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Reducing the Risks of President Abbas Succession

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This brief is the third in the PSR series of Critical Policy Briefs for 2019. These briefs address important domestic and foreign policy-oriented issues confronting Palestinian society today.

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Reducing the Risks of President Abbas Succession

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The dissolution of the Legislative Council per the Supreme Constitutional Court ruling on December 12, 2018, sparks off a constitutional and political crisis the instant the president office is declared vacant. This aftereffect rings particularly relevant under the clear and binding provisions of the Basic Law concerning the procedures of filling the vacancy in the office of the president. Beyond a shadow of a doubt, the lack of constitutional grounds would create a crisis over the legitimacy of the Palestinian political regime if the Palestinian Authority (PA) fails to abide by the rules and provisions spelt out in the Basic Law.

Trampling on the established mechanisms set out by the Basic Law would further aggravate the political schism over legitimacy between Fatah and Hamas and stir up resistance from several Palestinian political parties under the Palestine Liberation Organization (PLO) as well as civil society organisations (CSOs). In a similar vein, such a move would increase the risk of dragging the whole country into chaos and rampant insecurity and a struggle over control and influence, threatening an internal conflict that would diminish the capacity of the PA, a turn that would give a rise to rival powers to dominate some cities and towns with the force of arms. As a spill-over, the PA would dissolve as an umbrella body and overarching authority, and the public security would fall apart. In both cases, the citizens' feeling of insecurity for their families, properties, and themselves would rage on. Along these lines, the security forces would cave in, and the PA would fail in providing basic services - needless to mention the economic difficulties the public needs to endure; such as a sharp rise in the unemployment rate and the number of Palestinian households under the poverty line. It is also highly unlikely that the PA would be able sell such 'trampling on constitutional mechanisms' to the international community or donors.

Although the call to hold parliamentary, but not presidential, elections in the aftermath of the transition of the PA to a UN-recognised state, the elevation of the status of Palestine from a permanent observer entity to a non-member observer state, has no legal standing, it can perhaps be understood from a political standpoint if it reflects concerns over Hamas's commitment to holding fair and free elections in the Gaza Strip. It might also be understood if presented as a process that begins with parliamentary elections but would soon be followed by a presidential one, or if it is meant to provide time for Fatah to select its candidate for the presidency, one other than Abbas. Keeping the office of president without re-election after the transition to a status of a state is a patent violation of the Basic Law. Article 115 of the said Law spells it out that, '[t]he provisions of this Basic Law shall apply during the interim period and may be extended until the entry into force of the new Constitution of the State of Palestine.' In other words, the change to the status of the PA does not permit it to breach the Basic Law provisions on power transfer arrangement and the fact that the legitimacy of its political institutions must be rock-bedded on free public elections and subject to regular public accountability.

The vacancy in the office of the president of the State of Palestine/PA poses an additional challenge to the Palestinian political regime in the heat of ultra-complex circumstances. While the political division is on the rise, the political system would lack any legitimacy without elections. This paper reviews the legal status of the vacancy in the office of the president of the PA. It tackles the reasons for the broad local and international interest in this situation and its impact on the Palestinian political system. Along these lines, the paper presents the options available to fill the vacancy in the post and the positions of the different actors that have a direct impact on the Palestinian political system. The paper also aims to put forward a set of recommendations for the PA to avoid probable risks that would arise from the vacancy in the office of the president of the PA and to maintain the legitimacy of the Palestinian political system.

The reasons behind the keen interest in the vacancy in the office of the president of the State of Palestine/PA

The interest in this matter is mainly attributed to the constitutional uncertainty of the succession process if President Mahmoud Abbas fails to perform the role and responsibilities constitutionally assigned thereto after the health conditions he went through and the medical checks he has undergone at several places without clear information or official statement on the health conditions of the head of the PA. Moreover, President Mahmoud Abbas is over 83 years of age; a fact that cause concern given that the average life expectancy for men in Palestine is 72 years.

This increasing concern also stems from the curiosity to know the identity and background of the prospect successor and the impact of his/her policies on the future Israeli Palestinian relations. This worry is particularly relevant, given that President Mahmoud has been in office for more than fourteen years, blurring the lines between the state and the head of the state and the political regime, just as is the case in many other third world countries. The Palestinian situation, nevertheless, proves to be more complicated. It, therefore, warrants fathoming the relationship with the Israelis and its future and how to handle the international interests that are more related to Israel than the Palestinians. The absence of a constitutional mechanism for the transfer power due to the dissolution of the Legislative Council and the Palestinian schism further complicates the situation.

As article 37 of the Basic Law stands,

‘The office of the President shall be considered vacant in any of the following cases:

- a. death;
- b. Resignation submitted to the Palestinian Legislative Council if accepted by two-thirds of its members;
- c. Loss of legal capacity, as per a ruling issued by the High Constitutional Court and subsequently approved by a majority of two-thirds of the members of the Legislative Council.

If the office of the President of the National Authority becomes vacant by any of the reasons above, the Speaker of the Palestinian Legislative Council shall temporarily assume the powers and role of the President of the National Authority for a period not to exceed sixty (60) days, during which free and direct elections to elect a new President shall take place in accordance with the Palestinian Election Law’

This jus cogens as per the constitutional legislature stipulate that when the office of the president is vacant, the Speaker of the Legislative Council must take the helm. In other words, it presumes a duly elected legislative council to be functional and in place. Notwithstanding, this provision does not provide for any other parties to act as a president pro tempore. Moreover, this provision is based on the premise that the political system is rock-bedded on democratic rules for the transfer of power -such as transfer of the office of the president and the membership of the Legislative Council, and is incompatible with the appointment mechanisms. If the Palestinian are to enter the situation of a ‘vacant president office’ any time in the offing, they will stand in need of the other side of the equation of article 37 of the Basic Law that hauls the Palestinian political system to, but a constitutional deadlock.

It goes without saying that the transition requires triggering the constitutional and legal rules and observing the role of the existing political situations. The shift also necessitates performing the constitutional powers of the president of the PA/State in a manner that safeguards its statutory nature and respects the rule of law by maintaining the legitimacy of the political system of one of the most critical offices in the state. To that end, the president pro tempore shall carry presidential elections per article 37 of the Basic Law and the Public Elections Law, performing the primary mission a president pro tempore in any event within 60 days of the vacancy in the office. Otherwise, any action by the president pro tempore after that period shall be constitutionally null and void.

From a constitutional perspective, the acting president shall take up all the powers provided for in the Basic Law and other laws. The ethical norms, however, exclude some powers during the interim period on the premise that the president pro tempore is an acting president to fill the constitutional gap and perform the jus cogens that shall never be set aside.

Available options to mitigate the risks of the vacancy in the office of the president

To weather the constitutional and political crisis that may hit the Palestinian political system the day the office of the president of the PA is vacant, a choice needs to be made from the constitutional and political options below:

Option 1: The Chairman of the PLO Executive Committee or the Chairman of the Central Council

As per this option, the new Chairman of the Executive Committee may fulfil the president pro tempore office based on a decision made by the Central Council according to the Palestinian National Authority Establishment Decision made by the Central Council in October 1993. Otherwise, the Chairman of the PLO Central Council, who also chairs the PLO National Council, may assume the interim presidency upon a special session of the Central Council is held for that purpose. Of note, the Central Council assumes all the powers of the National Council during the period between the two sessions of the National Council per the latter's decision in its last session. "The Jerusalem and Return Declaration" of May 4, 2018, states, 'the National Council has decided to delegate all the powers vested therein during the period between its two sessions to the PLO Central Council to promote and activate the PLO's role and develop the relevant competence and performance in such demanding and challenging times.'¹

This pathway offers a soft option. It takes the Central Council one session to determine whether the Chairman of the Executive Committee or the Chairman of the National Council is more capable of dealing with international and regional stakeholders and promote the Palestinian demarches to clear the transition from the PA to the State of Palestine at the international level. On the other hand, this option would aggravate the schism between Fatah and Hamas and increase the rejection within the PLO by the parties that did not take part in the last National Council meeting, such as the Popular Front for the Liberation of Palestine, or did not attend the last sessions of the Central Council, such as the Democratic Front for the Liberation of Palestine and the Palestinian National Initiative. Furthermore, this option raises concerns over blurring the lines between the PLO and its departments and the PA and its institutions, particularly given the incapacity to conduct elections in the West Bank and the Gaza Strip within the terms (60 days) set forth in the Basic Law. Consequently, the PLO would become directly responsible for implementing Palestinian obligations under the Oslo Accords and their various annexes.

Option 2: The Prime Minister as an interim president

As per this option, the prime minister may assume the president pro tempore post for 60 days. The prime minister is the only senior officer that remains functional if the office of the president is vacant after the dissolution of the Legislative Council per the Supreme Constitutional Court Ruling. The Fatah Central Committee insisted one of its members fill the office of the prime minister in case the office of the President is vacant; Fatah, the 'Ruling Party', otherwise would be out of the PA political institutions.

¹ See the text of the Declaration, the Palestinian News Agency- Wafa
http://wafa.ps/ar_page.aspx?id=44C019a819631600293a44C019

As the Public Elections Law stands, the government is responsible for laying the groundwork and necessary conditions for holding the presidential elections. Still, this option contradicts the provisions of the Basic Law and accentuates the concerns over having the government taking over the reins of power without a reference point or a body to supervise its activities and performance during the transitional period in the absence of a president and the Legislative Council. In return, the government resources would be brought into the service of the candidate of the ruling party.

Option 3: The Chief Justice of the Supreme Constitutional Court as an interim president

This option names the head of the Supreme Constitutional Court to assume the office of the president as an impartial judicial official free of partisan biases and political interests. This route requires a ruling from the Supreme Constitutional Court for interpreting article 37 of the Basic Law if the office of the president is vacant under the absence of the Legislative Council. This option is similar to the Egyptian model that was applied in 2013 after the removal of the former president Mohammad Mursi. Back then, Adly Mansour, the Head of the Supreme Constitutional Court, acted as the president pro tempore until the presidential elections were held in 2014.

Needless to say, this option is not based on any constitutional provision but draws from the discretion power of the Supreme Constitutional Court to survive a critical constitutional bottleneck. However, several Palestinian parties challenge the legitimacy of the head of the Palestinian Supreme Constitutional Court and the Court itself - let alone the fact that it has not gained the acceptance by the majority of the Palestinian parties.

Option 4: The Speaker of the Legislative Council as an interim president

This option names the Speaker of the dissolved Legislative Council Dr Aziz Dweik, the Hamas politician, as the next interim president. Such a bet sets Hamas eye to eye with the commitments of respecting and implementing the intricate contractual relations with the Government of Israel under the Oslo Accords. The advantage of this option lies in the fact that it respects the legislative elections held in 2006 and would gain massive support from Hamas, its supporters, and some countries in the region such as Turkey, Iran, and Qatar. By contrast, this option violates the Supreme Constitutional Court ruling to dissolve the Legislative Council. Fatah and the PA institutions and bodies would, moreover, flatly reject such an option due to the lack of confidence in Hamas and the Speaker of the dissolved Legislative Council, leaving the reins of the interim presidency unmanageable. The interim president would hit a deadlock in terms of accessing the international society to exert pressure to hold presidential elections as per the Special Protocol on Holding Elections in Jerusalem. In addition, the Israeli Government is most likely to withhold the PA clearance revenues, bring pressure to bear on the PA and dissolve it.

Option 5: A consensual interim president agreed by Fatah and Hamas

As per this scenario, a national figure, one of the dissolved Legislative Council members, or any of the first three options may assume the interim president office upon a national agreement brokered by the PLO Reorganization Committee, also known as the "Leadership Committee." The advantage of this option is that it would gain the support of the majority of the Palestinian factions, and thus it would allow holding the presidential elections within the statutory deadlines and ease the political tension between Fatah and Hamas. Nonetheless, this option is fraught with the difficulty of reaching an agreement between Fatah and Hamas within a timeframe that leaves legroom to set the constitutional election procedures in motion. This option also does not rely on a constitutional provision; thus, it legitimizes the agreement between the political parties at the expense of the constitutional provisions.

Option 6: Holding Legislative Elections Now

This option provides for holding legislative elections, without presidential elections, in the West Bank and the Gaza Strip (according to the Supreme Constitutional Court ruling concerning the dissolution of the Legislative Council) or in the West Bank only before the office of the president becomes vacant. This alternative would breathe life into the constitutional option, which was nipped by the dissolution of the Legislative Council.

The results of the Public Poll No. 71 published by the Palestinian Center for Policy and Survey Research (PSR) in March 2019² indicate that 61% of the Palestinian oppose holding legislative elections in the West Bank and the Gaza Strip. This opposition leaps to three quarters (74%) of the Palestinian that are against holding parliamentary election in the West Bank alone; 41% of the Palestinian indicated that they would participate in the election if it is held in the West Bank and the Gaza Strip. However, only 29% would join if it is held in the West Bank only.

The probability of holding elections in the West Bank and Gaza Strip together remain limited in light of the current positions of the Palestinian parties, especially Hamas' as stated by Dr Khalil al-Hayya, 'the delegation of the Elections Committee presented to Hamas President Mahmoud Abbas's call for holding legislative elections only, and Hamas declined.' This rejection bars the Palestinian in the Gaza Strip from taking part in the election as long as the Gaza Strip is under the control of Hamas. A majority of the public, 53%, believes that Hamas will not permit the holding of elections if only the legislative election is to be held. Over and above, an election in the West Bank without the participation of the citizens in the Gaza Strip would be limited and disintegrated. If any, this election would result in a legislative council that lacks public legitimacy. Another majority, 50%, believes that such an elected legislative council may represent the West Bank and the Gaza Strip if the electoral lists include representatives from the Gaza Strip. Bottom line, an elected legislative council would ensure a smooth transfer of office any time the office of the president is vacant.

Conclusion:

It is beyond question that mitigation of the legitimacy risks across the Palestinian political system due to the vacancy in the office of the president because of incapacity or death poses a challenge to the political system. On the other hand, it offers a window of opportunity to contemplate the pressing need for public elections to avoid the risks that might develop in such a circumstance in the absence of an elected legislative council.

Further, Option 6 (i.e. the prior legislative elections) ensures the compliance with the transfer mechanisms provided for in the Basic Law and respects the constitutional rules. Besides, it gains legitimacy for the political system and mitigates the difficulties that beset the succession of President Mahmoud Abbas, which could lead to the collapse of the PA, put the public security at stake, and deny the members of the public basic services. To buttress this conclusion, the prior legislative elections option does not trample on the Supreme Constitutional Court Ruling concerning the holding of parliamentary elections and saves the Palestinian the threat of an international boycott or the collapse of critical agreements with the Israeli side.

² Please see the Palestinian Center for Policy and Survey website: <http://pcpsr.org/en/node/752>

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