Land and Transitional Justice in Yemen

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The land issue in the countries of the Arab Spring remains one of the most controversial topics in the process toward national reconciliation by the previous ruling parties. This legacy is still the subject of heated debate and ongoing conflict, and much work remains to be done to address that particular issue in Yemen.

Land has been a central component to the ongoing conflict and power struggles throughout Yemen, particularly in the provinces of al-Hudayda (west), Lahij (south) and Sa’da (north). From a lack of a transparent land registry, conflicting systems of tenure, tribal claims, land grabbing and corruption, reaching national reconciliation requires redress of land disputes. The current transitional justice process underway in Yemen is at a critical juncture in development and implementation. The Transitional Justice Law correlates positively with international human rights obligations, including provisions for compensation and restitution of property (Article 7.C). However, despite these provisions, transitional justice processes generally, including the present process in Yemen, tend to lack proper attention to economic, social and cultural rights and lack sufficient precedents for operationalizing these rights.

Transitional justice processes, land, and economic, social and cultural rights

Transitional justice processes are particular from country to country and within each post-conflict situation or transition from crisis. A wide body of literature exists on transitional justice, national reconciliation and related processes such as truth commissions; however, what is largely lacking is proper attention and guidance on how to integrate economic, social and cultural rights into these processes.

Research suggests that the typical approach to transitional justice is to compartmentalize abuses into their respective and confining categories, usually consisting of those defined as associated with mass war crimes, crimes against humanity and a limited set of gross human rights violations (usually killings and torture) and those associated with economic crimes and corruption. When these separations are made, human rights violations become separated from the systematic contest of abuse and vulnerabilities. The root causes of conflict are often engrained in structural violence, and inevitably violations of economic social and cultural rights, particularly economic violence.
While the importance of integrating economic, social and cultural rights into transitional justice processes is acknowledged in research, it often lacks examples of best practices. While, on the other hand, examples abound of how governments and external implementers of these processes have failed to integrate the economic, social and cultural rights dimension, to the detriment of an actual solution and lasting peace.

Disputes over land and its use are often a root cause of conflict. Transitional justice typically engages with one aspect of land rights; i.e., property rights, specifically property restitution, or issues related to persons denied property. These issues, while already complex, become more so when overlapping systems of tenure and customary systems enter the discussion. In many societies throughout the Global South, customary and local systems of tenure are applied in conjunction with—or in place of—formal, modernized tenure systems. These overlapping systems typically lack coordination and, thus, leave room for corruption, removal and general insecure tenure for communities. While engaging with property rights is an important component that must be addressed in the transitional or reform process, this sole focus ignores core issues that often plague tenure systems as a whole, which are often at the core of conflict.

Yemeni lands and reparations

In 2013, following the completion of the outcome recommendations of Yemen’s comprehensive national dialogue, in which the issues related to grievances from southern Yemen dominated the discussion, the members of the Transitional Justice Team failed to vote on the final report. This was due to fundamental differences with the Conference Party on aspects of transitional justice relating to political dismissals, immunity, reparations, truth telling and contrition to the victims, which also impeded the full adoption of the transitional justice law.

The report included two important points regarding land grabbing, namely (1) that no statute of limitations applies to the cases of land and property dispossession, and (2) the establishment of an independent national body to recover public and private land and properties, with extraordinary powers to enable them to conduct their work in various institutions of the state. However, the interim Yemeni president issued Decision No. 2/2013, in January 2013, creating two committees to address the issue of land and staff dismissals in the south, as well as Decision No. 6/2014, in February 2014, establishing a committee to address the land takings in al-Hudayda Governorate.

According to the Decision, both Commissions addressing land and property issues were to finish their work within a period not exceeding one year from the effective date of the Decision. As of May 2014, the Committees received 100,000 cases in the south, the largest share of them located in the Aden Abyan Governorate, and 2,025 grievances from Hudayda. In November 2013, the interim President of Yemen issued a decree adopting the recommendations of the Commission, in October–November 2013, addressing more than 11,000 land-grabbing cases of the southern provinces; there will be a compensatory land exchange for 11,157 civilians and military persons from the southern provinces who lost their lands after the war in the summer of 1994. The first batch of land and property restitutions will cover 360 cases. Despite these important steps to resolve the issue of South and promote stability, these measures represent less than 4% of the total number of cases related to the looting of land. Meanwhile, the Commission actually has recorded a number of 221,000 cases of land theft in the south.

Some believe that this is only a partial step and lacks clear mechanisms for implementation and any comprehensive vision to resolve systematically looted lands. This has given rise to the fear that the Commission’s recommendations will share the fate of the recommendations of the Basr-Hilal Committee, formed during the reign of Ali Saleh, which froze the cases without taking any action, after it had identified the names of influential people who looted lands south.
Moreover, the Commission did not address some of the most-problematic aspects in the land administration, which includes the issue of land investment and the land that was to resolve their dispute by Islamist insurgents in the province of Abyan through the imposition of strict Islamic law. This caused an issue as the Commission did not specify the legal bases upon which to treat the lands of the south, whether constitutional or Islamic law references, such as land endowments, or customary law, are to prevail in land tenure conflicts.\(^{14}\)

Al-Hudayda also faces the same factors related to the mechanism of implementing the recommendations, and the extent of its powers vis-à-vis the state institutions. This is especially true in the treatment of lands in the Port of Hudayda, as well as the lands of the Tihama region, where the general manager of the General Authority for Lands, Survey and Planning rejected to authorize the Commission to address them.\(^{15}\)

Recently, military forces under the 10\(^{th}\) Brigade (the former Republican Guard) broke into the governorate building with the purpose of forcing Governor `Atiyya to sign over land with drinking water wells in al-Baidha.\(^{16}\) The water would be for residential facilities for the Brigade, against a ministerial decree allocating the area for urban or industrial use. This development has created conflict between citizens and the forces of the 10\(^{th}\) Brigade. The judge of the Committee on Hudayda lands affirmed that some parties have misused legislation to spread the phenomenon of land grabbing in the name of residential compounds and industrial cities do not exist at all.\(^{17}\)

Next steps for Yemen

Reparations, including restitution, are transitional justice processes that are indispensable to reconciling torn communities and restoring livelihood-sustaining rights integrated through law, policy and institutional reform processes. The phenomenon of land as a component to various conflicts and national reconciliation is abundant globally, but remains understudied, underanalyzed and
sporadically applied. Land issues permeate all human rights of affected communities, and this analysis will advance the dialogue and practice on reconciliation and resolving protracted crises. In current transition in Yemen, much attention focuses on central institutions and civil/political rights, rather than fully integrating economic, social and cultural rights.

There is a large gap in the actual applied knowledge and information around land policy, and thus a lack of guidelines and information toward conflict resolution on the same subject. It is critical that human rights knowledge and methods for future conflict avoidance and dispute resolution. HIC-HLRN is currently its “Loss Matrix” (eviction impact assessment [EvIA] tool), which is utilized to quantify actual costs, losses and damages of force evictions, dispossession and destruction of land and housing within the UN Basic Principles and Guidelines (A/HRC/4/18) and the reparations framework (A/RES/60/147), and will provide critical inputs to this ongoing process in Yemen.18

Issues of land and property in Yemen are a core cause of conflict within in society and between various communities. Addressing issues of land and offering solutions requires seriously re-examining and implementing the principles of transitional justice. This includes by applying legal norms and accountability, as well as integrating human rights mechanisms with focus on economic, social and cultural rights into the process in order to find durable solutions to the issues of land to be carried out by the parties concerned.

Endnotes:

7 ibid., 333
12 Supra note 9
14 “Yemen Special Commission on Land,” Terra Nulis, (13 August 2013), at: http://www.naugrim.it/wordpress/?p=90
17 “Tehama Movement Delivers Vision for the Commission to Address the Territory of Hudayda and Confirms that the Commission should take into Account the Historical Judgments,” Yemanaat, 25 May 2014, at: http://www.yemenat.net/news46669.html
18 This project began in 2014; updates and outputs will be posted on www.hic-mena.org.