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With Recent Shifts in the Structure of the Palestinian Political System, What Choices Remain for a Safe Succession Process?

Jehad Harb

Strategic Analysis Unit
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Jihad Harb is a researcher on Palestinian politics and government with a special focus on parliamentary affairs. He is a co-editor of the ARI's report on the Arab Democracy Index: The State of Reform in the Arab World, and the Arab Security Index. He holds a Master's degree in political science from Tunisia. He writes a weekly article and teaches occasionally at the department of political science at Birzeit University. His publications include work on the Palestinian political system, good governance, parliament, integrity, and the security sector.

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This brief is the first in the PSR series of Critical Policy Briefs for 2022. These briefs address important domestic and foreign policy-oriented issues confronting Palestinian society today.

The Palestinian Center for Policy and Survey Research (PSR)

P. O. Box 76, Ramallah, Palestine

Tel: +970-2-2964933

Fax: +970-2-2964934

pcpsr@pcpsr.org

www.pcpsr.org

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The decision by President Mahmoud Abbas to place the General Secretariat of the Palestinian Legislative Council (PLC) with all its staff, departments and facilities under the direct responsibility of the Speaker of the Palestinian National Council (PNC)¹ has sparked debate on the process of implanting PLO institutions into those of the Palestinian Authority (PA). The Basic Law, which created the PA institutions, including the PLC, and described their functions and jurisdiction, does not recognize the PLO institutions, including the PNC, as legitimate components of the PA structure. Imposing PNC control over the PLC creates a hybrid PA-PLO system and brings about a significant transformation of the PA's political system. A serious debate is now underway about the wisdom and implications of this shift, particularly on the prospects for a safe transition of power in the event of a vacancy of the post of PA President.

Relying on political decisions to create an institutional or a "constitutional" foundation to ensure a smooth succession process, or filling the vacancy in the post of the head of state, will create an internal constitutional and political crisis due to the fact that the rules governing the selection of the head of state differ in PA legal system from that of the PLO's. The PLO legal system relies on a decision by the Central Council for the appointment of the Head of State. In the PA legal system, article 115 of the amended Basic Law of 2003 stipulates that it applies throughout the "Transitional Period" and can be extended until the new Constitution of the Palestinian State comes into force." The same law stipulates that the President must be elected by the Palestinian people.

The vacancy of the post of Head of State poses an additional challenge to the Palestinian political system already under extremely complex circumstances. First, the system lacks legitimacy due to the absence of elections. Second, the internal division and the split between the West Bank and the Gaza Strip have never been as deep as they are today. Third, the hidden internal conflicts over succession and the jockeying for power within the PLO institutions and the PA civil and security agencies are mounting.

This *Critical Policy Brief* aims to review the shifts in the nature of the Palestinian political system, the placement of the PLO institutions into the PA and the impact of the decisions of the Central Council on

¹ See Palestine Gazette, 191 (al-Waqai' al-Filastiniyya), Law Number 31 of 2022, Concerning the General Secretariate of the PLC, p. 34: <https://t.ly/Wtyb>

the future of the succession process. It describes the two most likely options available today to fill the vacancy in the position of the president or head of state and examines the positions of the various parties with direct influence in the political system. The *Brief* seeks to make recommendations to state institutions in order to avoid an institutional conflict when the position of the president or head of state becomes vacant in the hope of reducing internal differences and preserving a level of legitimacy in the political system.

This Critical Policy Brief aims to review the shifts in the nature of the Palestinian political system, the placement of the PLO institutions into the PA and state institutions and the impact of the decisions of the Central Council on the future of the succession process. It presents the two most likely options available today to fill the vacancy in the position of president or head of state and examines the positions of the various parties with direct influence in the political system. The paper seeks to make recommendations to state institutions in order to avoid an institutional conflict when the position of the president or head of state becomes in the hope of reducing internal differences and preserving a level of legitimacy in the political system.

Three turning points in altering the Palestinian political system

In the last 10 years, there have been three shifts in the nature of the political system towards the process of placing the PLO institutions into those of the PA, that was established in 1994 on the basis of the Palestinian-Israeli Oslo Accords, under the guise of transitioning from PA institutions to State of Palestine institutions. The first turning point came following the elevation of the status of Palestine at the United Nations to an observer state in November 2012. One of the manifestations of this decision was the replacement of the name of the Palestinian National Authority (PNA) with the State of Palestine in official Palestinian institutions, thereby removing the title of the “President of the PA” from the President's signature on presidential decrees and other decisions and replacing it with the title of “President of the State of Palestine” and Chairman of the Executive Committee of the PLO.

The second turning point came following the decision to dissolve the Legislative Council, in accordance with the Constitutional Court's interpretative decision on December 12, 2018, to "dissolve the Legislative Council and call for legislative elections within six months." Now, the phrasing of the decrees changed. As of issue 152 of the Official Gazette, issued on 19 February 2019, the customary words "on the basis of the provisions of the amended Basic Law of the year 2003 and its amendments" were removed from the decrees' introductory statements to that of "based on the statute of the Palestine Liberation Organization." Moreover, the decrees now omitted any reference to the article was written in all decree stipulating that the “law by decree must be presented to the Legislative Council at its first session for approval,” an article that had been until then contained in all laws by decree.² This constitutional change was an attempt to abolish the existence of the PLC from the political system and to

² See, AMAN's annual report on the assessment of integrity and anticorruption in Palestine in 2021, p.26: 1 <https://www.aman-palestine.org/reports-and-studies/16789.html>

assign a substitute in the form of the PLO Central Council, which was now, in the PNC's 2018 decision, granted the full legislative and oversight powers of the PNC.³

The third turning point came in the PLO Central Council's decision in its 31st session on 6-8 February 2022, which called for "the need to continue to work to adapt the legal status and international relations of institutions of the State of Palestine in accordance with General Assembly Resolution 19/67 of 2012 that recognized the status of Palestine as a state. The Central Council asserted its jurisdiction and constitutional powers over the executives' organs and institutions of the PLO as well as the PA. One of the manifestations of the central council's decision was the president's decision to place the General Secretariat of the PLC "under the responsibility of the Speaker of the National Council." The Central Council now holds its meetings at the PLC building; essentially turning it into the Parliament of the State of Palestine, as a fait accompli.⁴

Conflicting constitutional rules governing succession

A safe process of transition for the high office, one that maintains the legitimacy of one of the most important constitutional authorities in the country, requires the implementation of clear and agreed upon constitutional and legal rules, respect for the roles of existing political institutions, and the exercise of constitutional powers in a manner that preserves rule of law and strengthens public institutions. Unfortunately, in the event of a vacancy for the post of the PA President, the probability of conflicting constitutional and legal conflict is high given the contradictions between the rules governing the transition envisaged in the Basic Law compared to that of PLO by-laws and that of the PNC's various decisions regarding the selection of the president of the State of Palestine.

Article 37 of the amended Basic Law 2003 states that the position of the president of the PA becomes vacant in case of death, resignation, or loss of legal capacity on the basis of a decision of the Supreme Constitutional Court and the approval of the Legislative Council by a two-thirds majority of its members. In any of these cases, the speaker of the PLC assumes the presidency for no more than 60 days, during which free and direct elections are to be held to elect a new president in accordance with the Palestinian electoral.

Law by decrease number 1 of 2021, which amended the 2007 election law, stipulates the direct election of the PA president by the Palestinian people. Article 3 stipulates that the person calling for elections is the Head of State of Palestine, chairman of the Executive Committee of the PLO.⁵

Accordingly, the speaker of the PLC must serve as the interim president, which of course assumes the prior existence of a parliament. Yet, none of the other actors in the Palestinian political system can serve in that capacity, as this constitutional rule has not granted the interim presidency to any of the other

³ See the PNC decision here: http://wafa.ps/ar_page.aspx?id=44C019a819631600293a44C019

⁴ See the PLO Central Council's decision of February 2022: <https://www.wafa.ps/Pages/Details/41150>

⁵ See the text of the law by decree that amended the 2007 election law here: <http://muqtafi.birzeit.edu/pg/getleg.asp?id=17403>

parties in the political system. Given the fact that the PLC has been dissolved, the Palestinians will have to confront the prospect of a constitutional and legal vacuum and potentially a crisis. This provision is also based on the assumption that the political system relies on democratic rules for the political transition. However, if the need arises in the near future, the Palestinians will face a conflict of constitutional rules due to the absence of the PLC or a parliament directly elected by the Palestinians. This fact puts the Palestinian political system in constitutional crisis.

On the other hand, the provisions of the PLO Statute or bylaws refer to the mechanism for selecting the chairman of the Executive Committee of the PLO in the event of a clear vacancy of the post. Article 13, section 2, stipulates that "the chairman of the Executive Committee is elected by the Committee members", which is elected only by the PNC. However, at its 23rd session in Ramallah, the PNC transferred to the Central Council all its powers.

The two likely options for the selection of the president

This section of the paper reviews two options that are most likely to be relied on to choose the next Palestinian president based on the constitutional rules governing the formal political system *under the status quo*. The analysis does not take into consideration, non-institutional political or societal transformations that may arise and force a change in the structure of the existing political system. It also excludes the possibility of holding general elections in the very near future.

Option #1: the chairman of the PLO Executive Committee becomes president

Following the vacancy of the position of president, the Chairman of the Executive Committee the PLO would be nominated as president of the state of Palestine. He assumes the position by a vote in the Central Council. Article 13 of the PLO Statute provides for the mechanism for selecting the chairman of the Executive Committee as outlined above.

This option is easy to make and only needs a session of the Central Council. It does not require presidential elections in the foreseeable future; at least in the absence of the ability to hold them, and keeps both positions "the PLO chairman and Head of State" in the hands of one person to prevent a conflict of powers between the pillars of the dual political system. It promotes the process of dissolving the PA political system in favors of the PLO institutions at the expense of the public institution established after 1994 under the Oslo Agreement. The Chairman of the Executive Committee is also able to deal with international and regional parties, especially since he will be a well-known member of the Committee and does not need international recognition or external legitimacy.

However, this option carries with it multiple risks, including internal power struggle within Fatah in light of the potential rivalry and jockeying for positions of influence. Also, it will probably exacerbate the division between Fatah and Hamas, and will worsen relations within the PLO institutions and increase the opposition of other members of the PLO institutions.

Finally, this option poses serious risks to the prospects of a future Palestinian democracy by squandering the opportunity for elections and for the citizens to choose their president. It doing so, it will be a clear violation of articles (5)⁶ and (34)⁷ of the amended Basic Law of 2003 which stipulates that the President must be directly elected by the Palestinian people. It will also be in violation of article 37 of the amended Basic Law of 2003 governing the vacancy of the post of President. Such violations will reinforce the shift towards a more authoritarian regime in which no elections are held and in which the executive and legislative powers remain in the hands of a single individual.

Option #2: PNC Speaker becomes an interim president:

This second option assumes that the PNC Speaker becomes the interim president. This option is consistent with the current tendencies within the PLO Central Council and its February 2022 resolutions. One of those stated that “The Central Council assumes "its constitutional powers and oversight mandate over the executive bodies, organs and institutions of the PLO, the PA and the work of unions, trade unions and associations in accordance with the laws governing their work".

One of the most important advantages of this option lies in the fact that it is relatively more consistent than the previous one with the provisions of article 37 of the Basic Law governing the transfer of power in the event of a vacancy in the office of President. It is also consistent with the decisions of the Central Council. Furthermore, it maintains the hope that presidential elections will be held within 60 days of the vacancy of the post of President and show some respect for some of the provisions of the Basic Law, especially articles 5 and 34. It also contributes somewhat to alleviating some of the immediate conflicts and rivalries within Fatah over the succession issue. It may also be accepted, or at least not rejected, by other PLO factions.

On the other hand, this option carries with it multiple risks, including with regard to residual internal conflicts within Fatah. Given the fragmentation within the movement, the selection of its candidate for the presidential elections might not be easy. Needless to say, any general elections will exacerbate the division within the movement. Moreover, conflict between Fatah and Hamas will not disappear, particularly over the selection of the interim president, a job Hamas might think has been stolen from it. This option also has risks to the nature of the political system by effectively placing the unelected Central Council as an alternative to the elected PLC and in doing so, violate the clear provisions of the Basic Law of 2003. On top of everything else, nothing in this option guarantees the holding of any general elections in the aftermath of its implementation. In the meanwhile, the emergence power of the interim presidency might become permanent.

⁶ “Palestine’s political system is democratic Whereby the president is directly elected by the people.” Amended Basic Law, article 5.

⁷ “The president of the PA is directly elected by the Palestinians in accordance with the Election Law.”

Conclusion:

There is no doubt that the above-mentioned analysis strongly raises the concern about the PLO's identification and immersion into the PA and the substitution of PA institutions by those of the PLO. This concern becomes more serious when it comes to the issue of succession at a time when the holding of general elections in 60 days cannot be taken for granted and might be delayed for a long time. In this case, the PLO will be under pressure given its obligations under the Oslo Agreement and its various annexes. The failure to hold general elections also increases the risk of the lack of legitimacy in the entire PA and its public institutions and the prospect of internal strife.

The choice between the above-mentioned options must be based on the assessment of which one is more consistent with the provisions of the amended Basic Law, and is better able to open the door for the holding of general elections, particularly presidential elections, thereby reducing the prospect of the emergence of a highly authoritarian regime, one that monopolizes both the legislature and the executive authorities while being rejected by the majority of the public and factions. It must also be based on the assessment of which one is more likely to help reduce the likely gap in the positions of the various Palestinian factions, not just within the PLO but also within Fatah's various blocs and with other Palestinian groups. In this case, the second option, the one that allows the speaker of the PNC to become the interim president, seems to be largely in line with these criteria and might help mitigate the illegality and lack of legitimacy that will soon overwhelm the entire political system.

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