Memorandum on constitutional mechanisms to implement Item 9 of Part II of the Agreement on a Just Solution to the Southern Question

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0. Introduction

This memorandum provides an overview of mechanisms that may be considered in the context of implementing specific aspects of the Agreement on a Just Solution to the Southern Question, especially those related to Item 9 of Part II. The memorandum draws on a range of relevant experiences elsewhere, bearing in mind the uniqueness of the situation in Yemen and considering, to the extent necessary and possible, provisions in other outcome documents of the National Dialogue Conference that have a bearing on the adoption of relevant constitutional mechanisms in relation to the implementation of the Agreement on a Just Solution to the Southern Question, including in particular the Final Report of the Working Group on the Sa'adah Issue, the Final Report of the Regions Committee, the Final Report of the Working Group on State Building, as well as the 20 Points and the 11 Points. Where necessary, this memorandum considers in passing constitutional mechanisms related to electoral system design (i.e., the closed proportional list system) and territorial self-governance (i.e., the proposed federal structure of the Yemeni state), but does not elaborate on these in any significant detail. Nor does this memorandum deal with issues of resource management and wealth sharing, although it should be noted that many of the options considered below would be of relevance in this regard.

The memorandum is structured as follows. Part 1 provides a short overview of relevant constitutional mechanisms. Part 2 presents a set of options that may be considered in relation to the implementation of the Agreement on a Just Solution to the Southern Question, discusses some potential advantages and disadvantages, and considers provisions in other outcome documents of the National Dialogue Conference that may have an impact on the adoption of specific mechanisms. Part 3 offers some short concluding observations.

1. Constitutional Mechanisms: An Overview

Power sharing is a set of governance arrangements that facilitates joint decision making by representatives of different groups. Power sharing can be achieved in different branches of government (for example, there can be executive, legislative and judicial power-sharing) and it can also occur in the wider public sector (for example, the civil service/administration and security forces). These different types of power-sharing are complementary and often occur together, but need not always be present simultaneously.

Power sharing has two inextricably linked dimensions—representation and participation. Representation is linked to the question of who makes decisions. In other words, it is about how many representatives different groups have in particular decision-making bodies. This can be pre-determined in absolute or relative terms, e.g., a certain group is given a specific number of seats or allocated a percentage of the overall total number of seats. It can also be facilitated by particular electoral systems (for example the use of PR systems for legislative

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elections) or selection/appointment procedures (for example the use of the d'Hondt mechanism[2] for the allocation of government portfolios to parties represented in a legislative body).

Representation is clearly an important dimension of power sharing, but its effectiveness as a mechanism to achieve truly meaningful joint decision making crucially depends on the rules of participation, i.e., an answer to the question about how decisions are made. Here, different approaches are possible. Some decisions may require a simple or absolute majority, others may require a qualified majority (e.g., two-thirds or 75%), and yet others may require a concurrent majority (e.g., a majority overall plus a majority in each relevant group). It is also important in this context to either pre-determine which decisions will require what kinds of majorities and/or agree a mechanism by which such decisions can be identified (e.g., a motion by one particular group or a motion signed by a minimum number of representatives).

Beyond the executive and legislative branches of government, forms of power sharing can also apply in the public sector more widely. This is primarily related to the degree to which public sector personnel reflects numerical (and power) balances within a given state or sub-state entity. Proportionality is usually achieved by either pre-determined quotas (of recruitment and/or representation targets) and/or by more indirect measures (such as, for example, requiring that civil servants be bilingual). In addition to an overall degree of proportionality within the civil service, administration and/or security forces, the appointment of senior personnel should reflect concerns for visible power sharing. Equitable group representation in senior roles in the security forces is especially important.

Finally, power sharing in the judiciary acquires its importance from the role that judicial institutions play in any political system based on the rule of law. However, an effective – and representative – judiciary is crucial to settling disputes between different branches and levels of government, e.g., between executive and legislature or between the federal and regional governments. Judicial power sharing is realised through a mixture of representation and participation rules. As such it relates primarily to selection procedures for judges (and prosecutors) at all levels and voting rules on courts.

2. Options for the Implementation of the Agreement on a Just Solution to the Southern Question

Options for the First Electoral Cycle

Item 9 of Part II of the Agreement on a Just Solution to the Southern Question establishes apparently precise requirements for representation of the South during the first electoral cycle after the federal constitution is adopted. It states specifically that "the South shall have a 50% representation in all leadership structures in the executive, legislative and judicial bodies, including the armed and security forces, and in levels where appointments are made by the President of the Republic or the Prime Minister. Similarly, the South shall have a 50% representation in the House of Representatives."

Implementing these requirements, however, is potentially challenging. The first issue that arises is the definition of "the South".[3] While clear in geographical terms and in terms of the two regions (Hadhermout and Aden, including the City of Aden), it is not clear who would

[2] See Appendix for an illustration of how this particular system works in Northern Ireland.
[3] The first of the so-called 20 Points, for example, refers to "all groups within the Southern Movement inside and outside Yemen".

count as a representative of the South.[4] This will need to be determined partly by the details of the electoral system (definition of electoral constituencies), but also depends on whether the Sides' understanding of a representative of the South is somebody elected in a southern constituency, somebody originating from one of the two Southern regions, or someone nominated by, or being a member of, a particular political party.[5]

A second issue requiring clarification is the meaning of "leadership structures". For example, leadership in the legislature may mean the Speakers of Parliament, Federal Council and National Assembly and/or the Chairs of any committees they may establish. In terms of the executive, the question would be whether "leadership structures" refers to the executive as a whole (i.e., the "government"), a cabinet (of particularly significant ministries), a smaller group of senior ministers (prime minister and deputy prime ministers), and/or specific (independent) bodies and agencies established by the executive (e.g., a national security council or a central bank).[6]

Representation in leadership structures, however, is note merely an issue of the share of posts allocated to different groups but also highlights another important consideration for each group — the need for power sharing to be visible, for example in the distribution of key posts with high public profiles across the different branches of government, civil service and security forces.

Broadening the meaning of leadership structures to include deputy ministers, deputy heads of particular government departments, the deputy speaker(s) of parliament, or deputy heads of parliamentary committees, the chief of staff of the armed services and chiefs of different branches of the security forces increases the number of such positions significantly and might facilitate equitable deals between the Sides (provided, of course, that deputies enjoy real powers). Another option of addressing the issue of representation in leadership structures is to consider rotation in office or the establishment of collective offices with a rotating chair. Rotation in office could apply to the speaker of parliament or chairs of parliamentary committees. The speaker of parliament could also be established as a collective office with a rotating chair. Terms for rotation could be set, for example, in

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[4] This is not very different to similar questions concerning the resolution of the Sa'adah issue. Here, the Final Report of the Working Group on the Sa'adah Issue refers to "the sons of Sa'adah", presumably as an umbrella term for the al-Houthi movement, which is, however, far more homogeneous than the Southern movement. Notably, however, there is also one specific mention (Part 1, Issue 55) of Ansar Allah (the military wing of the al-Houthi movement): "Ansar Allah should withdraw their check-points and any act that conflict with the obligations of the State. This should be done in concert with the absorption of their members in all government institutions and organs."

[5] Note in this context the provisions in the Final Report of the Working Group on State Building on political parties in Item 5, Political Foundations ("It is unlawful for any political party to be established on the basis of religious, ethnic, doctrinal or sectarian grounds…") which does not rule out a regional basis of political parties. In contrast, however, the Final Report of the Working Group on the Sa'adah Issue does explicitly state (Part 1, Issue 30) that "[p]olitical parties based on regionalism, factionalism, tribalism, doctrinal, sectarian or professional grounds should be prohibited." Also note the provision in Item 3c, Decisions Relevant to the System of Governance ("Independents have the right to run in the elections by forming special lists supported by signatures of at least five-thousand registered voters in that specific constituency.") which increases the potential pool of representatives of the South beyond those formally affiliated with a political party. Also relevant are provisions on security forces in Item 13, Political Foundations ("The armed forces shall be built on nationalistic foundations and shall have no regional affiliation. […] Appointment and promotions must be guaranteed to be based exclusively on legal and professional grounds.") and Item 14, Political Foundations ("It must be reaffirmed that the building of the police organization and other security organization should be based on national foundations and not regionalism. […] It must be emphasized that appointments and promotions shall be based exclusively on professional grounds.") Both provisions potentially constrain Southern representation, as well as leaving open the possibility of security forces in the two Southern regions to be led by non-Southerners.

[6] Point 11 of the 20 points already established the need to "[a]ppoint southerners in central public offices and ministries headquarters in the capital Sana'a in a way that embodies true national partnership." This is also echoed in the Final Report of the Working Group on the Sa'adah Issue (Part 1, Issue 32): "To quickly accommodate and integrate the sons of Sa'adah and the affected governorates from the wars in all State organs and institutions in par with their counterparts from other political forces during the transitional period."

relation to the electoral cycle (e.g., half of a parliamentary term for rotation between a chair and a single deputy of a committee, a third for each member of a three-person speaker office, etc.).

By way of illustration, during the first electoral cycle, 50% of government ministries could be allocated to political parties representing the South (defined, for example, as either exclusively running in the South or obtaining a pre-defined share of their total vote in the South). The distribution of ministries between these parties could be determined according to a mathematical formula such as the d'Hondt mechanism which allocates government positions sequentially and proportionally. Parties would choose from a pre-determined list of cabinet posts in sequential order based on the number of seats they have won in the assembly until all posts are allocated.

It is important to bear in mind that appointments of individuals to such leadership structures beyond executive and legislative bodies (e.g., in the civil service and the security forces) can only contribute to meaningful power sharing if appointees are representative of, and perceived as legitimate by, relevant groups.[7] Terms of such appointees may have to be limited in order to adapt to changing demographics, group size, and other factors. To enhance continuity and stability, terms might be double or treble the length of their appointing bodies (e.g., electoral cycles). Shifts in the electoral fortunes of a particular group/party would therefore not immediately result in its complete exclusion from power. At the same time, a group/party which loses electoral relevance would not permanently be able to exercise a degree of power disproportionate to its position. This issue is, therefore, of significance beyond the first electoral circle.

Options for the Period after the First Electoral Cycle

Item 9 of Part II of the Agreement on a Just Solution to the Southern Question also establishes a number of guidelines for the period after the first electoral cycle: "The federal constitution shall provide for executive, judicial and parliamentary mechanisms to protect the vital interests of the South after the first electoral cycle. These may include special veto rights or special voting rights on issues related to the vital interests of the South and special representation based on the formula of population weighted by territory. No amendments shall be made to the constitution that affects the South or changes the structures of the state unless through the agreement of the majority of the representatives of the South in the Parliament. Moreover, the federal constitution shall define arrangements to realize power sharing."

Power sharing in the executive branch of government is one of the most crucial, and often most controversial, forms of power sharing, yet in many cases of conflict it is an essential element of their solution. Representation can be achieved through specific rules for the formation of the executive, while meaningful participation requires particular procedures for executive decision making.

[7] Hence the importance of clarifying the meaning of "the South".

Representation of particular groups in the executive can be achieved through one of the following ways of executive formation:[8]

- Through the use of the d'Hondt or another mathematical formula that allows parties to choose cabinet posts in sequential order based on the strength of their presence in a representative body (normally a legislative assembly). This method guarantees executive participation of all major parties/groups and avoids potentially protracted coalition negotiations. It is currently used in Northern Ireland.
- Through a requirement that the executive be representative of specific communities. This option normally means that different parties/groups will need to negotiate a coalition agreement but are constrained in doing so by the precise nature of the requirement for cross-constituency representativeness (e.g., predetermined proportions between different parties/groups reflecting their power or census data, or proportions reflecting relative strength in a representative assembly). This option allows for a certain degree of flexibility in the formation of executives and enables parties to form governments on the basis of substantive policy agendas. This form of executive formation was used in Northern Ireland in 1973/4 and is still part of the settlements in Bosnia and Herzegovina, Belgium and South Tyrol.
- Through requiring the executive to enjoy qualified and/or concurrent majority support in a representative assembly. This usually means that the executive needs to have more than a mere 50%+1 support in the assembly and guarantees that groups whose representative parties are in a minority position are included in the process of executive formation. Concurrent majority support furthermore ensures that any executive formed also enjoys majority support in each group whose consent is required. It should be noted that this method does not *per se* mandate the establishment of power sharing executives (i.e., executives in which members of different groups participate in a meaningful way), but in practice it gives minority representatives bargaining power that ensures their participation in the executive. This option also allows for flexibility in the formation of executives and enables parties to form governments on the basis of substantive policy agendas. This form of executive formation was proposed in Macedonia in 2007 as part of an agreement between ethnic Albanian and Macedonian parties (it is also referred to as the Badinter rule in Macedonia).

Power sharing in the executive also extends to the rules that determine procedures of executive decision making. Meaningful power sharing in this context relates to the collective nature of executive decision making and can be further specified by requirements for qualified and/or concurrent majority voting for all or particular executive decisions, ensuring that all groups' interests rather than merely those of the majority are reflected in the work of the executive. In turn, a high degree of autonomy of each member of the executive within his or her portfolio minimises the danger of executive paralysis, especially if executives are formed without formal coalition agreements.

The nature of <u>legislative power sharing</u> is dependent on both the nature of the legislative system (unicameral vs. bicameral) and the method by which the legislature is elected. It manifests itself in:

- Qualified and/or concurrent majorities for specific decisions;

[8] Note that the Final Report of the Working Group on the Sa'adah Issue acknowledges the need for special measures only during a transitional phase of indeterminate length (Part1, Issue 31): "National partnership in the government through a constituting phase and, after that, the government can be formed on the basis of the elections that will follow the constituting phase." and (Part 1, Issue 32): "To quickly accommodate and integrate the sons of Sa'adah and the affected governorates from the wars in all State organs and institutions in par with their counterparts from other political forces during the transitional period."

- Mandatory consultation of permanent bodies considering special areas of legislation;
- Distribution of key offices in the assembly.

Meaningful legislative power sharing, while predicated on the composition of the legislature, is not evident in the degree to which an assembly is representative of different groups and parties, but rather in the nature of voting and legislative procedures in the assembly. Power can, thus, be shared in an assembly via a requirement for qualified and/or concurrent majorities for specific decisions to be passed, as well as by requiring approval or confirmation of laws in more than one chamber of the legislature.[9]

Of equal significance, therefore, are legislative procedures that influence the degree to which legislative power sharing, given specific voting procedures, is actually meaningful. It is important to note that Item 9 of Part II of the Agreement on a Just Solution to the Southern Question already acknowledges in principle that "The federal constitution shall provide for executive, judicial and parliamentary mechanisms to protect the vital interests of the South after the first electoral cycle. These may include special veto rights or special voting rights on issues related to the vital interests of the South…" It is thus essential to consider how "vital interests" can be identified. These could include procedures which require special voting—either triggered by motions from a particular number of representatives (e.g., 50%+1 representatives of a particular group, x% of members of the assembly as a whole), and/or pre-determined for certain areas of legislation (e.g., budget, education, culture, regional development). It is also noteworthy in this context that Item 9 of Part II of the Agreement on a Just Solution to the Southern Question already establishes that "No amendments shall be made to the constitution that affects the South or changes the structures of the state unless through the agreement of the majority of the representatives of the South in the Parliament."

An example of a trigger procedure for a double majority vote is offered in the constitution of Bosnia and Herzegovina, according to which any bill before parliament may be declared to be detrimental to 'vital interests' of the Bosniak, Croat or Serb people by a majority of, as appropriate, the Bosniak, Croat, or Serb members of parliament. To pass such a proposed decision then requires a majority of the Bosniak, of the Croat, and of the Serb members of parliament.

An example of pre-determined areas of legislation in which qualified majority voting applies are provisions in the 2000 Arusha Peace and Reconciliation Agreement for Burundi. According to this agreement, the country's constitution could not be amended except with the support of a four-fifths majority in the National Assembly and a two-thirds majority in the Senate, while organic laws could not be amended except by a three-fifths majority in the National Assembly and with the approval of the Senate.

It is worth considering that the Final Report of the Working Group on State Building establishes in Part 7 that the functions of the Parliament shall include discussion and approval of the overall public and subsidiary budgets, the Judicial Authority Law, the Council of Ministers Law, the Elections Law, and the Press Law, as well as the selection of the Chairman of the Central Audits and Controls Organization. These issues thus may prove a

[9] The Final Report of the Working Group on State Building establishes three chambers with various different functions. It also provides that each "legislative authority council shall have special rules of procedures to organize their activities. This shall be discussed and approved by the concerned council and shall be enacted into law." While this provision thus allows for special voting procedures in principle, these would not, according to the present provision, be constitutionally entrenched. This could be revisited in the process of final constitutional drafting and this memorandum will offer some options for consideration in this respect.

useful starting point for the consideration of special (i.e., qualified and/or double majority) voting procedures. Given the specific significance of regional issues to the South, the Law of the Regions, stipulated in the Final Report of the Regions Committee (Part 3, Issues 2 and 3), could also be considered in this context.

Legislation in a number of these issue areas will also require approval from the second chamber of the Yemeni legislature, the Federal Council. According to Part 7 of the Final Report of the Working Group on State Building this body shall "consist of a number of members which shall not exceed half of the membership of the Parliament. Members in the Council are all elected through free direct and secret balloting on the basis of the proportional list system at the level of each region. The membership should reflect equal representation for all regions." This would suggest that an identical number of representatives will be elected in each region, which in turn means that the South will not have 50% representation there, not even in the first term.[10] It might hence be worth considering the adoption of special voting procedures in particular areas and/or a trigger mechanism to invoke them for other decisions. One option would be the use of a qualified majority of two-thirds of members of the Federal Council or a double majority rule, e.g., a majority overall and a majority among the representatives from each region. Variations on either of these options are possible. One could be the requirement of a qualified majority of two-thirds plus 1 (which would give representatives from the South, if they were to vote unanimously, an effective veto). Another one could be to require a double majority such that in addition to an overall majority, there would need also need to be a majority from among Southern representatives (i.e., a majority from the total of the elected representatives of both regions) and/or from representatives of the non-Southern regions (i.e., the remaining four regions). The advantage of this latter variation is that it means that while any single region can still bloc legislation, it could only do so if all its representatives vote as a single bloc.

The Federal Council is also meant to approve appointments to high-profile positions in leadership structures: the Governor of the Central Bank; the General Commander of the Armed Forces, deputies and assistants; the Chair of the General Authority of the Civil Service; and the Attorney General. Similarly, it is to approve the appointment of ambassadors to other countries and representatives to international and regional organizations. Considering the visibility of these positions—and thus their value in making power sharing visible—special voting procedures could be considered here.

The third chamber of the legislature of the Yemeni state—the National Assembly—is to comprise the members of both Parliament and Federal Council. While some of its functions are currently defined in rather vague terms, it will perform the critical task of "discussion and confirmation of the proposals for constitutional amendments before being offered in a referendum to the public." Given the composition of its two constituent bodies, especially after the end of the first electoral term, this might be an area in which to consider the requirement for special voting procedures, for example by requiring a double majority of members of the National Assembly overall and of its Southern representatives.

[10] Note, however, that the Final Report of the Regions Committee provides (Part 3, Issue 4): "Fair representation of each state in the federal parliament shall be guaranteed." "State", in this context, seems to refer to the constituent entities of each region, i.e., the (former) governorates of Yemen (plus potentially the two special-status cities, Aden and Sana'a). The use of the term "fair" to describe representation in the federal parliament could mean proportional in relation to the parliament (House of Representatives), which could be achieved through the application of the proposed closed PR List system with the number of seats in each (state) constituency weighted in relation to the size of the electorate. If, however, it was to refer to representation in the Federal Council it could open up the possibility of considering differential representation of the Southern regions even after the first electoral term. Hence, this issue needs clarification and harmonization.

Legislative power sharing may also be accompanied by procedures that require mandatory consultation of permanent bodies which consider special areas of legislation and which may or may not be composed of members of the legislature alone (e.g., mandatory consultation of/approval by a council of civil society representatives).

Regarding the work of the assembly, power sharing can also manifest itself in the distribution of key offices in the assembly, such as speaker and deputy speaker(s), and chairs and deputy chairs of committees. Their election and/or selection can be conducted by any of the methods elaborated for executive formation, while their particular powers to influence the working of the legislature will vary from case to case but should also be agreed upon in ways that reflect meaningful participation of all groups concerned.

For example, the 2003 Peace Agreement between the Government of Liberia, the Liberians United for Reconciliation and Democracy, the Movement of Democracy in Liberia and the Political Parties provides that for the Speaker and Deputy Speaker of the National Transitional Legislative Assembly to be elected a minimum of 60% of votes in the Assembly is required. If no candidate achieves such a majority in the first round, a run-off between the three highest-scoring candidates is conducted, again requiring the winner to achieve a 60% majority of the votes. If necessary, a second run-off between the two highest-scoring candidates from the second round can be conducted in which the winner is elected with a simple majority.

In bicameral assemblies, the distribution of powers between the two chambers is highly significant. Upper chambers can represent either territorial entities within a state (regions, federal states, etc.) or communities by giving them equal voting power regardless of the size of the population they represent or weighing their votes in terms of their relative population size. Lower chambers are usually based proportionally on population whereby each member represents the same number of citizens in each district or region. Key considerations for power sharing are the extent to which the upper chamber can veto decisions of the lower chamber, the threshold for overturning such decisions in the lower chamber (e.g., qualified and/or concurrent majorities), and the degree to which upper chamber consent is required for particular decisions (e.g., concurrent and/or qualified support in both chambers for constitutional changes).

The 2005 Comprehensive Peace Agreement for Sudan, for example, included a provision that a three-quarter majority was required in both chambers for approval of constitutional amendments and a two-thirds majority in the upper chamber for legislation affecting the rights of States.

Power sharing in the judiciary acquires its importance from the role that judicial institutions play in any political system based on the rule of law and the separation of executive, legislative, and judicial powers. As such, an effective – and representative – judiciary is crucial to conflict prevention and resolution. Judicial power sharing relates primarily to selection procedures for judges (and prosecutors) at all levels and voting procedures on courts.[11]

The selection and appointment of judges and prosecutors can either be carried out by and within judicial institutions themselves, by organs of the executive, or by legislative bodies.

[11] Other mechanisms for judicial power sharing in a broader sense could include specific types of courts that are established, the applicability of different judicial systems, and distinct procedure and sanction functions exercised by judicial institutions.

Sequential and/or concurrent approval procedures may also be in place (e.g., the executive selects personnel, the legislature approves the appointment). Another option is to establish special appointment panels comprised of representatives of stakeholder groups (government, civil society, professional bodies, different groups and/or parties representing them). Power sharing in selection and appointment procedures can either rely on pre-determined quotas, use mechanisms such as language requirements to ensure that different groups are represented fairly (and can engage with judicial institutions in an equitable manner), utilise special voting procedures (qualified/concurrent majorities), or invoke mathematical formulas such as the d'Hondt mechanism. Insofar as the latter can de-politicise the selection process, it might be particularly appropriate for the appointment of senior judicial personnel.

The Final Report of the Working Group on State Building offers a number of detailed guidelines on the Judicial Authority (Part 8), including the establishment, membership, and functions of a High (or Supreme) Judicial Council and a Constitutional Court. Decisions on membership are based on broad professional involvement and require legislative approval and a presidential appointment decree. However, as there is no specific rule for regional representativeness, it might be worth considering either to mandate a specific regional formula in the constitution or require an appropriate parliamentary vote employing a qualified and/or double majority procedure (see above for various options). It would also be worth considering whether, in the first cycle of appointments, all members are appointed (approved) as a single slate or as individual candidates. The initial single-slate option would provide for a regional balance, while subsequent appointments (for example, due to members retiring) could then follow the like-for-like replacement principle (on a regional basis) even though they may still require the use special voting procedures for approval by the legislature.[12]

For example, The 2003 Peace Agreement between the Government of Liberia, the Liberians United for Reconciliation and Democracy, the Movement of Democracy in Liberia and the Political Parties determines that nominations for all judicial appointments to the Supreme Court are to be made by the National Bar Association and subject to approval by the National Transitional Legislative Assembly. They are also to reflect national and gender balance. According to the 1992 Arusha Protocol of Agreement on Power-Sharing within the Framework of a Broad-Based Transitional Government between the Government of the Republic of Rwanda and the Rwandese Patriotic Front, the country's Supreme Court was to be chaired by a presiding judge, assisted by five deputy presiding judges. All of these were to be selected by the National Assembly based on a proposal by the government listing two candidates for each post and their appointment could not be terminated by the Assembly except with a two-thirds majority of votes.

Qualified majority voting on courts, as a form of power sharing in the day-to-day operation of judicial institutions, could be made mandatory in particular for decisions on constitutional matters and those that directly affect the operation of institutions agreed in a conflict settlement. Combined with appropriate selection and appointment procedures, this would ensure that minority interests are not permanently overruled by the majority.

[12] Legislative approval at present is meant to involve only the Federal Council. Given the specific provision of equal regional representation, meaningful Southern participation in this process will depend on either a qualified majority of at least two-thirds plus 1 and/or a double majority requirement.

3. Concluding Observations

The Constitutional Drafting Commission faces a specific task in relation to the design of special mechanisms relevant to the implementation Item 9 of Part II of the Agreement on a Just Solution to the Southern Question, as well as related outcome documents of the National Dialogue Conference. This involves a number of considerations beyond merely designing such mechanisms and including them in the constitution. Among them is the question about the extent to which special mechanisms beyond the specified representation of the South should also be part of the first electoral cycle, whether this transitional phase should be seen as something that represents a "permanent +" version of the long-term constitutional arrangements or whether the first electoral cycle should be radically different from what follows after it.

While nothing beyond Southern representation is mandated for the first electoral cycle, neither are special mechanisms related to the modes of participation in decision making excluded. As highlighted in this memorandum, meaningful power sharing extends beyond the issue of representation, and arguably derives from the right mix of representation and participation rules.

The Southern Question is clearly central to the future of the Yemeni state, but Yemen's constitution needs to work for all the country's citizens who need to have a recognizable stake in it in the sense that they see their concerns reflected through mechanisms that facilitate the peaceful pursuit of their particular interests without undermining the achievement of the broader common good of a viable Yemeni state.

When carefully designed, power-sharing institutions can provide all Sides with institutions of governance that accept and protect their core interests and effectively address concerns about participation and representation. Yet, power-sharing institutions are only one dimension in a comprehensive approach that frequently also includes arrangements for regional self-governance; the security sector; safeguards for the protection of human and minority rights; guarantees for an entrenchment of the rule of law; and mechanisms for wealth sharing and resource management.

Such complementary aspects, and their compatibility with each other, are critical determinants of overall success in the sense of building sustainable and comprehensive frameworks for the regulation of peaceful political competition. Power sharing, while not a panacea, is thus a useful to device, in combination with other mechanisms, to offer the Sides an alternative to violence because it assures them of institutional safeguards that will protect their interests.

APPENDIX: The d'Hondt allocation formula at work in Northern Ireland after the 2007 elections

The system works as follows: Every party's seat total is divided by one in the first round and hence the party with the largest number of seats in the Assembly wins the first seat on the executive. In every subsequent round, the party's total number of seats won in the Assembly is divided by the number of seats it has already won on the Executive plus 1. The Executive seat in each round is thus claimed by the party with the highest figure in this round, and in case of a draw by the party with the higher overall vote share in the Assembly elections (Round 3 and Round 9: DUP won a total of 25.6% of the vote in the 2007 Assembly elections, compared to the UUP's 22.7%).

Round	DUP (36 seats)	Sinn Féin (28 seats)	UUP (18 seats)	SDLP (16 seats)	Alliance (7 seats)
1	36	28	18	16	7
2	18	28	18	16	7
3	18	14	18	16	7
4	12	14	18	16	7
5	12	14	9	16	7
6	12	14	9	8	7
7	12	9.33	9	8	7
8	9	9.33	9	8	7
9	9	7	9	8	7
10	7.2	7	9	8	7