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Can a Newly Elected Parliament Repair the Damage Done to the Palestinian Political System in its Absence?
agenda for political reform

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In mid-January 2021, president Abbas issued a decree calling for holding parliamentary elections on 22 May. It is not certain that any elections will take place in the near future and the goal of holding such elections, if they do take place, is almost certainly not the reform of the political system. Indeed, the goal most emphasized by Palestinian leaders, from Fatah and Hamas alike, is “the unification of the Palestinians people.” Nonetheless, it is essential to explore the implications of the revival of a parliamentary life, in the form of an elected PLC, on the prospects for reform even if elections do not take place soon. Once a Palestinian parliament is created, the political system will find it impossible to continue its current slide to authoritarianism.

The paper outlines the main target areas of reform which the council should focus on from the first day of its existence. Doing so is critical to the success of the parliament in making itself a strong and effective public institution, one capable of representing the public that elected it and delivering on its promises to that public. The paper outlines the expected challenges that will confront the parliament as it sets its own agenda. If not addressed, these challenges can impede the parliament’s efforts to accomplish its mission in bringing accountability back into the Palestinian political system. Based on that review, the paper proposes a list of reform priorities that are relevant to parliament’s own role and function but can also have a multiplying effect on the entire political system. Despite their importance, this policy paper does not directly address highly relevant domestic issues, such as those dynamics that led to the split between the West Bank and the Gaza Strip, how to reform the Palestine Liberation Organization (PLO), what to do about the Palestinian regional problems or how to improve relations with Israel. Instead, it is restricted to those political issues that are directly related to the reform of the political system and particularly those that require parliamentary intervention. Moreover, in outlining the challenges and impediments to reform, the paper is focused essentially on the functioning of the Palestinian Authority (PA) in the West Bank and does not directly address the Hamas’ practices in the Gaza Strip, despite the fact that these practices have been more determinantal to the future of accountability in the political system.

Challenges: evidence of authoritarianism in the Palestinian Political System, 2007-2021:

In the past several years, the PA in the West Bank has taken several measures that have severely undermined good governance. Four areas have been damaged: the separation of power, the independence of the judiciary, the independence and pluralism of civil society and its organizations, and

the media and freedom of expression. These areas should constitute the reform agenda of a newly elected PLC.

Without general elections since 2006, the impact of the four measures on PA institution building and governance has been destructive: rule of law has been sacrificed, the judiciary has been weakened and its independence damaged, media freedoms have been highly curtailed, and the space for civil society has significantly shrunk as its organizations lost much of its independence from the government. The behavior of the Hamas government in the Gaza Strip has not been better, indeed worse; it was more ruthless and much less bothered by constitutional principles and norms or even rule of law.

Diminished Accountability and Oversight:

The suspension of the activities of the Palestinian Legislative Council (PLC) in the West Bank in 2007, in the immediate aftermath of the Hamas violent takeover of the Gaza Strip, has been one of the most damaging governance measures taken by the PA since its creation. But the clearest evidence of the slide to authoritarianism has been the decision taken by the party that lost the 2006 elections, Fatah, to dissolve the PLC in 2018. The inevitable outcome of the suspension of the PLC meetings has been the transfer of its legislative and oversight functions to the executive authority represented by the president. Since 2007, president Abbas issued more laws by decree than those ever issued by the PLC during its entire life since the first election in 1996. Most of these laws were not urgent, as required by the Basic Law, and many of them violated the terms of that law. In the absence of a parliament, the president gave himself the power to rule by decree without accountability or oversight, with the exception of the little opposition expressed occasionally by the judiciary, the media, and civil society before they too came under the heavy hand of authoritarianism. Without a parliament able to defend its members, the president gave himself the power to annul the immunity of the PLC members, to suspend the payment of their salaries, to send them to court, and to close their offices ending eventually in his decision in December 2018 to dissolve the entire PLC utilizing for that mission the services of a body he created for that purpose, the constitutional court.¹

Without a parliament during the period between 2007 and 2021, the Palestinian public has been denied the ability to influence legislation directly affecting their life; the political system become devoid of any formal accountability. If the PLC comes back to life soon, it will be up to it to accept or reject all those laws decreed by the president. The new parliament should also determine its own priorities in strengthening and fortifying legislative texts that the executive has managed to undermine in order to grant the president powers he did not have, such as the ability to issue normal laws by decrees during the period in which the parliament was not in session or the ability of the president and the institutions he created, such as the constitutional court, to commit grave constitutional violations.

The Diminished Independence of the Judiciary:

¹ For more details on the suspension of the PLC activities, see a paper by Salah al Wadya on the impact of the split on the PLC: "أثر الانقسام السياسي على المجلس التشريعي الفلسطيني"، أبريل 25، 2018، <https://icspr.ps/ar/?p=1644> ، 22.12.2018.

See also, قانونيون ونواب لوطن: قرار حل التشريعي غير قانوني وخطير

<https://www.wattan.net/ar/news/271807.html>

المركز الفلسطيني لحقوق الانسان: العملية التشريعية والرقابة البرلمانية خلال فترة الانقسام السياسي الفلسطيني (من يونيو 2007 وحتى أغسطس 2012)

<http://www.pchrgaza.org/files/2012/bookPCHR12-2012.pdf>

و "مفتاح، تقرير أداء المجلس التشريعي الفلسطيني 2009":

http://www.miftah.org/Publications/Books/The_Performance_of_the_Palestinian_Legislative_Council4.pdf

The need to ensure regime security in the West Bank in the aftermath of Hamas' violent takeover of the Gaza Strip provided the initial impetus to the drive to weaken the independence of the judiciary. The PA crackdown on Hamas' military, financial, religious and political infrastructure in the West Bank aimed at destroying or weakening its organization but lacked legal justification and entailed significant violations of human rights and rule of law. The PA wanted to prevent a Hamas takeover of the West Bank, one similar to what that movement did in the Gaza Strip. When the judiciary intervened in order to impose restraint, the PA security services, which carried out most of the crackdown, simply ignored its rulings, and it got away with it. While the Palestinian Basic Law defines failure to implement court decisions by PA officials and security services as a "crime punishable by imprisonment and dismissal," rulings by the highest court, the High Court of Justice, demanding the release of detainees, were routinely ignored by the security services. In fact, between 2007 and 2009, the PA formed military courts to try civilians. Only in early 2011, right after the eruption of the Arab Spring, did the PA stop the practice of sending civilians to military courts and began to show a little more attention to court rulings.

The attacks on the judiciary however became much more serious during the past five years. In the conflict between president Abbas and Mohammad Dahlan, the former head of the Preventive Security apparatus, the president sought a judgement from the courts accusing the latter of corruption. In order to force Dahlan, a member of the PLC, to face the court, Abbas, gave himself the right to annul the immunity of a members of the parliament. When the high court objected, deeming such a step unconstitutional, the president turned his attention in October 2016 to the judiciary, dismissing the Chief Justice and appointing a new one. In doing so, he explicitly violated the Basic Law and the Law of the Judiciary. Seeking a stamp of approval that would legalize his actions, the president amended the constitutional court law that then allowed him to form a court to his own liking². In November 2016, the newly established body, the Constitutional Court, did what was expected: rubber stamped all decisions taken by Abbas regarding Dahlan and the judiciary. Abbas went further: in December of that year, the president annulled the immunity of four other pro-Dahlan members of the PLC, all from his own Fatah party.

Despite Abbas' failure in mid-2017, under pressure from civil society, to amend the law of the judiciary in a manner that would have given him effective control over that institution, he did impose his control in violation of that law. Moreover, in 2019 he dismissed the Supreme Judicial Council (SJC) and appointed a transitional council in a clear violation of the Basic Law and the law of the judiciary. This was followed in January 2021 by a presidential decree that did finally amend that law in such a manner that provided him all the control he needed over the appointment of the Chief Justice, head of the high court and the head of the SJC. The amendment allowed the dismissal of the judges and forcing them into retirement.³

² See the letter sent to president Abbas by the Independent Commission for Human Rights and a group of civil society organizations requesting the withdrawal of the amended law of the constitutional court and viewing the changes decreed by the president as an effort to impose the hegemony of the executive over the other branches of the PA and a challenge to the independence of the judicial authority "in violation of the PA priorities of rule of law and separation of power:"

<https://www.ichr.ps/مواضيع-مهمة-اديوان-المظالم-الهيئة-المستقلة-لحقوق-الانسان>

³ For more details on the efforts of the president and the executive to weaken the judiciary, see the following:

"نقابة المحامين ومؤسسات المجتمع المدني وفصائل يطالبون بإلغاء القرارات بقوانين الاخيرة المتعلقة بالقضاء ويؤكدون ان ما يحدث هو جريمة بكل المقاييس"، كانون ثاني (يناير) 2021

<https://www.wattan.net/ar/video/330598.html>

"بيان صادر عن المؤسسات الحقوقية ومؤسسات المجتمع المدني نحو تعزيز واستقلال السلطة القضائية." أكتوبر 2016

<http://www.istiqlal.ps/?q=node/101>

the law and an attempt by the PA to restrict the ability of NGOs to operate outside the boundaries set for it by the government thereby shrinking the space for civil society.⁴

Civil society constitutes an important institution that supports and supplements the oversight responsibility of the parliament. In weakening it, the PA weakens the PLC's role in bringing the government to accountability. In the absence of a parliament between 2007 and 2021, civil society organizations served an important role in setting limits on the PA slide to authoritarianism. It should be one of the priorities of the newly elected parliament to ensure the annulment of regulations that violate the law and restrict the ability of civil society organizations to play their role in strengthening other public institutions while ensuring an independent and pluralistic civil society. One of those regulations should be the one introduced in July 2015 that requires a prior government approval of the activities and the funding of non-profit companies.

Targeting the Media and free speech:

In the years immediately following Hamas' violent takeover of the Gaza Strip, dozens of journalists were arrested in the West Bank and the Gaza Strip for expressing their views and many more were beaten while covering demonstrations and other expressions of protest against the PA or the Hamas government. The PA has gone further in 2017: with little or no consultation, the president issued a cybercrime law. The law regulates online activities, media websites, and social networks, imposing jail time and fines on those violating public order or inciting hatred. Journalists and normal citizens paid a price for expressing their own views as more arrests followed the publication of the law. Responding to a huge public outcry, the president and the government introduced various amendments and re-introduced the law again in 2018. Despite positive changes in the new law, it still continued to "criminalize acts and writings that should come under free speech."⁵ It continued to use open-ended terms, such as those used in article 39: "national security or public order or public administration" when providing justification for closing or blocking access to websites. In implementation of this article, the PA blocked access on October 2019 to 59 sites, added to another 30 that were blocked in 2017.

⁴ See statements by al Haq, and the Palestinian Center for Human Rights and the Independent Commission for Human Rights:

قراءة في تعديلات نظام الشركات غير الربحية وعلاقتها بالمنظمات الاهلية، أغسطس 2015:

<https://www.alhaq.org/ar/publications/7929.html>

المركز الفلسطيني لحقوق الانسان: التقرير السنوي 2016.

<http://pchgaza.org/ar/wp-content/uploads/2017/10/Annual-report-arabic2016.pdf>

"بموجب مذكرة قدمتها لرئيس الوزراء الهيئة المستقلة تطالب مجلس الوزراء التراجع عن القرارين (7) و(8) لعام 2015 بنظام معدل لنظام الشركات غير الربحية رقم (3) لسنة 2010"،

<http://ichr.ps/ar/1/17/1716>

⁵ See the statement issued by the Independent Commission for Human Rights: (10) القرار بقانون رقم (10)

لسنة 2018 بشأن الجرائم الإلكترونية وتقدم مجموعة من الملاحظات والتحفظات"، أيار 2018

[الهيئة ترحب بصدور القرار بقانون رقم \(10\) لسنة 2018 بشأن الجرائم الإلكترونية وتقدم مجموعة من - ديوان المظالم'الهيئة المستقلة لحقوق الانسان](http://www.ichr.ps/ar/1/26/1325/)

: الحق: الانقسام الفلسطيني صفحة سوداء في مسار: <http://www.alhaq.org/ar/publications/7945.html> See also, statements issued by al Haq and Mada:

الحقوق والحريات، نوفمبر 2011

<https://www.alhaq.org/ar/publications/7945.html>

الهيئة المستقلة لحقوق الانسان: الهيئة المستقلة لحقوق الانسان تعبر عن قلقها لتزايد توقيف واحتجاز مواطنين على خلفية الرأي والتعبير والعمل الصحافي، فبراير 2016

<http://ichr.ps/ar/1/26/1325/>

مدى: انتهاكات الحريات الإعلامية في فلسطين التقرير السنوي 2017. ص 31- ص 44:

http://www.madacenter.org/images/text_editor/annualrepA2017.pdf

The newly elected parliament should strive to protect liberties and ensure the rights of the opposition, the media, and normal citizens by amending the 2018 cybercrime law by removing all these open-ended terms and by restricting the jurisdiction of the executive in blocking access to websites. It should ensure the privacy of users of the internet and social media.

Sources of Palestinian Authoritarianism

Before embarking on any serious reform effort pertaining to the previous four reform agenda, the PLC should ask itself how we arrived at this point of slide to authoritarianism: how did the PA manage to undo much of the progress it built in the first half of its existence? Without a full understanding of the forces and dynamics that brought us to where we are today, the PLC will not be able to realize and appreciate the impediments it will confront in the first day of its existence. On that day, it will have to decide whether it too wants to respect and implement the rules set by the Basic Law or put them aside as the executive authority did since 2007 claiming various justifications, such as the need to confront the consequences of the split triggered by Hamas' violent take over of the Gaza Strip. Some of the forces and circumstances behind the Palestinian grave failure to respect the legacy of those who preceded us are obvious and have already been mentioned while others are not so obvious. The following is a list of four sources that brought us to where we are today.

The Split: The first and most obvious source of authoritarianism goes back to mid-2007, in the form of measure put in place in response to Hamas' use of force in the Gaza Strip against forces loyal to President Mahmoud Abbas. This armed coup against the PA president, and the decisions made by Abbas immediately after the coup, led to the current political split that added further agony to the existing geographic separation between the two Palestinian regions of the West Bank and the Gaza Strip. In response to Hamas' coup, Abbas dismissed the National Unity Government, which was led at that time by Hamas' Ismail Haniyeh, formed a new government led by Salam Fayyad, and prevented the PLC from holding its meetings in the West Bank. This led to the creation of two governments, one in the Gaza Strip, the dismissed or caretaker government led by Haniyeh, and one in the West Bank, led by Fayyad. Fayyad's government never obtained a parliamentary vote of confidence as required by the Basic Law. The absence of a parliamentary approval for the Fayyad government provided the Haniyeh government with the legal justification to remain in office for the entire period between 2007 and 2014, when it finally resigned in the aftermath of the formation of the "reconciliation government" led by Rami Al Hamdallah. In late 2018, the failure of the reconciliation government to unify the West Bank and the Gaza Strip played a role in heightening tensions between Fatah and Hamas leading Fatah's Revolutionary Council (the elite of the party that lost the 2006 elections) to demand from the PLO Central Council (an unelected body) the dissolution of the elected PLC, a clear indication of the extent to which the split has destroyed Palestinian political norms.

Intra-Fatah rivalry: In the last five years however, the slide to authoritarianism has received a greater impetus from a second source: the heightening of internal power struggle inside Fatah, particularly the conflict between President Abbas and Mohammad Dahlan. Between 2011 and 2014, this internal power struggle led, under Abbas' instructions, to the expulsion of Dahlan and several other senior Fatah leaders from the Fatah movement, mostly from the Gaza Strip. However, during the period between 2015-19, the conflict spilled into the larger arena of the PA and its political system. The impact has been huge: PLC members were intimidated and their ability to criticize the executive significantly curtailed; the judiciary was brought under control and further stripped of its independence; civil society was weekend and forced to play by rules set by the executive; and the media, including social media, was brought

under severe restrictions and forced to exercise self-censorship. Because of that and given prevailing apathy in the street, as people were busy struggling to make a living or respond to greater repression from the Israeli occupation and its settlers, the PA became much bolder in ignoring the Basic Law and rule of law and more open in strengthening the institution of the presidency and the executive as a whole while weakening all opposition including that of civil society.

The nature of the Palestinian ruling elite: The third source of authoritarianism came from the Palestinian political elite, particularly those staffing the executive. There is no doubt that many of the elite (particularly among the Islamist one) are anti-democratic. Nonetheless, most are simply non-democratic. The real problem lies in the fact that only few of the members of the secular nationalist elite and almost none of the Islamist elite are truly democratic. Without the breaks normally found among democratic elites, the senior Palestinian bureaucracy in the executive branch found itself free of any meaningful oversight. Without restrictions on its ability to rule as it saw fit, members of the PA cabinets, find it easier to rule without being bothered by courts, civil society, or the media.

The task of the current PA elite is made easier by the absence of an effective opposition from within and outside Fatah. The replacement of Prime Minister Salam Fayyad with al Hamdallah in 2013 accelerated this process and played a significant role in facilitating the slide to authoritarianism. The opposition to the Fayyad government from within Fatah imposed constraints on its ability to work without accountability and many of its own members, including the prime minister, built a barrier that contributed to slowing down the rush to authoritarianism. On top of its own authoritarian instinct, the Hamdallah cabinet seemed unwilling to question measures instituted by Abbas and the PA security services to undermine rule of law or weaken civil society and indeed to restructure the entire political system. Instead of correcting the PA direction, Fatah's own political elite, not only in its Central Committee, but also in its Revolutionary Council, became apologists for the slide to authoritarianism justifying it on grounds of the split or a preoccupation with standing up to the Israeli occupation. This elite behavior demonstrated how empty and fake the calls for democracy that Fatah and other nationalist and Islamist movement pretended to embrace. This does not mean that these movement are essentially anti-democratic. But it means that the political leaderships and elite members of these movements, unlike their own base, find it easier and more natural to be authoritarian in the absence of accountability and oversight.

The diminishing role of the international community: With little or no attention from the international community, the PA has over the last decade, particularly since the Arab Spring, become bolder in ignoring its own Basic Law and rule of law while seeking to strengthen the power of the presidency and the executive as a whole and to weaken all opposition, including that of civil society. The international community seems much less interested in Palestinian good governance. American and European diplomats stationed in the Palestinian territories argued that due to rise of Islamism, civil wars, terrorism, and sectarianism in the post-Arab Spring environment, a focus on stability is replacing the traditional agenda of democracy and good governance. Moreover, given the failure of the international community to take a strong stand or concrete measures against Israeli settlement policy, the major international actors are reluctant to press the PA—which remains committed to the two-state solution--on domestic issues. One should also keep in mind that having reduced its own financial support to the PA by almost half during the past decade, the international community has lost considerable leverage. It is not surprising that this loss of leverage has been accompanied by a gradual detachment from Palestinian governance. Rule of law and good governance is no longer a priority for any of the major donor countries.

Conclusions:

This policy brief started with a skeptical view regarding the prospect of holding Palestinian legislative elections any time soon. However, the skepticism did not stop it from looking for ways in which elections, if they were held, can be capitalized on to serve the interests of Palestinian society, particularly in the area of political reforms. The previous analysis described the various indications of the slide to authoritarianism in the Palestinian political system and the four drivers of this slide. This analysis gave implicit support to the skeptical view by raising various indications questioning the seriousness of the PA leadership and the main Palestinian political parties in holding elections.

For the Palestinian political system to exit the current slide to authoritarianism and to be able to stand on a solid ground for a transition to good governance, it will be essential for all public institutions to work in harmony, including the legislature, the executive, the judiciary, civil society, and the media. The discussion in this paper has been restricted to the role of the PLC, once elected, because it will represent the aspiration of the Palestinian people and its civil society to build a political system characterized by accountability and rule of law.

During the years of the split, Palestinians discovered that they are not different from the rest of the Arab peoples, leaders, and political parties despite their own unique experience of living under occupation and in exile. Moreover, they discovered that they too are not much different than other Arab masses that tolerated oppression and authoritarianism for decades before the eruption of the Arab Spring in 2011. The Arab Barometer's fifth round, conducted in Palestine around the end of 2018, found that only one third of the Palestinians trust their own government, that the majority does not believe that it has guarantees of freedom of expression, and 83% said there is corruption in the PA public institutions. Despite the fact that the overwhelming majority agrees that "democracy, despite its problems, is the best system there is," about three quarters describe the status of democracy in Palestine as bad or very bad. Yet, no more than one third indicate that they participate in some kind of opposition activities.⁶

The holding of legislative (and presidential, at a latter stage) could provide the Palestinian public with the ability to make a difference and institute the change they have always aspired for through a widespread participation in these elections. Once a parliament is elected, it will have the mandate required for reforms thereby providing a solid ground for the PLC to take up the four areas of reform agenda covered in this paper. In order to succeed in its efforts to reform the PA, the PLC will have three effective tools in its arsenal: amending the Basic Law, reviewing, amending or rejecting selected laws issued by presidential decrees, and forcing a newly established government to amend or cancel anti-democratic regulations adopted by previous governments.

- **Amending the Basic Law:** This measure will be the most difficult because it is not clear that the PLC will have the majority needed to approve the proposed amendments. Nonetheless, it will be valuable for the parliament to open a debate on the need to transform the Palestinian political system into a parliamentary one or at least to take steps to decrease the powers of the office of the president so as to remove any ambiguity about the ability of a president to issue legislation during the absence of the parliament and put in place greater protection for the immunity of its members. It should ensure that the president does not have the capacity to make top senior appointments in the public sector without explicit parliamentary approval, that the executive cannot take away jurisdiction belonging to the judiciary, that free speech is guaranteed, and that the space available to civil society is not shrunk and their activities curtailed or controlled. The amendments and clarifications must make it clear, beyond any shadow of a doubt, that a government that does not receive a parliamentary vote of confidence is illegitimate and its decisions invalid.
- **Rule by decrees:** The Palestinian political system should not tolerate rule by decree. The PLC should review, amend, or reject in its first session all those laws issued by decree that have caused great

⁶ <https://www.arabbarometer.org/surveys/arab-barometer-wave-v/>

damage to the principle of separation of powers or violated the terms of the Basic Law, including those affecting the judiciary, the constitutional court, the cybercrime law, and others.

- **Illegal governmental regulations:** The PLC should also reject all those decisions and orders issued by the various PA governments since 2007 that violated the separation of powers and represented an attack on the jurisdiction of the parliament, such as the amendment introduced in 2015 to the regulations governing the functioning of the non-profit companies.

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