

THE TRIBAL DISPUTE RESOLUTION MECHANISM IN YEMEN

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ABSTRACT

Purpose - This study was aimed to contribute to literature and has practical significance in the sense that it could assist the legislators to modernize the arbitration system in Yemen. Also, introduce the foreign investor of the tribal dispute resolution mechanism in Yemen (TADRM). The tribal dispute resolution mechanism in Yemen is primarily considered in this research. The tribes are considered as an important part of the Yemeni society. It is hard to separate the tribes from the society (McCune, 2012), since they play a significant role in the Yemeni society (Manea, 1996). The tribes do multiple tasks such as protecting their members, maintaining security, stabilizing the communities, negotiating with the state regarding various matters that are important to the tribes (Hanzawy, 2009), settling disputes among members of the communities 80% of disputes are settled by applying tribal customary laws (Al- Zwaini, 2006). The people prefer tribal customary laws in their daily transactions (Alkhatai, 2008). Tribal arbitrators utilizes tribal arbitral awards to settle disputes among members of the society (Al- Muwadda). According to Tribalism Index Scores 2009, Republic of Yemen is ranked number 7 out of 160 countries in the world, figure 1 is considered as the highest rate, while figure 160 is considered as the lowest (Jacobson, 2012). Yemen's ranking at number 7 shows that tribalism is high the country and this factor may adversely affect the growth of the Yemeni national economy as well as the performance of government institutions. The Yemeni law allowed the disputing parties to settle their differences in civil cases through arbitration and settlements outside the formal justice system based on section 45 of Yemeni Arbitration (Act, 22) 1992 (YAA). Section 21 of the code of criminal procedure limited litigation in criminal cases to formal justice which the public prosecution only has jurisdiction. However, TADRM can be used for all type of disputes whether civil cases, commercial cases, criminal cases, or family matters (Gaston, 2014).

Methodology - This paper adopts a qualitative research method by conducting interviews with three of Court of Appeal judges who have jurisdiction to deal with arbitral cases, one arbitrator, and two academicians. They are five male interviewees at the age of 40 to 60 old years. The Court of Appeal judges are from big commercial cities which include Sana'a, Aden, and Hadhramout as these are the biggest cities in Yemen where there are many investment projects, the arbitrator is

from the capital Sana'a, and the academicians are from the capital Sana'a and Aden. In addition, whereas the researcher adopted a doctrinal to conduct this research as it is generally relying on a library-based study, which means that the research depended on the materials and information that are available at the library, such as books, journals, and articles. The researcher analyzed data collected from the interview questions using content analysis as the participants are of limited numbers of experts.

Findings - According to Omar Bawazir, TADRM is more favourable than the formal law (Bawazir, 2017). As the formal system became weak because of non-enforcement of the judgments and the rampant corruption. Legal practitioners are claiming that the tribal arbitrators are not qualified to engage in arbitration. Hence, their tribal award are usually set aside. However, in order to set aside TADRM, the judiciary has to be reformed. The people do not trust the courts as bribery can influence the judge's rulings and independence. It is commonly known that government institutions have collapsed since the Arab Spring of 2011 so the custom substituted the official institutions. Therefore, Yemen has maintained a kind of stability because of the existing of the TADRM and the custom as a whole.

The weakness of the judiciary and the state as a whole could be as a result of the spread of the power of tribes who resist reforms of government institutions (Corstange, 2008). From the results of interviews of Court of Appeal judges, academicians, and arbitrator that was conducted on (2016, December). The vast majority suggested that:

in order to improve the arbitration system in Yemen, recommended the development of institutional arbitration and stay away from non-institutionalized arbitration referring to The tribal alternative dispute resolution Mechanisms because tribal men are not aware of legal procedures and pleading which the court faces difficulties in implementing the arbitral award and lead recourse the award so suggested to repeal section 45 of YAA that provides the recognition of TADRM.

Keywords: Arbitration, tribal customary law.

CONCLUSIONS

As a result of the lack of the enforcement of the law, the people prefer to solve their disputes by customary laws that are supervised and administered by sheikhs as they have the power to enforce the customary laws. Additionally, the state does not fully extend its sovereignty over the territory as mentioned above. Throughout the tribal mechanism arbitration, often Sheikhs take an interim measure of protections from the disputing parties to ensure enforcement of the decisions. It is traditionally considered as shameful if debtor parties reject the sheikh's decision. Thus, the collapse of the judicial institutions is because the citizens do not trust the formal courts as rampant corruption adversely affect the courts' judgments.

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