistent delays in obtaining politically sensitive records.

25c. In practice, citizens can access the financial records of individual candidates (their campaign revenues and expenditures) at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

There is no legal requirement to give citizens access. Party candidates fall under the requirement for political parties to disclose such information to the Political Parties Committee.

References:

Elections and Referenda Law No. 13, 2001

Law for Political Parties and Organizations No. 66, 1991, Chapter 4, Article 18

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

Category III. Government Accountability

III-1. ²⁰Executive Accountability

27. Can the chief executive be held accountable for his/her actions?

44

27a. In practice, the chief executive gives reasons for his/her policy decisions.

100 | 75 | 50 | 25 | 0

Comments:

There are no regular press conferences or briefings, but there are occasions when the president will discuss the reasons for major changes in policy, to the extent that it does not present any harm or cause misunderstanding of intention.

References:

<http://www.reuters.com/article/middleeastCrisis/idUSL17824829>

100: The chief executive and/or cabinet ministers give formal explanations of all policy matters. The chief executive regularly takes critical questions from journalists or an opposition party, usually at least once a month. There is no censoring of such sessions.

75:

50: The chief executive and/or cabinet ministers give explanations of policy, but not always in a timely or complete way. The chief executive occasionally takes critical questions from journalists or an opposition party, but not in a regular or formalized process. Particular issues of political sensitivity may be censored by government broadcasters.

25:

0: The chief executive and/or cabinet ministers do not give substantial justifications for policy. Public appearances by the chief executive offer no exposure to critical questions. The government and government-run media routinely censor such sessions.

27b. In law, the judiciary can review the actions of the executive.

YES | NO

Comments:

The Supreme court is mandated to do this, but it has yet to be tested.

However, as the second link indicates: "... court rulings are subject to the demands of the government."

There have not been any cases of judicial review of the executive, except for minor "anti-corruption" cases, which are done more for public show than to curtail wrongdoing by the government.

Some review has been done through lawsuits presented by victims of government

References:

Constitution of the Republic (amended 2001), Article 153 (e)

<http://www.heritage.org/Index/country.cfm?id=Yemen>

YES: A YES score is earned if there is a formal process by which the judiciary can pass judgments on the legality or constitutionality of actions taken by the executive.

NO: A NO score is earned if no such mechanism exists. A NO score is earned if judicial review is vaguely established in law or regulation without formal procedures. A NO score is earned if general exemptions exist with respect to executive actions that are reviewable (a national security exemption, for example).

27c. In practice, when necessary, the judiciary reviews the actions of the executive.

100 | 75 | 50 | 25 | 0

Comments:

In a rare decision, the court actually ruled in favor of a newspaper editor, whose license had been suspended.

However, the courts are far from being an effective mechanism of checks and balances among the branches of government in Yemen.

References:

<http://yementimes.com/article.shtml?i=1152&p=local&a=1>

<http://yementimes.com/article.shtml?i=1135&p=local&a=1>

100: When constitutional or legal questions or possible violations are raised, the judiciary is aggressive in reviewing executive actions and can void illegal or unconstitutional actions. The judiciary is fair and nonpartisan in its application of this power. It does not need to rely upon the executive to initiate a constitutional or legal review.

75:

50: The judiciary will review executive actions, but is limited in its effectiveness. The judiciary may be slow to act, unwilling to take on politically sensitive issues, or occasionally unable to enforce its judgments.

25:

0: The judiciary does not effectively review executive policy. The judiciary may make judgments but not enforce them, or may fail to pass judgments on executive abuses. The judiciary may be partisan in its application of power. It must rely on instructions from the executive in order to initiate a legal or constitutional review.

27d. In practice, the chief executive limits the use of executive orders for establishing new regulations, policies, or government practices.

100 | 75 | 50 | 25 | 0

Comments:

If anything, it appears that executive orders are the rule rather than the exception. Presidential orders cover anything from the release of prisoners unjustly imprisoned to improving the lot of civil servants.

References:

<http://www.yobserver.com/front-page/10014803.html>

http://www.newsymen.net/en/view_news.asp?sub_no=3_2008_09_01_7414

100: The chief executive utilizes executive orders only when there is no constitutional or legal requirement for official legislative action or approval. Executive orders are limited in number and narrow in scope.

75:

50: The chief executive sometimes relies on executive orders to implement policies and regulations opposed by the legislature. Some executive orders are overly broad in scope and are designed to circumvent constitutional or legal requirements for legislative action or approval.

25:

0: The chief executive routinely abuses executive orders to render the legislature practically useless. Executive orders are the norm, not the exception, and directly contravene constitutional or legal requirements for legislative action or approval.

28. Is the executive leadership subject to criminal proceedings?

100

28a. In law, the heads of state and government can be prosecuted for crimes they commit.

YES | NO

Comments:

Even though the judiciary theoretically is not controlled by the president, it would be unable to take any action if it wanted to.

References:

Constitution of the Republic (amended 2001), Article 153 (e)

YES: A YES score is earned if the heads of state and government can be investigated, charged or prosecuted for criminal allegations. Figurehead officials (symbolic figures without day-to-day authority) may be exempt.

NO: A NO score is earned if either the head of state or government cannot be investigated, charged or prosecuted for criminal allegations or the executive branch controls whether investigative or prosecutorial immunity can be lifted on the heads of state or government.

28b. In law, ministerial-level officials can be prosecuted for crimes they commit.

YES | NO

Comments:

To date no prosecution of any minister has taken place for wrongdoing in office.”

References:

Constitution of the Republic (amended 2001), Article 153 (e)

YES: A YES score is earned if ministerial-level officials, or their equivalents, can all be investigated, charged or prosecuted for criminal allegations.

NO: A NO score is earned if any ministerial-level official, or equivalent official, cannot be investigated, charged or prosecuted for criminal allegations or the executive branch controls whether investigative or prosecutorial immunity can be lifted on ministerial-level officials.

29. Are there regulations governing conflicts of interest by the executive branch?

25

29a. In law, the heads of state and government are required to file a regular asset disclosure form.

YES | NO

References:

Law No. 30, 2006, Article 4

YES: A YES score is earned if the heads of state and government are required by law to file an asset disclosure form while in office, illustrating sources of income, stock holdings, and other assets. This form need not be publicly available to score a YES. Figurehead officials (symbolic figures without day-to-day authority) may be exempt.

NO: A NO score is earned if either the head of state or government is not required to disclose assets.

29b. In law, ministerial-level officials are required to file a regular asset disclosure form.

YES | NO

References:

Law No. 30, 2006, Article 4

YES: A YES score is earned if ministerial-level officials, or their equivalents, are all required by law to file an asset disclosure form while in office, illustrating sources of income, stock holdings, and other assets.

NO: A NO score is earned if ministers are not required to disclose assets. A NO score is earned if some ministers must disclose assets, but other ministers are not required.

29c. In law, there are regulations governing gifts and hospitality offered to members of the executive branch.

YES | **NO**

Comments:

No specific mention is in the law. It discusses only receipt of money or in-kind assets that increase an employee's worth.

References:

Law No. 30, 2006, Article 4, <http://snaccyemen.org/details.asp?id=1665&catid=33>

YES: A YES score is earned if there are formal guidelines regulating gifts and hospitality offered to members of the executive branch of government.

NO: A NO score is earned if there are no guidelines or regulations with respect to gifts and hospitality offered to members of the executive branch. A NO score is earned if the guidelines are overly general and do not specify what is and is not appropriate.

29d. In law, there are requirements for the independent auditing of the executive branch asset disclosure forms (defined here as ministers and heads of state and government).

YES | **NO**

Comments:

The right to look at the Financial Disclosure Declarations and the explanations, documents and procedures of the evaluation is restricted to the Supreme Anti-Corruption Committee and the relevant investigating agency." From Article 12

There is no specific mention of an external independent auditor in the law.

References:

Law No. 30, 2006, Articles 4, 12, <http://snaccyemen.org/details.asp?id=1665&catid=33>

YES: A YES score is earned if there is a legal or regulatory requirement for independent auditing of executive branch asset disclosures. The auditing is performed by an impartial third-party. Figurehead officials (symbolic figures without day-to-day authority) may be exempt.

NO: A NO score is earned if there are no legal or regulatory requirements for the independent auditing of executive branch asset disclosures or if such requirements exist but allow for self-auditing.

29e. In law, there are restrictions on heads of state and government and ministers entering the private sector after leaving the government.

YES | **NO**

Comments:

Article 30 of the Anti-Corruption Law specifically defines what constitutes cases of corruption."

Regulations are not there yet. Article 21 (c) touches on this: The Supreme National Anti-Corruption Committee (SNACC) "will study, assess and develop staffing systems in order to ... promote transparency in public posts and prevent conflict of interest between public posts and employees; after-service regulations should be made to regulate or prevent employees from having personal advantages by practicing professional private activities directly related to the posts they used to hold or supervise during service."

References:

Constitution of the Republic (amended 2001)

Anti-Corruption Law No. 39, 2006, Articles 21 (c), 30, <http://snaccyemen.org/details.asp?id=1683&catid=33>

Financial Disclosure Law 20, 2006

Civil Service Law No. 19, 1991

YES: A YES score is earned if there are regulations restricting the ability of heads of state/government and ministers to take positions in the private sector after leaving government that would present a conflict of interest, including positions that directly seek to influence their former government colleagues. Figurehead officials (symbolic figures without day-to-day authority) may be exempt.

NO: A NO score is earned if no such restrictions exist.

29f. In practice, the regulations restricting post-government private sector employment for heads of state and government and ministers are effective.

100 | 75 | 50 | 25 | 0

Comments:

The Supreme National Anti-Corruption Committee (SNACC) will study, assess and develop staffing systems in order to ... promote transparency in public posts and prevent conflict of interest between public posts and employees; after-service regulations should be made to regulate or prevent employees from having personal advantages by practicing professional private activities directly related to the posts they used to hold or supervise during service."

References:

Anti Corruption Law No. 39, 2006, Article 21 (c)

100: The regulations restricting post-government private sector employment for heads of state/government and ministers are uniformly enforced. There are no cases or few cases of those officials taking jobs in the private sector after leaving government where they directly lobby or seek to influence their former government colleagues without an adequate cooling off" period.

75:

50: The regulations are generally enforced though some exceptions exist. In certain sectors, heads of state/government or ministers are known to regularly take jobs in the private sector that entail direct lobbying or seeking to influence their former government colleagues. Cooling off periods are short and sometimes ignored.

25:

0: The regulations are rarely or never enforced. Heads of state/government or ministers routinely take jobs in the private sector following government employment that involve direct lobbying or influencing of former government colleagues. Cooling off periods are non-existent or never enforced.

29g. In practice, the regulations governing gifts and hospitality offered to members of the executive branch are effective.

100 | 75 | 50 | 25 | 0

Comments:

None of the relevant laws specifically deal with gifts and hospitality.

References:

Law No. 19, Civil Service Law

Law 20, 2006 Concerning Declarations of Financial Disclosure

Law 39, 2006, Combating Corruption

100: The regulations governing gifts and hospitality to members of the executive branch are regularly enforced. Members of the executive branch never or rarely accept gifts or hospitality above what is allowed.

75:

50: The regulations governing gifts and hospitality to members of the executive branch are generally applied though exceptions exist. Some ministers in certain sectors are known to accept greater amounts of gifts and hospitality from outside interest groups or private sector actors than is allowed.

25:

0: The regulations governing gifts and hospitality to members of the executive branch are routinely ignored and unenforced. Ministers and other members of the executive branch routinely accept significant amounts of gifts and hospitality from outside interest groups and actors seeking to influence their decisions.

29h. In practice, executive branch asset disclosures (defined here as ministers and above) are audited.

100 | 75 | 50 | 25 | 0

Comments:

The law leaves the checking to the Supreme National Anti-Corruption Committee (SNACC) and does not allow for others to view the declarations, except investigative agencies.”

References:

Law 20, 2006, Financial Disclosures Declaration, <http://snaccyemen.org/details.asp?id=1683&catid=33>

100: Executive branch asset disclosures are regularly audited using generally accepted auditing practices.

75:

50: Executive branch asset disclosures are audited, but audits are limited in some way, such as using inadequate auditing standards, or the presence of exceptions to disclosed assets.

25:

0: Executive branch asset disclosures are not audited, or the audits performed have no value. Audits may be performed by entities known to be partisan or biased in their practices.

30. Can citizens access the asset disclosure records of the heads of state and government?

0

30a. In law, citizens can access the asset disclosure records of the heads of state and government.

YES | NO

Comments:

The Supreme National Anti-Corruption Committee (SNACC) and investigative bodies” are the only ones allowed to view Financial Disclosure Declarations.

References:

Final Disclosure Law, 2006

YES: A YES score is earned if the heads of state and government file an asset disclosure form that is, in law, accessible to the public (individuals, civil society groups or journalists).

NO: A NO score is earned if there is no asset disclosure for either the head of state or government. A NO score is earned if the form is filed, but not available to the public.

30b. In practice, citizens can access the asset disclosure records of the heads of state and government within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

The Supreme National Anti-Corruption Committee (SNACC) and investigative bodies" are the only ones allowed to view Financial Disclosure Declarations.

References:

Financial Disclosure Act, 2006, Article 12

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take around two weeks to obtain. Some additional delays may be experienced.

25:

0: Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

30c. In practice, citizens can access the asset disclosure records of the heads of state and government at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

The Supreme National Anti-Corruption Committee (SNACC) and investigative bodies" are the only ones allowed to view Financial Disclosure Declarations.

References:

Financial Disclosure Act, 2006, Article 12 of

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

26. Can citizens sue the government for infringement of their civil rights?

100

26. In law, can citizens sue the government for infringement of their civil rights?

YES | NO

Comments:

There have even been some rare cases where the government lost (see second source).

References:

Constitution of the Republic (amended 2001), Article 50, (<http://www.unhcr.org/refworld/docid/3fc4c1e94.html>)

<http://www.yobserver.com/front-page/10014188.html>

YES: A YES score is earned if all citizens (citizen is defined broadly, to include all ethnicities, or anyone born in the country) can receive compensation or redress through the courts for civil rights violations committed by the government, such as failure to follow due process of law when detaining suspected criminals.

NO: A NO score is earned if any group of citizens is excluded from the right to sue the government, or no such mechanism exists.

31. Official government functions are kept separate and distinct from the functions of the ruling political party.

0

31. In practice, official government functions are kept separate and distinct from the functions of the ruling political party.

100 | 75 | 50 | 25 | 0

Comments:

Although the first source is somewhat old, it does provide lengthy insights into how the People's General Congress exerts its political muscle to realize its political will.

References:

http://www.idea.int/publications/dem_yemen/upload/Yemen_country_report_English.pdf

<http://yementimes.com/article.shtml?i=1094&p=front>

<http://www.yemenonline.info/news-855.html>

100: Clear rules are followed distinguishing state functions from party activities. Government funds are never used for party activities. The civil service is completely distinct from party bureaucracy.

75:

50: The ruling party is, in principal, separate from the state, but exceptions to this standard sometimes occur. Examples may be the use of civil servants to organize political rallies, use of government vehicles on campaign trips, or use of government funds for party purposes.

25:

0: The government bureaucracy is an extension of the ruling party. There are few boundaries between government and party activities. Government funds, equipment and personnel are regularly used to support party activities.

III-2. Legislative Accountability

32. Can members of the legislature be held accountable for their actions?

32a. In law, the judiciary can review laws passed by the legislature.

YES | NO

Comments:

To date, the Supreme Court has yet to rule on the constitutionality of enacted legislation.

References:

Constitution of the Republic of Yemen (amended 2001), Article 153 (a)

YES: A YES score is earned if there is a formal process by which the judiciary or constitutional courts can pass judgments on the legality or constitutionality of laws passed by the legislature.

NO: A NO score is earned if no such mechanism exists. A NO score is earned if judicial review is vaguely established in law or regulation without formal procedures. A NO score is earned if general exceptions exist exempting certain legislative actions from being reviewed (a national security exemption, for example).

32b. In practice, when necessary, the judiciary reviews laws passed by the legislature.

100 | 75 | 50 | 25 | 0

Comments:

Review of the constitutionality of the General Sales Tax has been before the court since 2005. This is the first time a lawsuit involving review of legislation has been handled by the judiciary. Other cases are still awaiting decisions.

References:

<http://yementimes.com/article.shtml?i=1172&p=local&a=4>

<http://thereport.amnesty.org/eng/regions/middle-east-and-north-africa/yemen>

100: When constitutional or legal questions or possible violations are raised, the judiciary is aggressive in reviewing laws passed and can void illegal or unconstitutional actions. The judiciary is fair and nonpartisan in its application of this power.

75:

50: The judiciary will review laws passed, but is limited in its effectiveness. The judiciary may be slow to act, unwilling to take on politically sensitive issues, or occasionally unable to enforce its judgments.

25:

0: The judiciary does not effectively review laws passed. The judiciary may make judgments but not enforce them, or may fail to pass judgments on executive abuses. The judiciary may be partisan in its application of power.

32c. In law, are members of the national legislature subject to criminal proceedings?

YES | NO

Comments:

Article 194 deals with cases of loss of membership in Parliament, including criminal actions.

Article 205 states that the Minister of Justice can request a waiver of immunity for a member of Parliament for three months. Article 206 says this can be done by a simple majority vote of members. If the legal procedures for which the member is being tried are not completed within the period, then immunity is restored.

References:

Internal Procedures (Bylaws) of the House of Representatives, 1994, Articles 194 -196, 205, 206, http://www.parliament.gov.ye/laws/Internal/Interna_05.htm#5_2

YES: A YES score is earned if all members of the legislature can, in law, be investigated and prosecuted for criminal allegations.

NO: A NO score is earned if any member of the legislature cannot, in law, be investigated and prosecuted for criminal proceedings. A NO score is also earned if the legislative branch itself controls whether investigative or prosecutorial immunity can be lifted on members of the legislature.

33. Are there regulations governing conflicts of interest by members of the national legislature?

14

33a. In law, members of the national legislature are required to file an asset disclosure form.

YES | NO

References:

Financial Disclosure Act, 2006, Article 4 (A3), <http://snaccyemen.org/details.asp?id=1665&catid=33>

YES: A YES score is earned if all members of the legislature are required by law to file an asset disclosure form while in office, illustrating sources of income, stock holdings, and other assets. This form does not need to be publicly available to score a YES.

NO: A NO score is earned if any member of the legislature is not required to disclose assets.

33b. In law, there are restrictions for national legislators entering the private sector after leaving the government.

YES | NO

Comments:

The Supreme National Anti-Corruption Committee (SNACC) will study, assess and develop staffing systems in order to ... promote transparency in public posts and prevent conflict of interest between public posts and employees; after-service regulations should be made to regulate or prevent employees from having personal advantages by practicing professional private activities directly related to the posts they used to hold or supervise during service."

References:

Financial Disclosure Act, 2006, Article 21 (c), <http://snaccyemen.org/details.asp?id=1665&catid=33>

YES: A YES score is earned if there are regulations restricting national legislators' ability to take positions in the private sector after leaving government that would present a conflict of interest, including positions that directly seek to influence their former government colleagues.

NO: A NO score is earned if no such restrictions exist.

33c. In law, there are regulations governing gifts and hospitality offered to members of the national legislature.

YES | NO

Comments:

There are no legal stipulations that cover offers of gifts and hospitality to members of the House of Representatives.

References:

Internal Bylaws of Parliament

Financial Disclosure Law 20, 2006

YES: A YES score is earned if there are formal guidelines regulating gifts and hospitality for members of the legislature.

NO: A NO score is earned if there are no guidelines or regulations with respect to gifts or hospitality offered to members of the legislature. A NO score is earned if the guidelines are general and do not specify what is and is not appropriate.

33d. In law, there are requirements for the independent auditing of the asset disclosure forms of members of the national legislature.

YES | NO

Comments:

The law leaves the checking to the Supreme National Anti-Corruption Committee (SNACC). No others may view the declarations except investigative agencies."

References:

Financial Disclosure Law 20, 2006, <http://snaccyemen.org/details.asp?id=1683&catid=33>

YES: A YES score is earned if there is a legal or regulatory requirement for independent auditing of legislative branch asset disclosures. The auditing is performed by an impartial third-party.

NO: A NO score is earned if there are no legal or regulatory requirements for the independent auditing of legislative branch asset disclosures or if such requirements exist but allow for self-auditing.

33e. In practice, the regulations restricting post-government private sector employment for national legislators are effective.

100 | 75 | 50 | 25 | 0

Comments:

Article 21, bullit c states:

The Supreme National Anti-Corruption Committee (SNACC) will study, assess and develop staffing systems in order to ... promote transparency in public posts and prevent conflict of interest between public posts and employees; after-service regulations should be made to regulate or prevent employees from having personal advantages by practicing professional private activities directly related to the posts they used to hold or supervise during service.

References:

Anti-Corruption Law No. 39, 2006, Article 21

100: The regulations restricting post-government private sector employment for national legislators are uniformly enforced. There are no cases or few cases of legislators taking jobs in the private sector after leaving government where they directly lobby or seek to influence their former government colleagues without an adequate cooling off" period.

75:

50: The regulations are generally enforced though some exceptions exist. In certain sectors, legislators are known to regularly take jobs in the private sector that entail directly lobbying or seeking to influence their former government colleagues. Cooling off periods are short and sometimes ignored.

25:

0: The regulations are rarely or never enforced. Legislators routinely take jobs in the private sector following government employment that involve direct lobbying or influencing of former government colleagues. Cooling off periods are non-existent or never enforced.

33f. In practice, the regulations governing gifts and hospitality offered to national legislators are effective.

100 | 75 | 50 | 25 | 0

Comments:

None of the relevant laws specifically deals with gifts and hospitality.

References:

Law 20, 2006, Concerning Declaration of Financial Disclosure

Law No. 1, 2006, Concerning the Internal Procedures of the House of Representatives (Bylaws)

100: The regulations governing gifts and hospitality to national legislators are regularly enforced. Legislators never or rarely accept gifts or hospitality above what is allowed.

75:

50: The regulations governing gifts and hospitality to national legislators are generally applied though exceptions exist. Some legislators in certain sectors are known to accept greater amounts of gifts and hospitality from outside interest groups or private sector actors than is allowed.

25:

0: The regulations governing gifts and hospitality to national legislators are routinely ignored and unenforced. Legislators routinely accept significant amounts of gifts and hospitality from outside interest groups and actors seeking to influence their decisions.

33g. In practice, national legislative branch asset disclosures are audited.

100 | 75 | 50 | 25 | 0

Comments:

Only the Supreme National Anti-Corruption Committee (SNACC) and investigative agencies⁸ are allowed to check the reports.

References:

Financial Disclosure Law 20, 2006, <http://snaccyemen.org/details.asp?id=1683&catid=33> – Arabic)

Law No.1, 2006, Concerning the Bylaws of the House of Representatives

100: Legislative branch asset disclosures are regularly audited using generally accepted auditing practices.

75:

50: Legislative branch asset disclosures are audited, but audits are limited in some way, such as using inadequate auditing standards, or the presence of exceptions to disclosed assets.

25:

0: Legislative branch asset disclosures are not audited, or the audits performed have no value. Audits may be performed by entities known to be partisan or biased in their practices.

34. Can citizens access the asset disclosure records of members of the national legislature?

0

34a. In law, citizens can access the asset disclosure records of members of the national legislature.

YES | **NO**

Comments:

The Supreme National Anti-Corruption Committee (SNACC) and investigative bodies" are the only ones allowed to view Financial Disclosure Declarations.

References:

Financial Disclosure Law 20, 2006, Article 12

YES: A YES score is earned if members of the national legislature file an asset disclosure form that is, in law, accessible to the public (individuals, civil society groups or journalists).

NO: A NO score is earned if there is no asset disclosure for members of the national legislature. A NO score is earned if the form is filed, but not available to the public.

34b. In practice, citizens can access legislative asset disclosure records within a reasonable time period.

100 | 75 | 50 | 25 | **0**

Comments:

The Supreme National Anti-Corruption Committee (SNACC) and investigative bodies" are the only ones allowed to view Financial Disclosure Declarations. No other relevant stipulations exist.

References:

Financial Disclosure Law 20, 2006, Article 12

Internal Bylaws of Parliament

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take around two weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

34c. In practice, citizens can access legislative asset disclosure records at a reasonable cost.

100 | 75 | 50 | 25 | **0**

Comments:

The Supreme National Anti-Corruption Committee (SNACC) and investigative bodies" are the only ones allowed to view Financial Disclosure Declarations. No other relevant legal stipulations exist.

References:

Financial Disclosure Law 20, 2006, Article 12

Law No. 1, 2006, Internal Bylaws of Parliament

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

35. Can citizens access legislative processes and documents?

0

35a. In law, citizens can access records of legislative processes and documents.

YES | **NO**

Comments:

There is not much change from this observation: The parliamentary library has few materials available for legislative use. Important documents and even tapes of televised sessions are kept in secrecy. Access to important information is made difficult for most deputies, except committee chairs. The opposition blames this situation on the authoritarian nature of the government and its attempt to control information as a way to prevent true democratic change.”

If that is the case for members of Parliament, they have no greater access than the public at large. Note that the report states this to be the case for the 1993 and 1997 parliaments.

References:

http://findarticles.com/p/articles/mi_qa5400/is_200203/ai_n21309824/pg_9

YES: A YES score is earned if there is a general legal right to access records of legislative proceedings including voting records. A YES score can still be given if there are formal rules for specific exemptions to the right to disclosure (special secret sessions related to national security).

NO: A NO score is earned if there is no general right to access documents recording legislative proceedings. A NO score is earned if there exemptions to the general right that are not clearly defined by formal rules.

35b. In practice, citizens can access records of legislative processes and documents within a reasonable time period.

100 | 75 | 50 | 25 | **0**

Comments:

There is not much change from this observation: The parliamentary library has few materials available for legislative use. Important documents and even tapes of televised sessions are kept in secrecy. Access to important information is made difficult for most deputies, except committee chairs. The opposition blames this situation on the authoritarian nature of the government and its attempt to control information as a way to prevent true democratic change.”

If that is the case for members of Parliament, they have no greater access than the public at large. Note that the report states this to be the case for the 1993 and 1997 parliaments.

The second source states: “The Yemeni government should actively enforce transparency and public access to information law.”

References:

http://findarticles.com/p/articles/mi_qa5400/is_200203/ai_n21309824/pg_9

<http://www.freedomhouse.org/template.cfm?page=140&edition=7&ccrountry=143§ion=73&ccrpage=31>

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take around two weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

35c. In practice, citizens can access records of legislative processes and documents at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

Parliament drafted new instructions to prevent parliamentarians from accessing sources without prior permission from Parliament's chairman and the concerned minister. Even though the Constitution guarantees this right, the government seeks to make it difficult for parliamentarians to have access to information both inside and outside of parliament. Therefore, the general public finds it even more difficult to access the information.

References:

http://www.irex.org/programs/msi_MENA/2006/yemen.asp

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

22
III-3. Judicial Accountability

36. Are judges appointed fairly?

8

36a. In law, there is a transparent procedure for selecting national-level judges.

YES | NO

Comments:

Assignment of judges is done by judicial authorities. The minister nominates, and the appointments are endorsed by the Supreme Judicial Authority. Appointments are not endorsed by the Legislative Branch. Some argue that the law needs to be amended to reflect some recent changes, such as the removal of the president from the Supreme Judicial Council and the need for greater checks and balances among the three branches of government.

References:

Constitution of the Republic (amended 2001)

Law of Judicial Authority, Chapter IV, Section i, Articles 57-64, <http://www.police-info.gov.ye/Laws/Jud01.htm>

YES: A YES score is earned if there is a formal process for selecting national level justices. This process should be public in the debating and confirmation stages. National-level judges are defined as judges who have powers that derive from a national law or constitution; are nominated/appointed by a national governmental body (head of state/government or national legislature); and/or are elected nationally.

NO: A NO score is given if there is no formal process of selection or the process is conducted without public oversight. National-level judges are defined as judges who have powers that derive from a national law or constitution; are nominated/appointed by a national governmental body (head of state/government or national legislature); and/or are elected nationally.

36b. In practice, professional criteria are followed in selecting national-level judges.

100 | 75 | 50 | 25 | 0

Comments:

The criteria rest on academic credentials; little attention is given to experience. With the removal of the president from the Supreme Judicial Council, the law requires a presidential decree for most senior judicial appointments.

The Constitution provides for an autonomous judiciary and independent judges; however, a weak judiciary was severely hampered by corruption and Executive Branch interference.

Many litigants maintained, and the government acknowledged, that a judge’s social ties and, occasionally, bribery influenced verdicts. Many judges were poorly trained, and some were closely associated with the ruling party. The judiciary was hampered further by the government’s frequent reluctance to enforce judgments. Tribal members at times threatened and harassed members of the judiciary.” From second source

References:

Judicial Authority Law No. 1, 1991, Article 57

<http://www.state.gov/g/drl/rls/hrrpt/2007/100610.htm>

100: National-level judges selected have relevant professional qualifications such as formal legal training, experience as a lower court judge or a career as a litigator.

75:

50: Most national-level judges selected meet these qualifications, with some exceptions.

25:

0: National-level judges are often unqualified due to lack of training or experience.

36c. In law, there is a confirmation process for national-level judges (i.e. conducted by the legislature or an independent body).

YES | NO

Comments:

There is no confirmation procedure for the appointment of judges.

References:
Law of Judicial Authority No. 1, 1990

YES: A YES score is earned if there is a formal process establishing a review of national-level judicial nominees by an agency independent from the body appointing the judges.

NO: A NO score is earned if there is no formal review. A NO score is earned if the review is conducted by a body directed by the body appointing the judges (such as review by the head of police if judges are appointed by the executive).

37. Can members of the judiciary be held accountable for their actions?

46

37a. In law, members of the national-level judiciary are obliged to give reasons for their decisions.

YES | NO

Comments:
Because of the religious ramifications associated with the judiciary, reasons are usually given for decisions.

References:
Law of Judicial Authority No. 1, 1990

Law of Judicial Litigation (Proceedings)

YES: A YES score is earned if there is a formal and mandatory process for judges to explain their decisions.

NO: A NO score is earned if justices are not required to explain decisions. A NO score is earned if there is a general exemption from explaining some decisions (such as national security).

37b. In practice, members of the national-level judiciary give reasons for their decisions.

100 | 75 | 50 | 25 | 0

Comments:
Notwithstanding the reasoning behind them, court rulings are often incoherent and lack a harmonious approach to meting out justice. Indications of executive interference are clear in many cases.

References:
<http://www.freemuse.org/sw29041.asp>
<http://www.extrajudicialexecutions.org/communications/yemen.html>
<http://www.jamestown.org/terrorism/news/article.php?articleid=2370077>

100: Judges are formally required to explain their judgments in detail, establishing a body of precedent. All judges comply with these requirements.

75:

50: Judges are compelled to give substantial reasons for their decisions, but some exceptions exist. These may include special courts, such as military courts or tribunals.

25:

0: Judges commonly issue decisions without formal explanations.

37c. In law, there is a disciplinary agency (or equivalent mechanism) for the national-level judicial system.

YES | NO

Comments:

The Supreme Judicial Council is the disciplinary agency and the overseer of all judicial activities.

References:

Law of Judicial Authority, Chapter V, Sections i-iii

YES: A YES score is earned if there is a disciplinary agency (or equivalent mechanism) for the judicial system. A disciplinary agency is defined here as an agency or mechanism specifically mandated to investigate breaches of procedure, abuses of power or other failures of the judiciary.

NO: A NO score is earned if no agency or mechanism is specifically mandated to act as a disciplinary mechanism for the national-level judiciary.

37d. In law, the judicial disciplinary agency (or equivalent mechanism) is protected from political interference.

YES | NO

Comments:

Even after removal of the president from the chairmanship of the Supreme Judicial Council (SJC), its membership is subject to executive appointment (presidential decree) either to members' employment position or their membership on the SJC.

References:

Law of Judicial Authority, Chapter V, Sections i-iii

YES: A YES score is earned if there are formal rules establishing that the judicial disciplinary agency (or equivalent mechanism) is protected from political interference by the executive and legislative branches.

NO: A NO score is earned if there are no formal rules establishing the independence of the judicial disciplinary agency (or equivalent mechanism). A NO score is given if the judicial disciplinary agency or equivalent mechanism function is carried out by an inherently subordinate organization, such as an executive ministry or legislative committee.

37e. In practice, when necessary, the judicial disciplinary agency (or equivalent mechanism) initiates investigations.

100 | 75 | 50 | 25 | 0

Comments:

The law designates the Judicial Inspection Authority as the investigator, either on its own initiation or by instruction from the Supreme Judicial Council. The authority then recommends the appropriate disciplinary action to the council.

References:

Law of Judicial Authority, Chapter IV, Section v

100: The judicial disciplinary agency (or equivalent mechanism) aggressively starts investigations — or participates fully with cooperating agencies' investigations — into judicial misconduct. The judicial disciplinary agency (or equivalent mechanism) is fair in its application of this power.

75:

50: The judicial disciplinary agency (or equivalent mechanism) will start or cooperate in investigations, but often relies on external pressure to set priorities, or has limited effectiveness when investigating. The judicial disciplinary agency (or equivalent mechanism), though limited in effectiveness, is still fair in its application of power.

25:

0: The judicial disciplinary agency (or equivalent mechanism) rarely investigates on its own or cooperates in other agencies' investigations, or the judicial disciplinary agency (or equivalent mechanism) is partisan in its application of this power.

37f. In practice, when necessary, the judicial disciplinary agency (or equivalent mechanism) imposes penalties on offenders.

100 | 75 | 50 | 25 | 0

Comments:

This is done by a subcommittee of the Supreme Judicial Council (SJC) called the Judicial Accountability Council, which is made up of three SJC members or three judges, after referral by the SJC.

When the accountability council finds that a judge has committed a clear violation and has clear-cut evidence, the council will take legal action against him. From second source

The process is complex and involves too many boards or sections of the ministry, or the SJC and could be subject to political influence. A judge was actually penalized for meting out judgment against a big government official and in favor of a citizen over a land dispute: "Zaidi judge Mohammed Luqman was sentenced to 10 years in prison after ruling against one of Saleh's political cronies." From Amnesty

References:

Law of Judicial Authority, Chapter V, Section iii

<http://yementimes.com/article.shtml?i=1037&p=report&a=1>

<http://yementimes.com/article.shtml?i=851&p=local&a=10>

www.worldpress.org/Mideast/2083.cfm

<http://www.amnesty.org/en/region/middle-east-and-north-africa/west-gulf/yemen>

100: When rules violations are discovered, the judicial disciplinary agency (or equivalent mechanism) is aggressive in penalizing offenders or in cooperating with other agencies who penalize offenders.

75:

50: The judicial disciplinary agency (or equivalent mechanism) enforces rules, but is limited in its effectiveness. The judicial disciplinary agency (or equivalent mechanism) may be slow to act, unwilling to take on politically powerful offenders, resistant to cooperating with other agencies, or occasionally unable to enforce its judgments.

25:

0: The judicial disciplinary agency (or equivalent mechanism) does not effectively penalize offenders. The judicial disciplinary agency (or equivalent mechanism) may make judgments but not enforce them, does not cooperate with other agencies in enforcing penalties, or may fail to make reasonable judgments against offenders. The judicial disciplinary agency (or equivalent mechanism) may be partisan in its application of power.

38. Are there regulations governing conflicts of interest for the national-level judiciary?

14

38a. In law, members of the national-level judiciary are required to file an asset disclosure form.

YES | NO

References:

Financial Disclosure Act, 2006, Article 4, <http://snaccyemen.org/details.asp?id=1665&catid=33>

YES: A YES score is earned if all members of the national-level judiciary are required by law to file an asset disclosure form while in office, illustrating sources of income, stock holdings, and other assets. This form does not need to be publicly available to score a YES.

NO: A NO score is earned if any member of the national-level judiciary is not required to publicly disclose assets.

38b. In law, there are regulations governing gifts and hospitality offered to members of the national-level judiciary.

YES | **NO**

Comments:

No legal stipulations govern gifts and hospitality.

References:

Judicial Authority Law

Anti-Corruption Law

Financial Disclosure Act

YES: A YES score is earned if there are formal guidelines regulating gifts and hospitality for members of the national-level judiciary.

NO: A NO score is earned if there are no guidelines or regulations with respect to gifts or hospitality offered to members of the national-level judiciary. A NO score is earned if the guidelines are general and do not specify what is and is not appropriate.

38c. In law, there are requirements for the independent auditing of the asset disclosure forms of members of the national-level judiciary.

YES | **NO**

Comments:

No legal stipulations exist. Review of Asset Disclosure Declarations is confirmed by the Supreme Anti-Corruption Committee.

References:

Judicial Authority Law

Anti-Corruption Law

Financial Disclosure Act

YES: A YES score is earned if there is a legal or regulatory requirement for independent auditing of national-level judiciary asset disclosures. The auditing is performed by an impartial third-party.

NO: A NO score is earned if there are no legal or regulatory requirements for the independent auditing of national-level judiciary asset disclosures or if such requirements exist but allow for self-auditing.

38d. In law, there are restrictions for national-level judges entering the private sector after leaving the government.

YES | NO

Comments:

One of the tasks of the Supreme Anti-Corruption Committee is to look into employment regulations for post-retirement civil servants.

References:

Judicial Authority Law

Anti-Corruption Law

Financial Disclosure Act

YES: A YES score is earned if there are regulations restricting national-level judges' ability to take positions in the private sector after leaving government that would present a conflict of interest, including positions that directly seek to influence their former government colleagues.

NO: A NO score is earned if no such restrictions exist.

38e. In practice, the regulations restricting post-government private sector employment for national-level judges are effective.

100 | 75 | 50 | 25 | 0

Comments:

There are no explicit legal stipulations.

One of the tasks of the Supreme Anti-Corruption Committee is to look into employment regulations for post-retirement civil servants.

References:

Judicial Authority Law

Anti-Corruption Law

Financial Disclosure Act

100: The regulations restricting post-government private sector employment for national-level judges are uniformly enforced. There are no cases or few cases of judges taking jobs in the private sector after leaving government where they directly lobby or seek to influence their former government colleagues without an adequate cooling off period.

75:

50: The regulations are generally enforced though some exceptions exist. In certain cases, judges are known to regularly take jobs in the private sector that entail directly lobbying or seeking to influence their former government colleagues. Cooling off periods are short and sometimes ignored.

25:

0: The regulations are rarely or never enforced. Judges routinely take jobs in the private sector following government employment that involve direct lobbying or influencing of former government colleagues. Cooling off periods are non-existent or never enforced.

38f. In practice, the regulations governing gifts and hospitality offered to members of the national-level judiciary are effective.

100 | 75 | 50 | 25 | 0

Comments:

There are no specific legal stipulations to regulate this.

References:

Judicial Authority Law

Anti-Corruption Law

Financial Disclosure Act

100: The regulations governing gifts and hospitality to members of the national-level judiciary are regularly enforced. Judges never or rarely accept gifts or hospitality above what is allowed.

75:

50: The regulations governing gifts and hospitality to members of the national-level judiciary are generally applied though exceptions exist. Some judges are known to accept greater amounts of gifts and hospitality from outside interest groups or private sector actors than is allowed.

25:

0: The regulations governing gifts and hospitality to members of the national-level judiciary are routinely ignored and unenforced. Judges routinely accept significant amounts of gifts and hospitality from outside interest groups and actors seeking to influence their decisions.

38g. In practice, national-level judiciary asset disclosures are audited.

100 | 75 | 50 | 25 | 0

Comments:

No independent audits take place, as only the Supreme National Anti-Corruption Agency and other investigative agencies" can review the declarations.

References:

Judicial Authority Law

Anti-Corruption Law

Financial Disclosure Act

100: National-level judiciary asset disclosures are regularly audited using generally accepted auditing practices.

75:

50: National-level judiciary asset disclosures are audited, but audits are limited in some way, such as using inadequate auditing standards, or the presence of exceptions to disclosed assets.

25:

0: National-level judiciary asset disclosures are not audited, or the audits performed have no value. Audits may be performed by entities known to be partisan or biased in their practices.

39. Can citizens access the asset disclosure records of members of the national-level judiciary?

0

39a. In law, citizens can access the asset disclosure records of members of the national-level judiciary.

YES | NO

Comments:

Only the Supreme National Anti-Corruption Committee and other investigative" agencies have the authority to review Disclosure of Assets Forms.

References:

Judicial Authority Law

Anti-Corruption Law

Financial Disclosure Act

YES: A YES score is earned if members of the national-level judiciary file an asset disclosure form that is, in law, accessible to the public (individuals, civil society groups or journalists).

NO: A NO score is earned if there is no asset disclosure for members of the national-level judiciary. A NO score is earned if the form is filed, but not available to the public.

39b. In practice, citizens can access judicial asset disclosure records within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

Only the Supreme National Anti-Corruption Committee and other investigative" agencies have the authority to review Disclosure of Assets Forms.

References:

and other investigative" agencies.

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take around two weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

39c. In practice, citizens can access judicial asset disclosure records at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

Citizens have no right to access such information. Only the Supreme National Anti-Corruption Committee and other investigative" agencies have the authority to review Disclosure of Assets Forms.

References:

Judicial Authority Law

Anti-Corruption Law

Financial Disclosure Act

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

III-4. Budget Processes

40. Can the legislature provide input to the national budget?

0

40a. In law, the legislature can amend the budget.

YES | **NO**

Comments:

The approval process by the House of Representatives is only a formality: The proposed general budget shall be submitted to the House of Representatives at least two months before the beginning of the fiscal year. A vote shall be taken on each part of the budget. It shall be enacted by a law. The House may not change the proposed budget without the approval of the government.

References:

Constitution of the Republic of Yemen, 2001, Article 88

YES: A YES score is earned if the legislature has the power to add or remove items to the national government budget.

NO: A NO score is earned if the legislature can only approve but not change details of the budget. A NO score is earned if the legislature has no input into the budget process.

40b. In practice, significant public expenditures require legislative approval.

100 | 75 | 50 | 25 | **0**

Comments:

Out-of-budget approvals are usually sought at the end of the year, after the funds have been expended

At the request of the government and after the endorsement of Parliament, the additional funds amounting to 287 billion (US\$1.43 billion), 330 million (US\$1.65 million) and 576 thousand (US\$2,880) rials added to the 2007 budget included many constitutional violations. In fact, law doesn't allow the spending any additional funds prior to parliamentary approval. However, the report of Parliament's financial committee disclosed that the government spent 160 billion (US\$8 million), 242 million (US\$1.2 million) and 132 thousand (US\$660) rials — 58% of the additional funds — before getting an official endorsement from Parliament."

References:

<http://www.globalpolitician.com/21616-yemen-arab>

100: All significant government expenditures (defined as any project costing more than 1% of the total national budget), must be approved by the legislature. This includes defense and secret programs, which may be debated in closed hearings.

75:

50: Most significant government expenditures (as defined) are approved by the legislature, but some exceptions to this rule exist. This may include defense programs, an executive's personal budget, or other expenses.

25:

0: The legislature does not have the power to approve or disapprove large portions of the government budget, or the legislature does not exercise this power in a meaningful way.

40c. In practice, the legislature has sufficient capacity to monitor the budget process and provide input or changes.

100 | 75 | 50 | 25 | 0

Comments:

Parliament must approve the budget as presented by the Executive Branch; it cannot make any changes to the budget, unless the government approves them. Parliament's oversight of budget implementation is minuscule because it does not have access to regular reports on budget implementation until the end of the year, when final accounts are presented for a simple confirmation of action (including expenditures that were made out-of-budget).

"The limited role of the Parliament to determine the budget process weakens representation." From GDNNet

References:

Constitution of the Republic of Yemen, 2001, Article 88

<http://yementimes.com/article.shtml?i=1142&p=opinion&a=2>

http://www.gdnet.org/pdf2/gdn_library/global_research_projects/explaining_growth/Yemen_final.pdf

100: Legislators benefit from a sufficient and qualified staff as well as adequate financial and physical resources. Lack of capacity is never a reason why legislators cannot carry out their duties effectively.

75:

50: Legislators have some staff and financial resources but are limited by a shortfall of resources to adequately perform all of their budgetary oversight functions. Legislators are occasionally overwhelmed by the volume of work to be performed.

25:

0: Legislators have little to no staff and virtually no financial resources with which to perform their budgetary oversight role. Lack of resources is a regular and systemic problem that cripples the performance of the legislature.

41. Can citizens access the national budgetary process?

25

41a. In practice, the national budgetary process is conducted in a transparent manner in the debating stage (i.e. before final approval).

100 | 75 | 50 | 25 | 0

Comments:

The 2007 budget faced difficulty getting approval by Parliament for the first time in the parliamentary history of Yemen. Approval was delayed because Parliament opposed government proposals to lift subsidies on fuel products and diesel."

References:

http://pdf.dec.org/pdf_docs/PDACF483.pdf

<http://siteresources.worldbank.org/CDFINTRANET/Overview/21139679/YemenFINALNovember272006.doc>

100: Budget debates are public and records of these proceedings are easily accessible. Authors of individual budget items can easily be identified. Nearly all budget negotiations are conducted in these official proceedings.

75:

50: There is a formal, transparent process for budget debate, but major budget modifications may be negotiated in separate, closed sessions. Some items, such as non-secret defense projects, may be negotiated in closed sessions. Authors of individual line items may be difficult to identify.

25:

0: Budget negotiations are effectively closed to the public. There may be a formal, transparent process, but most real discussion and debate happens in other, closed settings.

41b. In practice, citizens provide input at budget hearings.

100 | 75 | 50 | 25 | 0

Comments:

There is no stipulation that citizens be involved in the budget process.

References:

Financial Law No. 8, 1990, and subsequent amendments

Yearly invitations to prepare the budget

By-Laws of Parliament, 2006)

100: Citizens, usually acting through CSOs, can provide information or commentary to the budget debate through a formal process. This information is essential to the process of evaluating budget priorities.

75:

50: Citizens or CSOs can provide input, but this information is often not relevant to budget decisions.

25:

0: Citizens or CSOs have no formal access to provide input to the budget debate.

41c. In practice, citizens can access itemized budget allocations.

100 | 75 | 50 | 25 | 0

Comments:

Once the budget is approved, it is issued by the various press organs. Journalists should be able to get itemized allocations if they cared to pursue them.

References:

Financial Disclosure Act, 2006,

Bylaws of Parliament, 2006

Law of Press and Publishing

100: Citizens, journalists and CSOs can access itemized lists of budget allocations. This information is easily available and up to date.

75:

50: Citizens, journalists and CSOs can access itemized lists of budget allocations but this information may be difficult to access, incomplete or out of date.

25:

0: Citizens cannot access an itemized list of budget allocations, due to secrecy, prohibitive barriers or government inefficiency.

43. Is the legislative committee overseeing the expenditure of public funds effective?

17

43a. In practice, department heads regularly submit reports to this committee.

100 | 75 | 50 | 25 | 0

Comments:

A parliamentary committee oversees government finance, but it is powerless to undertake any action to effectively provide prudent oversight. It can call the Prime Minister or Minister of Finance in for questioning. The only report that Parliament and this committee get is the Final Accounts Report at the end of year. It shows all actual revenues and expenditures against budget.

References:

Bylaws of Parliament, 2006

100: Heads of ministry- or cabinet-level agencies submit regular, formal reports of expenses to a budget oversight committee.

75:

50: Agency heads submit reports to a budget oversight committee, but these reports are flawed in some way. The reports may be inconsistently delivered, or lacking important details.

25:

0: There is no budget oversight committee or equivalent, or heads of agencies do not submit meaningful reports to the agency.

43b. In practice, the committee acts in a non-partisan manner with members of opposition parties serving on the committee in an equitable fashion.

100 | 75 | 50 | 25 | 0

Comments:

All parties may be represented, but the ruling party is dominant.

References:

Bylaws of Parliament, 2006

<http://www.yemenparliament.com/committees.php?lng=arabic&id=97>

<http://www.yemenparliament.com/committees.php?lng=arabic&id=567>

100: The committee is comprised of legislators from both the ruling party (or parties) and opposition parties in a roughly equitable distribution. All members of the committee — including opposition party members — are able to fully participate in

the activities of the committee and influence the committee's work to roughly the same extent as any other member of the committee.

75:

50: The committee is comprised of legislators from both the ruling party (or parties) and opposition parties although the ruling party has a disproportionate share of committee seats. The chairperson of the committee may be overly influential and curb other members' ability to shape the committee's activities.

25:

0: The committee is dominated by legislators of the ruling party and/or the committee chairperson. Opposition legislators serving on the committee have in practice no way to influence the work of the committee.

43c. In practice, when necessary, this committee initiates independent investigations into financial irregularities.

100 | 75 | 50 | 25 | 0

Comments:

The Presidium of the Parliament may designate the committee to carry out such investigations. It may also do so at the committee's recommendation.

References:

<http://www.yemenparliament.com/committees.php?lng=arabic&id=97>

100: When irregularities are discovered, the committee is aggressive in investigating the government.

75:

50: The committee starts investigations, but is limited in its effectiveness. The committee may be slow to act, unwilling to take on politically powerful offenders, or occasionally unable to enforce its judgments.

25:

0: The committee does not effectively investigate financial irregularities. The committee may start investigations but not complete them, or may fail to detect offenders. The committee may be partisan in its application of power.

42. Is there a separate legislative committee which provides oversight of public funds?

100

42. In law, is there a separate legislative committee which provides oversight of public funds?

YES | NO

Comments:

A parliamentary committee oversees government finance, but it is powerless to undertake any action to effectively provide prudent oversight. It can call the Prime Minister or Minister of Finance in for questioning.

References:

Bylaws of Parliament, 2006

YES: A YES score is earned if there is a dedicated legislative committee (or equivalent group located in the legislature) that oversees the expenditure of public funds.

NO: A NO score is earned if no such body exists within the legislature. A NO score is earned if there is a body executing this function but it is not part of the legislature (such as a separate supreme audit institution).

IV-1. ~~44~~ Civil Service Regulations

44. Are there national regulations for the civil service encompassing, at least, the managerial and professional staff?

50

44a. In law, there are regulations requiring an impartial, independent and fairly managed civil service.

YES | NO

Comments:

The laws and regulations apply to all public servants, including administrative employees at all levels, public enterprises employees and mixed sector units. Nevertheless, senior positions are mostly given to either relatives or loyalists, whose support is assured.

The Constitution guarantees the rights of an independent civic sector, and for the most part the government allows civic organizations to conduct their work freely." From internal bylaws

References:

Civil Service Law No. 19, 1991

Law No. 43, 2005, Concerning Employment, Wages and Salaries

Law for the Strategy of Salaries and Wages, 2006

Internal Bylaws for the Civil Service (Republican Decree No. 235, 2007), Article 14 (a), <http://mocsi.gov.ye/>

http://www.mhryemen.org/contents/active_detail_en.php?n_no=266

YES: A YES score is earned if there are specific formal rules establishing that the civil service carry out its duties independent of political interference.

NO: A NO score is earned if there are no formal rules establishing an independent civil service.

44b. In law, there are regulations to prevent nepotism, cronyism, and patronage within the civil service.

YES | NO

Comments:

They are not specifically stated but rather implicitly understood by guarantees of equal opportunity." The Internal Bylaws say that "... an employee may not accept or use his (her) employment influence to obtain a benefit for himself/herself or others."

References:

Civil Service Law No. 19, 1991

Law No. 43, 2005, Concerning Employment, Wages and Salaries

Law for the Strategy of Salaries and Wages, 2006

YES: A YES score is earned if there are specific formal rules prohibiting nepotism, cronyism, and patronage in the civil service. These should include competitive recruitment and promotion procedures as well as safeguards against arbitrary disciplinary actions and dismissal.

NO: A NO score is earned if no such regulations exist.

44c. In law, there is an independent redress mechanism for the civil service.

YES | NO

Comments:

Article 105 states that a three-man (two senior officers of the unit and a member of the union or syndicate) committee be set up in each unit to look into objections of employee evaluations. Otherwise, as the second source states, Public sector employees must take their grievances to court."

References:

Civil Service Law No. 19, 1991. Article 105

<http://www.state.gov/g/drl/rls/hrrpt/2005/61703.htm>

YES: A YES score is earned if there is a mechanism to which civil servants and applicants for the civil service can take grievances regarding civil service management actions. The mechanism should be independent of their supervisors but can still be located within the government agency or entity (such as a special commission or board). Civil servants are able to appeal the mechanism's decisions to the judiciary.

NO: A NO score is earned if no such mechanism exists.

44d. In law, civil servants convicted of corruption are prohibited from future government employment.

YES | NO

Comments:

There are no specific conditions for potential employees to be free of any charges of corruption, but there are implied statutes that a person should not have any shortcomings or have been involved in any previous proceedings.

References:

Civil Service Law No. 19, 1991

YES: A YES score is earned if there are specific rules prohibiting continued government employment following a corruption conviction.

NO: A NO score is earned if no such rules exist or if the ban is not a lifetime ban.

45. Is the law governing the administration and civil service effective?

28

45a. In practice, civil servants are protected from political interference.

100 | 75 | 50 | 25 | 0

Comments:

There is no real protection from interference. Such predicaments must be faced by conscientious civil servants: When the law mentions the duties and prohibitions of employees, they come in general terms, and those terms can be interpreted in different ways that allow leaders to personalize those provisions and abuse them."

References:

<http://www.u4.no/training/in-country-open/yemen-docs/political-culture-corruption-yemen-abdomoghran.pdf>

100: Civil servants operate independently of the political process, without incentive or pressure to render favorable treatment or policy decisions on politically sensitive issues. Civil servants rarely comment on political debates. Individual judgments are rarely praised or criticized by political figures. Civil servants can bring a case to the courts challenging politically-motivated firings.

75:

50: Civil servants are typically independent, yet are sometimes influenced in their judgments by negative or positive political or personal incentives. This may include favorable or unfavorable treatment by superiors, public criticism or praise by the government, or other forms of influence. Civil servants may bring a case to the judicial system challenging politically-motivated firings but the case may encounter delays or bureaucratic hurdles.

25:

0: Civil servants are commonly influenced by political or personal matters. This may include conflicting family relationships, professional partnerships, or other personal loyalties. Negative incentives may include threats, harassment or other abuses of power. Civil servants are unable to find a remedy in the courts for unjustified or politically-motivated firings.

45b. In practice, civil servants are appointed and evaluated according to professional criteria.

100 | 75 | 50 | 25 | 0

Comments:

Except for certain positions in Yemen's Foreign Ministry, no merit-based competitive selection process exists for civil service positions. Minister of Civil Service and Procurement Khalid Al-Su decided in September 2003 to suspend all employment procedures because of corruption and bribes taken by people in charge of the hiring process."

Many government appointments are made on the basis of which political party the candidate belongs to. However, for professional and technically oriented positions (middle level and under) selection might be based on qualifications, especially if the positions cannot be filled from among favored elements (family, tribe loyalists, etc.).

References:

http://www.mhryemen.org/contents/active_detail_en.php?n_no=266

100: Appointments to the civil service and their professional evaluations are made based on professional qualifications. Individuals appointed are free of conflicts of interest arising from personal loyalties, family connections or other biases. Individuals appointed usually do not have clear political party affiliations.

75:

50: Appointments and professional assessments are usually based on professional qualifications. Individuals appointed may have clear party loyalties, however.

25:

0: Appointments and professional assessments are often based on political considerations. Individuals appointed often have conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed often have clear party loyalties.

45c. In practice, civil service management actions (e.g. hiring, firing, promotions) are not based on nepotism, cronyism, or patronage.

100 | 75 | 50 | 25 | 0

Comments:

Most appointments are not based on principles of efficiency.”

One cannot fail to note the close kinship between holders of most of the leading senior management positions and command positions in the military.

References:

<http://armiesofliberation.com/archives/category/yemen/a-internal/reform/yemen-democracy/>

100: Nepotism (favorable treatment of family members), cronyism (favorable treatment of friends and colleagues), and patronage (favorable treatment of those who reward their superiors) are actively discouraged at all levels of the civil service. Hirings, firings, and promotions are based on merit and performance.

75:

50: Nepotism, cronyism, and patronage are discouraged, but exceptions exist. Political leaders or senior officials sometimes appoint family member or friends to favorable positions in the civil service, or lend other favorable treatment.

25:

0: Nepotism, cronyism, and patronage are commonly accepted principles in hiring, firing and promotions of civil servants.

45d. In practice, civil servants have clear job descriptions.

100 | 75 | 50 | 25 | 0

Comments:

The second source notes: “The government is working on a new wage system dependent on job descriptions within the organizational restructuring of government ministries and agencies.” However, one worries that with the Minister of Civil Service who has worked on many aspects of the reform program, now out of office, implementation will be somewhat slow on the organizational side, while the monetary side will be rapidly implemented.

References:

Salaries and Wages Law, 2005

<http://www.ahaunityemen.org/2008/publications/en/ministry/economicPerformance.pdf>

100: Civil servants almost always have formal job descriptions establishing levels of seniority, assigned functions, and compensation. Job descriptions are a reliable representation of positions in terms of a person’s authority, responsibility and base pay.

75:

50: Civil servants often have formal job descriptions, but exceptions exist. Some civil servants may not be part of the formal assignment of duties and compensations. Some job descriptions may not map clearly to pay or responsibilities in some cases.

25:

0: Civil servants do not have formal roles or job descriptions. If they do, such job descriptions have little or nothing to do with the position’s responsibilities, authority, or pay.

45e. In practice, civil servant bonuses constitute only a small fraction of total pay.

100 | 75 | 50 | 25 | 0

Comments:

Extraordinary bonuses have become a common expectation, in addition to the on-the-job bonuses obtained for actual work accomplished. Whether for elections or on occasions such as holidays, the president has issued orders for monthly salaries (whole or partial) to be paid out to employees (sometimes three times a year).

References:

Salaries and Wages Law, 2005

Salaries and Wages Strategy

Staff report for the 2007 Article IV Consultation Supplementary Information, <http://www.imf.org/external/pubs/ft/scr/2007/cr07334.pdf>

100: Civil servant bonuses constitute no more than 10% of total pay and do not represent a major element of take-home pay.

75:

50: Civil servant bonuses are generally a small percentage of total take-home pay for most civil servants though exceptions exist where some civil servants' bonuses represent a significant part of total pay.

25:

0: Most civil servants receive bonuses that represent a significant amount of total take-home pay. In some cases bonuses represent the majority of total pay to civil servants.

45f. In practice, the government publishes the number of authorized civil service positions along with the number of positions actually filled.

100 | 75 | 50 | 25 | 0

Comments:

The print editions of these newspapers often display vacant job listings, but rarely are jobs reported as filled.

The Ministry of Civil Service last June announced that it is selecting new employees to fill top management (division heads to section heads) on a competitive basis as part of the ministry's reform agenda, with the expectation that other ministries would follow suit. So far the "follow the leader" approach has not been enthusiastically received by the other line ministries.

References:

Yemen Times

Yemen Observer (supported by General People's Congress)

Al-Thawra Newspaper (government supported)

Yemen Post

100: The government publishes such a list on a regular basis.

75:

50: The government publishes such a list but it is often delayed or incomplete. There may be multiple years in between each successive publication.

25:

0: The government rarely or never publishes such a list, or when it does it is wholly incomplete.

45g. In practice, the independent redress mechanism for the civil service is effective.

100 | 75 | 50 | 25 | 0

Comments:

Employees react to the lack of effective redress mechanisms either by striking (sometimes with violence) or seeking ways to initiate more effective redress.

References:

<http://www.state.gov/g/drl/rls/hrrpt/2007/100610.htm>

http://www.aft.org/topics/international/downloads/Training_Yemen.pdf

100: The independent redress mechanism for the civil service can control the timing and pace of its investigations without any input from the bodies that manage civil servants on a day-to-day basis.

75:

50: The independent civil service redress mechanism can generally decide what to investigate and when but is sometimes subject to pressure from the executive or the bodies that manage civil servants on a day-to-day basis on politically sensitive issues.

25:

0: The civil service redress mechanism must rely on approval from the executive or the bodies that manage civil servants on a day-to-day basis before initiating investigations. Politically sensitive investigations are almost impossible to move forward on.

45h. In practice, in the past year, the government has paid civil servants on time.

100 | 75 | 50 | 25 | 0

Comments:

The postal service has done much to facilitate and speed up payment of salaries to government employees.

References:

<http://www.post.ye/moneymo.html>

100: In the past year, no civil servants have been paid late.

75:

50: In the past year, some civil servants have been paid late.

25:

0: In the past year, civil servants have frequently been denied due pay.

45i. In practice, civil servants convicted of corruption are prohibited from future government employment.

100 | 75 | 50 | 25 | 0

Comments:

The source describes the case of a judge who lost his job after he ruled against military personnel accused of stealing land.

References:

<http://forum.sh3bwah.maktoob.com/t120500.html> – Arabic

100: A system of formal blacklists and cooling off periods is in place for civil servants convicted of corruption. All civil servants are subject to this system.

75:

50: A system of formal blacklists and cooling off periods is in place, but the system has flaws. Some civil servants may not be affected by the system, or the prohibitions are sometimes not effective. Some bans are only temporary.

25:

0: There is no such system, or the system is consistently ineffective in prohibiting future employment of convicted civil servants.

46. Are there regulations addressing conflicts of interest for civil servants?

33

46a. In law, senior members of the civil service are required to file an asset disclosure form.

YES | NO

Comments:

Everyone from the president down to the lowest of middle managers must file a financial-disclosure declaration.

References:

Law No. 39, Financial Disclosure Act, Article 4, <http://snaccyemen.org/details.asp?id=1665&catid=33>

YES: A YES score is earned if senior members of the civil service are required by law to file an asset disclosure form while in office, illustrating sources of income, stock holdings, and other assets. This form does not need to be publicly available to score a YES.

NO: A NO score is earned if any senior member of the civil service is not required to disclose assets.

46b. In law, there are requirements for civil servants to recuse themselves from policy decisions where their personal interests may be affected.

YES | NO

Comments:

The law vaguely sets definitions for what constitutes circumstances when civil servants should recuse themselves from making policy decisions: Promote transparency in public posts and prevent conflict of interest between public posts and employees; after-service regulations should be made to regulate or prevent employees from having personal advantages by practicing professional private activities directly related to the posts they used to hold or supervise during service."

References:

Law No 39 for Combating Corruption, Article 21, <http://snaccyemen.org/details.asp?id=1683&catid=33>

YES: A YES score is earned if there are requirements for civil servants to recuse themselves from policy decisions where their personal interests, including personal financial interests as well as those of their family and friends, are affected.

NO: A NO score exists if no such requirements exist in regulation or law.

46c. In law, there are restrictions for civil servants entering the private sector after leaving the government.

YES | NO

Comments:

Regulations are not there yet. Article 21 (c) touches on this: The Supreme National Anti-Corruption Committee (SNACC) will study, assess and develop staffing systems in order to ... promote transparency in public posts and prevent conflict of interest between public posts and employees; after-service regulations should be made to regulate or prevent employees from having personal advantages by practicing professional private activities directly related to the posts they used to hold or supervise during service."

References:

Constitution of the Republic, 2001

Anti-Corruption Law No. 39, 2006, <http://snaccyemen.org/details.asp?id=1683&catid=33>

Financial Disclosure Law 20, 2006

Civil Service Law No. 19, 1991

YES: A YES score is earned if there are regulations restricting civil servants' ability to take positions in the private sector after leaving government that would present a conflict of interest, including positions that directly seek to influence their former government colleagues.

NO: A NO score is earned if no such restrictions exist.

46d. In law, there are regulations governing gifts and hospitality offered to civil servants.

YES | NO

Comments:

No provision regarding gifts and hospitality, or any other gratuity, can be found in any of the relevant laws.

References:

Law No. 20, 2006, Concerning Financial Disclosure, <http://snaccyemen.org/details.asp?id=1665&catid=33>

Law No. 19, 1991

Law No. 39, Concerning Combatting Corruption

YES: A YES score is earned if there are formal guidelines regarding gifts and hospitality given to civil servants.

NO: A NO score is earned if there are no such guidelines or regulations.

46e. In law, there are requirements for the independent auditing of the asset disclosure forms of senior members of the civil service.

YES | NO

Comments:

The right to look at Financial Disclosure Declarations, and the explanations, documents and procedures of their evaluation, is limited to the Supreme Anti-Corruption Committee and relevant "investigating agencies."

References:

Law No. 39, 2006, Concerning Financial Disclosure, Article 12, <http://snaccyemen.org/details.asp?id=1665&catid=33>

YES: A YES score is earned if there is a legal or regulatory requirement for independent auditing of civil service asset disclosures. The auditing is performed by an impartial third-party.

NO: A NO score is earned if there are no legal or regulatory requirements for the independent auditing of civil service asset disclosures or if such requirements exist but allow for self-auditing.

46f. In practice, the regulations restricting post-government private sector employment for civil servants are effective.

100 | 75 | 50 | 25 | 0

Comments:

Article 30 specifically defines what constitutes cases of corruption.”

Article 21 (c) touches on this: SNACC “will study, assess and develop staffing systems in order to ... promote transparency in public posts and prevent conflict of interest between public posts and employees; after-service regulations should be made to regulate or prevent employees from having personal advantages by practicing professional private activities directly related to the posts they used to hold or supervise during service.”

References:

Law No. 39, 2006, Concerning Combatting Corruption, Articles 21 (c), 30

Law 19, 1991, Concerning Civil Service, Chapter 10

100: The regulations restricting post-government private sector employment for civil servants are uniformly enforced. There are no cases or few cases of civil servants taking jobs in the private sector after leaving government where they directly lobby or seek to influence their former government colleagues without an adequate cooling off” period.

75:

50: The regulations are generally enforced though some exceptions exist. In certain sectors, civil servants are known to regularly take jobs in the private sector that entail directly lobbying or seeking to influence their former government colleagues. Cooling off periods are short and sometimes ignored.

25:

0: The regulations are rarely or never enforced. Civil servants routinely take jobs in the private sector following government employment that involve direct lobbying or influencing of former government colleagues. Cooling off periods are non-existent or never enforced.

46g. In practice, the regulations governing gifts and hospitality offered to civil servants are effective.

100 | 75 | 50 | 25 | 0

Comments:

Almost all civil servants accept the hospitality of companies and organizations on their overseas missions, and thus avoid paying any expenses for hotels and restaurants, even though there are situations when this would be grounds for conflicts of interest. These civil servants keep the travel allowance the government gives them as supplementary income. Gifts are also accepted without any sense of ethical reckoning, especially at the turn of the new year, as business firms distribute their promotional gifts openly to government employees; more expensive gifts given to more senior employees.

Article 30 does not include this in the areas deemed to be areas of corruption. Nor is any mention made of this in the relevant sections of the Civil Service Law.

References:

Anti Corruption Law No. 39, 2006, Article 30

Civil Service Law No. 19,1991, Chapter II, Section ii

Researcher’s expertise

100: The regulations governing gifts and hospitality to civil servants are regularly enforced. Civil servants never or rarely accept gifts or hospitality above what is allowed.

75:

50: The regulations governing gifts and hospitality to civil servants are generally applied though exceptions exist. Some civil servants in certain sectors are known to accept greater amounts of gifts and hospitality from outside interest groups or private sector actors than is allowed.

25:

0: The regulations governing gifts and hospitality to the civil service are routinely ignored and unenforced. Civil servants routinely accept significant amounts of gifts and hospitality from outside interest groups and actors seeking to influence their decisions.

46h. In practice, the requirements for civil service recusal from policy decisions affecting personal interests are effective.

100 | 75 | 50 | 25 | 0

Comments:

No clear definition exists in anti-corruption laws or the civil service code of when conflicts of interest are to be avoided, or how they should be avoided. No one has gotten out of making a serious public decision, even if it represented a conflict of interest. There was even an occasion when the researcher, while carrying out a financial evaluation of a large tender for a leading utility, was actually told to evaluate a certain company favorably (among 25 competing international companies). That company was actually ranked last and earned the least number of points. Despite failed efforts to get the evaluator to change his mind, the firm was still given two major components of the relatively large project. The contractor performed miserably, but no one was held accountable for this obvious lack of recusal.

References:

Law No. 39, 2006, Combatting Corruption

Law No. 20, 2006 ,Concerning Declarations of Financial Disclosure

Civil Service Law No. 19, 1991, Article 14 (c)

100: The requirements that civil servants recuse themselves from policy decisions where their personal interests are affected are routinely followed by most or all civil servants.

75:

50: The requirements that civil servants recuse themselves from policy decisions where their personal interests are affected are followed by most civil servants though exceptions exist. In certain sectors, civil servants are known to routinely participate in policy decisions where their personal interests are affected.

25:

0: Most civil servants routinely ignore recusal requirements and continue to participate in policy decisions where their personal interests are affected.

46i. In practice, civil service asset disclosures are audited.

100 | 75 | 50 | 25 | 0

Comments:

There is no legal requirement for an independent audit of financial disclosure submissions, and none has taken place since the law was enacted. Only the Supreme National Anti-Corruption Committee (SNACC) may look at civil service employees' disclosure forms, and SNACC is not allowed to make them public.

References:

Law No. 20, 2006, Financial Disclosure Declarations, <http://snaccyemen.org/details.asp?id=1683&catid=33>

Various media reports

100: Civil service asset disclosures are regularly audited using generally accepted auditing practices.

75:

50: Civil service asset disclosures are audited, but audits are limited in some way, such as using inadequate auditing standards, or the presence of exceptions to disclosed assets.

25:

0: Civil service asset disclosures are not audited, or the audits performed have no value. Audits may be performed by entities known to be partisan or biased in their practices.

47. Can citizens access the asset disclosure records of senior civil servants?

0

47a. In law, citizens can access the asset disclosure records of senior civil servants.

YES | **NO**

Comments:

Financial Disclosure Declarations can only be reviewed by the Supreme National Anti-Corruption Committee (SNACC) and investigative bodies."

References:

Financial Disclosure Act, 2006, Article 12

YES: A YES score is earned if laws or regulations guarantee that citizens can access the asset records of senior civil servants.

NO: A NO score is earned if senior civil servants do not file an asset disclosure. A NO score is earned if senior civil servants file an asset disclosure, but it is not available to the public.

47b. In practice, citizens can access the asset disclosure records of senior civil servants within a reasonable time period.

100 | 75 | 50 | 25 | **0**

Comments:

Article 12 allows only the members of the Supreme National Anti-Corruption Committee (SNACC) to review disclosure documents.

References:

Financial Disclosure Act, 2006, Article 12

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take around two weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

47c. In practice, citizens can access the asset disclosure records of senior civil servants at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

Article 12 gives only the Supreme National Anti-Corruption Committee (SNACC) access civil servants' disclosure.

References:

Law No. 20, 2006, Financial Disclosure Act, Article 12

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

IV-2. Whistle-blowing Measures

48. Are employees protected from recrimination or other negative consequences when reporting corruption (i.e. whistle-blowing)?

25

48a. In law, civil servants who report cases of corruption, graft, abuse of power, or abuse of resources are protected from recrimination or other negative consequences.

YES | NO

Comments:

The Authority guarantees legal protection for experts, witnesses and reporters, and its bylaws will define procedures for their protection." From Article 27

In none of the relevant laws is there any specific protection for civil servants. Note that the English version of the Anti-Corruption Law the Supreme National Anti-Corruption Committee (SNACC) website translates the article incorrectly: "... the Authority will secure

References:

Anti-Corruption Law No. 20, 2006, Combatting Corruption, Article 27, <http://snaccyemen.org/details.asp?id=1666&catid=33>

Financial Law No. 8, 1990 (with 1999 amendments)

Civil Service Law No. 19, 1991

YES: A YES score is earned if there are specific laws against recrimination against public sector whistleblowers. This may include prohibitions on termination, transfer, harassment or other consequences.

NO: A NO score is earned if there are no legal protections for public-sector whistleblowers.

48b. In practice, civil servants who report cases of corruption, graft, abuse of power, or abuse of resources are protected from recrimination or other negative consequences.

100 | 75 | 50 | 25 | 0

Comments:

This protection is on the agenda." There is no precedent, nor are there legal bases for such protection.

References:

<http://www.oecd.org/dataoecd/39/11/38376701.pdf>

100: Public sector whistleblowers can report abuses of power without fear of negative consequences. This may be due to robust mechanisms to protect the identity of whistleblowers or may be due to a culture that encourages disclosure and accountability.

75:

50: Public sector whistleblowers are sometimes able to come forward without negative consequences, but in other cases, whistleblowers are punished for disclosing, either through official or unofficial means.

25:

0: Public sector whistleblowers often face substantial negative consequences, such as losing a job, relocating to a less prominent position, or some form of harassment.

48c. In law, private sector employees who report cases of corruption, graft, abuse of power, or abuse of resources are protected from recrimination or other negative consequences.

YES | NO

Comments:

Law No. 20 gives the Supreme National Anti-Corruption Committee (SNACC) the right to summon public or private employees. Article 27 states that SNACC guarantees protection for reporters of corruption.

References:

Law No. 20, 2006, Combatting Corruption, Article 27

YES: A YES score is earned if there are specific laws against recrimination against private sector whistleblowers. This may include prohibitions on termination, transfer, harassment or other consequences.

NO: A NO score is earned if there are no legal protections for private-sector whistleblowers.

48d. In practice, private sector employees who report cases of corruption, graft, abuse of power, or abuse of resources are protected from recrimination or other negative consequences.

100 | 75 | 50 | 25 | 0

Comments:

There is no precedent.

References:
Anti-Corruption Law No. 39, 2006, Article 27

100: Private sector whistleblowers can report abuses of power without fear of negative consequences. This may be due to robust mechanisms to protect the identity of whistleblowers or may be due to a culture that encourages disclosure and accountability.

75:

50: Private sector whistleblowers are sometimes able to come forward without negative consequences, but in other cases, whistleblowers are punished for disclosing, either through official or unofficial means.

25:

0: Private sector whistleblowers often face substantial negative consequences, such as losing a job, relocating to a less prominent position, or some form of harassment.

50. In practice, is the internal mechanism (i.e. phone hotline, e-mail address, local office) through which civil servants can report corruption effective?

38

50a. In practice, the internal reporting mechanism for public sector corruption has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

Comments:
It is not clear how the Supreme National Anti-Corruption Committee (SNACC) is staffed, as the authority does not have an office. All that is publicly known now is that SNACC has nine permanent staff members, as Article 12 stipulates.

References:
Anti-Corruption Law No. 39, 2006, Article 12

<http://armiesofliberation.com/archives/category/yemen/a-internal/corruption/>

100: The agency/entity has staff sufficient to fulfill its basic mandate.

75:

50: The agency/entity has limited staff, a fact that hinders its ability to fulfill its basic mandate.

25:

0: The agency/entity has no staff, or a limited staff that is clearly unqualified to fulfill its mandate.

50b. In practice, the internal reporting mechanism for public sector corruption receives regular funding.

100 | 75 | 50 | 25 | 0

Comments:
Supreme National Anti-Corruption Committee (SNACC) members were sworn in on July 4, 2007. The government has contributed budgetary resources for the agency." From second source

References:
2008 and 2009 National Budgets

http://216.239.59.104/search?q=cache:xgQBPlaCLZYJ:www.yemencg.org/library/2008/government_report08_en.pdf+SNACC+Funding+Yemen&hl=en&ct=clnk&cd=14

100: The agency/entity has a predictable source of funding that is fairly consistent from year to year. Political considerations are not a major factor in determining agency funding.

75:

50: The agency/entity has a regular source of funding but may be pressured by cuts, or threats of cuts to the agency budget. Political considerations have an effect on agency funding.

25:

0: Funding source is unreliable. Funding may be removed arbitrarily or as retaliation for agency actions.

50c. In practice, the internal reporting mechanism for public sector corruption acts on complaints within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

It is still not clear if these reported cases are producing concrete results of indictment, trial and punishment.

References:

<http://armiesofliberation.com/archives/2008/05/30/8700-cases-of-corruption-among-ministries-snacc/>

<http://www.yobserver.com/local-news/10014762.html>

100: The agency/entity acts on complaints quickly. While some backlog is expected and inevitable, complaints are acknowledged promptly and investigations into serious abuses move steadily towards resolution. Citizens with simple issues can expect a resolution within a month.

75:

50: The agency/entity acts on complaints quickly, with some exceptions. Some complaints may not be acknowledged, and simple issues may take more than two months to resolve.

25:

0: The agency/entity cannot resolve complaints quickly. Complaints may be unacknowledged for more than a month, and simple issues may take more than three months to resolve. Serious abuses are not investigated with any urgency.

50d. In practice, when necessary, the internal reporting mechanism for public sector corruption initiates investigations.

100 | 75 | 50 | 25 | 0

Comments:

It is not clear how genuine and realistic these reports are. The Supreme National Anti-Corruption Committee (SNACC) began functioning only in mid-2007. The scale score is given with some optimism.

References:

http://www-wds.worldbank.org/external/default/WDSContentServer/WDSP/IB/2008/08/24/000333038_20080824235238/Rendered/INDEX/434100ENGLISH010Box3

<http://siteresources.worldbank.org/INTMNAREGTOPGOVERNANCE/Resources/jan08issue.pdf>

<http://www.state.gov/g/drl/rls/hrrpt/2007/100610.htm>

100: When irregularities are discovered, the agency/entity is aggressive in investigating the government or in cooperating with other agencies' investigations.

75:

50: The agency/entity starts investigations, but is limited in its effectiveness. The agency/entity may be slow to act, unwilling to take on politically powerful offenders, reluctant to cooperate with other investigative agencies, or occasionally unable to enforce its judgments.

25:

0: The agency/entity does not effectively investigate. The agency/entity may start investigations but not complete them, may refuse to cooperate with other investigative agencies, or may fail to detect offenders. The agency/entity may be partisan in its application of power.

49. Is there an internal mechanism (i.e. phone hotline, e-mail address, local office) through which civil servants can report corruption?

0

49. In law, is there an internal mechanism (i.e. phone hotline, e-mail address, local office) through which civil servants can report corruption?

YES | **NO**

Comments:

The law does not set out a specific mechanism by which civil service employees can report corruption to the relevant authority. However the Anti-Corruption Law does establish the Supreme National Anti-Corruption Committee (SNACC), which is supposed to have its own office.

SNACC shall receive reports, complaints and report tips" submitted to it. From Anti-Corruption Law. But, again, it is general and does not it does not specify civil servants or the "mechanism" to be used.

References:

Anti-Corruption Law No. 39, 2006, Article 8, Item 5

Civil Service Law No. 19, 2006

YES: A YES score is earned if there is a mechanism, or multiple mechanisms for multiple national government agencies, through which civil servants can report cases of graft, misuse of public funds, or corruption.

NO: A NO score is earned if no such mechanism (or equivalent series of mechanisms) exists.

21
IV-3. Procurement

51. Is the public procurement process effective?

60

51a. In law, there are regulations addressing conflicts of interest for public procurement officials.

YES | **NO**

Comments:

There are no specific regulations, although all those in charge of tenders and auctions at all stages must avoid conflicts of interest, or the possibility thereof, while undertaking their employment duties and tasks as set out by law.

References:

Financial Law No. 8, 199,0 and subsequent amendments

Law of Tenders, Auctions and Stores No. 23, 2007, Article 95 (1) (b) <http://snaccyemen.org/details.asp?id=1664&catid=33>

YES: A YES score is earned if there are specific formal regulations defining and regulating conflicts of interest between official public duty and private interests for public procurement officials. A YES score is earned if such regulations cover all civil servants, including procurement officials.

NO: A NO score is earned if no such rules exist.

51b. In law, there is mandatory professional training for public procurement officials.

YES | **NO**

Comments:

The law speaks only of preparing programs for training chairmen and members of tender committees and their respective staffs. There is no compulsory training in any of the relevant laws, including the Financial Law and the Anti-Corruption Law.

References:

Law No. 32, 2007, Concerning Tenders, Auctions and Stores, Article 57 (8)

YES: A YES score is earned if public procurement officials receive regular mandatory training to ensure professional standards in supervising the tendering process. A YES score is earned if such training is mandated for portions of the broader civil service, to include procurement officials.

NO: A NO score is earned if there is no regular required training of public procurement officials or if training is sporadic, inconsistent, unrelated to procurement processes, or voluntary.

51c. In practice, the conflicts of interest regulations for public procurement officials are enforced.

100 | 75 | 50 | 25 | **0**

Comments:

Procurement was a regular source of corruption in the executive branch. For instance, in September the Ministry of Public Works acknowledged before Parliament that only 20% of contracts were awarded by tender." From first source

It is obvious to many government employees that no significant attention is given to enforcing procurement laws, and this researcher has significant experience in the field.

References:

<http://www.u4.no/training/in-country-open/yemen-docs/political-culture-corruption-yemen-abdomoghran.pdf>

<http://armiesofliberation.com/archives/2006/10/10/bidding-and-tenders-oversight-in-yemen/>

100: Regulations regarding conflicts of interest for procurement officials are aggressively enforced.

75:

50: Conflict-of-interest regulations exist, but are flawed. Some violations may not be enforced, or some officials may be exempt from regulations.

25:

0: Conflict-of-interest regulations do not exist, or are consistently ineffective.

51d. In law, there is a mechanism that monitors the assets, incomes and spending habits of public procurement officials.

YES | NO

Comments:

Although the law speaks of the establishment of the Supreme National Anti-Corruption Committee (SNACC), there is no specific stipulation for monitoring the changing wealth of procurement officials. Even with the Financial Disclosure Act, there is no specific follow-up mechanism to check for changes in the economic well-being of all relevant officials, not just procurement officials. The mandate is implied in the relevant laws, but it is inconceivably difficult to believe that they can be effective.

References:

Financial Disclosure Law No. 20, 2006

Anti-Corruption Law No. 30, 2006

Procurement Law No. 23, 2007

YES: A YES score is earned if there is a formal mandate to some agency to monitor the assets, incomes and spending habits of public procurement officials, such as an inspector general, or ombudsman.

NO: A NO score is earned if no such mandate exists.

51e. In law, major procurements require competitive bidding.

YES | NO

Comments:

The bylaws for the current effective Tender Law (2007) have yet to be enacted or are under preparation by a U.S. consulting firm. But if we can rely on the bylaws of the previously effective Procurement Law (1997), it sets out ceilings for undertaking other forms of bidding, and it is expected that the new bylaws will do the same.

References:

Law No. 23, 2007, Tenders, Auctions and Stores

Bylaws of Tender Law, Prime Minister's Decrees No. 234, 1997, No. 3, 1997, <http://magic.wordpress-158395-729720.cloudwaysapps.com/socialScientist/surveyQuestions.cfm?questionID=197&subCategoryID=62&answerID=&status=notsubmitted>

YES: A YES score is earned if all major procurements (defined as those greater than 0.5% of GDP) require competitive bidding.

NO: A NO score is earned if competitive bidding is not required by law or regulation for major procurement (greater than 0.5% OF GDP).

51f. In law, strict formal requirements limit the extent of sole sourcing.

YES | NO

Comments:

The above defines cases when a direct purchase or contract is allowed.

References:

Law of Tenders 23, 2007, Articles 16-18, <http://snaccyemen.org/details.asp?id=1612&catid=33>

YES: A YES score is earned if sole sourcing is limited to specific, tightly defined conditions, such as when a supplier is the only source of a skill or technology.

NO: A NO score is earned if there are no prohibitions on sole sourcing. A NO score is earned if the prohibitions on sole sourcing are general and unspecific.

51g. In law, unsuccessful bidders can instigate an official review of procurement decisions.

YES | NO

Comments:

Law sets out this right by presenting a request to the head of the entity for which the tender is made.

References:

Law of Tenders, 23, 2007, Article 77 (a), <http://snaccyemen.org/details.asp?id=1612=33>

YES: A YES score is earned if there is a formal appeal process for unsuccessful bidders.

NO: A NO score is earned if no such process exists.

51h. In law, unsuccessful bidders can challenge procurement decisions in a court of law.

YES | NO

References:

Law of Tenders 23, 2007, Article E (1), <http://snaccyemen.org/details.asp?id=1612&catid=33>

<http://snaccyemen.org/details.asp?id=1612&catid=33>

YES: A YES score is earned if unsuccessful bidders can use the courts to appeal a procurement decision.

NO: A NO score is earned if no such process exists.

51i. In law, companies guilty of major violations of procurement regulations (i.e. bribery) are prohibited from participating in future procurement bids.

YES | NO

Comments:

The articles speak to rejection of bids, possible revocation of licenses and suits for damages, if the completed works were unsatisfactory, if the contractor had undertaken some of the work or carried out some of the supply or services.

References:

Law No. 23, 2007 for Tenders, Auctions and Stores, Articles 28 (a), 29

<http://snaccyemen.org/details.asp?id=1612&catid=33>

YES: A YES score is earned if there are formal procurement blacklists, designed to prevent convicted companies from doing business with the government.

NO: A NO score is earned if no such process exists.

51j. In practice, companies guilty of major violations of procurement regulations (i.e. bribery) are prohibited from participating in future procurement bids.

100 | 75 | 50 | 25 | 0

Comments:

There are stipulations for this in the current Procurement Law, but with the absence of a bylaws for Law 23, there have not been any procedures for implementing the law. There is no record of companies being prohibited for such violations, except for the boycott list that used to be effective throughout the Arab World). No record of banned companies for such violations exists.

References:

Procurement Law

Law No. 23, 2007

100: A system of formal blacklists and cooling off periods is in place for companies convicted of corruption. All companies are subject to this system.

75:

50: A system of formal blacklists and cooling off periods is in place, but the system has flaws. Some procurements or companies may not be affected by the system, or the prohibitions are sometimes not effective.

25:

0: There is no such system, or the system is consistently ineffective in prohibiting future hiring of blacklisted companies.

52. Can citizens access the public procurement process?

54

52a. In law, citizens can access public procurement regulations.

YES | NO

Comments:

The Tender Committee website shows the pertinent laws and regulations, all of which clearly express the transparency of all procedures.

References:

Official Gazette

Higher (or Supreme) Tender Committee, <http://www.htb.gov.ye/circulars.html>

YES: A YES score is earned if procurement rules are, by law, open to the public. These regulations are defined here as the rules governing the competitive procurement process.

NO: A NO score is earned if procurement rules are officially secret for any reason or if there are no procurement rules.

52b. In law, the government is required to publicly announce the results of procurement decisions.

YES | NO

Comments:

No stipulation exists to force the announcement of results of tenders except to the awardee and the unsuccessful bidders, but there is no stipulation for making the results public. It may come in the bylaws, but until then, the answer is no.

References:

Law No. 23, 2007, Tenders, Auctions and Stores, Article 22 (b)

YES: A YES score is earned if the government is required to publicly post or announce the results of the public procurement process. This can be done through major media outlets or on a publicly-accessible government register or log.

NO: A NO score is earned if there is no requirement for the government to publicly announce the results of the public procurement process.

52c. In practice, citizens can access public procurement regulations within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

When any new regulations are issued, they are usually published in at least one of the official newspapers (Al-Thoura). At least one of the English-language newspapers would have a translation or summation.

References:

Media reports of issued laws

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information. These records are defined here as the rules governing the competitive procurement process.

75:

50: Records take around two weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

52d. In practice, citizens can access public procurement regulations at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

Public TV sometimes reads out the entire text of a new law or regulation. In any case, the cost should not exceed that of a newspaper.

In any cases, new laws and regulations requiring legislative enactment are published in the Official Gazette.

References:

Various media reports

Law No. 1, 2006, Bylaws of Parliament

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line. These records are defined here as the rules governing the competitive procurement process.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

52e. In practice, major public procurements are effectively advertised.

100 | 75 | 50 | 25 | 0

Comments:

Tender announcements are always available in the print editions (and sometimes the Web editions) of Al-Thoura and in almost all the English-language newspapers. Other entities show them on their websites. Tender announcements can also be found with other sources that have ready access to such information.

References:

<http://www.dgmarket.com/eproc/np-notice.do?noticeld=2243036>

http://www.buyusa.gov/yemen/en/yemen_ccg_2006.doc

100: There is a formal process of advertising public procurements. This may include a government website, newspaper advertising, or other official announcements. All major procurements are advertised in this way. Sufficient time is allowed for bidders to respond to advertisements.

75:

50: There is a formal process of advertisement but it is flawed. Some major procurements may not be advertised, or the advertising process may not be effective. The time between advertisements and bidding may be too short to allow full participation.

25:

0: There is no formal process of advertising major public procurements or the process is superficial and ineffective.

52f. In practice, citizens can access the results of major public procurement bids.

100 | 75 | 50 | 25 | 0

Comments:

The above is one of the rare occasions when the result of a tender was announced.

References:

http://goliath.ecnext.com/coms2/gj_0199-3578617/YEMEN-WINNING-OF-TENDER-FOR.html

100: Records of public procurement results are publicly available through a formal process.

75:

50: Records of public procurements are available, but there are exceptions to this practice. Some information may not be available, or some citizens may not be able to access information.

25:

0: This information is not available to the public through an official process.

IV-4. Privatization

53. Is the privatization process effective?

75

53a. In law, all businesses are eligible to compete for privatized state assets.

YES | NO

Comments:

Among the aims of the law is to encourage private ownership and investment in a competitive manner, so as to prevent monopolization and to achieve broader ownership through public subscription. Article 4 stresses making all the steps in the process public. Participation is not just open to businesses but also to workers of privatized parastatals, unions, cooperatives and other community associations.

References:

Law No. 45, 1999, Privatization, Articles 3, 4, <http://snaccyemen.org/details.asp?id=1602&catid=33>

YES: A YES score is earned if all businesses are equally eligible to compete for privatized assets. A YES score is still earned if the government did not privatize any state-owned assets during the study period.

NO: A NO score is earned if any group of businesses (other than those blacklisted due to corruption charges) is excluded by law.

53b. In law, there are regulations addressing conflicts of interest for government officials involved in privatization.

YES | NO

Comments:

Minimum penalties are two years' imprisonment and a minimum fine of 500,000 rials (US\$2500).

References:

Privatization Law No. 45, 1999, Privatization, Articles 21 (a), (b)

YES: A YES score is earned if there are specific formal regulations defining and regulating conflicts of interest between official public duty and private interests for privatization officials. A YES score is earned if such regulations cover all civil servants, including privatization officials.

NO: A NO score is earned if there are no such formal regulations.

53c. In practice, conflicts of interest regulations for government officials involved in privatization are enforced.

100 | 75 | 50 | 25 | 0

Comments:

As with most Yemini laws, stipulations point one way and enforcement is directed in the other.

Yemen lacks most legal safeguards to protect against conflicts of interest. From first source

The Supreme National Anti-Corruption Committee (SNACC) has yet to consider the matter of privatization.

Parliament has, on a number of occasions, demanded an investigation of privatization efforts, as some members claim that of the 130 parastatals that were privatized, only 30 were under the auspices of the Higher/Supreme Privatization Committee. MPs point out that there is a lot of suspicion that the whole process has turned into a phenomenal display of favoritism and cronyism. There is little information on how these privatizations were undertaken (i.e., there is no transparency). No reports can be found in the press on any privatization corruption cases under judicial review.

References:

http://www.freedomhouse.org/inc/content/pubs/fiw/inc_country_detail.cfm?year=2005&country=6864&pf

http://www.alsahwa-yemen.net/print.asp?sub_no=1_2008_07_27_64945

100: Regulations regarding conflicts of interest for privatization officials are aggressively enforced.

75:

50: Conflict-of-interest regulations exist, but are flawed. Some violations may not be enforced, or some officials may be exempt from the regulations.

25:

0: Conflict of interest regulations do not exist, or are consistently ineffective.

54. Can citizens access the terms and conditions of privatization bids?

65

54a. In law, citizens can access privatization regulations.

YES | NO

Comments:

The above public media give citizens access to privatization regulations, and the law stresses the need to make all matters concerning privatization accessible to public. However, there is little stipulation on informing the public of the relevant laws or regulations on privatization. Nevertheless, anyone who would wish to get the information would not have difficulty in getting it, especially with some lucrative payment.

References:

Official Gazette and other official publications

YES: A YES score is earned if privatization rules (defined here as the rules governing the competitive privatization process) are, by law, open to the public. Even if privatization is infrequent or rare, the most recent privatization should be used as the basis for scoring this indicator.

NO: A NO score is earned if privatization rules are officially secret for any reason or if there are no privatization rules.

54b. In practice, privatizations are effectively advertised.

100 | 75 | 50 | 25 | 0

Comments:

In talks over Yemen's accession to World Trade Organization membership, a Yemeni representative stated that the Technical Bureau for Privatization publishes announcements of enterprises to be privatized in widely circulated newspapers, as the second source seems to indicate.

Notwithstanding the above, the press and Parliament strongly suspect that the announcements are a formality. The process is often done by direct negotiations with certain interest groups or one family, as the third source states.

Personal experience shows a couple of occasions when the senior management of a public corporation asked the researcher to negotiate directly with a foreign firm on a privatization proposal. Even after getting the firm to agree to terms and conditions most favorable to Yemen, the deal was shelved, because the firm was not brought by any officials at more senior positions of power and

influence. On another occasion, the researcher was seconded as an important senior management officer to a successful and profitable mixed sector enterprise (the government and private sector involved in trading and industrial operations). The then CEO used to arrange deals with certain local, private sector elements and directly sell them the agencies of important international companies that the enterprise owned. The agencies were very lucrative, the company was operating successfully and it was not even a candidate for privatization, as there is private-sector participation in the ownership of the company's capital shares. The decisions were consummated without the approval of the Board of Directors (with members from the private sector), which almost became frozen when the CEO was appointed (by presidential decree) to take charge of the enterprise.

References:

www.wtoyemen.org/ar/showonlinefile.aspx?F=1&ID=15 – Arabic (Page 11)

<http://www.asharqalawsat.com/sections.asp?section=6&epage=economy&apage=%D8%A7%D9%84%D8%A7%D9%82%D8%AA%D8%B5%D8%A7%D8%AF&issueno=8512>

<http://www.alwasat-ye.net/modules.php?name=News&file=article&sid=3764>

100: There is a formal process of advertising privatizations. This may include a government website, newspaper advertising, or other official announcements. All major procurements are advertised in this way. Sufficient time is allowed for bidders to respond to advertisements.

75:

50: There is a formal process of advertisement but it is flawed. Some privatizations may not be advertised, or the advertising process may not be effective. The time between advertisements and bidding may be too short to allow full participation.

25:

0: There is no formal process of advertising privatizations or the process is superficial and ineffective.

54c. In law, the government is required to publicly announce the results of privatization decisions.

YES | NO

Comments:

Article 4 stipulates (somewhat loosely) that the results of privatization negotiations with all parties should be made accessible to the public. Article 5 requires that the Higher Privatization Committee give details of any privatization effort to the relevant committee in the House of Representative and that copies of the relevant documents associated with the process.

The second source points out that several members of Parliament are demanding more investigative effort of the process and are questioning the laxity of the Presidium of Parliament on this matter.

References:

Law of Privatization No.45, 1999, Articles 4, 5

http://www.alsahwa-yemen.net/print.asp?sub_no=1_2008_07_27_64945

YES: A YES score is earned if the government is required to publicly post or announce the results of the privatization process. This can be done through major media outlets or on a publicly-accessible government register or log.

NO: A NO score is earned if there is no requirement for the government to publicly announce the results of the privatization process.

54d. In practice, citizens can access privatization regulations within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

The government is required to publish all issued laws and legislations in the Official Gazette. SNACC's website is an excellent and the most up-to-date source of most of pertinent laws (and sometimes bylaws) issued to date in Arabic. It is more useful in this even more than the website of the Ministry of Legal Affairs.

References:
Official Gazette

Supreme National Anti-Corruption Committee (SNACC), <http://snaccyemen.org/details.asp?id=1602&catid=33>

100: Records (defined here as the rules governing the competitive privatization process) are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take around two weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

54e. In practice, citizens can access privatization regulations at a reasonable cost.

100 | 75 | **50** | 25 | 0

Comments:

How little the cost is depends on where one looks. For example if the researcher had not found the SNACC website, finding the law would have been difficult, time-consuming and more expensive. The researcher could not find a website for the Higher Privatization Committee.

References:
Official Gazette

Supreme National Anti-Corruption Committee (SNACC), <http://snaccyemen.org/details.asp?id=1602&catid=33>

100: Records (defined here as the rules governing the competitive privatization process) are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

Category V. Oversight and Regulation

V-1. ⁵²National Ombudsman

56. Is the national ombudsman effective?

41

56a. In law, the ombudsman is protected from political interference.

YES | NO

Comments:

The Supreme National Anti-Corruption Committee (SNACC) is theoretically an independent entity that carries out its duties with complete independence and neutrality without any interference from anyone or any entity, the latter of which is deemed to be a crime punishable by law and precedence."

The Central Organization for Control and Auditing (COCA) is still under the control of the president's office. It is the entity that is now more qualifies to undertake the investigative work on corruption.

References:

Law No. 39, 2006, Concerning Combating Corruption

YES: A YES score is earned only if the agency (or set of agencies) has some formal organizational independence from the government. A YES score is earned even if the entity is legally separate but in practice staffed by partisans.

NO: A NO score is earned if the agency is a subordinate part of any government ministry or agency, such as the Department of Interior or the Justice Department.

56b. In practice, the ombudsman is protected from political interference.

100 | 75 | 50 | 25 | 0

Comments:

The judiciary has been known to take disciplinary measures against lax judges trying public property/funds cases, but mostly they are lower-level judges. The Supreme National Anti-Corruption Committee (SNACC) has reported that it has hundreds of cases," but no significant indictment of "heavy" corruption cases has materialized.

References:

<http://www.yemencg.org/library/en/NAR%20Progress%20Report.pdf>

<http://www.yementimes.com/article.shtml?i=874&p=local&a=1>

100: This agency (or set of agencies) operates independently of the political process, without incentive or pressure to render favorable judgments in politically sensitive cases. Investigations can operate without hindrance from the government, including access to politically sensitive information.

75:

50: This agency (or set of agencies) is typically independent, yet is sometimes influenced in its work by negative or positive political incentives. This may include public criticism or praise by the government. The ombudsman may not be provided with some information needed to carry out its investigations.

25:

0: This agency (or set of agencies) is commonly influenced by political or personal incentives. This may include conflicting family relationships, professional partnerships, or other personal loyalties. Negative incentives may include threats, harassment or other abuses of power. The ombudsman cannot compel the government to reveal sensitive information.

56c. In practice, the head of the ombudsman agency/entity is protected from removal without relevant justification.

100 | 75 | 50 | 25 | 0

Comments:

Article 11 states that membership in the Supreme National Anti-Corruption Committee (SNACC) may be rescinded if only the member commits a violation in the undertaking of his duties and only after after referral to the court by a majority vote of SCAAC members and a subsequent court ruling.

References:

Anti-Corruption Law No. 39, 2000, Article 11

100: The director of the ombudsman (or directors of multiple agencies) serves a defined term and cannot be removed without a significant justification through a formal process, such as impeachment for abuse of power.

75:

50: The director of the ombudsman (or directors of multiple agencies) serves a defined term, but can in some cases be removed through a combination of official or unofficial pressure.

25:

0: The director of the ombudsman (or directors of multiple agencies) can be removed at the will of political leadership.

56d. In practice, the ombudsman agency (or agencies) has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

Comments:

The Supreme National Anti-Corruption Committee (SNACC), the Central Organization for Control and Auditing (COCA), and the Public Property Courts all have support staff, but they often lack adequate training.

References:

http://www.yemencg.org/library/2008/government_report08_en.pdf

Anti-Corruption Law No. 39, 2000

100: The ombudsman agency (or agencies) has staff sufficient to fulfill its basic mandate.

75:

50: The ombudsman agency (or agencies) has limited staff that hinders its ability to fulfill its basic mandate.

25:

0: The ombudsman agency (or agencies) has no staff, or a limited staff that is clearly unqualified to fulfill its mandate.

56e. In practice, agency appointments support the independence of the ombudsman agency (or agencies).

100 | 75 | 50 | 25 | 0

Comments:

With the nominations coming from the Consultative Assembly (all of whose members are appointed) and endorsed by a House of Representatives, where the ruling party is almost guaranteed an overwhelming majority, it is inconceivable to suggest that appointments to the Supreme National Anti-Corruption Committee (SNACC) can be totally free from political association. (The Chairman of SNACC is a member of the ruling party, the General People's Congress.) The same is true for the heads of the Central Organization for Control and Auditing (COCA) and the Public Property Court, and the chairman of the Judiciary Council. The senior positions within SNACC are bound to be politically inspired, even if not necessarily without compromise to professional and even ethical standards. One may ascertain that there are going to be certain elements of officialdom that will remain untouchable by any authority.

COCA reported that between its creation in 1999 and 2005, it had investigated 518 official cases of corruption, of which 361 were filed with COCA in 2005, resulting in a loss to the treasury of \$24.7 million (4.86 billion riyals). At year's end, of the 518 cases, 490 had been sent to the judiciary for action, while the remaining 28 cases were still under consideration."

A correction: COCA was actually created in 1974 in the former Yemen Arab Republic (North Yemen) and redefined institutionally by Law No. 39, 1992 after unification of North and South Yemen in May 1990.

References:

<http://www.coca.gov.ye/index.php?lang=2&page=p9>

<http://www.state.gov/g/drl/rls/hrrpt/2007/100610.htm>

<http://www.coca.gov.ye/index.php?lang=2&page=p1>

100: Appointments to the agency (or agencies) are made based on professional qualifications. Individuals appointed are free of conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed usually do not have clear political party affiliations.

75:

50: Appointments are usually based on professional qualifications. Individuals appointed may have clear party loyalties.

25:

0: Appointments are often based on political considerations. Individuals appointed often have conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed often have clear party loyalties.

56f. In practice, the ombudsman agency (or agencies) receives regular funding.

100 | 75 | 50 | 25 | 0

Comments:

The Central Organization for Control and Auditing (COCA) and the Supreme National Anti-Corruption Committee (SNACC) have autonomous budgets that are included in the General State Budgets. The Public Property Courts' budgets are included within the autonomous" budgets of the Judiciary Branch.

References:

http://www.yemencg.org/library/2008/government_report08_en.pdf

Fiscal Years 2008 and 2009 Budget (proposed)

100: The agency (or agencies) has a predictable source of funding that is fairly consistent from year to year. Political considerations are not a major factor in determining agency funding.

75:

50: The agency (or agencies) has a regular source of funding, but may be pressured by cuts, or threats of cuts to the agency budget. Political considerations have an effect on agency funding.

25:

0: Funding source is unreliable. Funding may be removed arbitrarily or as retaliation for agency functions.

56g. In practice, the ombudsman agency (or agencies) makes publicly available reports.

100 | 75 | 50 | 25 | 0

Comments:

The first and second sources underscore the poor transparency existing in corruption-related cases.

The Yemeni institutional infrastructures that are responsible for fighting and preventing corruption have been characterized by a serious crisis of responsibility. In addition, this framework faces many obstacles and a lack of transparency and accountability in its structure and level of administration. Building transparent and accountable institutions for preventing corruption is a fundamental starting point for developing good governance and fighting corruption in Yemen.

"The law requires a degree of transparency and public access to information, and the Press and Publications Law provides for journalists to have some access to government reports and information; however, in practice the government offered few procedures to ensure transparency. In August 2006, Parliament passed a law requiring public disclosure of government officials' assets, and the Supreme National Anti-Corruption Committee (SNACC) worked to implement this during the year. The government provided limited information on Internet sites; however, few citizens had access to the Internet."

The stipulations in the pertinent legislation of these agencies and other related laws further reinforce the limitations to public access to most of the ombudsman agencies work.

References:

<http://www.yemenpost.net/24/InvestigationAndInterview/20081.htm>

<http://www.state.gov/g/drl/rls/hrrpt/2007/100610.htm>

100: The agency (or agencies) makes regular, publicly available, substantial reports either to the legislature or directly to the public outlining the full scope of its work.

75:

50: The agency (or agencies) makes publicly available reports to the legislature and/or directly to the public that are sometimes delayed or incomplete.

25:

0: The agency (or agencies) makes no reports of its activities, or makes reports that are consistently out of date, unavailable to the public, or insubstantial.

56h. In practice, when necessary, the national ombudsman (or equivalent agency or agencies) initiates investigations.

100 | 75 | 50 | 25 | 0

Comments:

Institutions that deal with corruption during the investigation: The Central Organization for Control and Auditing (COCA), Public Prosecution for Public Funds (public property cases), Supreme Judicial Council (for cases involving judges and prosecutors) and Ministry of Finance, for checks and control of finance affairs.

SNACC, according to the Anti-Corruption Law, is also empowered to initiate investigations of public property/corruption cases. It is most likely, however, that COCA will undertake the investigative work for SNACC, in view of COCA's experience and resources (specifically, qualified manpower). While the researcher's personal experience with COCA demonstrates diligent investigative work and meaningful conclusions, the following would indeed present a problem in making the work as effective as it should be in terms of indictment, prosecution and penalization: The Central Organization for Control and Auditing (COCA), as an anti-corruption watchdog, in practice is not an independent body. It is answerable to the president and presents its report to Parliament once a year. It has been monitoring government revenues, spending, procurement and performance. But its reports are either not taken into account or are being used to blackmail government officials.

While SNACC has reported that many cases have been designated for its perusal, no reports yet exist of any major corruption cases being prosecuted or tried.

References:

<http://info.worldbank.org/etools/docs/library/242904/Yemen-final-Draft-on%20Hadeel-comments.doc>

<http://www.yementimes.com/article.shtml?i=874&p=local&a=1>

<http://www.yemenpost.net/24/InvestigationAndInterview/20081.htm>

100: The agency aggressively starts investigations — or participates fully with cooperating agencies' investigations — into judicial misconduct. The agency is fair in its application of this power.

75:

50: The agency will start or cooperate in investigations, but often relies on external pressure to set priorities, or has limited effectiveness when investigating. The agency, though limited in effectiveness, is still fair in its application of power.

25:

0: The agency rarely investigates on its own or cooperates in other agencies' investigations, or the agency is partisan in its application of this power.

56i. In practice, when necessary, the national ombudsman (or equivalent agency or agencies) imposes penalties on offenders.

100 | 75 | 50 | 25 | 0

Comments:

The judiciary has perhaps been the institution within which the most apparent corrupt or incompetent officials can be found: According to Farwan, more than 42 Yemeni judges were investigated last year, some of whom were given oral notice while others were dismissed." From Yemen Times

"Only low-ranking officials have been prosecuted for corruption since the inception of the Central Organization for Control and Auditing (COCA). The actual number of corruption cases was generally considered to be significantly higher than what was reported by COCA." From second source

References:

<http://www.yementimes.com/article.shtml?i=1037&p=report&a=1>

<http://www.state.gov/g/drl/rls/hrrpt/2007/100610.htm>

100: When rules violations are discovered, the agency is aggressive in penalizing offenders or in cooperating with other agencies who penalize offenders.

75:

50: The agency enforces rules, but is limited in its effectiveness. The agency may be slow to act, unwilling to take on politically powerful offenders, resistant to cooperating with other agencies, or occasionally unable to enforce its judgments.

25:

0: The agency does not effectively penalize offenders. The agency may make judgments but not enforce them, does not cooperate with other agencies in enforcing penalties, or may fail to make reasonable judgments against offenders. The agency may be partisan in its application of power.

56j. In practice, the government acts on the findings of the ombudsman agency (or agencies).

100 | 75 | 50 | 25 | 0

Comments:

The Central Organization for Control and Auditing (COCA), as an anti-corruption watchdog, in practice is not an independent body. It is answerable to the president and presents its report to Parliament once a year. It has been monitoring government revenues, spending, procurement and performance. But its reports are either not taken into account or are being used to blackmail government officials.

This is confirmed by other reports as well and personal experience:

At year's end, of the 518 cases, 490 had been sent to the judiciary for action, while the remaining 28 cases were still under consideration. COCA's reports were given to Parliament but were not accessible to the general public. Only low-ranking officials have been prosecuted for corruption since COCA's inception."

References:

<http://info.worldbank.org/etools/docs/library/242904/Yemen-final-Draft-on%20Hadeel-comments.doc>

<http://www.state.gov/g/drl/rls/hrrpt/2007/100610.htm>

100: Ombudsman's reports are taken seriously, with negative findings drawing prompt corrective action.

75:

50: In most cases, ombudsman's reports are acted on, though some exceptions may occur for politically sensitive issues, or particularly resistant agencies.

25:

0: Ombudsman's reports are often ignored, or given superficial attention. Ombudsman's reports do not lead to policy changes.

56k. In practice, the ombudsman agency (or agencies) acts on citizen complaints within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

The researcher reported a case to COCA, which was investigated appropriately.

The nuclear power case cited in second source was acted upon by the Supreme National Anti-Corruption Committee (SNACC) when it was raised by a newspaper editor in Mariib Press.

References:

Personal Experience with the Central Organization for Control and Auditing (COCA)

<http://mypejawa.mu.nu/archives/189585.php>

<http://www.yobserver.com/front-page/10013170.html>

100: The agency (or agencies) acts on complaints quickly. While some backlog is expected and inevitable, complaints are acknowledged promptly and investigations into serious abuses move steadily towards resolution. Citizens with simple issues can expect a resolution within a month.

75:

50: The agency (or agencies) acts on complaints quickly, with some exceptions. Some complaints may not be acknowledged, and simple issues may take more than two months to resolve.

25:

0: The agency (or agencies) cannot resolve complaints quickly. Complaints may be unacknowledged for more than a month, and simple issues may take more than three months to resolve. Serious abuses are not investigated with any urgency.

57. Can citizens access the reports of the ombudsman?

17

57a. In law, citizens can access reports of the ombudsman(s).

YES | NO

Comments:

The Central Organization for Control and Auditing (COCA), as an anti-corruption watchdog, in practice is not an independent body. It is answerable to the president and presents its report to Parliament once a year. It has been monitoring government revenues, spending, procurement and performance. But its reports are either not taken into account or are being used to blackmail government officials.

This is confirmed by other reports as well and personal experience:

At year's end, of the 518 cases, 490 had been sent to the judiciary for action, while the remaining 28 cases were still under consideration. COCA's reports were given to Parliament but were not accessible to the general public. Only low-ranking officials have been prosecuted for corruption since COCA's inception."

References:

Law No. 39, 1992, Concerning the Central Organization of Control and Auditing (COCA), Articles 11, 13

YES: A YES score is earned if all ombudsman reports are publicly available.

NO: A NO score is earned if any ombudsman reports are not publicly available. This may include reports made exclusively to the legislature or the executive, which those bodies may choose not to distribute the reports.

57b. In practice, citizens can access the reports of the ombudsman(s) within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

There is no stipulation for public access to COCO's reports. Their availability can sometimes depend on the possible political value of such access. However, many newspaper reports have referred to COCA reports, which apparently were provided by either COCA staff, concerned employees of the relevant entities, or other informal means.

COCA's reports were rendered to Parliament but were not made accessible to the general public." From second source

The Supreme National Anti-Corruption Committee (SNACC) has given general reports to the public, but its laws do not call for public access to its official reports and activities.

In any case, the reports that are made public have not enlightened the public to any increased pressure on the widespread corruption prevalent in the government.

References:

Law 39, 1992, Concerning the Central Organization for Control and Auditing (COCA) and the Bylaws thereof, <http://snaccyemen.org/details.asp?id=1620&catid=33>

<http://www.yobserver.com/local-news/10014609.html>

100: Reports are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Reports take around two weeks to obtain. Some delays may be experienced.

25:

0: Reports take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

57c. In practice, citizens can access the reports of the ombudsman(s) at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

With some reports now reaching the public, it is not yet clear how much of an impact they will have on enticing public involvement in anti-corruption measures. The reports do not go into the specifics of the corruption being investigated or prosecuted.

The anti-corruption laws and the Financial Disclosure Act do not allow for disclosure of details of anti-corruption cases or Financial Disclosure Declarations.

References:

http://www.newsyyemen.net/en/view_news.asp?sub_no=3_2008_05_14_7228

<http://wwwnational.ae/article/20080626/FOREIGN/282688866/1001/ART>

100: Reports are free to all citizens, or available for the cost of photocopying. Reports can be obtained at little cost, such as by mail, or on-line.

75:

50: Reports impose a financial burden on citizens, journalists or CSOs. Retrieving reports may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving reports imposes a major financial burden on citizens. Reports costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

55. Is there a national ombudsman, public protector or equivalent agency (or collection of agencies) covering the entire public sector?

100

55. In law, is there a national ombudsman, public protector or equivalent agency (or collection of agencies) covering the entire public sector?

YES | NO

Comments:

Law No. 39 primarily creates and stipulates the role of the Supreme National Anti-Corruption Committee (SNACC).

Note that the President of the Republic, by law, is no longer chairman of the Supreme Judicial Council.

Note that COCA is under under the Office of the President of the Republic and reports to the director of the office.

References:

Republican Decree of Law No 39, 1992, Concerning the Central Organization for Control and Auditing (COCA) (Not subject to Parliamentary approval)

Law No. 39, 2006, Concerning Combatting Corruption

Decree of the President of the Republic, Chairman of the Supreme Judicial Council, No. 3, 1996, Concerning the Establishment of the Public Property/Funds Courts

Law for the Establishment of Public Property Prosecution

YES: A YES score is earned if there is a specific agency or set of agencies whose primary mandate is to investigate the actions of government on the behalf of common citizens. This agency or set of agencies should be specifically charged with seeking out and documenting abuses of power.

NO: A NO score is earned if no such agency or set of agencies exists, or that function is a secondary concern of a larger body, such as the legislature.

V-2. Supreme Audit Institution

59. Is the supreme audit institution effective?

25

59a. In law, the supreme audit institution is protected from political interference.

YES | NO

Comments:

COCA is under the auspices of the Executive Office of the Presidency, and its chairman and top staff are appointed by presidential decree.

The law clearly states that the appointment of its senior officers is by presidential decree and is not subject to legislative approval. The fact that COCA is by law under the presidential office makes its independence rather fluid.

References:

Law 39, 1992, Concerning the Central Organization for Control and Auditing (COCA), <http://snaccyemen.org/details.asp?id=1620&catid=33>

YES: A YES score is earned only if the agency has some formal organizational independence from the government. A YES score is earned even if the entity is legally separate but in practice staffed by partisans.

NO: A NO score is earned if the agency is a subordinate part of any government ministry or agency, such as the Department of Interior or the Justice Department.

59b. In practice, the head of the audit agency is protected from removal without relevant justification.

100 | 75 | 50 | 25 | 0

Comments:

Article 19 (a) explicitly leaves the designation of the chairman of COCA to the President of the Republic.

Article 19 (b) states that the chairman is immune from removal or relocation unless he is proven to have violated the law or was deficient in carrying out his duties. There have been occasions in the past when the chairman was actually diligent in his duties, and this may have been cause for his dismissal.

References:

Law 39, 1992, Concerning the Central Organization for Control and Auditing (COCA), <http://snaccyemen.org/details.asp?id=1620&catid=33>, Article 19 (a), (b)

100: The director of the agency serves a defined term and cannot be removed without a significant justification through a formal process, such as impeachment for abuse of power.

75:

50: The director of the agency serves a defined term, but can in some cases be removed through a combination of official or unofficial pressure.

25:

0: The director of the agency can be removed at the will of political leadership.

59c. In practice, the audit agency has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

Comments:

The staff of the Central Organization for Control and Auditing (COCA) numbers 1700 and is spread throughout Yemen. They undergo continuous training.

References:

http://www.yemencg.org/library/2008/government_report08_en.pdf

http://www.arabosai.org/en/recipient_member.asp?member_id=22

100: The agency has staff sufficient to fulfill its basic mandate.

75:

50: The agency has limited staff that hinders its ability to fulfill its basic mandate.

25:

0: The agency has no staff, or a limited staff that is clearly unqualified to fulfill its mandate.

59d. In practice, audit agency appointments support the independence of the agency.

100 | 75 | 50 | 25 | 0

Comments:

Appointments of the top positions in COCA are by presidential decree and are not subject to review by Parliament.

References:

<http://www.coca.gov.ye/index.php?lang=2&page=p9&PHPSESSID=1eec351b3a27d3c8317a29bb987f66fa>

Law 39, 1992, Concerning the Central Organization for Control and Auditing (COCA), <http://snaccyemen.org/details.asp?id=1620&catid=33>

100: Appointments to the agency are made based on professional qualifications. Individuals appointed are free of conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed usually do not have clear political party affiliations.

75:

50: Appointments are usually based on professional qualifications. Individuals appointed may have clear party loyalties.

25:

0: Appointments are often based on political considerations. Individuals appointed often have conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed often have clear party loyalties.

59e. In practice, the audit agency receives regular funding.

100 | 75 | 50 | 25 | 0

Comments:

The budget for the Central Organization for Control and Auditing (COCA) is included in the government's general budget.

Although the law stipulates that COCA's budget is independent, it complains of Finance Ministry practices that aren't indicative of such independence, even regarding finances. From Yemen Times, quoting from a World Bank study

References:

<http://www.yementimes.com/article.shtml?i=1182&p=local&a=1>

100: The agency has a predictable source of funding that is fairly consistent from year to year. Political considerations are not a major factor in determining agency funding.

75:

50: The agency has a regular source of funding, but may be pressured by cuts, or threats of cuts to the agency budget. Political considerations have an effect on agency funding.

25:

0: Funding source is unreliable. Funding may be removed arbitrarily or as retaliation for agency actions.

59f. In practice, the audit agency makes regular public reports.

Comments:

The Central Organization for Control and Auditing s (COCA) reports were given to Parliament but were not made accessible to the general public."

Article 11 states that COCA should inform the relevant government agency of its findings in cases concerning that agency. If the relevant agency does not act upon the report within 30 days, COCA can refer the case to the General Prosecution of Public Property. However, in the cases involving ministers, vice ministers and undersecretaries, the reports are given to the president.

Article 13 states that COCA presents its reports to the relevant entities, with copies to the other concerned entities and the Presidential Council (which has now been annulled, and thus to the president). COCA also sends its reports on the review of the budgets, final accounts and performance assessments of various government entities to the entities concerned, with copies to the other relevant concerned entities. COCA sends its annual review of the Final Account of the Government Budget (and the attached budgets of "autonomous" units) to the president, Parliament, the Cabinet and other relevant concerned entities.

References:

<http://www.state.gov/g/drl/rls/hrrpt/2006/78867.htm>

Law 39, 1992, Concerning the Central Organization for Control and Auditing (COCA), <http://snaccyemen.org/details.asp?id=1620&catid=33>

100: The agency makes regular, publicly available, substantial reports to the legislature and/or to the public directly outlining the full scope of its work.

75:

50: The agency makes publicly available reports to the legislature and/or to the public directly that are sometimes delayed or incomplete.

25:

0: The agency makes no reports of its activities, or makes reports that are consistently out of date, unavailable to the public, or insubstantial.

59g. In practice, the government acts on the findings of the audit agency.

Comments:

The first source clearly indicates that the ombudsmans efforts often lead to a dead end:

The Central Organization for Control and Auditing (COCA), as an anti-corruption watchdog, in practice is not an independent body. It is answerable to the president and presents its report to Parliament once a year. It has been monitoring government revenues, spending, procurement and performance. But its reports are either not taken into account or are being used to blackmail government officials.

This is confirmed by other reports as well as personal experience: At year's end, of the 518 cases, 490 had been sent to the judiciary for action, while the remaining 28 cases were still under consideration. COCA's reports were given to Parliament but were not accessible to the general public. Only low-ranking officials have been prosecuted for corruption since COCA's inception."

References:

<http://info.worldbank.org/etools/docs/library/242904/Yemen-final-Draft-on-%20Hadeel-comments.doc>

<http://www.state.gov/g/drl/rls/hrrpt/2007/100610.htm>

100: Audit agency reports are taken seriously, with negative findings drawing prompt corrective action.

75:

50: In most cases, audit agency reports are acted on, though some exceptions may occur for politically sensitive issues, or particularly resistant agencies.

25:

0: Audit reports are often ignored, or given superficial attention. Audit reports do not lead to policy changes.

59h. In practice, the audit agency is able to initiate its own investigations.

100 | 75 | 50 | 25 | 0

Comments:

Institutions that deal with corruption during the investigation: The Central Organization for Control and Auditing (COCA), Public Prosecution for Public Funds (public property cases), Supreme Judicial Council (for cases involving judges and prosecutors) and Ministry of Finance, for checks and control of finance affairs.

This is confirmed by other reports as well and personal experience:

At year's end, of the 518 cases, 490 had been sent to the judiciary for action, while the remaining 28 cases were still under consideration. COCA's reports were given to Parliament but were not accessible to the general public. Only low-ranking officials have been prosecuted for corruption since COCA's inception."

The Central Organization for Control and Auditing (COCA), as an anti-corruption watchdog, in practice is not an independent body. It is answerable to the president and presents its report to Parliament once a year. It has been monitoring government revenues, spending, procurement and performance. But its reports are either not taken into account or are being used to blackmail government officials.

References:

<http://info.worldbank.org/etools/docs/library/242904/Yemen-final-Draft-on%20Hadeel-comments.doc>

100: The supreme audit institution can control the timing and pace of its investigations without any input from the executive or legislature.

75:

50: The supreme audit institution can generally decide what to investigate, and when, but is subject to pressure from the executive or legislature on politically sensitive issues.

25:

0: The supreme audit institution must rely on approval from the executive or legislature before initiating investigations. Politically sensitive investigations are almost impossible to move forward on.

60. Can citizens access reports of the supreme audit institution?

17

60a. In law, citizens can access reports of the audit agency.

YES | NO

Comments:

COCA presents its reports to the relevant agency, to other concerned entities and to the President of the Republic, and at year end presents a report to Parliament on its review of the final accounts of the budget.

References:

Law 39, 1992, Concerning the Central Organization for Control and Auditing (COCA), Articles 11, 13, <http://snaccyemen.org/details.asp?id=1620&catid=33>

YES: A YES score is earned if all supreme auditor reports are available to the general public.

NO: A NO score is earned if any auditor reports are not publicly available. This may include reports made exclusively to the legislature or the executive, which those bodies may choose not to distribute.

60b. In practice, citizens can access audit reports within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

There are reports that manage to reach the press.

References:

<http://www.yementimes.com/article.shtml?i=1182&p=local&a=1>

<http://armiesofliberation.com/archives/2008/06/14/the-first-report-of-yemen-journalists-against-corruption/>

100: Reports are available on-line, or records can be obtained within two days. Reports are uniformly available; there are no delays for politically sensitive information.

75:

50: Reports take around two weeks to obtain. Some delays may be experienced.

25:

0: Reports take more than a month to acquire. In some cases, most reports may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

60c. In practice, citizens can access the audit reports at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

Stipulations in pertinent COCO legislation and other related laws further reinforce the limitations of public access to most of the output of the ombudsman agencies. They are also not available in COCA website.

References:

Personal experience

Various published Central Organization for Control and Auditing (COCA) reports leaked to the press, <http://armiesofliberation.com/archives/2008/06/14/the-first-report-of-yemen-journalists-against-corruption/>

100: Reports are free to all citizens, or available for the cost of photocopying. Reports can be obtained at little cost, such as by mail, or on-line.

75:

50: Reports impose a financial burden on citizens, journalists or CSOs. Retrieving reports may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving reports imposes a major financial burden on citizens. Report costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

58. Is there a national supreme audit institution, auditor general or equivalent agency covering the entire public sector?

58. In law, is there a national supreme audit institution, auditor general or equivalent agency covering the entire public sector?

YES | NO

Comments:

COCA is the national supreme audit institution for all government ministries, agencies, authorities, and public and mixed-sector enterprises.

References:

Law 39, 1992, Concerning the Central Organization for Control and Auditing (COCA), <http://snaccyemen.org/details.asp?id=1620&catid=33>

YES: A YES score is earned if there is a specific agency whose primary mandate is to audit and track the movement of money through the government. This agency should be specifically charged to investigate and document the misuse of funds. A system of agencies located in each department is equivalent.

NO: A NO score is earned if no such agency exists, or that function is a secondary concern of a larger body, such as the executive.

47 V-3. Taxes and Customs

62. Is the tax collection agency effective?

25

62a. In practice, the tax collection agency has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

Comments:

The second source underscores a major weakness in staff capability: Even in auditing for tax purposes, the Tax Authority does not have the qualifications that will enable it to identify organizations that are systematically involved in corruption and payment of bribes, as evidenced in their own accounting books.

The second source indicates efforts to improve the tax administration, which includes the training of staff.

The Tax Authority was chosen as one of six government entities to restructure the GTA and streamline operations. Since the program is only beginning, we can assume that the staff has yet to be able to handle the increasing work load, with the application of the General Sales Tax, although 100 new staff have been hired to apply the GTA.

The third source confirms this: "Currently, Yemen's tax revenues are low and the economic environment is difficult for investment. According to a World Bank study, Yemen ranks 84th out of 178 countries regarding ease of tax-paying and 113th out of that same number of countries for ease of doing business. The World Bank Group's International Financing Corporation (IFC) will work in conjunction with Yemen's General Investment Authority to review tax-exemption status and national tax revenues. Once these financial norms have been stated, the IFC will focus on reforming the nation's Tax Authority, improving its competence and transparency while reducing the potential for corruption.

References:

<http://www.mcc.gov/documents/factsheet-021407-yemen.pdf>

http://www-wds.worldbank.org/external/default/WDSContentServer/WDSP/IB/2000/04/26/000094946_00040805522085/Rendered/PDF/multi_page.pdf

<http://www.zawya.com/story.cfm?id=ZAWYA20080322064502&page=emailstory§ion=main>

100: The agency has staff sufficient to fulfill its basic mandate.

75:

50: The agency has limited staff that hinders its ability to fulfill its basic mandate.

25:

0: The agency has no staff, or a limited staff that is clearly unqualified to fulfill its mandate.

62b. In practice, the tax agency receives regular funding.

100 | 75 | 50 | 25 | 0

Comments:

The funding of the General Tax Authority is included in annual Ministry of Budget appropriations. However, funding for reforms and restructuring comes from various international agencies, including the UNDP, UNCTAD, the International Monetary Fund, the World Bank and the Department for International Development.

References:

Fiscal Year 2007 and 2008 General Budgets

http://www.unctad.org/en/docs/domepu20071_en.pdf

100: The agency has a predictable source of funding that is fairly consistent from year to year. Political considerations are not a major factor in determining agency funding.

75:

50: The agency has a regular source of funding, but may be pressured by cuts, or threats of cuts to the agency budget. Political considerations have an effect on agency funding.

25:

0: Funding source is unreliable. Funding may be removed arbitrarily or as retaliation for agency actions.

65. Is the customs and excise agency effective?

25

65a. In practice, the customs and excise agency has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

Comments:

From the second source:
Under the direction of the NPD (National Project Director, ASCYUDA, or Automated System for Customs Project), the implementation is undertaken by two teams, a Functional team, three members and a Team Leader and a Technical team, eight members and a Team Leader. Both the NPD and the Technical Team Leader (who are on unpaid leave from Customs) are on UNCTAD contracts, whilst the rest of the team, including the Functional Team Leader, are regular Customs staff." (Note REGULAR STAFF)

The Customs staff do need training in customs administration in keeping with accepted international practice.

References:

<http://www.customs.gov.ye/english/index.htm>

http://www.unctad.org/en/docs/domepu20071_en.pdf

100: The agency has staff sufficient to fulfill its basic mandate.

75:

50: The agency has limited staff that hinders its ability to fulfill its basic mandate.

25:

0: The agency has no staff, or a limited staff that is clearly unqualified to fulfill its mandate.

65b. In practice, the customs and excise agency receives regular funding.

100 | 75 | 50 | **25** | 0

Comments:

The 2007 and 2008 General Budget of Yemen had appropriations for a Customs Authority, and the staff is paid from the civil service employees' payroll of the Ministry of Finance.

In addition, the GCA receives funding for some projects from international and bilateral donors (UNCTAD, DFID, European Union, International Monetary Fund, World Bank). For example, the World Bank funds the reengineering and restructuring project under the Civil Service Modernization Project, and UNCTAD, among others, is financing the ASCYUDA implementation project.

References:

2007 and 2008 General Budgets

http://www.unctad.org/en/docs/domepu20071_en.pdf

100: The agency has a predictable source of funding that is fairly consistent from year to year. Political considerations are not a major factor in determining agency funding.

75:

50: The agency has a regular source of funding, but may be pressured by cuts, or threats of cuts to the agency budget. Political considerations have an effect on agency funding.

25:

0: Funding source is unreliable. Funding may be removed arbitrarily or as retaliation for agency actions.

61. Is there a national tax collection agency?

100

61. In law, is there a national tax collection agency?

YES | NO

Comments:

Republican Decree 29 is the legal mandate for the Tax Authority.

References:

Unification Agreement of North and South Yemen

Financial Law No. 8, 1991, as amended in 1999

Republican Decree No. 29, 1993, Bylaws of the General Tax Authority, <http://www.tax.gov.ye/6.pdf>

YES: A YES score is earned if there is a national agency formally mandated to collect taxes.

NO: A NO score is earned if that function is spread over several agencies, or does not exist. A NO score is earned if national government ministries can collect taxes independently.

63. Are tax laws enforced uniformly and without discrimination?

25

63. In practice, are tax laws enforced uniformly and without discrimination?

100 | 75 | 50 | 25 | 0

Comments:

The above source states that 80% of companies avoid paying taxes.

The researcher knows of one instance when one of the biggest trading houses in Yemen provided a bank with financial statements that showed the firm making a loss. When asked how could this be possible, the supplier of the statements said that this was for tax purposes." He finally produced statements of the company's branch in Paris, where they kept the real accounts of the firm.

About the only place in which the law is clearly enforced is in the payrolls of government employees, as the income is deducted from the salaries monthly.

There are efforts to modernize the tax administration system in Yemen, which is funded by the International Monetary Fund, the World Bank (under the Civil Service Modernization Project), UNCTAD, the European Union and other bilateral donors (DFID). The General Tax Authority is one of six pilot government agencies in which restructuring and reengineering will be carried with a view toward comprehensive reform of tax system management.

References:

<http://www.almotamar.net/news/38547.htm> (2 January 2007)

Personal experience

100: Tax laws (which may be economically unfair as written) are enforced consistently for all citizens. No general group of citizens is more or less likely to evade tax law than another.

75:

50: Tax laws are generally enforced consistently, but some exceptions exist. For example, some groups may occasionally evade tax law. Some arbitrary and discriminatory tax rules exist.

25:

0: Tax law is unequally applied. Some groups of citizens are consistently more or less likely to evade tax law than others. Tax regulations are, as a rule, written to be discriminatory and/or arbitrary.

64. Is there a national customs and excise agency?

100

64. In law, is there a national customs and excise agency?

YES | NO

Comments:

The law defines the General Customs Authority (GCA) as the central customs apparatus and the customs departments/areas,

represented by the chairman of the GCA.

References:

Law 14, 1990, Concerning customs, and all the subsequent customs laws that followed

YES: A YES score is earned if there is an agency formally mandated to collect excises and inspect customs.

NO: A NO score is earned if that function is spread over several agencies, or does not exist.

66. Are customs and excise laws enforced uniformly and without discrimination?

25

66. In practice, are customs and excise laws enforced uniformly and without discrimination?

100 | 75 | 50 | 25 | 0

Comments:

A strong effort is needed to correct many of the improprieties in the Customs Administration, including controlling smuggling and corruption, which obviously lead to direct or indirect discriminate enforcement of customs laws and approved tariffs. The second source underscores this:

Yemen's weighted average tariff rate was 11.8% in 2000. Some import bans and restrictions, import taxes, import licensing requirements, weak enforcement of intellectual property rights, inefficient customs administration and corruption add to the cost of trade."

To underscore the inefficient application of law due to corruption, in a poll, various businessmen placed customs and taxes as third, after the judiciary, in terms of the level of corruption.

The third source states: "Yemen's Customs Authority faces pressures, long land and sea borders, and civil service regulations that restrict flexibility of work practices and financial management. The introduction of the ASYCUDA system had a dramatic impact. A number of obstacles remain: anachronistic processes for documentation, a slow dispute process, inconsistent interpretation of customs law and practice, and informal payments."

It is difficult to see a uniform and fair application of customs laws in such a venue.

References:

<http://www.heritage.org/Index/country.cfm?id=Yemen>

<http://yemenpolling.org/english/index.php?action=showNews&id=10>

100: Customs and excise laws (which may be economically unfair as written) are enforced consistently for all citizens. No general group of citizens is more or less likely to evade customs than another.

75:

50: Customs and excise laws are generally enforced consistently, but some exceptions exist. For example, some groups may occasionally evade customs requirements.

25:

0: Customs and excise laws are unequally applied. Some groups of citizens are consistently more or less likely to evade customs and excise laws than others.

68. Is the agency, series of agencies, or equivalent mechanism overseeing state-owned companies effective?

25

68a. In law, the agency, series of agencies, or equivalent mechanism overseeing state-owned companies is protected from political interference.

YES | **NO**

Comments:

Each ministry has its own law, such as the Law of Electricity, and procedural bylaws.

The overseeing agencies are mostly government line ministries. Ministries are subject to sectoral laws and administrative guidelines for their work. Being as they are government ministries, they are subject to political interference.

References:

n/a

YES: A YES score is earned only if the agency, series of agencies, or equivalent mechanism has some formal operational independence from the government. A YES score is earned even if the entity is legally separate but in practice staffed by partisans.

NO: A NO score is earned if the agency, series of agencies, or equivalent mechanism is a subordinate part of any government ministry or agency.

68b. In practice, the agency, series of agencies, or equivalent mechanism overseeing state-owned companies has a professional, full-time staff.

100 | 75 | 50 | **25** | 0

Comments:

The above study, although old, gives an indication of the parastatals and the respective ministries overseeing them, from page 38 to 56.

Yemen has no single entity to exercise ownership rights of state-owned enterprises; ownership still lies with line ministries."

Staffing of these oversight ministries is as good as the civil service can provide, given the poor training, poor salaries, lack of procedures and the many administrative ills that the Yemeni administrative apparatus suffers from.

Most oversight is limited to receiving periodic reports or acting as liaison between the enterprises and other ministries or government agencies.

References:

http://www-wds.worldbank.org/external/default/WDSContentServer/WDSP/IB/1996/11/27/000009265_397031115507/Rendered/PDF/multi_page.pdf

100: The agency, series of agencies, or equivalent mechanism has staff sufficient to fulfill its basic mandate.

75:

50: The agency, series of agencies, or equivalent mechanism has limited staff that hinders its ability to fulfill its basic mandate.

25:

0: The agency, series of agencies, or equivalent mechanism has no staff, or a limited staff that is clearly unqualified to fulfill its mandate.

68c. In practice, the agency, series of agencies, or equivalent mechanism overseeing state-owned companies receives regular funding.

100 | 75 | 50 | 25 | 0

Comments:

Funding may be disproportionate to the supervision roles they play.

All ministries have their respective appropriations in the government budget. Sometimes, they have access to funding from the parastatals they oversee, as is the case with the Public Electricity Corporation funding some expenditures of the Ministry of Electricity and Water and paying the salaries of seconded staff to the ministry.

References:

2007 and 2008 General State Budget

Personal experience

100: The agency, series of agencies, or equivalent mechanism has a predictable source of funding that is fairly consistent from year to year. Political considerations are not a major factor in determining agency funding.

75:

50: The agency, series of agencies, or equivalent mechanism has a regular source of funding, but may be pressured by cuts, or threats of cuts to the agency budget. Political considerations have an effect on agency funding.

25:

0: Funding source is unreliable. Funding may be removed arbitrarily or as retaliation for agency functions.

68d. In practice, when necessary, the agency, series of agencies, or equivalent mechanism overseeing state-owned companies independently initiates investigations.

100 | 75 | 50 | 25 | 0

Comments:

The mandate for investigation rests with the ombudsman and audit organizations, or authorities such as the Supreme National Anti-Corruption Committee (SNACC). Initiation has come from the press (newspapers Mareb Press, Yemen Times and Al-Wasat), including the Mareb Press revelation of the fraud in the Nuclear Power Station Contracts.

Oversight ministries can initiate investigations into matters pertaining to the parastatals under their supervision, but they allow parastatals to enjoy a high degree of autonomy.

References:

Law 39, 1992, Concerning the Central Organization for Control and Auditing (COCA), Article 2, <http://snaccyemen.org/details.asp?id=1620&catid=33>

<http://emptyquarter.wordpress.com/2007/10/02/suspicious-nuclear-deal-picking-up-steam-in-yemen-press/>

100: When irregularities are discovered, the agency, series of agencies, or equivalent mechanism is aggressive in investigating and/or in cooperating with other investigative bodies.

75:

50: The agency, series of agencies, or equivalent mechanism starts investigations, but is limited in its effectiveness or in its cooperation with other investigative agencies. The agency, series of agencies, or equivalent mechanism may be slow to act, unwilling to take on politically powerful offenders, or occasionally unable to enforce its judgments.

25:

0: The agency, series of agencies, or equivalent mechanism does not effectively investigate financial irregularities or cooperate with other investigative agencies. The agency, series of agencies, or equivalent mechanism may start investigations but not complete them, or may fail to detect offenders. The agency may be partisan in its application of power.

68e. In practice, when necessary, the agency, series of agencies, or equivalent mechanism overseeing state-owned companies imposes penalties on offenders.

100 | 75 | 50 | 25 | 0

Comments:

There is very little that any oversight entity can do beyond following the stipulations of the Civil Service Law, which controls disciplinary and other remedial actions. However, the worst punishment is dismissal WITH PAY.

References:

Civil Service Law No. 19, 1991, Concerning Civil Service, Article 112

Personal Experience

100: When rules violations are discovered, the agency, series of agencies, or equivalent mechanism is aggressive in penalizing offenders and/or in cooperating with other agencies that impose penalties.

75:

50: The agency, series of agencies, or equivalent mechanism enforces rules, but is limited in its effectiveness or reluctant to cooperate with other agencies. The agency, series of agencies, or equivalent mechanism may be slow to act, unwilling to take on politically powerful offenders, or occasionally unable to enforce its judgments.

25:

0: The agency, series of agencies, or equivalent mechanism does not effectively penalize offenders or refuses to cooperate with other agencies that enforce penalties. The agency, series of agencies, or equivalent mechanism may make judgments but not enforce them, or may fail to make reasonable judgments against offenders. The agency, series of agencies, or equivalent mechanism may be partisan in its application of power.

69. Can citizens access the financial records of state-owned companies?

20

69a. In law, citizens can access the financial records of state-owned companies.

YES | NO

Comments:

Information of any kind is available only those parastatals subject to privatization. There is no stipulation for public access to any information on other parastatals.

References:

Law No. 35, 1991, for Public Corporations, Companies and Authorities

Law No.7, 1999, amending Law No. 35, 1991

Law No. 45, 1999 ,Concerning Privatization, Article 4 (a)

YES: A YES score is earned if the financial information of all state-owned companies is required by law to be public. State-owned companies are defined as companies owned in whole or in part by the government.

NO: A NO score is earned if any category of state-owned company is exempt from this rule, or no such rules exist.

69b. In practice, the financial records of state-owned companies are regularly updated.

100 | 75 | 50 | 25 | 0

Comments:

The laws of each parastatal require this. Otherwise they would not get approval for their budgets.

References:

Law No. 35, 1991, for Public Corporations, Companies and Authorities

Law No.7, 1999, amending Law No. 35, 1991

100: State-owned companies always publicly disclose financial data, which is generally accurate and up to date.

75:

50: State-owned companies disclose financial data, but it is flawed. Some companies may misstate financial data, file the information behind schedule, or not publicly disclose certain data.

25:

0: Financial data is not publicly available, or is consistently superficial or otherwise of no value.

69c. In practice, the financial records of state-owned companies are audited according to international accounting standards.

100 | 75 | 50 | 25 | 0

Comments:

Law 39 gives COCA the mandate to carry out all auditing work on government entities and parastatals. Law 49 empowers the Higher Committee for Privatization to assign independent auditors if necessary, or as may be required by potential buyers of parastatals undergoing privatization, although this is more implied within general contexts.

References:

Law 39, 1992, Concerning the Central Organization for Control and Auditing (COCA), <http://snaccyemen.org/details.asp?id=1620&catid=33>

Law 49, 1999, Privatization of Parastatals

100: Financial records of all state-owned companies are regularly audited by a trained third party auditor using accepted international standards.

75:

50: Financial records of state-owned companies are regularly audited, but exceptions may exist. Some companies may use flawed or deceptive accounting procedures, or some companies may be exempted from this requirement.

25:

0: State-owned companies are not audited, or the audits have no functional value. The auditors may collude with the companies in providing misleading or false information to the public.

69d. In practice, citizens can access the financial records of state-owned companies within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

This may be so for enterprises undergoing privatization, but not for all parastatals, which are only required to present their final accounts of budget implementation, which are standardized formats used for all government entities.

With independently audited, open bookkeeping and accounting (attributes, it should be said, that are not always found in the large parastatal agencies and donor organizations that absorb virtually all the considerable financial resources that constitute development budgets!)”

Personal experience working with a major government-owned utility and a mixed-sector enterprise shows that since 1981, when the government imposed “uniform procedures for all government entities and public sector economic units,” most government parastatals ceased to publish audited financial statements or to provide them in the standard format of private commercial enterprises, which renders the “final accounts” provided to Parliament at year-end useless for the purpose of financial analysis. Some parastatals like commercial banks (the National Bank of Yemen and the Yemen Bank for Reconstruction and Development) do have audited financial statements, and they may be accessible to public.

References:

Law No. 45, 1999, Privatization of Parastatals

Various laws of parastatals

<http://www.al-bab.com/yemen/env/arid.htm>

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take around two weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

69e. In practice, citizens can access the financial records of state-owned companies at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

This may be so for enterprises undergoing privatization, but not for all parastatals, which are only required to present their final accounts of the implementation of the budgets, which are standardized formats used for all government entities, administrative or economic in nature.

Source 3 confirms this: with independently-audited, open book-keeping and accounting, (attributes, it should be said that are not always found in the large parastatal agencies and donor organizations that absorb virtually all the considerable financial resources that constitute development budgets!)”

Note that personal experience working with a major government owned utility and a mixed sector enterprise shows that since 1981, when the Government imposed the “uniform procedures for all government entities and public sector economic units”, most government parastatals ceased to publish audited financial statements and provide them in the standard format of private commercial enterprises, which renders the “final accounts” provided to Parliament at year end useless for the purpose of financial analysis. Some parastatals like commercial banks (the National Bank of Yemen – Aden – and the Yemen Bank for Reconstruction and Development) do have audited financial statements and they may be accessible to public.

References:

Law No. 45, 1999, Privatization of Parastatals

Various laws of parastatals

<http://www.al-bab.com/yemen/env/arid.htm>

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

67. Is there an agency, series of agencies, or equivalent mechanism overseeing state-owned companies?

100

67. In law, is there an agency, series of agencies, or equivalent mechanism overseeing state-owned companies?

YES | NO

Comments:

There are many economic parastatals in Yemen, including enterprises involved in trade, industry and services. Each has its respective government line ministry supervising its operations, depending on their nature. There are also mixed-sector enterprises with mixed public/private ownership, including the Yemen Bank for Reconstruction and Development and the Yemen Drug Company.

References:

Ministry of Trade and Industry (Government trade and industrial enterprises)

Ministry of Water and the Environment (Water and Sanitation utilities)

Ministry of Electricity and Energy (Public Electricity utilities)

Ministry of Telecommunications and Information Technology (Yemen Telecommunications Company, Internet Services)

YES: A YES score is earned if there is an agency, series of agencies, or equivalent mechanism tasked with overseeing the conduct and performance of state-owned companies on behalf of the public. A YES score can be earned if several government agencies or ministries oversee different state-owned enterprises. State-owned companies are defined as companies owned in whole or in part by the government.

NO: A NO score is earned if this function does not exist, or if some state-owned companies are free from government oversight.

48
V-5. Business Licensing and Regulation

70. Are business licenses available to all citizens?

63

70a. In law, anyone may apply for a business license.

YES | NO

Comments:

The third source states that the Investment Law ensures equality between Yemeni, foreign and expatriate capital without distinction or discrimination between rights, duties and measures.”

“The Commercial Law encourages investments and attract new investors in various sectors. The Commercial Company Law facilitates registration procedures and attracts foreign trade investments.”

There are some additional conditions for foreign wives of Yemeni citizens and women, who must have the permission of their husbands, and foreigners, who must have Yemeni partners, according to the Commercial Law.

References:

Investment Law No. 22, 2002, http://www.yemenembassy.org/economic/eng_law.pdf

Executive Bylaws for Law No. 22, 2002, Concerning Investment, <http://www.yemenembassy.org/economic/excutive%20-by-law.pdf>

<http://www.yemenembassy.org/economic/Investment.htm>

Law of Commercial Registration No. 33, 1991, Concerning Trade Registration, and subsequent amending laws No. 31, 1997, Law No. 14 1999, <http://www.afswj.com/ebooks/yemenRules/13.pdf>

Commercial Law No. 32, 1991, and its Amended Law No. 6 of 1998, <http://www.afswj.com/ebooks/yemenRules/2.pdf>

YES: A YES score is earned if no particular group or category of citizens is excluded from applying for a business license, when required. A YES score is also earned if basic business licenses are not required.

NO: A NO score is earned if any group of citizens are categorically excluded from applying for a business license, when required

70b. In law, a complaint mechanism exists if a business license request is denied.

YES | NO

Comments:

Article 14 provides a mechanism that involves a letter to the minister complaining of rejection or removal from the commercial register, whose ruling is final.

However, Article 3 does provide for resorting to the courts if the head of a relevant authority does not act upon an appeal or rejects the appeal of an applicant for a procedure that is handled by that relevant concerned authority." It might be said for investment projects only, but the Constitution and the Judiciary Law give citizens the right to resort to the courts if their rights are violated or they are treated unfairly in any government dealings.

The fourth source illustrates the fundamental existence of such a mechanism of appeal: "The applicant is entitled to appeal the Registrar's decision before the High Court of Justice within a period not exceeding one month from the date of the Registrar's decision."

References:

Law of Commercial Registration No. 33, 1991, Concerning Trade Registration, and subsequent amending laws No. 31, 1997, Article 14

Law No. 14 1999, <http://www.afswj.com/ebooks/yemenRules/13.pdf>

Commercial Law No. 32, 1991, and its Amended Law No. 6 of 1998, <http://www.afswj.com/ebooks/yemenRules/2.pdf>

Investment Law No. 22, 2002, Article 38, http://www.yemenembassy.org/economic/eng_law.pdf

<http://www.dradamiprgroup.com/index.php?link=yemen>

YES: A YES score is earned if there is a formal process for appealing a rejected license.

NO: A NO score is earned if no such mechanism exists.

70c. In practice, citizens can obtain any necessary business license (i.e. for a small import business) within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

The first source shows that almost 20 days (most likely an optimistic tally, according to government sources) are needed to set up a limited liability partnership. A conservative estimate based on the experience of a random selection of many acquaintances in the private sector optimistically reflects a month and a half. The researcher's experience 25 years ago was 2 days, less procedures 4 and 6. With a ranking of 98, Yemen is still a long way from showing competitive conditions for attracting private sector initiatives.

References:

<http://www.doingbusiness.org/exploretopics/startingbusiness/Details.aspx?economyid=205>

<http://www.yemenpost.net/47/Business/20081.htm>

100: Licenses are not required, or licenses can be obtained within roughly one week.

75:

50: Licensing is required and takes around one month. Some groups may be delayed up to a three months

25:

0: Licensing takes more than three months for most groups. Some groups may wait six months to one year to get necessary licenses.

70d. In practice, citizens can obtain any necessary business license (i.e. for a small import business) at a reasonable cost.

100 | 75 | 50 | **25** | 0

Comments:

When you add the minimal capital requirements, according to Corporate Business Law (1,000,000 rials (US\$5,000) for a limited partnership and 5,000,000 rials (US\$25,000) for shareholding companies, of which a sizable sum will be spent for registration (nearly US\$900), which for limited companies amounts to a minimum 20% of the capital requirements, for a poor country like Yemen, the cost can be prohibitive and hardly encouraging to the entrepreneurial spirit.

The overall freedom to start, operate and close a business is restrained by Yemen's regulatory environment.

References:

Corporate Business Law No. 22, 1997, <http://www.afswj.com/ebooks/yemenRules/12.pdf>

<http://www.heritage.org/Index/country.cfm?id=Yemen>

<http://www.doingbusiness.org/exploretopics/startingbusiness/Details.aspx?economyid=205>

100: Licenses are not required, or licenses are free. Licenses can be obtained at little cost to the organization, such as by mail, or on-line.

75:

50: Licenses are required, and impose a financial burden on the organization. Licenses may require a visit to a specific office, such as a regional or national capital.

25:

0: Licenses are required, and impose a major financial burden on the organization. Licensing costs are prohibitive to the organization.

71. Are there transparent business regulatory requirements for basic health, environmental, and safety standards?

100

71a. In law, basic business regulatory requirements for meeting public health standards are transparent and publicly available.

YES | NO

Comments:

The general legal framework for health and environmental protection is readily available and transparent in as far as one understands the technical intricacies involved. However, the first source states that protections are inadequate to meet international standards.

References:

[http://74.125.45.104/search?](http://74.125.45.104/search?q=cache:hkBsFH8P1GkJ:www.escwa.un.org/divisions/events/29May06_Pres10.pdf+%D8%A7%D9%84%D9%8A%D9%85%D9%86+%D9%82%D8%A7)

[g=cache:hkBsFH8P1GkJ:www.escwa.un.org/divisions/events/29May06_Pres10.pdf+%D8%A7%D9%84%D9%8A%D9%85%D9%86+%D9%82%D8%A7'](http://74.125.45.104/search?q=cache:hkBsFH8P1GkJ:www.escwa.un.org/divisions/events/29May06_Pres10.pdf+%D8%A7%D9%84%D9%8A%D9%85%D9%86+%D9%82%D8%A7)
EXCWA study

Law No. 46, 1991, Concerning Fishing and Exploitation of Marine Life

Law No. 37, 1992, Concerning Practice of Health Professions

Law No. 26, 1995, Environmental Protection

Other legislation involving health, sanitation and the environment, many of which can be found at <http://www.yemenparliament.com/content.php?lng=arabic&cid=33>.

YES: A YES score is earned if basic regulatory requirements for meeting public health standards are publicly accessible and transparent.

NO: A NO score is earned if such requirements are not made public or are otherwise not transparent.

71b. In law, basic business regulatory requirements for meeting public environmental standards are transparent and publicly available.

YES | NO

Comments:

The general legal framework for health and environmental protection is readily available and transparent in as far as one understands the technical intricacies involved. However, the first source states that protections are inadequate to meet international standards. A visit to many of the public and private hospitals shows how much Yemen falls below standard in basic levels of safety, cleanliness and adequate equipment.

References:

[http://74.125.45.104/search?](http://74.125.45.104/search?q=cache:hkBsFH8P1GkJ:www.escwa.un.org/divisions/events/29May06_Pres10.pdf+%D8%A7%D9%84%D9%8A%D9%85%D9%86+%D9%82%D8%A7)

[g=cache:hkBsFH8P1GkJ:www.escwa.un.org/divisions/events/29May06_Pres10.pdf+%D8%A7%D9%84%D9%8A%D9%85%D9%86+%D9%82%D8%A7'](http://74.125.45.104/search?q=cache:hkBsFH8P1GkJ:www.escwa.un.org/divisions/events/29May06_Pres10.pdf+%D8%A7%D9%84%D9%8A%D9%85%D9%86+%D9%82%D8%A7)
EXCWA study

Law No. 46, 1991, Concerning Fishing and Exploitation of Marine Life

Law No. 37, 1992, Concerning Practice of Health Professions

Law No. 26, 1995, Environmental Protection

Other legislation involving health, sanitation and the environment, many of which can be found at <http://www.yemenparliament.com/content.php?lng=arabic&cid=33>.

YES: A YES score is earned if basic regulatory requirements for meeting public environmental standards are publicly accessible and transparent.

NO: A NO score is earned if such requirements are not made public or are otherwise not transparent.

71c. In law, basic business regulatory requirements for meeting public safety standards are transparent and publicly available.

YES | NO

Comments:

Article 35 concerns the safety of laborers (including inspectors). The Civil Law covers rented property, contracting work and other work contracts.

The Traffic Police Law and other police legislation cover public safety in general as well as civil defense measures.

References:

Labor Law, 1995, amended by Law No. 25, 2003, Law No. 11, 2001, and Law No. 25, 2007, Article 35, <http://www.yemenparliament.com/content.php?lng=arabic&cid=29>

Civil Law No. 14, 2002, Part II, Chapter 1; Chapter 3

Traffic Police Law No. 46, 1991, and other police services (<http://www.moi.gov.ye/moi1/policeSerDept.aspx>)

YES: A YES score is earned if basic regulatory requirements for meeting public safety standards are publicly accessible and transparent.

NO: A NO score is earned if such requirements are not made public or are otherwise not transparent.

72. Does government effectively enforce basic health, environmental, and safety standards on businesses?

25

72a. In practice, business inspections by government officials to ensure public health standards are being met are carried out in a uniform and even-handed manner.

100 | 75 | 50 | 25 | 0

Comments:

The general legal framework for health and environmental protection is readily available and transparent in as far as one understands the technical intricacies involved. However, the first source states that protections are inadequate to meet international standards.

Yemen is still lacking many of the technical capabilities needed to achieve standards acceptable to rest of the world.

References:

<http://www.unesco.org/ui/en/UJLPDF/nesico/confintea/Yemen.pdf>

http://www.escwa.un.org/divisions/events/29May06_Pres9.pdf

100: Business inspections by the government to ensure that public health standards are being met are designed and carried out in such a way as to ensure comprehensive compliance by all businesses with transparent regulatory requirements.

75:

50: Business inspections by the government to ensure public health standards are met are generally carried out in an even-handed way though exceptions exist. Bribes are occasionally paid to extract favorable treatment or expedited processing.

25:

0: Business inspections to ensure that public health standards are met are routinely carried out by government officials in an ad hoc, arbitrary fashion designed to extract extra payments from businesses in exchange for favorable treatment.

72b. In practice, business inspections by government officials to ensure public environmental standards are being met are carried out in a uniform and even-handed manner.

100 | 75 | 50 | 25 | 0

Comments:

The very important chapter on the environmental impact assessment (EIA), which has become a must preceding the construction of any project have an adverse impact on environment, was modified: The new law differentiates between the EIA studies, which

are carried out before approving the licensing and construction of a project, and the environmental inspection to be exercised over the already existing installations.

The third sourced indicates weaknesses in environmental management: Weak environmental management and rapid population growth pose mounting pressure on natural resources. Natural resources have been over-exploitation over the decades. Land and habitat degradation and loss of biodiversity are apparent. Marine and coastal-zone management is weak. The water level in most aquifers is declining due to heavy extraction. In some cases, twice as much water is extracted as is recharged. In urban areas, waste and sewage problems pose threat to ground water.

Others problems include lack of qualified personnel in environmental management and in systematic inspection work.

References:

<http://www.escwa.un.org/divisions/pptcdadvisors.asp?id=10>

100: Business inspections by the government to ensure that public environmental standards are being met are designed and carried out in such a way as to ensure comprehensive compliance by all businesses with transparent regulatory requirements.

75:

50: Business inspections by the government to ensure public environmental standards are met are generally carried out in an even-handed way though exceptions exist. Bribes are occasionally paid to extract favorable treatment or expedited processing.

25:

0: Business inspections to ensure that public environmental standards are met are routinely carried out by government officials in an ad hoc, arbitrary fashion designed to extract extra payments from businesses in exchange for favorable treatment.

72c. In practice, business inspections by government officials to ensure public safety standards are being met are carried out in a uniform and even-handed manner.

100 | 75 | 50 | 25 | 0

Comments:

Labor law and other civil safety laws (traffic, police, fire) all call for periodic inspections by the relevant authorities, but very little is being done. There is little regard for overall public safety, because there are no laws or regulations forcing the relevant authorities to schedule visits to facilities and installations.

Inspections are random rather than periodic checks on outlets that trade in dangerous materials or in facilities where workers could be working in vulnerable conditions vis a vis their safety. There is a lack of defined standards, which such outlets or facilities should have.

References:

<http://www.yemenpost.net/44/LocalNews/20086.htm>

<http://www.yementimes.com/article.shtml?i=1178&p=report&a=1>

100: Business inspections by the government to ensure that public safety standards are being met are designed and carried out in such a way as to ensure comprehensive compliance by all businesses with transparent regulatory requirements.

75:

50: Business inspections by the government to ensure public safety standards are met are generally carried out in an even-handed way though exceptions exist. Bribes are occasionally paid to extract favorable treatment or expedited processing.

25:

0: Business inspections to ensure that public safety standards are met are routinely carried out by government officials in an ad hoc, arbitrary fashion designed to extract extra payments from businesses in exchange for favorable treatment.

VI-1. ⁶⁶Anti-Corruption Law

73. Is there legislation criminalizing corruption?

100

73a. In law, attempted corruption is illegal.

YES | NO

Comments:

These and other laws are as effective in preventing corruption as pouring diesel fuel is for putting out a fire.

References:

Law No. 39, 2006, Concerning Combating Corruption

Law No. 20, 2006, Financial Disclosure

Penal Code No. 12, 1994, and subsequent amendments

Law No. 19, 1991, Concerning Civil Service, Articles 111, 117 (g), 122, 125 (b)

Law No. 6, 1995, Prosecution and Indictment of Senior Government Officials, <http://www.f-law.net/law/showthread.php?t=11431>

YES: A YES score is earned if corruption laws include attempted acts.

NO: A NO score is earned if this is not illegal.

73b. In law, extortion is illegal.

YES | NO

Comments:

It is a crime punishable by law

Article 3 says that the president and vice president are only liable for high treason; constitutional breach; and violation of the sovereignty and independence of Yemen.

References:

Anti-Corruption Law No 39, 2006 , Articles 3, 30

Penal Code

Law No. 6, 1995, Prosecution and Indictment of Senior Government Officials, <http://www.f-law.net/law/showthread.php?t=11431>

YES: A YES score is earned if corruption laws include extortion. Extortion is defined as demanding favorable treatment (such as a bribe) to withhold a punishment.

NO: A NO score is earned if this is not illegal.

73c. In law, offering a bribe (i.e. active corruption) is illegal.

YES | NO

Comments:

There are a number of stipulations.

References:

Penal Code No. 12, 1994

Anti-Corruption Law No. 39, 2006, Article 30

YES: A YES score is earned if offering a bribe is illegal.

NO: A NO score is earned if this is not illegal.

73d. In law, receiving a bribe (i.e. passive corruption) is illegal.

YES | NO

References:

Penal Code 12, 1994

YES: A YES score is earned if receiving a bribe is illegal.

NO: A NO score is earned if this is not illegal.

73e. In law, bribing a foreign official is illegal.

YES | NO

Comments:

Article 3 says that the president and vice president are only liable for high treason; constitutional breach; and violation of the sovereignty and independence of Yemen.

References:

Anti-Corruption Law No. 39, 2006, Articles 3, 30

Law No. 6, 1995, Prosecution and Indictment of Senior Government Officials, <http://www.f-law.net/law/showthread.php?t=11431>

YES: A YES score is earned if bribing a foreign official is illegal.

NO: A NO score is earned if this is not illegal.

73f. In law, using public resources for private gain is illegal.

YES | NO

Comments:

There are other similar stipulations in other legislation as well, but the law goes one way and reality takes a very different route.

Article 3 says that the president and vice president are only liable for high treason; constitutional breach; and violation of the sovereignty and independence of Yemen.

References:

Law No. 6, Concerning Prosecuting and Trying Senior Public Officials, Chapter I, Article 4

Money Laundering Law No. 35, 2003, Article 4, <http://www.yemenparliament.com/content.php?lng=arabic&id=898>

YES: A YES score is earned if using public resources for private gain is illegal.

NO: A NO score is earned if this is not illegal.

73g. In law, using confidential state information for private gain is illegal.

YES | NO

Comments:

Under Article 3, the president and vice president are only liable for high treason, constitutional breach, and violation of the sovereignty and independence of Yemen.

Article 30 does not specifically state breach of confidentiality, but puts it under exploitation of official position.”

References:

Anti-Corruption Law No. 39, 2006, Article 30

Law No. 6 of 1995, Prosecution and Indictment of Senior Government Officials, Article 3, <http://www.f-law.net/law/showthread.php?t=11431>

YES: A YES score is earned if using confidential state information for private gain is illegal.

NO: A NO score is earned if this is not illegal.

73h. In law, money laundering is illegal.

YES | NO

Comments:

Under Article 3, the president and vice president are only liable for high treason, constitutional breach, and violation of the sovereignty and independence of Yemen.

References:

Law 35, 2003 Concerning Money Laundering

Law No. 6, 1995, Prosecution and Indictment of Senior Government Officials, <http://www.f-law.net/law/showthread.php?t=11431>

YES: A YES score is earned if money laundering is illegal. Money laundering is defined as concealing the origin of funds to hide wrongdoing or avoid confiscation.

NO: A NO score is earned if this is not illegal.

73i. In law, conspiracy to commit a crime (i.e. organized crime) is illegal.

YES | NO

Comments:

Under Article 3, the president and vice president are only liable for high treason, constitutional breach, and violation of the sovereignty and independence of Yemen.

References:

Law No. 356, 2003, Concerning Money Laundering, Article 3, <http://www.yemenparliament.com/content.php?lng=arabic&id=898>

Law No. 6, 1995, Prosecution and Indictment of Senior Government Officials, <http://www.f-law.net/law/showthread.php?t=11431>

YES: A YES score is earned if organized crime is illegal.

NO: A NO score is earned if this is not illegal.

VI-2. Anti-Corruption Agency

75. Is the anti-corruption agency effective?

42

75a. In law, the anti-corruption agency (or agencies) is protected from political interference.

YES | NO

Comments:

The Supreme National Anti-Corruption Committee (SNACC) is theoretically an independent entity that carries out its duties with complete independence and neutrality without any interference from anyone or any entity, the latter of which is deemed to be a crime punishable by law.

Public property is under the Judicial Authority, which is theoretically independent now, as the Supreme Judicial Council is chaired by the chairman of the Supreme Court.

COCA is still under the control of the president's office, and it is the entity more qualified to undertake investigative work on corruption.

References:

Law No. 39, 2006, Concerning Combating Corruption, Article 15

YES: A YES score is earned only if the agency (or agencies) has some formal organizational or operational independence from the government. A YES score is earned even if the agency/agencies is legally separate but in practice staffed by partisans.

NO: A NO score is earned if the agency (or agencies) is a subordinate part of any government ministry or agency, such as the Department of Interior or the Justice Department, in such a way that limits its operational independence.

75b. In practice, the anti-corruption agency (or agencies) is protected from political interference.

Comments:

The Supreme National Anti-Corruption Committee (SNACC) is theoretically an independent entity that carries out its duties with complete independence and neutrality without any interference from anyone or any entity, the latter of which is deemed to be a crime punishable by law," according to the Anti-Corruption Law. But since its establishment, it has not brought any significant cases to the indictment stage, let alone the sentencing stage. There are no known cases that are heading in that direction. Thus, one cannot determine the extent of its protection from political influence, as it has yet to test the extent of its mandate accordingly.

Public Property/Funds Prosecution and Public Property Courts have taken some disciplinary and legal actions against some suspected lower-level members of the bench.

The remarkable phenomenon is that the Central Organization for Control and Auditing (COCA) is actually trying to get corruption cases to the courts and succeeding, even though it is the least independent of all the anti-corruption agencies. The results achieved after that are beyond COCA's control.

References:

<http://www.yemencg.org/library/en/NAR%20Progress%20Report.pdf>

<http://www.yementimes.com/article.shtml?i=874&p=local&a=1>

100: This agency (or agencies) operates independently of the political process, without incentive or pressure to render favorable judgments in politically sensitive cases. Investigations can operate without hindrance from the government, including access to politically sensitive information. .

75:

50: This agency (or agencies) is typically independent, yet is sometimes influenced in its work by negative or positive political incentives. This may include favorable or unfavorable public criticism by the government, political appointments, or other forms of influence. The agency (or agencies) may not be provided with some information needed to carry out its investigations.

25:

0: This agency (or agencies) is commonly influenced by political or personal incentives. These may include conflicting family relationships, professional partnerships, or other personal loyalties. Negative incentives may include threats, harassment or other abuses of power. The agency (or agencies) cannot compel the government to reveal sensitive information.

75c. In practice, the head of the anti-corruption agency (or agencies) is protected from removal without relevant justification.

Comments:

Article 11 states that membership in the Supreme National Anti-Corruption Committee (SNACC) may only be rescinded if the member commits a violation in the undertaking of his duties and only after a court ruling (after referral to the court by majority vote of the members of SNACC). It is not clear, however, what these violations would be.

An extensive search in various media channels (official, partisan and independent) and among acquaintances in the relevant government agencies provided no evidence of the head of an anti-corruption agency being axed for his actions, for the simple reason that there none of them have made any significant moves to test the limits of their mandates.

References:

Anti-Corruption Law No. 39, 2000, Article 11

Various media reports

100: The director(s) cannot be removed without a significant justification through a formal process, such as impeachment for abuse of power.

75:

50: The director(s) can in some cases be removed through a combination of official or unofficial pressure.

25:

0: The director(s) can be removed at the will of political leadership.

75d. In practice, appointments to the anti-corruption agency (or agencies) are based on professional criteria.

100 | 75 | 50 | 25 | 0

Comments:

The Supreme National Anti-Corruption Committee (SNACC), Central Organization for Control and Auditing (COCA) and the Public Property Courts all have highly qualified senior staff.

Initiation of SNAPP members' appointments starts with the Consultative Assembly, the membership of which itself is fully by presidential appointment.

The second source, although dated, and the researcher personally testify to the diligent efforts of the former deputy chairman of COCA, interviewed in the article, to challenge the extent to which holds sway over the public-service sector. He was dismissed for this diligence, a fact that will not fade in the memory of current appointees to sensitive positions in any of the anti-corruption agencies, especially COCA.

The third source notes: At the end of June, the Yemeni Parliament, after more than two months of scrutiny, has approved the board members for the Supreme National Anti-Corruption Committee (SNACC) from the list of candidates proposed by the Shura Council."

References:

Anti-Corruption Law No. 39, 2000, Article 11

<http://www.yementimes.com/98/iss20/interview.htm>

<http://siteresources.worldbank.org/INTYEMEN/Resources/310077-1098870168865/YEUFall2007.pdf>

100: Appointments to the agency (or agencies) are made based on professional qualifications. Individuals appointed are free of conflicts of interest arising from personal loyalties, family connections or other biases. Individuals appointed usually do not have clear political party affiliations.

75:

50: Appointments are usually based on professional qualifications. Individuals appointed may have clear party loyalties, however.

25:

0: Appointments are often based on political considerations. Individuals appointed often have conflicts of interest arising from personal loyalties, family connections or other biases. Individuals appointed often have clear party loyalties.

75e. In practice, the anti-corruption agency (or agencies) has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

Comments:

The Supreme National Anti-Corruption Committee (SNACC), the Central Organization for Control and Auditing (COCA) and the Public Property Courts all have support staff, but employees often lack adequate training. COCA is attempting to ensure a fair and transparent selection process for choosing its support staff.

The authorities have embarked on an extensive set of structural reforms since early 2006, although outcomes have yet to materialize. These reforms cover areas such as governance, public financial management, civil services administration and the general investment climate. The formation of SNACC was finalized when Parliament gave its approval to the selected board members." From third source

References:

Anti-Corruption Law No. 39, 2000, Article 11

<http://www.almotamar.net/en/4812.htm>

<http://siteresources.worldbank.org/INTYEMEN/Resources/310077-1098870168865/YEUFall2007.pdf>

100: The agency (or agencies) has staff sufficient to fulfill its basic mandate.

75:

50: The agency (or agencies) has limited staff, or staff without necessary qualifications to fulfill its basic mandate.

25:

0: The agency (or agencies) has no staff, or a limited staff, that is clearly unqualified to fulfill its mandate.

75f. In practice, the anti-corruption agency (or agencies) receives regular funding.

100 | 75 | 50 | 25 | 0

Comments:

The source above states that the Supreme National Anti-Corruption Committee (SNACC), under the new anti-corruption legislation, is an autonomous body with an independent budget that is included in General State Budget.

It is too early to judge how SNACC's work impacts its budgets, which are almost guaranteed to be sustained, since civil service employees salaries continue even if the employee has committed a felony.

References:

<http://siteresources.worldbank.org/INTYEMEN/Resources/310077-1098870168865/YEUFall2007.pdf>

2007 and 2008 Budgets

100: The agency (or agencies) has a predictable source of funding that is fairly consistent from year to year. Political considerations are not a major factor in determining agency funding.

75:

50: The agency (or agencies) has a regular source of funding, but may be pressured by cuts, or threats of cuts to the agency budget. Political considerations have an effect on agency funding.

25:

0: The agency's funding sources are unreliable. Funding may be removed arbitrarily or as retaliation for agency actions.

75g. In practice, the anti-corruption agency (or agencies) makes regular public reports.

100 | 75 | 50 | 25 | 0

Comments:

The first and second sources underscore the poor transparency existing in corruption-related cases.

The Yemeni institutional infrastructures that are responsible for fighting and preventing corruption have been characterized by a serious crisis of responsibility. In addition, this framework faces many obstacles and a lack of transparency and accountability in its structure and level of administration. Building transparent and accountable institutions for preventing corruption is a fundamental starting point for developing good governance and fighting corruption in Yemen."

"The law requires a degree of transparency and public access to information, and the Press and Publications Law provides for journalists to have some access to government reports and information; however, in practice the government offered few procedures to ensure transparency. In August 2006 Parliament passed a law requiring public disclosure of government officials' assets, and the Supreme National Anti-Corruption Committee (SNACC) worked to implement this during the year. The government provided limited information on Internet sites; however, few citizens had access to the Internet.

The relevant stipulations in the pertinent legislation of these agencies and other related laws further reinforce the limitations of public access to most of the work of the ombudsman agencies.

References:

<http://www.yemenpost.net/24/InvestigationAndInterview/20081.htm>

Relevant legislation

100: The agency (or agencies) makes regular, publicly available, substantial reports to the legislature and/or to the public directly outlining the full scope of its work.

75:

50: The agency (or agencies) makes publicly available reports to the legislature that are sometimes delayed or incomplete.

25:

0: The agency (or agencies) makes no reports of its activities, or makes reports that are consistently out of date, unavailable to the public, or insubstantial.

75h. In practice, the anti-corruption agency (or agencies) has sufficient powers to carry out its mandate.

100 | 75 | 50 | 25 | 0

Comments:

The Supreme National Anti-Corruption Committee (SNACC) has powers to investigate and refer to prosecution cases of corruption in all levels of state officials, including legislative and judiciary authorities. It also has powers to cancel contracts deemed to be corrupt and detrimental to the good of the state, as well as to seize and repatriate proceeds from corruption.

SNACC is the first anti-corruption authority of its kind in the Middle East. From first source

It appears that rather minor, insignificant cases are attracting the attention of SNACC. One example is a case of bureaucratic red tape rather than one of "big" corruption, which is what SNACC was expected to deal with. While not dismissing the strong possibility of corruption in smaller cases, there are surely more areas of bigger corruption that SNACC should take on if any seriousness/sincerity is to be reflected in its work. From second source

References:

http://www.iaaca.org/web/caller/show_news.jsp?id=5

<http://www.yobserver.com/local-news/printer-10014045.html>

100: The agency (or agencies) has powers to gather information, including politically sensitive information. The agency (or agencies) can question suspects, order arrests and bring suspects to trial (or rely on related agencies or law enforcement authorities to perform such functions).

75:

50: The agency (or agencies) has most of the powers needed to carry out its mandate with some exceptions.

25:

0: The agency (or agencies) lacks significant powers which limit its effectiveness.

75i. In practice, when necessary, the anti-corruption agency (or agencies) independently initiates investigations.

100 | 75 | 50 | 25 | 0

Comments:

Institutions that deal with corruption during the investigation: The Central Organization for Control and Auditing (COCA), Public Prosecution for Public Funds (public property cases), Supreme Judicial Council (for cases involving judges and prosecutors) and Ministry of Finance, for checks and control of finance affairs.

SNACC, according to the Anti-Corruption Law, is also empowered to initiate investigations of public property/corruption cases. It is most likely, however, that COCA will undertake the investigative work for SNACC, in view of COCA's experience and resources (specifically, qualified manpower). While the researcher's personal experience with COCA demonstrates diligent investigative work and meaningful conclusions, the following would indeed present a problem in making the work as effective as it should be in terms of indictment, prosecution and penalization: The Central Organization for Control and Auditing (COCA), as an anti-

corruption watchdog, in practice is not an independent body. It is answerable to the president and presents its report to Parliament once a year. It has been monitoring government revenues, spending, procurement and performance. But its reports are either not taken into account or are being used to blackmail government officials.

While SNACC has reported that many cases have been designated for its perusal, no reports yet exist of any major corruption cases being prosecuted or tried.

References:

<http://info.worldbank.org/etools/docs/library/242904/Yemen-final-Draft-on%20Hadeel-comments.doc>

<http://www.yementimes.com/article.shtml?i=874&p=local&a=1>

<http://www.yemenpost.net/24/InvestigationAndInterview/20081.htm>

100: When irregularities are discovered, the agency (or agencies) is aggressive in investigating the government or in cooperating with other investigative agencies.

75:

50: The agency (or agencies) starts investigations, but is limited in its effectiveness or is reluctant to cooperate with other investigative agencies. The agency (or agencies) may be slow to act, unwilling to take on politically powerful offenders, or occasionally unable to enforce its judgments.

25:

0: The agency (or agencies) does not effectively investigate or does not cooperate with other investigative agencies. The agency (or agencies) may start investigations but not complete them, or may fail to detect offenders. The agency (or agencies) may be partisan in its application of power.

76. Can citizens access the anti-corruption agency?

25

76a. In practice, the anti-corruption agency (or agencies) acts on complaints within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

The judiciary has been the most apparent area where corrupt or incompetent officials are being subject to some disciplinary measures: According to Farwan, more than 42 Yemeni judges were investigated last year. Some were given oral notice while others were dismissed." From first source

"Only low-ranking officials have been prosecuted for corruption since the inception of the Central Organization for Control and Auditing (COCA). The actual number of corruption cases was generally considered to be significantly higher than what was reported by COCA." From second source

References:

<http://www.yementimes.com/article.shtml?i=1037&p=report&a=1>

<http://www.state.gov/g/drl/rls/hrrpt/2007/100610.htm>

100: The agency (or agencies) acts on complaints quickly. While some backlog is expected and inevitable, complaints are acknowledged promptly and investigations into serious abuses move steadily towards resolution. Citizens with simple issues can expect a resolution within a month.

75:

50: The agency (or agencies) acts on complaints quickly, with some exceptions. Some complaints may not be acknowledged, and simple issues may take more than two months to resolve.

25:

0: The agency (or agencies) cannot resolve complaints quickly. Complaints may be unacknowledged for more than a month, and simple issues may take more than three months to resolve. Serious abuses are not investigated with any urgency.

76b. In practice, citizens can complain to the anti-corruption agency (or agencies) without fear of recrimination.

100 | 75 | 50 | 25 | 0

Comments:

The first involves preventive measures to minimize the chance of corruption. The second is investigation of reported cases of corruption, and the third is education and raising awareness among the citizenry about their rights and obligations under the new legal framework.”

It is unrealistic to expect citizens to be able to determine where there is a case of corruption, since very little is publicly revealed about government operations. The people who are aware of their rights are few and far from any knowledge of what is right and wrong in the doings of government.

“The government body said it had received 71 complaints during the second quarter of 2008, noting that it is completing investigations in nine corruption cases, including irregularities related to biddings and bids, forgery offenses and the seizure of public funds and properties, as well as tax and customs evasions.”

References:

http://www-wds.worldbank.org/external/default/WDSContentServer/WDSP/IB/2008/08/24/000333038_20080824235238/Rendered/INDEX/434100ENGLISH010Box3

<http://www.sabanews.net/en/news162111.htm> (official News Agency)

100: Whistleblowers can report abuses of power without fear of negative consequences. This may be due to robust mechanisms to protect the identity of whistleblowers, or may be due to a culture that encourages disclosure and accountability.

75:

50: Whistleblowers are sometimes able to come forward without negative consequences, but in other cases, whistleblowers are punished for disclosing, either through official or unofficial means.

25:

0: Whistleblowers often face substantial negative consequences, such as losing a job, relocating to a less prominent position, or some form of harassment.

74. Is there an agency (or group of agencies) with a legal mandate to address corruption?

100

74. In law, is there an agency (or group of agencies) with a legal mandate to address corruption?

YES | NO

Comments:

Law No. 39 primarily creates and stipulates the role of the Supreme National Anti-Corruption Committee (SNACC).

Note the President of the Republic, by law, is no longer chairman of the Supreme Judicial Council .

COCA is under under the Office of the President of the Republic and reports to the Director of the Office of the Presidency.

References:

Republican Decree of Law No. 39, 1992, Central Organization for Control and Auditing (COCA)

Law No. 39, 2006 Concerning Combatting Corruption

Decree of the President of the Republic, chairman of the Supreme Judicial Council No. 3, 1996, Concerning the Establishment of the Public Property/Funds Courts

Law for the Establishment of the Public Property Prosecution

YES: A YES score is earned if an agency is specifically mandated to address corruption. A YES score is earned if there are several agencies or entities with specific roles in fighting corruption, including special prosecutorial entities.

NO: A NO score is earned if no agency (or group of agencies/entities) is specifically mandated to prevent or prosecute corruption.

56
VI-3. Rule of Law

77. Is there an appeals mechanism for challenging criminal judgments?

58

77a. In law, there is a general right of appeal.

YES | NO

Comments:

An appeal mechanism and a general right of appeal exist. However, the average citizen has considerable difficulty and faces an exorbitant cost to take advantage of this right. Prisons are full of people who were unable to appeal judgments that may have been wrongfully meted out to them.

The applicant is entitled to appeal the Registrar's decision before the High Court of Justice within a period not exceeding one month as from the date of the Registrar's decision."

References:

Yemeni Constitution, Article 153 (e)

Law for Judicial Litigation and Civil Execution No. 40, 2002, 2) Articles 275 279, <http://moj-yemen.net/PDF/Part1/13.pdf>

Penal Procedures Law, Articles 417, 421, <http://moj-yemen.net/PDF/Part1/13.pdf>

YES: A YES score is earned if there is a formal process of appeal for challenging criminal judgments.

NO: A NO score is earned if there is no such process.

77b. In practice, appeals are resolved within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

Here are examples of executive decisions causing obvious waiting periods.

The judiciary, especially at the lower levels, is susceptible to pressure and influence from the executive branch

Journalists were tried and sentenced for writing articles critical of the president or reporting on issues sensitive to the regime. On April 14, a prominent journalist was arrested for writing a report about an alleged assassination attempt on the president's son and was sentenced to a fine and a six-month work ban. On May 17, three journalists received prison sentences from three to five months, although the sentences were held in abeyance pending appeals. There was no further action on the appeal at year's end.

On May 29, the trial began of 15 suspects accused of Al-Qa'ida connections and involvement in five terrorist incidents, including a plot to assassinate a foreign ambassador and attack foreign embassies. Defendants claimed that they were not allowed full access to the prosecution's evidence. Observers concluded that the trial was conducted according to the law and was generally fair. Sentences ranged from death in one case to five to ten years for others. The Appeals Court heard arguments of all the defendants in the case, but no decisions were rendered by year's end.

On June 2, the government closed the Al-Shmuu newspaper for three months, and imposed a fine of 50,000 rials (US\$270) for publishing a list of banks that owed money to the Central Bank. The editor received a one-year prison sentence, held in abeyance pending appeal. There was no further action on the appeal at year's end.

On July 7, the government opened its case against six suspects in the 2000 bombing of the USS Cole in Aden. Despite defense claims to the contrary, observers evaluated the conduct of the trial as generally fair. At year's end, defendants in the case had submitted their cases to the Appeals Court, which did not render a decision.

On September 5, the Government closed the As-Shura newspaper for six months. The editor, Abdulkarim Al-Khaiwani, received a one-year prison sentence for publishing articles critical of the president's handling of the Al-Houthi rebellion, succession and other criticisms of the government. Despite repeated calls by several local parties, syndicates, nongovernmental organizations and international groups, the government refused to release Al-Khaiwani. Furthermore, the government summoned and questioned seven other writers from the paper. They were informed that they were also subject to possible prosecution. There was no appeal action by year's end.

"We can see how the executive even gets involved in the appeals process, which is a factor in the time needed for it to work, even if improperly".

This interference of the executive even in the appeals process is clearly confirmed by the following: "Yemeni authorities prevented any of Al-Khaiwani's appeals of reaching the Appeals Court, and he spent seven months in prison."

References:

<http://www.freemuse.org/sw29041.asp>

<http://www.state.gov/g/drl/rls/hrrpt/2004/41736.htm>

<http://www.menassat.com/?q=en/news-articles/2492-fearless-yemen>

100: Appeals are acted upon quickly. While some backlog is expected and inevitable, appeals are acknowledged promptly and cases move steadily towards resolution.

75:

50: Appeals are generally acted upon quickly but with some exceptions. Some appeals may not be acknowledged, and simple cases may take years to resolve.

25:

0: Most appeals are not resolved in a timely fashion. Appeals may go unacknowledged for months or years and simple cases may never be resolved.

77c. In practice, citizens can use the appeals mechanism at a reasonable cost.

100 | 75 | **50** | 25 | 0

Comments:

However, according to Penal Reform International, officials in Yemen's judiciary stated publicly in 2007 that there were 18 juveniles on death row, although nongovernmental organizations believe this number does not include some cases of children wrongly identified as adults. Nor would it include persons who are now adults but who were under 18 at the time of the crime. A Ministry of Interior official confirmed to Human Rights Watch that at least one juvenile offender, Walid Haykel, is currently on death row in Sana'a prison for a crime he committed at age 15."

The appeals process entails formidable costs. It is not known how many cases are pending or have not been appealed because inability to bear the burdens of appeal. The researcher is aware of a case where an erroneously convicted person has been seeking repeal of his conviction and reinstatement of his rights from his employer for more than 10 years. The cost incurred in this case has indeed been exorbitant.

References:

<http://www.menassat.com/?q=en/news-articles/2492-fearless-yemen>

http://www.mhryemen.org/contents/active_detail_en.php?n_no=266

100: In most cases, the appeals mechanism is an affordable option to middle class citizens seeking to challenge criminal judgments. Attorneys fees are not a barrier to appeals.

75:

50: In some cases, the appeals mechanism is not an affordable option to middle class citizens seeking to challenge criminal judgments. Attorneys fees present somewhat of a barrier to pursuing appeal.

25:

0: The prohibitive cost of utilizing the appeals mechanism prevents middle class citizens from challenging criminal judgments. Attorneys fees greatly discourage the use of the appeals process.

78. Do judgments in the criminal system follow written law?

25

78. In practice, do judgments in the criminal system follow written law?

100 | 75 | 50 | 25 | 0

Comments:

The judiciary, especially at the lower levels, is susceptible to pressure and influence from the Executive Branch."

"In addition to regular courts, a system of tribal adjudication exists for some noncriminal issues, although the tribal "judges" often hear criminal cases as well."

With so much involvement of outside authorities, adherence to written law is surely compromised.

References:

<http://www.state.gov/g/drl/rls/hrrpt/2004/41736.htm>

<http://www.nationsencyclopedia.com/Asia-and-Oceania/Yemen-JUDICIAL-SYSTEM.html>

100: Judgments in the criminal system are made according to established legal code and conduct. There are no exceptional cases in which individuals are treated by a separate process. Political interference, bribery, cronyism or other flaws are rarely factors in judicial outcomes.

75:

50: Judgments in the criminal system usually follow the protocols of written law. There are sometimes exceptions when political concerns, corruption or other flaws in the system decide outcomes.

25:

0: Judgments in the criminal system are often decided by factors other than written law. Bribery and corruption in the criminal judicial process are common elements affecting decisions.

79. Are judicial decisions enforced by the state?

25

79. In practice, are judicial decisions enforced by the state?

100 | 75 | 50 | 25 | 0

Comments:

The judiciary is nominally independent, but in practice it is weak and susceptible to interference from the Executive Branch. Government authorities have a spotty record of enforcing judicial rulings, particularly those issued against prominent tribal or political leaders."

References:

http://www.carnegieendowment.org/files/Yemen_APS.doc

<http://www.yemenembassy.org/economic/Reports/Freedom%20House/Yemen%20Report%20-%20Freedom%20in%20the%20World%202004.pdf>

100: Judicial decisions are enforced quickly regardless of what is being decided or who is appearing before the court. Failure to comply brings penalties enforced by the state.

75:

50: Judicial decisions are generally enforced by the state, with some exceptions. Certain areas of law may be ignored, or certain parties appearing before the courts may evade or delay enforcement.

25:

0: Judicial decisions are often ignored. The state lacks the will or capacity to consistently enforce these decisions.

80. Is the judiciary able to act independently?

81

80a. In law, the independence of the judiciary is guaranteed.

YES | NO

Comments:

The judiciary is nominally independent but in practice it is weak and susceptible to interference from the Executive Branch.”

References:

Yemeni Constitution, Article 149

<http://www.yemenembassy.org/economic/Reports/Freedom%20House/Yemen%20Report%20-%20Freedom%20in%20the%20World%202004.pdf>

YES: A YES score is earned if there are formal rules establishing that the judiciary is independent from political interference by the executive and legislative branches. Independence include financial issues (drafting, allocation, and managing the budget of the courts).

NO: A NO score is earned if there are no formal rules establishing an independent judiciary.

80b. In practice, national-level judges are protected from political interference.

100 | 75 | 50 | 25 | 0

Comments:

The Constitution guarantees the independence of the judiciary. Despite reform efforts, the judiciary remains the weakest of the three branches of government, severely hindered by inefficiency, corruption and interference from the Executive Branch.”

Articles 151-153 guarantee that judges will not be subject to any action without due cause and only then by due process within the judiciary’s own internal procedures.

Judges are protected as long as they do not go against the wishes of the Executive Branch. Some judges important to the regime are heavily guarded.

References:

Constitution of the Republic, Article 15

http://www.fundforpeace.org/web/index.php?option=com_content&task=view&id=15&Itemid=82

100: National level judges operate independently of the political process, without incentive or pressure to render favorable judgments in politically sensitive cases. Judges never comment on political debates. Individual judgments are rarely praised or criticized by political figures.

75:

50: National level judges are typically independent, yet are sometimes influenced in their judgments by negative or positive political incentives. This may include favorable or unfavorable treatment by the government or public criticism. Some judges may be demoted or relocated in retaliation for unfavorable decisions.

25:

0: National level judges are commonly influenced by politics and personal biases or incentives. This may include conflicting family relationships, professional partnerships, or other personal loyalties. Negative incentives may include demotion, pay cuts, relocation, threats or harassment.

80c. In law, there is a transparent and objective system for distributing cases to national-level judges.

YES | NO

Comments:

These stipulate the jurisdictional limits of cases handled by judges, individually or collectively.

References:

Law of Litigation and Prosecution No.40, 2002, Articles 10-

21, <http://ashrfmshrf.wordpress.com/2006/03/20/%d9%82%d8%a7%d9%86%d9%88%d9%86-%d8%a7%d9%84%d9%85%d8%b1%d8%a7%d9%81%d8%b9%d8%a7%d8%aa-%d8%a7%d9%84%d9%8a%d9%85%d9%86%d9%8a>

YES: A YES score is earned if there is an objective system that is transparent to the public that equitably or randomly assigns cases to individual judges. The executive branch does not control this process.

NO: A NO score is earned if the case assignment system is non-transparent or subjective where judges themselves have influence over which cases they adjudicate. A NO score is also earned if the executive branch controls this process.

80d. In law, national-level judges are protected from removal without relevant justification.

YES | NO

Comments:

Nevertheless, appointments of most senior judicial positions are made by the president.

References:

Constitution of the Republic, Article 151

Judiciary Law

YES: A YES score is earned if there are specific, formal rules for removal of a justice. Removal must be related to abuse of power or other offenses related to job performance.

NO: A NO score is earned if justices can be removed without justification, or for purely political reasons. A NO score is earned if the removal process is not transparent, or not based on written rules.

81. Are judges safe when adjudicating corruption cases?

100

81a. In practice, in the last year, no judges have been physically harmed because of adjudicating corruption cases.

YES | NO

Comments:

There really have not been any substantial cases of corruption put to trial. If there had been, they surely would have been handled by a loyal judge, and one would assume that if the judge ruled against the wishes of the executive, harm would have been meted out to the judge.

The researcher considered this a qualified yes, while noting that the looming threat of death or injury is effective.

References:

Various media challenges, including Yemen Times, Yemen Post, Al-Wasat

YES: A YES score is earned if there were no documented cases of judges being assaulted because of their involvement in a corruption case during the specific study period. YES is a positive score.

NO: A NO score is earned if there were any documented cases of assault to a judge related to his/her participation in a corruption trial. Corruption is defined broadly to include any abuses of power, not just the passing of bribes.

81b. In practice, in the last year, no judges have been killed because of adjudicating corruption cases.

YES | NO

Comments:

There really have not been any substantial cases of corruption put to trial. If there had been, they surely would have been handled by a loyal judge, and one would assume that if the judge ruled against the wishes of the executive, harm would have been meted out to the judge.

The researcher considered this a qualified yes, while noting that the looming threat of death or injury is effective.

References:

Various media reports

YES: A YES score is earned if there were no documented cases of judges being killed related to their involvement in a corruption case during the study period. YES is a positive score.

NO: A NO score is earned if there were any documented cases where a judge was killed because of his/her participation in a corruption trial. The relationship between a mysterious death and a judge's involvement in a case may not be clear, however the burden of proof here is low. If it is a reasonable assumption that a judge was killed in relation to his or her work on corruption issues, then the indicator is scored as a NO. Corruption is defined broadly to include any abuses of power, not just the passing of bribes.

82. Do citizens have equal access to the justice system?

36

82a. In practice, judicial decisions are not affected by racial or ethnic bias.

100 | 75 | 50 | 25 | 0

Comments:

As a result of the Sa'ada War, the regime and bigoted elements within it (including officials with strong Salafi association) continued to persecute and prosecute members of the Zeidi Sect indiscriminately without due process or adherence to basic human and civil rights.

References:

<http://www.shiachat.com/forum/index.php?>

[s=046b2fd8b2c45f7bc3e2ef7389db4bae&showtopic=58422&st=0&p=751474#entry751474](https://www.armiesofliberation.com/archives/2007/02/page/2/)

<http://www.armiesofliberation.com/archives/2007/02/page/2/>

<http://emptyquarter.wordpress.com/2007/10/29/terrorist-cells-on-trial-in-sanaa/>

<http://www.newswatch.in/newsblog/1696>

100: Judicial decisions are not affected by racial or ethnic bias.

75:

50: Judicial decisions are generally not affected by racial or ethnic bias, with some exceptions. Some groups may be occasionally discriminated against, or some groups may occasionally receive favorable treatment.

25:

0: Judicial decisions are regularly distorted by racial or ethnic bias. Some groups consistently receive favorable or unfavorable treatment by the courts.

82b. In practice, women have full access to the judicial system.

100 | 75 | 50 | **25** | 0

Comments:

This matter has been the subject of many reports and seminars on human rights in Yemen and is supported by the judiciary.

References:

<http://www.guardian.co.uk/lifeandstyle/2008/may/11/women.humanrights>

<http://www.arab-niaba.org/publications/hr/aden/agenda-e.pdf>

100: Women enjoy full and equal status in the eyes of the courts. There are no exceptions or practices in which women are treated differently by the judicial system. For this indicator, discrimination against women should reflect specific biases that confront women in the justice system as opposed to difficulties resulting from broader socio-economic disadvantages or discrimination against women.

75:

50: Women generally have use of the judicial system, with some exceptions. In some cases, women may be limited in their access to courts, or gender biases may affect court outcomes. For this indicator, discrimination against women should reflect specific biases that confront women in the justice system as opposed to difficulties resulting from broader socio-economic disadvantages or discrimination against women.

25:

0: Women generally have less access to the courts than men. Court decisions are commonly distorted by gender bias. Women may have to go through intermediaries to interact with the court, or are unable to present evidence. For this indicator, discrimination against women should reflect specific biases that confront women in the justice system as opposed to difficulties resulting from broader socio-economic disadvantages or discrimination against women.

82c. In law, the state provides legal counsel for defendants in criminal cases who cannot afford it.

YES | NO

Comments:

This right can be compromised.

References:

<http://www.extrajudicialexecutions.org/communications/yemen.html>

http://news.bbc.co.uk/2/hi/middle_east/312035.stm

YES: A YES score is earned if the government is required by law to provide impoverished defendants with legal counsel to defend themselves against criminal charges.

NO: A NO score is earned if there is no legal requirement for the government to provide impoverished defendants with legal counsel to defend themselves against criminal charges.

82d. In practice, the state provides adequate legal counsel for defendants in criminal cases who cannot afford it.

100 | 75 | 50 | 25 | 0

Comments:

This is not always the case, although it is a right guaranteed by law.

References:

<http://europenews.dk/en/node/1801>

http://www.news.bbc.co.uk/1/hi/world/middle_east/302382.stm

100: State-provided legal aid is basic, but well-trained and effective in representing the rights of impoverished defendants.

75:

50: State-provided legal aid is available, but flawed. Legal aid may be unavailable to some impoverished defendants. Legal aid/public defenders may be sometimes unable or unwilling to competently represent all defendants.

25:

0: State-provided legal aid is unavailable to most impoverished defendants. State legal aid/public defenders may be consistently incompetent or unwilling to fairly represent all defendants.

82e. In practice, citizens earning the median yearly income can afford to bring a legal suit.

100 | 75 | 50 | 25 | 0

Comments:

With the elimination of the middle class, the question would seem almost irrelevant to Yemen.

The Republic of Yemen, with a population of about 22,230,531, lacks a traditional middle class structure and is instead characterized by a small percentage of upper class, wealthy citizens and a large percentage of poor citizens.

Specialists attached to hospitals, like Dr. Amat and her physician husband, make US\$300 to US\$600 a month. Dr. Amat's afternoon work seeing patients in the clinic supplements this. Working six days a week, she might make over US\$800 a month in private practice. She is the primary breadwinner in her family; her husband doesn't like private practice and, like most Yemeni men, spends his afternoons chewing the mild stimulant qat. Maintaining a middle-class lifestyle is estimated to cost US\$1,000.

This underscores the sad plight of the middle class and reflects the low value of human resources, as highly professional people in a more equitable society with better income distribution would be far better off.

References:

http://internationalbusiness.wikia.com/wiki/Income_Distribution_in_Yemen

<http://www.annrachelmarlowe.com/2007/12/16/yemen-the-pioneer/>

100: In most cases, the legal system is an affordable option to middle class citizens seeking to redress a grievance. Attorneys fees do not represent a major cost to citizens.

75:

50: In some cases, the legal system is an affordable option to middle class citizens seeking to redress a grievance. In other cases, the cost is prohibitive. Attorneys fees are a significant consideration in whether to bring a case.

25:

0: The cost of engaging the legal system prevents middle class citizens from filing suits. Attorneys fees are high enough to discourage most citizens from bringing a case.

82f. In practice, a typical small retail business can afford to bring a legal suit.

100 | 75 | 50 | 25 | 0

Comments:

Relatively speaking, commercial court cases are still very few in number and often are related to banking transactions, as banks use them to settle past-due debts. Moreover, there is a pressing need to improve the functioning of the commercial courts."

Generally speaking, there are very few disputes within the commercial sector, as members of the private sector tends to avoid getting into confrontations.

References:

http://www.yemenembassy.org/economic/indicators/Ind_SEC_12.htm

http://books.google.com/books?id=QBOElvgW8iAC&pg=PA67&img=PA67&dq=commercial+courts+yemen&source=web&ots=pkK_8JiU38&sig=-KMgHGgA-gHEpiDIHsv2rqQcFOI&hl=en&sa=X&oi=book_result&resnum=9&ct=result#PPA69_M1

100: In most cases, the legal system is an affordable option to a small retail business seeking to redress a grievance. Attorneys fees do not represent a major cost to small businesses.

75:

50: In some cases, the legal system is an affordable option to a small retail business seeking to redress a grievance. In other cases, the cost is prohibitive. Attorneys fees are a significant consideration in whether to bring a case.

25:

0: The cost of engaging the legal system prevents small businesses from filing suits. Attorneys fees are high enough to discourage most small businesses from bringing a case.

82g. In practice, all citizens have access to a court of law, regardless of geographic location.

100 | 75 | 50 | 25 | 0

Comments:

There is still a tendency to rely on informal, traditional means of settling disputes through tribal customs, as judiciary resources have not made it possible for the judiciary to reach out to most of the population, especially in the countryside.

In rural areas, Yemenis frequently rely on traditional tribal forms of justice" because of the absence of nearby courts. Rule of law in rural areas can be exceptionally weak, as justice is often dispatched through revenge killings in a cycle of violence difficult to break. Almost all rural court cases are settled out of court with a tribal mediator.

"State justice and policing agencies are weakly institutionalized and service delivery is not very effective. Poor service delivery has significant negative impacts on poor and vulnerable groups, such as women, who, due to their limited mobility, influence and financial resources, have limited access to formal systems of justice and security."

"Strengthen Yemen's judicial system by assisting in the development of an independent and efficient judiciary, particularly in rural areas ..."

Access is also impeded by the government itself: "They were denied access to lawyers and had no recourse in the courts to challenge the legality of their detention."

References:

<http://www.amnesty.org/en/region/middle-east-and-north-africa/west-gulf/yemen>

<http://www.dfid.gov.uk/procurement/files/8435-Programme-Doc.pdf>

<http://unpan1.un.org/intradoc/groups/public/documents/nispacee/unpan016212.pdf>

<http://www.crisisgroup.org/home/index.cfm?id=1675&l=1>

100: Courtrooms are always accessible to citizens at low cost, either through rural courthouses or through a system of traveling magistrates.

75:

50: Courts are available to most citizens. Some citizens may be unable to reach a courtroom at low cost due to location.

25:

0: Courts are unavailable to some regions without significant travel on the part of citizens.

VI-4. Law Enforcement

83. Is the law enforcement agency (i.e. the police) effective?

42

83a. In practice, appointments to the law enforcement agency (or agencies) are made according to professional criteria.

100 | 75 | 50 | 25 | 0

Comments:

Appointment to the most sensitive positions of the government are decided upon through patronage: Yemen's state-sponsored system of patronage undermines the subjection of the government to the popular will by overriding both the creation of strong institutions and the establishment of law and order. It is clear that without addressing some very basic issues of state-building to at least reduce the potency of the patronage system, there is a glass ceiling on the other types of reform that can be realistically achieved. From first source

"Leadership of the military and security forces is in the hands of close relatives of President Saleh, including his son, his nephew and other relatives and extreme loyalists." There is no consideration of professional criteria in this vital area of governance. From second source

References:

http://books.google.com/books?id=yAdmjiAuTvqC&pg=PA247&lpg=PA247&dq=state-sponsored+patronage+Yemen&source=web&ots=cXswaSacwx&sig=Hfl85jLvZZhgExGEfrtR4_kCBlw&hl=en&sa=X&oi=book_result&resnum=2&ct=result
page 246

<http://www.globalpolitician.com/21616-yemen-arab>

100: Appointments to the agency (or agencies) are made based on professional qualifications. Individuals appointed are free of conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed usually do not have clear political party affiliations.

75:

50: Appointments are usually based on professional qualifications. Individuals appointed may have clear party loyalties, however.

25:

0: Appointments are often based on political considerations. Individuals appointed often have conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed often have clear party loyalties.

83b. In practice, the law enforcement agency (or agencies) has a budget sufficient to carry out its mandate.

100 | 75 | 50 | 25 | 0

Comments:

If anyone has an adequate budget in Yemen, it would be the military and security organs. However, because there are so many security organs, it would help achieve better law enforcement if they were streamlined and if appropriations were allocated rationally.

References:

2007 and 2008 budgets

100: The agency (or agencies) has a budget sufficient to fulfill its basic mandate.

75:

50: The agency (or agencies) has limited budget, generally considered somewhat insufficient to fulfill its basic mandate.

25:

0: The agency (or agencies) has no budget or an obviously insufficient budget that hinders the agency's ability to fulfill its mandate.

83c. In practice, the law enforcement agency is protected from political interference.

100 | 75 | 50 | 25 | 0

Comments:

It is not political intervention with the police that is worrisome. It is police intervention of peaceful demonstrations and of demonstrations that they themselves sometimes instigate to impress upon the public the need for excessive police action to quell violent disturbances or disguised suppression of human rights, freedom of peaceful assembly and free expression of opinion.

The security apparatus is one and the same with government authorities, and neither faces any problem of intervention by the other.

References:

<http://www.irinnews.org/report.aspx?ReportID=79353>

<http://www.tajaden.org/englishweb/modules.php?name=News&file=article&sid=45>

<http://www.unhcr.org/refworld/country,,FREEHOU,,YEM,,4738691916,0.html>

100: The agency (or agencies) operates independently of the political process and has operational independence from the government. All laws can be enforced regardless of the status of suspects or the sensitivity of the investigation.

75:

50: The agency (or agencies) is typically independent, yet is sometimes influenced in its investigations or enforcement actions by negative or positive political incentives. This may include favorable or unfavorable public criticism by the government or other forms of influence. The agency (or agencies) may not be provided with some information needed to carry out its investigations.

25:

0: The investigative and enforcement work of the agency (or agencies) is commonly influenced by political actors or the government. These may include conflicting family relationships, professional partnerships, or other personal loyalties. Negative incentives may include threats, harassment or other abuses of power by the government.

84. Can law enforcement officials be held accountable for their actions?

67

84a. In law, there is an independent mechanism for citizens to complain about police action.

YES | NO

Comments:

The mechanism is the courts.

We filed that suit against Saleh as a corporation, Allawo Corporation. We accused the president of being behind the imprisonment of innocent citizens inside the political security apparatus. According to the law, he is the first person in charge of the Political Security Apparatus. Because the judge knew we were right and our case was strong, he didn't have the audacity and courage to adjudicate it. We were surprised when the judge ruled that Saleh is not responsible about the prisoner who spent a long time in the Political Security Prison, justifying his ruling that Saleh is too busy to know about such a case, even though the law sees him as the responsible person. If Saleh is too busy to be in charge of the prison, then put someone else in charge instead of embarrassing yourself with a useless ruling."

References:

Law of Litigation No. 40, 2002, Chapter III, <http://ashrfmshrf.wordpress.com/2006/03/20/%d9%82%d8%a7%d9%86%d9%88%d9%86-%d8%a7%d9%84%d9%85%d8%b1%d8%a7%d9%81%d8%b9%d8%a7%d8%aa-%d8%a7%d9%84%d9%8a%d9%85%d9%86%d9%8a>

Constitution of Yemen, Article 51

Law 12, 1994, Penal Code, Article 132 (2), http://www.unhcr.org/refworld/country_LEGAL,,_YEM.4562d8cf2_3fec62f17_0.html

<http://www.yemenpost.net/20/InvestigationAndInterview/20081.htm>

YES: A YES score is earned if there is a formal process or mechanism by which citizens can complain about police actions. A YES score is earned if a broader mechanism such as the national ombudsman, human rights commission, or anti-corruption agency has jurisdiction over the police.

NO: A NO score is earned if there is no such mechanism

84b. In practice, the independent law enforcement complaint reporting mechanism responds to citizen's complaints within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

The second source, although somewhat old but still relevant, shows the government's rather slow pace to act on its international obligations in this regard: "Take measures to establish an effective, reliable and independent complaints system to undertake prompt and impartial investigations into allegations of ill-treatment or torture by police and other public officials, and punish the offenders." From Article 19

To date there no report existsof any action vis a vis complaints or lawsuits against any state security apparatus.

To show the attitude of authorities toward complaints from citizens: "The assailants stayed outside Al Odaini's house until 2 a.m. the next day. Despite being called for support, police did not come to the area until daybreak. After the first attack, Al Odaini had filed a complaint with both the local police and with security authorities, but no investigation took place.

References:

<http://asiapacific.amnesty.org/library/index/engmde310062003>

http://www.freemedia.at/cms/ipi/freedom_detail.html?country=/KW0001/KW0004/KW0108/&year=2005

http://www.freemedia.at/cms/ipi/freedom_detail.html?country=/KW0001/KW0004/KW0108/

100: The agency/entity responds to complaints quickly. While some backlog is expected and inevitable, complaints are acknowledged promptly and investigations into serious abuses move steadily towards resolution. Citizens with simple issues can expect a resolution within a month.

75:

50: The agency/entity responds to complaints quickly, with some exceptions. Some complaints may not be acknowledged, and simple issues may take more than two months to resolve.

25:

0: The agency/entity cannot resolve complaints quickly. Complaints may be unacknowledged for more than a month, and simple issues may take three to six months to resolve. Serious abuses are not investigated with any urgency.

84c. In law, there is an agency/entity to investigate and prosecute corruption committed by law enforcement officials.

YES | NO

Comments:

For all intents and purposes, the Disciplinary Councils in the various branches of the armed forces and the security organs called for in the law are ineffective. It is unknown what, if any, corrective actions they have ever taken against corrupt or incompetent military personnel of any rank.

The Law of Crimes and Penalties does not include members of the security apparatus and armed forces in its stipulations, according to the third source: With some exceptions, members of the armed forces, the Ministry of Interior and security forces are not covered by this law."

References:

<http://www.moi.gov.ye/moi1/%D9%82%D8%B7%D8%A7%D8%B9%20%D8%A7%D9%84%D8%AA%D8%AF%D8%B1%D9%8A%D8%A8%20%D9%88>

Law No 67, 1991, Concerning Military and Security Service, <http://www.yemenparliament.com/content.php?lng=arabic&id=778>

<http://info.worldbank.org/etools/docs/library/242904/Yemen-final-Draft-on%20Hadeel-comments.doc>

Law of Crimes and Penalties

YES: A YES score is earned if there is an agency/entity specifically mandated to investigate corruption-related activity within law enforcement. This agency/entity may be internal to the police department (provided it has a degree of independence, such as an internal affairs unit) or part of a broader national mechanism such as the national ombudsman, human rights commission, or anti-corruption agency.

NO: A NO score is earned if no such agency/entity exists.

84d. In practice, when necessary, the agency/entity independently initiates investigations into allegations of corruption by law enforcement officials.

100 | 75 | 50 | 25 | 0

Comments:

There is no record of any systematic action taken against any military or security personnel for any breach of law or for corruption charges, except in the cases shown in the first two sources, which arose after loud protests from citizens or the international community. In the first case, the decision was passed by Al-Mahweet Primary Court. It ordered compensation for the deceased victim's heirs out of their own pockets." It is not clear if they received any disciplinary sentence from the disciplinary council of their unit.

References:

http://findarticles.com/p/articles/mi_hb6465/is_ /ai_n25765834

<http://www.yementimes.com/article.shtml?i=1135&p=local&a=4>

100: When irregularities are discovered, the agency/entity is aggressive in investigating government law enforcement officials or in cooperating with other investigative agencies.

75:

50: The agency/entity starts investigations, but is limited in its effectiveness or is reluctant to cooperate with other investigative agencies. The agency/entity may be slow to act, unwilling to take on politically powerful offenders, or occasionally unable to enforce its judgments.

25:

0: The agency/entity does not effectively investigate or does not cooperate with other investigative agencies. The agency may start investigations but not complete them, or may fail to detect offenders. The agency may be partisan in its application of power.

84e. In law, law enforcement officials are not immune from criminal proceedings.

YES | NO

Comments:

Chapter9 details the penalties that military and security personnel can be subjected to and the violations involved.

However Law No. 6 of 2002 gives the president, also the commander in chief, and vice president immunity for most crimes except treason and sovereignty-related crimes.

References:

Law No 67, 1991, Concerning Military and Security Service, Chapter 9, <http://www.yemenparliament.com/content.php?lng=arabic&id=778>

Penal Code 12, 1994

Anti-Corruption Law 39, 2006

Law No. 6, 1995, Prosecuting and Trying Senior Officials, <http://www.f-law.net/law/showthread.php?t=11431>

Law No. 6, 2002, Prosecuting and Trying Senior Officials

YES: A YES score is earned if law enforcement officers are fully accountable for their actions under the law and can be investigated and prosecuted for their actions.

NO: A NO score is earned if law enforcement enjoys any special protection from criminal investigation or prosecution.

84f. In practice, law enforcement officials are not immune from criminal proceedings.

100 | 75 | 50 | 25 | 0

Comments:

The above cases refer to criminal proceedings against security officers and personnel that did undergo criminal proceedings.

It would still be very difficult, if not impossible, to undertake criminal proceedings against officers and personnel of the security apparatus (for example, prison officers who refuse to allow sick prisoners to obtain medical care), even though this kind of intolerable security action has been condemned internationally.

References:

http://findarticles.com/p/articles/mi_hb6465/is_/ai_n25765834

<http://www.yementimes.com/article.shtml?i=1135&p=local&a=4>

100: Law enforcement officers are subject to criminal investigation for official misconduct. No crimes are exempt from prosecution.

75:

50: Law enforcement is generally subject to criminal investigation but exceptions may exist where criminal actions are overlooked by the police or prosecutors. Some crimes may be exempt from prosecution, such as actions taken in the line of duty.

25:

0: Law enforcement enjoys a general protection from most criminal investigation. This may be due to a formal immunity or an informal understanding that the law enforcement community protects itself.
