

The Role of Elections in a Post-Conflict Yemen

April 2016





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Introduction

In March 2015, the Kingdom of Saudi Arabia and a coalition of Arab allies initiated a series of air strikes against Houthi targets in Sana'a, Aden, and other parts of Yemen, leading to an ongoing conflict between pro-government forces backed by the Saudi-led coalition, and Houthi militias allied with units of the armed forces loyal to former President Ali Abdullah Saleh. A recent report from the United Nations (UN) Panel of Experts on Yemen states that all sides in the conflict have breached international law.¹ The situation is made more complex by the presence of Al Qaeda in the Arabian Peninsula (AQAP) and of an affiliate of Islamic State in the east of Yemen, each of which has carried out attacks against the forces embroiled in the conflict.

Although the conflict in Syria has overshadowed that in Yemen, the humanitarian situation in Yemen continues to deteriorate. Within a month of the start of the conflict, Yemen was on the verge of a humanitarian crisis. The naval blockade enforced by the coalition and airstrike damage to Yemen's airports and other infrastructure are serious impediments to the delivery of humanitarian aid and exacerbated serious fuel shortages. Multiple attempts to implement ceasefires to allow delivery of fuel, medical supplies, and food by international organizations have been unsuccessful, and delivery of humanitarian aid to those most in need has been difficult and sporadic. In April 2016, the UN Office for the Coordination of Humanitarian Affairs (OCHA) estimated that between March 26, 2015 and March 17, 2016, more than 2.76 million Yemenis have been displaced, 14.4 million Yemenis are food insecure,² and just under 9,000, including 3,218 civilians, have been killed.³

The UN Special Envoy, Ismail Ould Cheikh Ahmed, has worked with all parties to the conflict to try to broker peace talks based on UN Security Council Resolution (UNSCR) 2216 adopted in April 2015 (see Annex 1). UNSCR 2216 requires the Houthis to withdraw from all areas seized during the latest conflict, relinquish arms seized from military and security institutions, and cease all actions falling exclusively within the authority of the legitimate Yemeni Government.⁴ The resolution states that this political solution should include "drafting a new constitution, electoral reform, the holding of a referendum on the draft constitution and timely general elections, to avoid further deterioration of the humanitarian and security situation in Yemen." Paragraph 6 calls on all parties to:

1 Himmiche, A., Fernández, N., Hill, V., & Salek, J. (n.d.). Final report of the Panel of Experts on Yemen established pursuant to Security Council resolution 2140 (2014) (Rep. No. S/2016/73). http://www.securitycouncilreport.org/atf/cf/{65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9}/s_2016_73.pdf

2 Yemen. (2016, April). Retrieved April 4, 2016, from <http://www.unocha.org/yemen>.

3 UN News Center. (2016, March 18). UN News - in wake of another deadly attack in Yemen, UN human rights chief decries coalition airstrikes. Retrieved April 4, 2016, from UN News Center, <http://www.un.org/apps/news/story.asp?NewsID=53480#.VwvWoaQrJaQ>.

4 UN News Center. (2015, October 7). UN News - Houthis Reaffirm Acceptance of Security Council Resolution Aimed at Ending Violence in Yemen – UN. Retrieved March 23, 2016, from UN News Center, <http://www.un.org/apps/news/story.asp?NewsID=52195#.VwaNOTYrKCQ>.

“Take concrete steps to agree and implement a consensus-based political solution to Yemen’s crisis in accordance with the Gulf Cooperation Council Initiative and its Implementation Mechanism and the outcomes of the comprehensive National Dialogue conference ...”

To date, all efforts to implement a ceasefire and negotiate an end to the conflict have failed. Recently, there have been several signs of a de-escalation in the conflict. On March 8, the State of Oman helped arrange a visit to Riyadh by Houthi representatives to engage with Saudi officials regarding peace talks at the invitation of Saudi authorities.⁵ Saudi Arabia and the Houthi delegation agreed to a prisoner exchange along the Saudi-Yemen border⁶ and delivery of some humanitarian aid during these meetings.

On March 23, the UN Special Envoy announced that a ceasefire would come into effect on April 10 in advance of peace negotiations to begin in Kuwait on April 18.

Ahead of the upcoming negotiations, President Abd Rabbuh Mansur Hadi removed Khalid Bahah from his posts as Prime Minister and Vice President of Yemen and reappointed him to the position of Presidential Adviser on April 3. General Ali Mohsen Al Ahmar was appointed Vice President and Ahmed Obaid Bin Daghr, former Communications Minister and Secretary-General of the General People’s Congress (GPC), was appointed as the new Prime Minister.⁷

Since his removal, Bahah has described this move as “a coup against legitimacy” on the basis of the Gulf Cooperation Council (GCC) Agreement and UN resolution 2216. Both require all parties abide by the GCC Initiative and its Implementation Mechanism, the outcomes of the comprehensive National Dialogue Conference, and other relevant Security Council resolutions.⁸ It is unclear at this time what impact this government reshuffle will have on the peace and reconciliation negotiations.

Despite the current uncertainty surrounding an end to the conflict in Yemen, it is clear that any negotiated settlement will outline a post-conflict transitional political process, which will include elections. The purpose of this Briefing Paper is to examine the needs and constraints that stakeholders will face in post-conflict Yemen, specifically focusing on technical aspects related to electoral processes. With over two decades of experience working in Yemen, IFES intends for this paper to inform discussions among

5 Reuters. (2016, March 9). Saudi Arabia, Yemen Houthis Swap Prisoners, Raising Hopes of Peace Talks. Retrieved March 16, 2016, from <http://www.voanews.com/content/yemen-saudi-houthi-prisoner-swap/3228053.html>; Riedel, B. (2016, March 10). Will there be peace in Yemen? - Al-Monitor: The Pulse of the Middle East. Retrieved March 16, 2016, from <http://www.al-monitor.com/pulse/originals/2016/03/yemen-war-saudi-arabia-peace-houthi-oman-mediation.html>; Al Jazeera. (2016, March 17). Saudi envoy confirms Houthis attended talks. Retrieved March 18, 2016, from <http://www.aljazeera.com/news/2016/03/saudi-envoy-confirms-houthis-attended-secret-talks-160317222540979.html>.
6 Mukhashaf, M. (2016, March 28). Saudi-led alliance says completes Yemen prisoner swap. Retrieved April 04, 2016, from <http://www.reuters.com/article/us-yemen-security-swap-idUSKCN0WU0BX>.

7 Ahmed Obaid Bin Daghr was an official in former president Saleh’s ruling GPC party. Major Gen Ali Mohsen al-Ahmar is a politically powerful military commander and staunch opponent of the Houthis. For citation, see 11.

8 BBC. (2016, April 5). Yemen conflict: Former Vice-President Bahah Denounces Sacking - BBC News. Retrieved April 7, 2016, from <http://www.bbc.com/news/world-middle-east-35971628>.

stakeholder groups following the cessation of the current political and security crisis. It will be critical that stakeholders are fully informed on this topic going into any new political agreement. A lack of understanding about the electoral process was a noticeable gap during the development of the GCC Implementing Mechanism, and this paper will fill critical knowledge and information gaps as stakeholders work on a new agreement.

The following sections establish a framework for the post-conflict transition period and identifies the transitional steps to be taken by key stakeholders, areas of focus, anticipated challenges and concerns associated with each step, and indicative timelines. The paper also examines the electoral roles and responsibilities of different stakeholders (civil society, political parties, media and other government actors) and includes recommendations for consideration by both domestic and international stakeholders to mitigate challenges.

Section 1 outlines the political context as it appears at the time of writing. Sections 2 and 3 discuss the role and timing of elections in the transitional process and the challenges and risks that will need to be overcome if credible electoral processes are to take place. Section 4 contains an indicative timeframe for elections following a political settlement, along with a brief analysis of short-term and medium-term electoral priorities. Conclusions are in Section 5.

1. The Current Political Situation in Yemen

Due to the ongoing military conflict, it is difficult to get an accurate picture of Yemen's current political map.⁹ It appears at the time of writing that the Houthis and their allies continue to control Sana'a, the northern governorates that border Saudi Arabia and along the Red Sea, and those governorates south of Sana'a to Ibb. President Hadi's government, backed by Saudi Arabia, is currently based in Aden and controls the nearby governorates and those east of Sana'a to the border with Oman, and its military objective seems to be focused on re-taking Sana'a. Most analysts believe that AQAP is present in the eastern governorates and near Ibb. Affiliates of the Islamic State are present around Aden but do not control any significant territory.

Current UN efforts and other initiatives are focused on ending the military conflict, and there are no clear details about any political settlement or transition framework that might also be negotiated at the same time.¹⁰ Although the UN Security Council resolution 2216 is the foundation for the Special Envoy's efforts, it can be assumed that the Houthis and their allies will regard this resolution as failing to recognize their

9 See, for example, the map in BBC (2016, March 18). Yemen war: Saudi coalition "causing most civilian casualties." BBC Middle East. Retrieved from <http://www.bbc.com/news/world-middle-east-35842708>.

10 Al Jazeera has reported that a ceasefire will begin on April 10 followed by talks in Kuwait beginning on April 18, focusing on "the withdrawal of military forces, the handover of heavy weaponry, interim security arrangements, and the restoration of state institutions"; Al Jazeera Media Network. (2016, March 23). UN: Yemen's Warring Parties Agree to April 10 Ceasefire. Retrieved March 23, 2016, from Al Jazeera, <http://www.aljazeera.com/news/2016/03/yemen-warring-parties-agree-april-10-ceasefire-160323173502992.html>.

demands, the strength they have demonstrated, and the depth of the popular opposition to restoring President Hadi and his government. In this context, it becomes difficult to see the Houthis agreeing to return to the status quo ante or accepting the outcomes of the National Dialogue and the subsequent draft constitution that was issued in January 2015, even as a starting point for further negotiations.¹¹

It is likely that a political settlement will establish a Transitional Government (TG) responsible for rebuilding the country. However, the composition, mandate and duration of the TG will be settled in future peace negotiations and hence are not known at the time of this writing. The TG may be responsible for overseeing any further negotiations concerning the details of the settlement and future constitutional and electoral arrangements. International bodies, including the UN, the GCC, and the Arab League are likely to have a crucial role in providing political, financial, and material support for these processes.

There is uncertainty about the transition process that Yemen will undergo following an end to the current hostilities. The security vacuum and efforts to restore the government will pose significant challenges. The extent to which the Houthis will demand modifications to the federal structure outlined in the draft 2015 constitution is not known. Similarly, the position of the secessionist Southern Movement (Hirak) is unclear, and the south will require substantial resources in order to participate in national reconciliation and transitional processes. It is also possible that an end to the fighting between the Houthis and their allies on the one side and the Hadi government and its allies on the other will not mean an end to all armed conflicts within Yemen. AQAP and the Islamic State will most likely continue their operations, as will conflicts between local militias and tribes.

The unprecedented level of physical damage caused by the conflict and the disastrous humanitarian crisis, compounded by continued fighting throughout the country, will have significant repercussions for decades to come on social, political and economic relationships among Yemenis. Every aspect of Yemen's transition process going forward will require some focus on national reconciliation issues to begin the long process of restoring trust and rebuilding rapport among Yemenis. The effects of these circumstances on possible electoral elements during the transition are discussed in the next section.

2. The Role and Sequence of Elections in a Future Transitional Process¹²

Electoral events such as referendums and elections are often regarded as essential components of a post-conflict transition:

“In post-conflict societies, competitive elections have become one of the instruments used not only to promote democracy but also to attempt to consolidate a fragile peace. In such cases, elections provide an inescapable means for jump-starting a new, post-conflict political order; for

11 International Crisis Group. (2016, February 9). Yemen: Is Peace Possible? - Middle East Report N° 167. Retrieved March 11, 2016, from <http://reliefweb.int/report/yemen/yemen-peace-possible-middle-east-report-n-167>.

12 Sections 3 and 4 draw on the IFES white paper, “Comments on the Electoral Provisions of the January 2015 Draft Constitution for the Republic of Yemen” (March 2015), written with funding from the Embassy of the Netherlands.

stimulating the development of democratic politics; for choosing representatives; for forming governments; and for conferring legitimacy upon the new political order. They also provide a clear signal that legitimate domestic authority has been returned – and hence that the role of the international community may be coming to an end. For all of these reasons, elections have become a central part of the process of state rebuilding.”¹³

Consequently there is often an expectation that elections will be held as early as possible during a post-conflict transition. However, post-conflict electoral events may carry significant risks. If they are held too early in the transition before the conditions for acceptable electoral processes can be established, they can become divisive and polarizing events that jeopardize the success of the transition.¹⁴ Constitutional negotiations, and subsequent elections, must allow meaningful participation by all significant political interests, particularly cultural and geographic minorities.¹⁵ In the past, post-conflict elections have been burdened by:

“multiple and sometimes incompatible objectives, being expected simultaneously to bring an end to armed violence and usher in a new era of democratic peace, but also to enable a sustainable expression of societal cleavages via a competitive but non-violent political process.”¹⁶

Post-conflict elections can also be very costly, which invariably necessitates significant international assistance to provide funding, election materials, technical advice and support to election authorities, voter registration including facilitating participation by displaced persons, support to political parties and community groups, voter education and information, observation and monitoring, dispute resolution, and capacity building for post-transition elections. One study concludes that:

“Within the limited realm of post-conflict elections, [international electoral] aid has been generally decisive for the very existence of the elections. Without the presence of the international community, and without substantial assistance, elections would not, in most cases, have taken place.”¹⁷

13 Benjamin Reilly, “Electoral Assistance and Post-Conflict Peacebuilding – What Lessons Have Been Learned?”, p. 2; <http://aceproject.org/ero-en/topics/elections-security/Reilly-2505.pdf>.

14 “While elections are an essential part of many peace agreements, ill-timed, badly-designed or poorly-run elections have often served to undermine peace processes in fragile post-conflict environments.” Reilly, B. (2004). *Electoral Assistance and Post-Conflict Peacebuilding - What Lessons Have Been Learned?* Retrieved from Ace Project website: <http://aceproject.org/ero-en/topics/elections-security/Reilly-2505.pdf/view>.

15 It is possible that the Houthis and Kirak will want to have the adoption of a new constitution for Yemen by referendum dependent on separate majorities in their respective areas as well as a majority in the country as a whole. If so, that will raise the question of the consequences of a failure to achieve such majorities. Anderson, G., & Choudhry, S. (2015). *Constitutional Transitions and Territorial Cleavages*. Retrieved from <http://www.idea.int/publications/constitutional-transitions/index.cfm?css=new2013>.

16 Reilly, B. (2011). Understanding Elections in Conflict Situations. In D. Gillies (Ed.), *Elections in Dangerous Places: Democracy and the Paradoxes of Peacebuilding* (pp. 3–18). McGill-Queen's University Press. Retrieved from <http://www.jstor.org/stable/j.ctt801j8.6>.

17 See 19; See 15

It becomes essential to establish effective coordination mechanisms among donors and between donors and national stakeholders.¹⁸ The international community can also play a vital role in mediating between election stakeholders and in ensuring that international electoral standards are acceptably met.¹⁹ Finally, it is vital for the international community to commit to support post-conflict electoral processes beyond the first electoral events in the transition; experience shows that the essential conditions for electoral processes that meet minimum international standards cannot be established in the short term in post-conflict societies.

Based on his study of post-conflict elections in 14 countries, Rafael López-Pintor concludes that the following ten “conditions and circumstances” are essential for those elections to be credible:²⁰

- “Peace, security, and political trust are the main requirements for the effective conduct of elections, and elections are necessary for a working democracy. Therefore, a first priority of the international community should be to work to advance those requirements. Former combatants must effectively demobilize and disarm before elections can be held. International actors should give special consideration to setting an election date, as well as developing adequate legal, administrative, and technical infrastructures for elections.
- “Ownership of elections by former combatants should be ensured. The political will for elections must exist among contenders, whether emerging from honest democratic convictions, a fear of the adversary, or as a matter of convenience. The risk of not joining or of withdrawing must be minimized. Even with elections being decided as merely an exit strategy to protracted warfare, they will not pay off if a high risk exists of reverting to civil war or of generating a power vacuum.
- “Ensuring that a minimum state administration is in place throughout the territory is a decisive factor for the proper conduct of the entire election operation.
- “Assisting in the production of a legal framework should emphasize all-inclusiveness of eligible voters as well as political parties and candidates. Political contenders should reach a consensus on major electoral issues. In this respect, certain initiatives by elites should be viewed with suspicion as unfavorable to free and transparent election.
- “Establishing an independent electoral authority. It must be inclusive, or at least open to the voice of political contenders ... Help in developing an electoral administration should

18 López-Pintor, R. (2005). *Postconflict Elections and Democratization: An Experience Review* (Issue Paper No. 8). Retrieved from: http://pdf.usaid.gov/pdf_docs/PNADB897.pdf.

19 Krishna Kumar and Marina Ottaway, “General Conclusions and Priorities for Policy Research,” in Krishna Kumar (ed.), *Post conflict Elections, Democratization, and International Assistance*, (Lynne Rienner, 1998), p. 230.

20 See 19. There is a similar list in Kumar and Ottaway, “General Conclusions and Priorities for Policy Research,” pp. 234-235, who add the need for “A working consensus among the former warring parties about national boundaries, the structure and functioning of the government, and relations between national and subnational units ... if there is no working consensus on the essential outlines of a system of government, it is unlikely the losers will accept election results ... If the parties cannot reach such basic consensus, international assistance cannot fill the gap.” (p. 234).

concentrate on enhancing its capacity for neutrality and professionalism, no matter how the EMB [election management body] is staffed.

- “Every effort should be made to ensure that whatever progress towards achieving inclusiveness was made for the inaugural elections is not later limited by shallow, inefficient, or corrupt electoral authorities. Just as voter and party registration create the gateway for enfranchisement and freedom of choice, so do voting and counting procedures create access to actual citizen representation.
- “Voter registration is the most expensive single item in an electoral budget. Therefore, building up of initial voter registries should be planned with a long-term perspective to facilitate further updating.
- “Regarding logistics and administration, local capacity to efficiently conduct elections should not be underestimated. Where basic requirements for security and political trust are met, material and procedural aspects of elections should, to the extent possible, be left to local agents. Domestic actors should depend as much as possible on local resources, both material and administrative. The international community should put greater emphasis on ensuring the political and security conditions for freedom than on the material arrangements for elections.
- “Smaller, longer term, strategically minded international observer missions are proving more effective as a support tool for democratization than former grand-style observers being deployed on polling days ... International observers better contribute to transparency and fairness by broadening the scope of observation, both in time (before, during, and after polling day) and in the realm of observation.
- “International support for domestic monitors will further ensure the democratic quality of elections. They have proved to play an important role in ensuring transparency and confidence in the electoral process, and to be able to follow up the democratic process after elections.”

As noted in Section 1 above, there will be significant uncertainties about the form, timing and duration of Yemen’s transition process until the details of the political settlement are known. It can be expected that the agreement will include terms that could serve as an interim constitution pending later agreement on these details.²¹ It is also common for such agreements to set a timetable for the first post-conflict elections, although experience shows that these elections tend to be actually held “months or years after the date set by the accords.”²²

Security Council Resolution 2216 envisages a referendum on a new constitution followed by general elections, which would include parliamentary elections, a presidential election if a presidential system of

21 Eight of the 14 peace accords analyzed by Lopez-Pintor included “much detail” about electoral provisions. López-Pintor, *Postconflict Elections and Democratization*, p. 6.

22 López-Pintor, *Postconflict Elections and Democratization*, p. 6.

government is adopted, and elections for sub-national representative bodies such as regional, governorate, and local councils.

Since a new constitution will embody the terms of the political settlement, it is likely that a referendum will be the first electoral event to be held in a post-conflict Yemen. It also seems likely that the draft constitution published in January 2015 will be the starting point for discussions about a new constitution, although it is not clear how much the draft will change due to the Houthis' objections²³ or to Hirak's involvement.

The experience of the National Dialogue Conference (NDC) suggests that it will take some time to resolve these matters. In the unlikely event that consensus and a new draft constitution can be achieved quickly, it is not realistic to expect that a constitutional referendum held in accordance with acceptable electoral standards could be held for at least 12 months after that consensus is achieved, and probably longer. This will be discussed in greater detail in the following section. Political, popular and international donors' expectations are likely to be high and will need careful management.

The draft constitution published in January 2015 refers to nine types of elections: presidential, federal House of Representatives (HoR), the Federal Council (FC), regional Parliaments, Sana'a City Council, Sana'a City Mayor, Aden City Council, Aden City Governor, and District Councils. Article 421 establishes an 18-month timeframe to simultaneously conduct the federal HoR, FC, and the HoR elections in each region within one year of the constitution coming into force. Article 421 also requires "preparation" for the presidential and local elections to be undertaken within six months of the announcement of the results of those elections.

The change in Yemen's circumstances since the draft constitution was published means that this 18-month timeframe to hold all elections is extremely short. This could create major risks for the integrity of Yemen's transitional electoral processes, and hence for the transition itself. As noted in Section 4, it may be possible to hold the first elections 12 to 15 or more months after the new constitution comes into force. This would allow time to enact and implement new legislation,²⁴ and update the voter register. In accordance with the statutory timetable the presidential and Local Council elections could follow six to nine months after the legislative elections are completed. Alternatively, the initial election load could be reduced in order to allow more time for preparations and provide a training ground for new parties and

23 Abdulmalik al-Houthi, the spiritual leader of the Houthi movement, repudiated the draft constitution prior to its public release citing the federal regions as the main reason. This public rejection preempted the public consultation period envisioned by the National Dialogue Secretariat effectively hijacking the opportunity for citizen engagement in a transparent, open review process.

24 Unless it is agreed that the TG can legislate by decree before a new HoR is elected under the new constitution, the current House (elected in 2003) would need to enact any legislative changes needed to prepare for the constitutional referendum and subsequent elections. It is not certain that using the existing HoR would be acceptable to the Houthis or to Hirak.

politicians. For example, some stakeholders might wish to hold regional parliamentary elections first, followed by HoR and FC elections, and then presidential and local elections.²⁵

3. Electoral Issues in a Post-Conflict Yemen

Yemen's last electoral event was the unopposed consensus election of President Hadi in February 2012 after former President Saleh stepped down, as required by the GCC Agreement. Prior to that, Yemen held simultaneous presidential and Local Council elections in September 2006. The last election for the HoR was held in April 2003, ten years after the first HoR elections in the newly unified country.

The terms of the political settlement will be a major determinant of the nature and timing of the electoral events in Yemen's continuing transition. If the five tiers of government (the federal level, the regions, Sana'a city and Aden city, the *wilaya*, and local districts) specified in the draft constitution are left largely intact, the electoral arrangements proposed in the draft are also likely to survive. On the other hand, these arrangements will need to be revised if there is a wholesale renegotiation of the structure of the state and the government, and the political settlement may establish a further consultative and negotiating process to resolve these and similar issues. Some of the results of that process may apply only to the initial electoral events such as the constitutional referendum and the first elections held under it, with any further changes being made by those elected at the elections. In consideration of these uncertainties, however, the following sections discuss in general terms the electoral issues that could arise during the transition.

(a) Electoral laws

Yemen's current election laws cover presidential, parliamentary, Local Council elections, referendums, and the formation and regulation of political parties. A referendum on a new constitution could be held under the existing law (Law No. 13 of 2001). Once a new constitution has been approved, legislative changes to the election law and political party law will be required prior to conducting subsequent elections if the electoral provisions in the new constitution include the kinds of changes foreshadowed in the draft issued in January 2015, such as changes to the membership of the HoR, the electoral system, gender representation, election of the FC, regional Parliaments, and the composition of the election management body, the Supreme Commission for Elections and Referendum (SCER). The 2015 draft

25 There is an argument that holding local elections first in post-conflict situations "is probably the best way to encourage the development of party politics and to inculcate voters in the routines of electoral politics"; Reilly, "Electoral Assistance and Post-Conflict Peacebuilding", p. 11; see also 27. Reilly, B. (2011). *Understanding Elections in Conflict Situations*. In D. Gillies (Ed.), *Elections in Dangerous Places: Democracy and the Paradoxes of Peacebuilding* (pp. 8-10). McGill-Queen's University Press. Retrieved from <http://www.jstor.org/stable/j.ctt801j8.6>; López-Pintor, R. (2005). *Postconflict Elections and Democratization: An Experience Review* (Issue Paper No. 8). Retrieved from: http://pdf.usaid.gov/pdf_docs/PNADB897.pdf: "The elites in transition societies perceive local elections as more politically sensitive and risky than national elections. The decision for local elections to follow national elections may be based on profound political considerations or perhaps for the public good. Sometimes, though, the decision is based more on the selfish interests of the elites, who tend to see local elections [as] a second priority, after national elections."

constitution requires that any changes to electoral laws are considered by a new Federal Constitutional Court.

(b) Election administration

The SCER has a long history of successfully conducting elections in Yemen, albeit with significant financial and technical support from donors and international NGOs. Article 289 of the 2015 draft constitution calls for the SCER to be replaced by the Independent Elections and Referendum Authority (IERA) responsible for the “administration and organization of referenda and general elections in the Republic.” The IERA (and other independent institutions) would be appointed by a two-thirds majority of the Federal Council, meaning that the SCER would remain the responsible body for conducting the constitutional referendum and parliamentary elections.²⁶

It is likely that the SCER is no longer functioning due to the ongoing conflict. Given the SCER’s responsibility for conducting the constitutional referendum and parliamentary elections, reestablishing the SCER’s pre-conflict capacity must be a priority following a political settlement. However, the politically-contentious issue of the composition of the SCER until the parliamentary elections are completed will need to be settled. Before its reappointment in 2012, the SCER Commissioners were regarded as representatives of political parties, with the General People’s Congress (GPC) holding the majority of seats compared to those aligned to the parties of the Joint Meeting Parties (JMP) coalition. Relations between the GPC and JMP representatives deteriorated badly following JMP accusations of political bias in decisions made by the majority aligned to the GPC, to the point where the SCER was hardly functioning. In December 2012, the party representatives were replaced by judges (including the first women Commissioners), whose constitutional independence improved perceptions of the SCER’s independence and impartiality.

In light of the improved public and political perceptions of the SCER since the appointment of the judicial members, it is clear that this approach is advisable for the SCER during the transition.²⁷ Important political issues will be decided and a new electoral system will be introduced during this time, and it is essential that the public and political parties trust the integrity and effectiveness of election administration. In order to build that trust, consideration should be given to improving the transparency of the SCER by allowing each registered political party to appoint a representative as a non-voting member who is entitled to receive all meeting papers and to attend and speak at all SCER meetings but not to vote on any matter. That arrangement could then end after the parliamentary elections when the members of the SCER’s successor are appointed in accordance with the new constitution.

²⁶ Article 283 of Section 5, Chapter III of the draft Constitution.

²⁷ The importance of stability and continuity during the transition and the need to take advantage of institutional knowledge in the SCER means that it would be particularly advantageous if the judges who had experience as SCER Commissioners before the war and SCER staff at all levels are willing to continue in their roles during the transition. Although in some post-conflict countries (e.g., Iraq and Afghanistan) an international body has been established to formally oversee the local EMB, the past performance and reputation of the SCER suggest this would not be necessary unless it proves incapable of regaining its pre-conflict capacity and standing.

Additionally, there are several administrative and operational issues that will need to be addressed immediately. It is expected that the SCER staff in Sana'a and in the governorate branch offices will need to be reassembled and new appointments made. Much of the infrastructure on which the SCER relies (e.g. electricity, supplies, state services, financial services, transport, and communications) – even in a non-election period – must be restored, and it will take considerable time for that infrastructure to be sufficiently restored to allow the SCER to prepare for and carry out a constitutional referendum. SCER buildings in Sana'a and the branch offices will have to be assessed and may need to be repaired or rebuilt or new premises found prior to any electoral event, although the extent of those needs are not known at the time of writing.

The 2015 draft constitution proposes that members of both houses of the federal Parliament, the regional Parliaments, the City Councils in Sana'a and Aden, and the District Councils will be elected by party list proportional representation.²⁸ There are specific quotas for the representation of women (30%) and youth (20%). The draft constitution does not specify whether elections to the 260-seat federal HoR will be based on constituencies or, if so, how the numbers of seats will be allocated between constituencies. The draft constitution established six federal regions, each represented by 12 members elected from each of the six regions plus six members representing Sana'a city and six representing Aden city in the Federal Council. Changes to the parliamentary electoral process such as these will have obvious implications for the work of the SCER; typically there should be at least 12 months between the final passage of electoral legislation and conducting an electoral event under that new legislation. The SCER and political parties will need time to finalize and adopt electoral procedures, regulations, and by-laws; develop training programs and manuals for employees; appoint and train election and security committees; and prepare voter education materials campaigns concerning the new legislation.²⁹ They will also have to ensure that their stakeholders are informed about the changes and about their respective rights and responsibilities.

(c) Voter registration

Yemen's voter registry has been a central issue in political disputes for many years, with opposition parties alleging many duplicate registrations, under-age registrations, and incomplete coverage in opposition areas. At the time the when the conflict broke out in 2014, the SCER was awaiting President Hadi's approval to begin the field phases of a project to create a new biometric voter registry (BVR),³⁰ under the Peace and National Partnership Agreement brokered by Jamal Benomar, then the Special Adviser on

28 The draft constitution specifically mentions "closed list" proportional representation only for the federal HoR, but leaves open the possibility that elections to the other bodies could be by open list. It is not clear whether this was intended or is an oversight.

29 See, for example, European Commission for Democracy Through Law (Venice Commission), *Code of Good Practice in Electoral Matters. Guidelines and Explanatory Report*, (October 2002), p. 10: "The fundamental elements of electoral law, in particular the electoral system proper, membership of electoral commissions and the drawing of constituency boundaries, should not be open to amendment less than one year before an election, or should be written in the constitution or at a level higher than ordinary law."

30 The BVR project was funded in part by USAID, with technical and material support from IFES.

Yemen to the UN Secretary-General, which was signed on September 21, 2014. Article 7 of this Agreement states:

“All constituencies shall participate in the preparations for the new biometric voter registry and the referendum on the constitution based on the new voter registry, and shall participate in the preparations and monitoring of elections according to the outcomes of the National Dialogue Conference.”

The SCER estimated at the time that, once the President’s approval was received, two to three months would be required to prepare for and conduct the nationwide BVR (e.g., appoint and train BVR committees, designate and equip registration centers, and prepare and conduct voter education programs). The SCER planned a progressive four-phase roll-out of the BVR over six to eight months before the constitutional referendum could be held. Due to the security situation, the SCER was also identifying alternative implementation options for the BVR, such as postponing implementation in areas of the country where the security situation did not allow the BVR to be conducted safely and without interference. It will be critical to the stability of the post-conflict transition that the voter register is perceived to be transparent, inclusive, and facilitative of political participation.

It seems unlikely at the time of writing that the circumstances of post-conflict Yemen would allow the SCER to conduct even a partial roll out of the BVR before a constitutional referendum, even if the SCER had the capacity and the resources to do so. The need for large-scale humanitarian aid once the conflict ends, the large numbers of persons who are internally displaced or who have left the country, and repairing the extensive damage to the country’s infrastructure will naturally take priority.

However, Yemen’s electoral law provides that the whole country is treated as one constituency in a referendum. Subject to any special majority requirements in Houthi areas and in the south for the constitutional referendum, it might be possible to use the existing voter registers, combined with prescribed forms of identification for those not on the register and/or other verification methods such as the use of indelible ink. This approach may allow domestic and international observers to confirm that the referendum was conducted to an acceptable standard in the circumstances.³¹

Once the constitution has been approved, the SCER would have time before the next elections to begin rolling out the national BVR. To that end, it will be necessary for the relevant stakeholders to assess the planning capacity of those responsible for BVR implementation; determine the extent to which the conflict has compromised the functionality of the branch offices responsible for implementing the BVR; determine

31 Article 5 of the current General Elections and Referendums Law (Law No. 13 of 2001) provides that “For purposes pertaining to presidential elections and public referenda, the Republic of Yemen shall be deemed a single electoral constituency. A voter may cast his vote at any voting center using a personal ID card, Voter Card, or any official document bearing the holder’s photograph. The Supreme Commission shall take appropriate measures to guarantee this right.” Article 11 of that law allows a voter registration committee to accept the sworn testimony of an *Akel* or an *Amin* (a community leader) that a person is of voting age. Although there are allegations that this provision has led to the registration of under-age persons, it may be possible to devise a similar procedure for allowing voters lacking the prescribed identification documents to vote in the referendum.

overall operational impacts on the offices and their ability to manage and administer future electoral events resulting from the security situation and military actions; and employ alternative approaches, such as a progressive implementation in areas of the country that cannot be included in a nationwide rollout.

(d) Voter education and information

The shortcomings of the previous transition process highlighted a deficiency by transition leaders and entities in adequately engaging the population in critical discussions and debates, such as the issue of federalism, the future of the south, and the role of the government in daily life. As a post-conflict Yemen enters a new transitional period, these conversations – along with a host of other critical issues – will resume at the national level. In order to avoid similar pitfalls, national leaders and local communities must inform citizens of key transition issues to build support for nation-building efforts stemming from the political process. Extensive international support will be needed to encourage and facilitate these interactions, particularly as the country approaches electoral benchmarks. Prior to the constitutional referendum, it will be necessary for the SCER to conduct a voter education and information campaign that covers the referendum process (including the arrangements for voter registration and voting) and the content of the new constitution at various levels of detail. Additionally, similar campaigns will need to be carried out before each subsequent election, and each will require its own voter education and information campaign strategy. For example, if a new electoral system such as closed list proportional representation is adopted, the campaigns will need to cover the method of voting and also the ways votes are translated into seats, again at various levels of detail. Voter education and information campaigns are absolutely critical to ensure that voters understand their civic role, what they are voting for, and the impact of their vote.

Previous voter education and information campaign efforts have been conducted as a combination of official campaigns by the SCER, alongside unofficial campaigns conducted by NGOs, community groups, and political parties. Both types of campaigns mostly rely on access to print, broadcast, and digital media and could not be effective if those media are not operating during the transition period. Other more localized campaigns are based on face-to-face encounters. Official and unofficial campaigns will also be important in motivating voters to participate at a time when their focus is likely to be on returning and/or rebuilding.

Voter education and information campaigns tend to be expensive, particularly where paid media advertising is used to reach mass audiences. International donors have usually been the main funders of these campaigns in Yemen, including official and unofficial campaigns targeting particular hard to reach groups such as women, youth, people with disabilities, and rural dwellers. In addition to conducting voter education and information campaigns associated with each electoral event, the SCER should develop and implement longer term non-partisan initiatives aimed at informing citizens about Yemen's system of government and the role of elections in it. It will be important that the donor community invest sufficient funds towards these efforts.

(e) Political parties

The 2015 draft constitution proposes new requirements for political parties, which will require amendment or replacement of the current law (the Parties and Political Organizations Law No. 66 of 1991). That law will, however, govern the affairs of political parties until the new constitution is passed, unless modified as a result of the political settlement.

Like other elements of Yemeni society, political parties will take time to recover their operational capacity and resume the active involvement of their leaderships, although some may participate in the peace settlement negotiations and subsequent consultations and negotiations concerning a new constitution. It is possible that new political parties could be formed as a result of the conflict (e.g., to represent the Houthis and Hirak). Political parties may also play an important role during the constitutional referendum (e.g., in informing citizens about the new constitution and the referendum process and in encouraging them to participate).

If the new constitution approved in the referendum retains a closed list proportional representation system for electing both houses of the federal Parliament, political parties will need to change their candidate selection processes accordingly. They will also need to adapt to new political and electoral incentives created by the different electoral system, as well as comply with any new statutory requirements concerning their internal organization.³² It will be critical to undertake a technical assessment of the electoral components of the current political party law prior to writing the new constitution. The assessment should include recommendations that address problem areas and gaps in the law, including issues that would emerge under a new electoral system.

(f) Domestic NGOs and Civil Society

The importance of viable domestic NGOs in voter education and mobilization campaigns has been mentioned above. These NGOs are also the mainstay of domestic election observation and monitoring programs, often funded by international donors. It is important that domestic observation programs are undertaken alongside those of international NGOs, since the latter often have difficulty in covering large parts of a country and lack the local networks and local knowledge that domestic observers have.

From an electoral point of view, then, it will be essential that Yemen's post-conflict transition includes efforts to support and reinvigorate domestic NGOs that may have gone into recess or ceased to exist

³² The draft 2015 constitution imposes a number of responsibilities on political parties, including adherence to good governance principles (Article 13(3)); reporting the results of internal elections to the IERA (Article 289); and providing public financial statements (Article 13(3)). Article 13(5) prohibits the establishment of parties on racial, sectarian or doctrinal grounds, the exploitation of religion for political ends, and prejudicing the democratic and republican system. Article 13(5) also prohibits parties from receiving foreign funding, which could affect the work of international NGOs engaged in the capacity development of parties. Political parties and organizations must "take care to ensure the representation of women and youth in their leadership bodies" (Article 13(4)). Article 13(2) prevents intervention in parties' affairs, preventing their activities or dissolution of a party "unless by a final court ruling."

during the conflict but could still contribute to the electoral process through voter education campaigns and/or by acting as domestic observers. It is to be expected, however, that after the political settlement many NGOs will be occupied with humanitarian issues.

Civil society will also play a critical post-conflict role in ensuring that disenfranchised and vulnerable populations are included in the transition process. This becomes particularly difficult in transitional environments with sectarian or regional rifts. Civil society organizations will need to be educated about the role and importance of the electoral process, including overview of the electoral system and roles and responsibilities of different stakeholders, emphasizing the importance of electoral participation and inclusion of marginalized communities. It is important that CSOs have the capacity to ensure that women, people with disabilities, and other minorities are empowered to participate in transitional political processes.

(g) Emerging leadership figures

A significant population of key government, party, and transition leaders have left the country since the start of the conflict. These departures caused a leadership vacuum inside Yemen that has offered local leaders, particularly women and youth, the opportunity to step into roles and positions of responsibility to provide basic services for neighborhoods, communities and villages. In a post-conflict environment, these leaders will require technical capacity building assistance as they are integrated into formal party, government, and transitional structures.

(h) Security issues

Security has often been a major concern vis-à-vis Yemen's elections. Those problems are likely to be magnified for electoral events held during the transition and it will be important that election security is a part of operational planning. Some parts of the armed forces loyal to former President Saleh are aligned with the Houthis and are currently fighting other parts of the armed forces loyal to President Hadi. Even if these main conflicts end, animosities between factions in the armed forces can arise which could affect a referendum or election being held at the time. In addition, Al Qaeda or the Islamic State could try to disrupt electoral processes during the transition, local militias may continue to be active, and there is always the potential for localized or tribal disputes – whether election-related or not – to escalate into armed conflict.

The disposition of the armed forces on each side of the conflict will obviously be a major part of the political negotiations to end the conflict. It is unclear at the time of this writing whether a UN or other peace-keeping force is likely to be deployed in Yemen during the transition period. Whatever decisions are made, however, it will not be possible to have an acceptable constitutional referendum or elections if they are held in very insecure conditions.

(i) Election dispute resolution

In addition to a general power to challenge SCER decisions in the courts, Article 138 of Yemen's current election law (Law No. 13 of 2001) provides for challenges and objections to be filed at various stages of the electoral process. In most cases, the initial challenge is filed directly with a specified court, such as a Court of First Instance for cases concerning registration of voters. Law No. 13 also provides for contests to be filed in specified courts against the voting and counting results of parliamentary elections, presidential elections, Local Council elections, and referenda. In each case, the decision of the court is final unless the law specifically provides for a right of appeal to a higher court.

Having a functioning, independent, and impartial judiciary is therefore essential for the electoral process. From an electoral point of view, it will be needed when the voter registration process begins. The need is likely to be less during the constitutional referendum, but it will certainly be vital for each of the subsequent elections.

Prior to the outbreak of the conflict, the SCER was developing and implementing internal procedures for receiving and determining election complaints. It was also developing training programs for members of the judiciary who would be involved in electoral cases. Both initiatives should be continued during the transition period as circumstances and resources permit, particularly in time for the parliamentary and other elections that will be held during the transition.

(j) International donors and NGOs

The financial, technical, and material support of international donors and NGOs will be crucial for the electoral events held during Yemen's post-conflict transition. They will need to obtain the approval of the TG, establish in-country offices, arrange visas for the international personnel they hire, appoint local personnel, establish liaison and coordination arrangements with others working on similar projects, and implement monitoring, evaluation and reporting procedures to the TG and their stakeholders.

It is also likely that the international community will want to send observation missions for the constitutional referendum and subsequent elections. Experience has shown that longer-term observation missions are more valuable than short-term missions in assessing the quality of an electoral event.³³ In either case, time will be needed to arrange the missions and the necessary logistics, perhaps more so for the elections than for the constitutional referendum.

33 López-Pintor, *Postconflict Elections and Democratization*, p. 22: "Smaller, longer term, strategically minded international observer missions are proving more effective as a support tool for democratization than former grand-style observers being deployed on polling days ... International observers better contribute to transparency and fairness by broadening the scope of observation, both in time (before, during, and after polling day) and in the realm of observation. That is, they should assess the legal framework, the conduct of voter registration, campaign activities and expenditures, access to media, the polling operation, counting and announcement of results, and the system of complaints adjudication."

4. Indicative Timeframe and Priorities for Elections in Post-Conflict Yemen

In general terms, a broad roadmap of electoral events during Yemen's transition can be established based on the following assumptions: a political settlement has resulted in agreements on the form of the Yemeni state and on the distribution of power within it; and that an agreed-upon TG has been established and is positioned to carry out the transition to that state and to oversee the reconstruction of the country and its institutions. The following is an indicative list of phases, durations, and electoral priorities for this process based on the outline on Page 2 of Security Council Resolution 2216 quoted in Section 1 of this briefing paper, the transitional arrangements proposed in the draft 2015 constitution, and assuming simultaneous presidential and Local Council elections as in 2006. It is, of course, possible that a different election sequence could be agreed in a political settlement.

(a) Phase 1: from the final political settlement to a constitutional referendum

Indicative duration:

Twelve to 18 months after the final political settlement, depending on the security situation and the pace of reconstruction, social and humanitarian relief, and resettlement of displaced persons.

Objective:

The objective during Phase 1 is to establish the conditions for a credible referendum on a new constitution that has emerged from the political negotiations. The TG will be responsible for some of those conditions (principally reconstruction, social conditions and security), whereas others will fall within the SCER's mandate.

Main electoral priorities:

- Re-establish the SCER's capacity (e.g. Commissioners, HQ and branch premises and staff, communications, election supplies, voter registration and election committees);
- Ensure TG and political stakeholders have access to technical advice on the electoral provisions in the new constitution;
- Decide and implement appropriate voter registration provisions for the constitutional referendum, including those that allow displaced persons to vote;
- Enact any necessary changes to existing election laws;
- Advise the TG on whether the security situation in different parts of the country will permit a credible referendum to be held;
- Design and implement voter education programs on the new constitution and the referendum process;
- Support the re-establishment of political parties;

- Support the re-establishment of those domestic NGOs that can contribute to voter education and information programs and to observation of the referendum; and
- Enable international donors and NGOs to re-establish in-country with international and local staff as needed.

(b) Phase 2: from the constitutional referendum to parliamentary and regional elections (including those for the Sana'a and Aden Councils)

Indicative duration:

Twelve to 15 months after the new constitution is approved in the referendum, depending on the security situation, the time needed to pass amendments to electoral laws and for the SCER, or its successor, to make consequential changes to its operations, and the time needed to register voters.

Objective:

The objective in Phase 2 is to build on the experience of the constitutional referendum so that legislative elections can be held to acceptable standards in the circumstances.

Main electoral priorities:

- Enact any necessary changes to existing election laws according to the electoral provisions of the new constitution, with technical advice as needed;
- Manage the transition from the SCER to its successor and continue to build the new election management body's (EMB) technical and professional capacity;
- Allocate seats to legislative constituencies and delimit the constituencies as needed;
- Advise the TG on whether the security situation in different parts of the country will permit credible elections to be held;
- Implement BVR in areas where this is feasible, and update the voter registers in other areas as needed;
- Design and implement voter education and information programs on the legislative electoral systems and the voting process;
- Support the development of political parties and assist them to adapt to a new electoral system;
- Support the role of the judiciary in relation to elections;
- Support domestic NGOs to carry out voter education and information programs; and
- Arrange for international and domestic observation of the legislative elections.

(c) Phase 3: from legislative elections to presidential and Local Council elections

Indicative duration:

Six to nine months after the legislative elections, depending on the security situation in different parts of the country and the lead time the SCER's successor needs to prepare for elections for a large number of Local Councils. This may also require an update to the voter registry prior to the presidential or Local Council elections.

Objective:

The objective in Phase 3 is to build on the experience of the legislative elections so that presidential and Local Council elections can be held to an acceptable standard in the circumstances.

Priorities:

- Enact any necessary changes to existing election laws according to the electoral provisions of the new constitution, with technical advice as needed;
- Ensure the EMB has the capacity and resources to conduct the elections;
- Allocate seats and delimit Local Council constituencies as needed;
- Assess whether the security situation in different parts of the country will permit credible elections to be held;
- Complete implementation of BVR where feasible, and update the voter registers as needed;
- Design and implement voter education and information programs on the presidential and Local Council elections and the voting process;
- Continue to support the development of political parties and assist them to adapt to a new electoral system;
- Continue to support the role of the judiciary in relation to elections;
- Support domestic NGOs to carry out voter education and information programs; and
- Arrange for international and domestic observation of the elections.

(d) Phase 4: after the first transitional electoral cycle has been completed

There should be an external assessment of the performance and capacity of the EMB after the first transitional electoral cycle has been completed in order to identify areas that will continue to need international support during the second electoral cycle. The objective of that continuing support should be to increase local capacity, knowledge, expertise and resources to gradually replace those provided by international donors, according to the situation in Yemen.

5. Conclusions

Yemen has a history of holding elections that, despite some significant issues, have largely been evaluated in positive terms.³⁴ Prior to this conflict, Yemen had functioning political parties and an active civil society sector. Although the terms of a political settlement that will end the conflict in Yemen are not known at the time of writing, the “conditions and circumstances” for credible post-conflict elections outlined in Section 2 of this briefing paper and the electoral issues discussed in the Section 3 suggest that any attempts to hold a constitutional referendum or general elections before those conditions are fulfilled would carry great risks and should be resisted by international donors and NGOs. The indicative timeframes outlined in Section 4 suggest that the first transitional electoral cycle could take at least two and a half years and perhaps a year or longer. If this means a longer period of transitional government, that should be seen as an acceptable consequence of a bitter, brutal, and divisive civil war and its accompanying humanitarian crisis.

While international donors and NGOs might regard a constitutional referendum and subsequent elections as indicating a return to politics as normal, it is likely that whatever political settlement emerges from the negotiations to end the conflict will remain fragile for some time afterwards. International support for Yemen’s transition will therefore be necessary in the medium to longer term – not just in relation to elections but in order to meet the economic, governmental, and social needs of a people ravaged by war. Depending on how the first transitional electoral cycle evolves and final decisions about legislative and presidential terms of office,³⁵ the initial commitment of the international community is likely to need to be for at least seven years, and possibly more according to the circumstances.

34 See, for example, the Final Report of the European Union’s Election Observation Mission on the 2006 presidential and local council elections (p. 1): “In spite of the geographical, logistical and security challenges found in Yemen, the Supreme Commission for Elections and Referendum (SCER) administered the elections efficiently and campaign activities took place across the whole country. These significant and positive developments, however, must be weighed against a series of fundamental and systemic weaknesses within Yemen’s political and administrative structures that undermined the democratic nature of key aspects of the electoral process. In particular, the results process lacked credibility to the extent that it was not possible to have confidence in the accuracy of the final results, State resources were used unfairly by incumbents and women were comprehensively excluded from the process.”

35 The draft 2015 constitution specifies a five-year presidential term and a four-year term for the federal and regional legislatures and for the Sana’a and Aden City Councils. No term is specified for the District Councils. This means that the relative timing of presidential and legislative elections will only repeat every 20 years. The legislative elections will at times be held just before the presidential elections, sometimes just after, and sometimes mid-term. This is confusing and could have unintended consequences. The incentives and political dynamics in the relationship between the presidency and the legislature will vary, making it more difficult to consolidate a political system in which voters and participants can predict the effects of their actions – which may impact negatively on the long term stability of that system.

Annex 1: UN Security Council resolution 2216 (2015)³⁶

Adopted by the Security Council at its 7426th meeting, on 14 April 2015

Security Council,

Recalling its resolutions 2014 (2011), 2051 (2012), 2140 (2014), 2201 (2015), and 2204 (2015) and presidential statements of 15 February 2013, 29 August 2014, and 22 March 2015,

Noting the letter dated 24 March 2015 from the Permanent Representative of Yemen, to the United Nations, transmitting a letter from the President of Yemen, in which he informed the President of the Security Council that “he has requested from the Cooperation Council for the Arab States of the Gulf and the League of Arab States to immediately provide support, by all necessary means and measures, including military intervention, to protect Yemen and its people from the continuing aggression by the Houthis”, and *noting* the letter dated 26 March 2015 from the Permanent Representative of the State of Qatar, [S/2015/217](#), transmitting a letter from the Representatives of the Kingdom of Bahrain, the State of Kuwait, the State of Qatar, the Kingdom of Saudi Arabia and the United Arab Emirates,

Recalling the resolution of Summit XXVI of the League of Arab States on the developments in Yemen, stressing inter alia the necessity to resume Yemen’s political transition process with the participation of all Yemeni parties in accordance with the Gulf Cooperation Council Initiative and its Implementation Mechanism and the outcomes of the comprehensive National Dialogue conference,

Reaffirming its strong commitment to the unity, sovereignty, independence and territorial integrity of Yemen, and its commitment to stand by the people of Yemen,

Condemning the growing number of and scale of the attacks by Al-Qaida in the Arabian Peninsula (AQAP),

Expressing concern at the ability of AQAP to benefit from the deterioration of the political and security situation in Yemen, mindful that any acts of terrorism are criminal and unjustifiable regardless of their motivation, whenever, wherever and by whomsoever committed,

Reiterating its support for the efforts of the Gulf Cooperation Council in assisting the political transition in Yemen and *commending* its engagement in this regard,

³⁶ UN Security Council, Security Council resolution 2216 (2015) [On Cessation of Violence in Yemen and the Reinforcement of Sanctions Imposed by Resolution 2104 (2014)] , 14 April 2015, S/RES/2216 (2015), available at: <http://www.refworld.org/docid/553deebc4.html> [accessed 8 March 2016].

Reaffirming its support for the legitimacy of the President of Yemen, Abdo Rabbo Mansour Hadi, and *reiterating its call* to all parties and Member States to refrain from taking any actions that undermine the unity, sovereignty, independence and territorial integrity of Yemen, and the legitimacy of the President of Yemen,

Expressing grave alarm at the significant and rapid deterioration of the humanitarian situation in Yemen, and *emphasizing* that the humanitarian situation will continue to deteriorate in the absence of a political solution,

Recalling that arbitrary denial of humanitarian access and depriving civilians of objects indispensable to their survival, including wilfully impeding relief supply and access, may constitute a violation of international humanitarian law,

Emphasizing the need for the return to the implementation of the Gulf Cooperation Council Initiative and its Implementation Mechanism and the outcomes of the comprehensive National Dialogue conference, including drafting a new constitution, electoral reform, the holding of a referendum on the draft constitution and timely general elections, to avoid further deterioration of the humanitarian and security situation in Yemen,

Reaffirming its full support for, and commitment to, the efforts of the United Nations and the Special Adviser of the Secretary-General on Yemen, in particular to the UN-brokered negotiations, and its support for the efforts of the Group of Ambassadors in Sana'a,

Alarmed at the military escalation by the Houthis in many parts of Yemen including in the Governorates of Ta'iz, Marib, AlJauf, Albayda, their advance towards Aden, and their seizure of arms, including missile systems, from Yemen's military and security institutions,

Condemning in the strongest terms the ongoing unilateral actions taken by the Houthis, and their failure to implement the demands in resolution 2201 (2015) to immediately and unconditionally withdraw their forces from government institutions, including in the capital Sana'a, normalize the security situation in the capital and other provinces, relinquish government and security institutions, and safely release all individuals under house arrest or arbitrarily detained, and *reiterating* its call on all non-State actors to withdraw from government institutions across Yemen and to refrain from any attempts to take over such institutions,

Deploring any attempt by the Houthis to take actions that are exclusively within the authority of the legitimate Government of Yemen, and *noting* that such actions are unacceptable,

Expressing alarm that such actions taken by the Houthis undermine the political transition process in Yemen, and jeopardize the security, stability, sovereignty and unity of Yemen,

Noting with concern the destabilizing actions taken by the former President of Yemen, Ali Abdullah Saleh, including supporting the Houthis' actions, which continue to undermine the peace, security and stability of Yemen,

Welcoming the intention of the Gulf Cooperation Council to convene a conference in Riyadh, upon the request of the President of Yemen, with the participation of all Yemeni parties to further support the political transition in Yemen, and to complement and support the UN-brokered negotiations,

Recalling its resolution 2117 (2013) and expressing grave concern at the threat to peace and security in Yemen arising from the illicit transfer, destabilising accumulation and misuse of small arms and light weapons,

Recognizing that the continuing deterioration of the security situation and escalation of violence in Yemen poses an increasing and serious threat to neighbouring States and *reaffirming its determination* that the situation in Yemen constitutes a threat to international peace and security,

Acting under Chapter VII of the Charter of the United Nations,

1. *Demands* that all Yemeni parties, in particular the Houthis, fully implement resolution 2201 (2015), *refrain* from further unilateral actions that could undermine the political transition in Yemen, and *further demands* that the Houthis immediately and unconditionally:

- (a) end the use of violence;
- (b) withdraw their forces from all areas they have seized, including the capital Sana'a;
- (c) relinquish all additional arms seized from military and security institutions, including missile systems;
- (d) cease all actions that are exclusively within the authority of the legitimate Government of Yemen;
- (e) refrain from any provocation or threats to neighbouring States, including through acquiring surface-surface missiles, and stockpiling weapons in any bordering territory of a neighbouring State;
- (f) safely release Major-General Mahmoud al-Subaihi, the Minister of Defence of Yemen, all political prisoners, and all individuals under house arrest or arbitrarily detained; and
- (g) end the recruitment and use of children and release all children from their ranks;

2. *Requests* the Secretary-General to report on the implementation of this resolution and resolution 2201 (2015), in particular paragraph 1 of this resolution, in 10 days from the adoption of this resolution; and in case of further non-implementation, *expresses* its intent to consider designating additional individuals and entities who are engaged in or providing support for acts that threaten the peace, security or stability of Yemen, to be subject to the measures imposed by paragraphs 11 and 15 of resolution 2140 (2014);

3. *Decides* that the individuals listed in the annex of this resolution shall be subject to the measures imposed by paragraphs 11 and 15 of resolution 2140 (2014);

4. *Reiterates* the importance of the implementation of all measures imposed by resolution 2140 (2014), as extended in resolution 2204 (2015);

5. *Calls upon* all Yemeni parties, in particular the Houthis, to abide by the Gulf Cooperation Council Initiative and its Implementation Mechanism, the outcomes of the comprehensive National Dialogue conference, and the relevant Security Council resolutions and to resume and accelerate inclusive United Nations-brokered negotiations, including on issues relating to governance, to continue the political transition in order to reach a consensus solution and *stresses* the importance of full implementation of agreements reached and commitments made towards that goal and *calls on* the parties, in this regard, to agree on the conditions leading to an expeditious cessation of violence, in accordance with the United Nations Charter and relevant Security Council resolutions, including this resolution and resolution 2201 (2015);

6. *Demands* that all Yemeni parties adhere to resolving their differences through dialogue and consultation, reject acts of violence to achieve political goals, and refrain from provocation and all unilateral actions to undermine the political transition and *stresses* that all parties should take concrete steps to agree and implement a consensus-based political solution to Yemen's crisis in accordance with the Gulf Cooperation Council Initiative and its Implementation Mechanism and the outcomes of the comprehensive National Dialogue conference;

7. *Urges* all Yemeni parties to respond positively to the request of the President of Yemen to attend a conference in Riyadh, under the auspices of the Gulf Cooperation Council, to further support the political transition in Yemen, and to complement and support the UN-brokered negotiations;

8. *Calls on* all parties to comply with their obligations under international law, including applicable international humanitarian law and human rights law;

9. *Reaffirms*, consistent with international humanitarian law, the need for all parties to ensure the safety of civilians, including those receiving assistance, as well as the need to ensure the security of humanitarian personnel and United Nations and its associated personnel, and *urges* all parties to facilitate the delivery of humanitarian assistance, as well as rapid, safe and unhindered access

for humanitarian actors to reach people in need of humanitarian assistance, including medical assistance;

10. *Calls on* all parties to facilitate the evacuation by concerned States and international organizations of their civilians and personnel from Yemen and *commends* steps already taken in this regard;

11. *Reaffirms* the principle of the inviolability of diplomatic and consular premises and the obligations of host Governments, including under the 1961 Vienna Convention on Diplomatic Relations and under the 1963 Vienna Convention on Consular Relations, to take all appropriate steps to protect diplomatic and consular premises against any intrusion or damage, and to prevent any disturbance of the peace of these missions or impairment of their dignity;

12. *Requests* the Secretary-General to intensify his efforts in order to facilitate the delivery of humanitarian assistance and evacuation, including the establishment of humanitarian pauses, as appropriate, in coordination with the Government of Yemen, and *calls on* Yemeni parties to cooperate with the Secretary-General to deliver humanitarian aid to those in need;

13. *Further requests* the Secretary-General to intensify his good offices role in order to enable a resumption of a peaceful, inclusive, orderly and Yemeni-led political transition process that meets the legitimate demands and aspirations of the Yemeni people, including women, for peaceful change and meaningful political, economic and social reform, as set out in the Gulf Cooperation Council Initiative and Implementation Mechanism and the outcomes of the comprehensive National Dialogue conference, and *stresses* the importance of the United Nations' close coordination with international partners, in particular the Gulf Cooperation Council, Group of Ambassadors in Sana'a, and other actors, in order to contribute to a successful transition;

Arms embargo

14. *Decides* that all Member States shall immediately take the necessary measures to prevent the direct or indirect supply, sale or transfer to, or for the benefit of Ali Abdullah Saleh, Abdullah Yahya Al Hakim, Abd Al-Khaliq Al-Huthi, and the individuals and entities designated by the Committee established pursuant to paragraph 19 of resolution 2140 (2014) (hereinafter referred to as "the Committee") pursuant to paragraph 20 (d) of this resolution, the individuals and entities listed in the annex of this resolution, and those acting on their behalf or at their direction in Yemen, from or through their territories or by their nationals, or using their flag vessels or aircraft, of arms and related materiel of all types, including weapons and ammunition, military vehicles and equipment, paramilitary equipment, and spare parts for the aforementioned, and technical assistance, training, financial or other assistance, related to military activities or the provision, maintenance or use of any arms and related materiel, including the provision of armed mercenary personnel whether or not originating in their territories;

15. *Calls upon* Member States, in particular States neighbouring Yemen, to inspect, in accordance with their national authorities and legislation and consistent with international law, in particular the law of the sea and relevant international civil aviation agreements, all cargo to Yemen, in their territory, including seaports and airports, if the State concerned has information that provides reasonable grounds to believe the cargo contains items the supply, sale, or transfer of which is prohibited by paragraph 14 of this resolution for the purpose of ensuring strict implementation of those provisions;

16. *Decides* to authorize all Member States to, and that all Member States shall, upon discovery of items the supply, sale, or transfer of which is prohibited by paragraph 14 of this resolution, seize and dispose (such as through destruction, rendering inoperable, storage or transferring to a State other than the originating or destination States for disposal) of such items and *decides* further that all Member States shall cooperate in such efforts;

17. *Requires* any Member State when it undertakes an inspection pursuant to paragraph 15 of this resolution, to submit promptly an initial written report to the Committee containing, in particular, explanation of the grounds for the inspections, the results of such inspections, and whether or not cooperation was provided, and, if prohibited items for supply, sale, or transfer are found, further *requires* such Member States to submit to the Committee within 30 days a subsequent written report containing relevant details on the inspection, seizure, and disposal, and relevant details of the transfer, including a description of the items, their origin and intended destination, if this information is not in the initial report;

Additional designation criteria

18. *Reaffirms* the designation criteria set out in paragraph 17 of resolution 2140 (2014), the measures imposed by paragraphs 11 and 15 of the same and *stresses* the importance of their full implementation;

19. *Reaffirms* paragraph 18 of resolution 2140 (2014), and *underscores* that acts that threaten the peace, security, or stability of Yemen may also include the violations of the arms embargo imposed by paragraph 14 or obstructing the delivery of humanitarian assistance to Yemen or access to, or distribution of, humanitarian assistance in Yemen;

Mandate of the Sanctions Committee

20. *Decides* that the Committee established pursuant to paragraph 19 of resolution 2140 (2014) shall also undertake the following tasks:

(a) monitoring implementation of the measures imposed in paragraph 14 of this resolution;

(b) seeking from all States whatever information it may consider useful regarding the actions taken by them to implement effectively the measures imposed by paragraph 14 above;

(c) examining and taking appropriate action on information regarding alleged non-compliance with the measures contained by this resolution;

(d) designating as may be necessary additional individuals and entities subject to the measures imposed by paragraph 14 above;

Mandate of the Panel of Experts

21. *Decides* that the mandate of the Panel of Experts established pursuant to paragraph 21 of resolution 2140 (2014) and renewed by resolution 2204 (2015) shall also include monitoring implementation of the measures imposed by paragraph 14;

22. *Requests* the Secretary-General, having due regard for the increased mandate of the Panel of Experts, to increase the Panel to five members, and make the necessary financial and security arrangements to support the work of the Panel;

23. *Calls upon* the Panel of Experts to cooperate actively with other Panels or Groups of Experts established by the Security Council, including the 1267 Monitoring Team, as relevant to the implementation of their mandate;

Commitment to review

24. *Reaffirms* its readiness to take further measures in case of non-implementation by any Yemeni party of this resolution and resolution 2201 (2015);

25. *Decides* to remain actively seized of the matter.

Annex

1. Abdulmalik al-Houthi

Abdul Malik al Houthi is a leader of a group that has engaged in acts that threaten the peace, security, or stability of Yemen.

In September 2014, Houthi forces captured Sanaa and in January 2015 they attempted to unilaterally replace the legitimate government of Yemen with an illegitimate governing authority that the Houthis dominated. Al-Houthi assumed the leadership of Yemen's Houthi movement in 2004 after the death of his brother, Hussein Badredden al-Houthi. As leader of the group, al-Houthi has repeatedly threatened Yemeni authorities with further unrest if they do not respond to his demands and detained President Hadi, Prime Minister, and key cabinet members. Hadi

subsequently escaped to Aden. The Houthis then launched another offensive towards Aden assisted by military units loyal to former president Saleh and his son, Ahmed Ali Saleh.

2. Ahmed Ali Abdullah Saleh

Ahmed Ali Saleh has engaged in acts that threaten the peace, security, and stability of Yemen.

Ahmed Ali Saleh has been working to undermine President Hadi's authority, thwart Hadi's attempts to reform the military, and hinder Yemen's peaceful transition to democracy. Saleh played a key role in facilitating the Houthi military expansion. As of mid-February 2013, Ahmed Ali Saleh had issued thousands of new rifles to Republican Guard brigades and unidentified tribal shaykhs. The weapons were originally procured in 2010 and reserved to purchase the loyalties of the recipients for political gain at a later date.

After Saleh's father, former Republic of Yemen President Ali Abdullah Saleh, stepped down as President of Yemen in 2011, Ahmed Ali Saleh retained his post as commander of Yemen's Republican Guard. A little over a year later, Saleh was dismissed by President Hadi but he retained significant influence within the Yemeni military, even after he was removed from command. Ali Abdullah Saleh was designated by the UN under UNSCR 2140 in November 2014.
