



Report on

Legislative Elections and Governance Integrity in Palestine



2021



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Executive Summary

Parliaments are the representative authority of citizens in any democratic system. Their decisions express the public will of citizens (majority and minority) in enacting laws and questioning the executive authority to hold it accountable.

Therefore, governing elites in different countries view the election of the legislative power and the resulting structure as an important component of governance control. The ruling power attempts to contain the parliamentary majority to push for the promulgation of legislations that preserve and reinforce these regimes and gear public budgets and policies to serve their interests and make their top officials enjoy immunity against any accountability. This undermines the integrity of governance in any given state.

In Palestinian, legislative elections have been held twice, in 1996 and 2006. Irregular elections are due to the Israeli occupation's obstacles to holding elections in Jerusalem in addition to internal political reasons due to the Palestinian political divide.

The present report diagnoses the electoral process and the form of the legislative power to be elected as well as its role in promoting governance integrity. It also assesses the risks of interference of parties from the political system in the legislative council's elections to control the outcome of the elections and form and role of the new legislative authority.

A review of the regulatory framework of the legislative elections and the Palestinian political system and previous elections, in addition to interviews with relevant organizations and representatives of the Palestinian political parties as well as political experts and elections experts, the study concluded the following:

- The Elections Law promotes the transparency of the Central Election Commission (CEC) and the electoral process. It set a ceiling for elections funding and sources. However, it has not stipulated the mechanisms of control of electoral [campaigns] funding by CEC. Furthermore, the law regulates electoral campaigns and the role of the official media in these campaigns but does not address the role of the private media. The law subjected CEC and the electoral process to the observation and accountability by local and international observers. It provides that observers must be present during the electoral process to promote transparency and integrity of the elections.
- CEC enjoys an independent legal personality. It is the official body responsible for monitoring the electoral process. All factions and observers testify that CEC is professional and impartial in the administration of elections. Nonetheless, to date, it has not been regulated by law. Its only legal framework is the articles in the Elections Law that stipulate fortis functions and role as well as the internal bylaws CEC prepared to organize its activity. Consequently, CEC suffers legal gaps including immunity of its staff against external interventions.
- The executive authority is the main player in the Palestinian political system. It drafted the electoral system and process clearly by the formulation of the Elections Law. For almost fifteen years, the absence of legislative power made it hegemonize the other authorities.

- The Palestinian context endures several complexities that hinder the regular holding of the legislative elections, most notably the Israeli obstacles to the organization of elections in Jerusalem. The political system has granted the executive power mandates that enable it to control the legislative elections and their outcome in a manner that compromise the governance integrity and maintains powers in the hands of the executive authority in addition to serving its interests:

- The President has the right to promulgate laws in cases of extreme necessity in case the PLC is not in session. Consequently, the executive power issued many legislations that weakened the Palestinian political system and enabled this power to control the different institutions. More specifically, the electoral system by introducing amendments to the elections law in the absence of the legislative power. The new draft law imposed undue restrictions on candidacy that contradict the Basic Law in an attempt to preempt the outcome of the legislative elections. These restrictions included political conditions imposed on candidates, which represent discrimination against the freedom of political opinion. Another condition related to proven resignation from current positions before running in the elections, which undermines the right of employees to run for office.
- The law and political system vest in the executive power and PNA President a discretionary mandate to select the members of the CEC, which is formed via a presidential decree. The law does not provide for the mechanisms of selection of CEC members and does not require ratification of the legislative power on their nomination.
- The absence of a law to regulate political parties and their sources of funding and the lack of mechanisms to monitor electoral funding in the general elections law leave large room to use domestic and foreign political money to influence the outcome and integrity of the electoral process.
- Worries arise regarding influencing the voting of security forces to serve the interests of specific lists, especially in the absence of the exact definition of security forces in the law and the existence of two ruling parties in the West Bank and Gaza and their respective security forces.
- The legislative power is connected to some executive power institutions like Diwan Al-Fatwa Wal Al-thasree', which publishes the Official Gazette. Publication of the laws in the Official Gazette is a precondition to their enforcement. Moreover, the Legislative Council receives its budget from the state's treasury. Since the disruption of the PLC, the executive authority has been procrastinating the transfer of the PLC budget in a manner that jeopardized the PLC's financial independence. Furthermore, PLC members are dependent on executive power for their remunerations and pension payments, which are disbursed from the state's treasury but do not contribute to the pension fund. This situation compromises the independence of the legislative power and its members' affiliations.

To overcome these problems, the following is needed:

- 1- Call on the international community to pressure the Israeli authorities to ensure they do not hinder but rather facilitate the organization of elections in Jerusalem.
- 2- Comply to holding periodic elections regardless of the political situation to redress the balance of the political system and separation of powers to prevent executive or other powers' hegemony and promote governance integrity in Palestine.
- 3- Review the effective law to draft a new elections law by the legislative power away of any political considerations or narrow parties' interests. The new law must provide for controls to prevent the executive power from interfering in the electoral process. It should, for instance, provide for the mechanisms of the nomination of CEC members by the executive power and approval by the legislative power before the promulgation of the presidential decree, similar to other state agencies. This system will enable the legislative authority to hold CEC accountable and will immune the Commission against any external pressure.
- 4- Amend the articles allowing for pre-voting of security forces until a clear definition of these security forces (police forces) whose agents participate directly in securing the electoral process. Mechanisms of participation of other forces must be regulated to take place on regular elections days to minimize fears of possible gearing of security forces' votes for a certain list.
- 5- Measures and policies are needed to control electoral funding and put an end to the use and exploitation of political funds and public resources.
- 6- Promulgation of a law on the legislative power to guarantee its financial and administrative independence and prevent executive power's control of its budgets, and members' remunerations, and pension salaries. The law must regulate the financial and administrative affairs of the legislative branch's staff to ensure full independence of this power.

Introduction:

Parliaments are the authority that represents citizens in any democratic system. Their decisions are the expression of the public's (citizens') will (both the majority and minority) via the enactment of legislation and holding the executive authority accountable and questioning its political acts. It is the representative body vested with the ratification of the public budget, whose revenues are generated by citizens' payments in the form of taxes, fees, and customs. Parliaments prioritize spending and monitor the enforcement of the national plans submitted by the governments¹.

For these reasons, the ruling elites in a state dedicate much attention to the legislative elections, being a tool to impose control on the parliament's decision by securing the majority of parliamentary seats. With this majority, it becomes easier for the government to pass legislation that reinforces and sustains the existing systems and gears budget and public policies to serve their interests by immunizing senior officials against any accountability or questioning.

The elites fully understand the importance of the electoral process to hegemonize the decision-making process. Hence, the design (selection) of the electoral system^{2*} is primarily a regulatory political matter. The context in which the electoral system is designed is as important as the choice of the design itself. Usually, the political interests lie in the heart of design considerations, which usually result in the enactment of an electoral system that has tremendous repercussions on the future of political life in a given country. As election systems are considered of determining effect on the construction of a political system, in addition to their importance in the administration of government, political interests surrounding this process focus on how to benefit from the motivators created by these systems³.

To establish a democratic system, elections must be held with freedom and integrity. This means preventing any falsification or influence on the votes, or on the conducting of these elections to serve one part to detriment of the other parties. Democracy also requires the rule of law, separation of powers, freedom of the media, and equal opportunities to all candidates to avoid manipulating the electoral process to serve one candidate, not the others.

In Palestine, since the establishment of the PNA in 1994, two general elections (of the Legislative Council) have been held in 1996 and 2006. In both cases, the elections have not been periodic. The first elected council stayed in office for almost ten instead of four years while the second council remained in office for the same period without any activity until it was dissolved by a constitutional court decision following orders from President Mahmoud Abbas. The reasons behind the disrupted organization of elections are numerous, mainly the obstacles laid by the Israeli occupation to hinder elections in Jerusalem in addition to domestic political considerations.

1 AMAN Coalition, Political corruption in the Arab World, June 2014

2 The selection of the electoral system enables the ruling authority and its elites to preempt the outcome of the elections since they design the system to weaken the opposition blocs and groups or independent groups and opt for a design that facilitates access of their supporters and allies to the parliament. Modern technology helps predicting the expected outcome of any system.

3 Forms of electoral system, International Foundation of Electoral Systems and Democracy Manual "new updated version", 2010

Both the first and second legislative elections were said to be free, fair, and acceptable as reported by the international observers who monitored the entire process and the political parties that took part in the elections. However, the failure after the second election happened due to the failure to ensure a smooth and peaceful rotation of power. After the elections resulted in Hamas winning 74 of 132 seats in the parliament and overweighing Fatah, which is considered as the ruling party, both parties failed to form a participatory government. As a result of this failure, Hamas usurped the authority via a coup d'état and imposed its full control over the public institutions in the Gaza Strip. Following this armed coup d'état, a political split took place and affected the functioning of the PLC. Hamas started to hold unilateral PLC sessions in Gaza while the other parties and blocks convened in the West Bank until the PLC was dissolved in 2018.

The irregular organization of the elections resulted in Hamas's control as a de facto ruling political party in the Gaza Strip, capturing all three powers while the PNA remained in control in the West Bank. The split was followed by a settling of scores between both parties and over politicization of public civil and security posts in addition to the polarization of the media outlets and influential bodies like the clergy and tribal chieftains. The political regime's control of the parliament, which is supposed to be the oversight body that guarantees the balance of the state powers, triggered a change in the system. These events created a fertile environment for political corruption, pushing each regime to focus on sustaining its rule rather than serving the public interest. Consequently, the ruling power hegemonized and hijacked the state institutions.

This painful Palestinian experience compromised the Palestinian national project and deepened the separation between the West Bank and the Gaza Strip (the two sides of the country). The result was the paralysis of the PLC, the representative of the public, to serve the hegemony and sustaining of the political regimes in the West Bank and Gaza Strip, which has been undermining the public interest since 2007. All of the attempts to put an end to the divide and reach a conciliation have failed as both conflicting parties with held to the centers of decision-making in the authority. In 2021, some hope of reconciliation appeared via the call to organize general elections and elect a representative legislative council as a first step toward the establishment of a participatory government and ending the political split between the West Bank and the Gaza Strip.

Purpose of the Report:

General Goal: Diagnose the electoral process and the shape of the expected elected legislative power and its role in boosting governance integrity in Palestine.

Specific Objective: Assess the risks and effect of the interference of members of the political system in the election of the PLC to influence the outcome, form, and role of the new legislative power via:

- Assess the indicators of the preparation for the elections and the details of the supervision of the electoral process (fair, free, and with integrity) and the management of the elections' outcome, and the working mechanism of the elected power.
- Formulate recommendations to promote the integrity and fairness of the electoral system by preventing any party to influence the outcome to serve its interests. The fair and free elections are a guarantee of governance integrity and combatting political corruption in Palestine as well as the creation of a PLC that acts with integrity and transparency to serve the public interest without being influenced by any external parties' pressure.

Methodology: Analytical descriptive methodology, which includes:

- I. Collection of relevant information and studies conducted in Palestine.
- II. Review of the legislative framework of the electoral process as regards the integrity and transparency of pertinent procedures (guarantee an independent PLC free of any external pressure including from the executive authority in the promulgation of policies and legislations and in the management of the public fund to serve the public interest because it is the representative of the people).
- III. Review the institutional framework of PLC elections stakeholders.
- IV. Description of the context, which includes:
 - Description of the previous elections (election of the first and second PLCs) with a focus on the regulatory and practical context and the governing policies.
 - Description of the matters about the past ten-year elections (their status in the reconciliation agreements, mechanisms of promulgation of the elections legislations during this same period).
 - Assess the indicators of fairness, integrity, impartiality, and independence as relevant to the preparation and conducting of the elections and the parties to the electoral process. Diagnostic of the management of the legislative power and its relationship with the other powers (the President and government).
- V. Analysis of data, information, and the outcomes of relevant indicators.
- VI. Conclusions on (the effect of the electoral process on the integrity of governance in the state and risks and effect of the interference and control of members of the political system of the legislative elections process.
- VII. Recommendations.

Elections regulatory framework:

The first elections conducted in 1996 depended on the elections protocol annexed to the Oslo Accord, which at the time represented the legal framework of the legislative elections in the PNA, as agreed upon between the parties to the negotiations (Israeli and Palestinian). This agreement stipulated for the number of parliamentary seats “members” and the elected council’s general role as well as the mechanism of elections in Jerusalem. The Israelis at the time aimed for a single PA body (executive and legislative) whereas the Palestinians aimed to separate the legislative body from the executive body.

Palestinian Elections Law 13 for the year 1995

Context:

The report on the Palestinian general elections of the PNA president and PLC members in 1996 pointed out that the draft elections law was prepared in early 1995 by the Ministry of Justice in cooperation with the Central Elections Commission and the Ministry of Local Government. It explained that the draft law was discussed in consultation meetings with the national parties and factions as well as the Islamic and Palestinian parties⁴.

Key pillars:

President Yasser Arafat issued in 1995 the Palestinian Elections Law No (13) for the year 1995, which included in its explanatory note some limitations of the electoral process:

- The law applies only to the inhabitants of the Gaza Strip and West Bank, including Jerusalem (but does not apply to the Palestinians of the diaspora, but preserves their right to participate in the elections upon their return to the homeland).
- The PNA president and elected Palestinian Council members shall be deemed members of the Palestinian National Council.
- The law provided for the elections of the PNA President and Palestinian Council members. The Council shall have a speaker elected among its members to reiterate the separation of powers.
- The law provided for a majority electoral system with constituencies and open lists. It stipulated that the PLC shall have 88 members including 7 seats for the religious minorities (six Christian seats and one Samaritan Seat), but has not prescribed any quota for women.

The Palestinian Basic Law

The amended Basic Law of 2003 stipulates that the governance system in Palestine shall be a parliamentary democratic system that depends on political and party pluralism. The PNA president shall be elected via direct suffrage. Citizens shall have the right to vote and run for the elections to elect their representatives. The Basic Law also provides in Article 26 for the right of the Palestinians to participate in political life, individually and collectively, and shall have the right to form and adhere to political parties in conformity with the law.

Elections Law No 9 for the year 2005

On 18th June 2005, the PLC promulgated the General Elections Law No 9 for the year 2005. The Law is based on the mixed electoral system evenly (50%-50%) between the relative majority (multiple constituencies) and proportional representation (list system) considering the entire Palestinian territories as one electoral constituency. 66 members shall be elected based on relative majority (multiple constituencies) and the remaining 66 members shall be elected based on proportional representation (lists).

⁴ CEC report on the Palestinian general elections of the PNA President and PLC members in 1996, on link <https://www.elections.ps/tabid/263/Default.aspx>

The law specified that 66 members shall be elected based on relative majority (multiple constituencies) and distributed in the 16 constituencies according to the population of each constituency, and with no less than one seat for each constituency. The number of members per constituency shall be defined by a presidential decree issued by the PNA President. Candidates shall compete individually in each constituency separately, and their names shall appear on the voting ballot. Every voter shall have several votes equal to the number of seats allocated to his/her constituency or less. Candidates who receive the highest number of votes shall win the elections. In the event of equal votes to two candidates in a constituency with only one seat, or for the last seat in a multi-seat constituency, complementary elections shall be held between the two or more candidates within ten days. The same applies to the seats allocated to the Christian candidates as these six seats are considered the minimum representation of the Christians at the PLC.

The proportional system/ lists are used to elect the remaining 66 members. Candidacy is through a close electoral list at the national level. The names of the candidates do not appear on the ballots, but in the stead, the electoral lists are shown and voters select one list only.

Names of the candidates on an electoral list are organized at the discretion of the list itself, provided that the number is not less than 7 and does not exceed 66 candidates. Every list must include a woman at least in the first three names and the next four names that follow and the next five names that follow and so on till the end of the list.

Seats on the electoral lists are distributed proportionally by the Sainte Laguë method. Each electoral list that receives 2% or more of the valid votes based on the proportional representation system shall be allocated a number of seats proportional to the total number of votes that the list receives and the seats each list wins shall be distributed over the candidates by the order of names in the list, (the first, the second and so on).

Decree-Law No (1) for the year 2007 on General Elections:

The Palestinian President, Mahmoud Abbas, issued on 2nd September 2007 Decree-Law No (1) for the year 2007 on the General Elections. The decree repealed the Palestinian Elections Law No (9) for the year 2005. In its preamble, it refers to the provisions of the Amended Basic Law, mainly Article (43), which grants the President the right to enact decree-laws in cases of necessity during the recess of the PLC. President Mahmoud Abbas “Abu Mazen” exercised this power because the PLC could not convene following the political division.

The decree-law replaces the Elections Law No (9) for the year 2005 issued by the PLC and ratified by the President on 13th August 2005.

The decree-law has prescribed the terms of candidacy relating to “the compliance of a candidate to PNA presidency to act as President of the PLO since it is the sole and legitimate representative of the Palestinian people and the Declaration of Independence and the Basic Law.” This term was introduced in 2007 following the political split between Fatah and Hamas but was not a provision in the General Elections Law of 2005, which governed the 2006 elections. The decree-law stipulated for complete proportional representation for the elections of the PLC (a lists system) and considered the

entire Palestinian Territory as a single constituency, repealing as such the mixed system prescribed by Law No 9, which governed the latest legislative elections in 2006. This means that all PLC members will be selected based on a list. Candidacy shall be only through closed electoral lists nationwide. Seats to the electoral lists shall be proportionally distributed using the Sainte Laguë method whereby every list receives several seats that are proportional to the votes it won at the national level.

The decree-law adopted most of the clauses of the Elections Law No (9) for the year 2005, including the definition of a resident, terms of candidacy, electoral process procedures, and introduced amendments with a new term of eligibility for candidacy to the presidential or legislative elections, which is “to comply with the PLO as a sole and legitimate representative of the Palestinian people and the Charter of Independence as well as the Basic Law.”

Decree-Law (1) for the year 2021 amending Decree-Law (1) for the year 2007 on General Elections

President Mahmoud Abbas issued on 11 January 2021 a decree-law amending the Elections Law of 2007. The amendment has not changed the proportional representation system, but focused on the following amendments:

- Repealing the conditions to candidacy prescribed by the 2007 law, to read “compliance with the Palestinian Basic Law and the General Elections Law.”
- Organization of subsequent elections, starting with the PLC elections, then the presidential elections on another date but both elections shall be considered as a single election cycle although not simultaneous.
- Amend the order of women candidates on the electoral lists to increase their quota to about 26%.
- Prescribing a condition on candidates to submit their resignation from their public posts and other posts set in the law before becoming candidates. The decision existed in Decree-Law No 1 for the year 2007 but was redrafted in the amendment of 2021.
- An implicit condition on the President of the State of Palestine to be the President of the PLO, to read as follows in Article (3) “the President of the State of Palestine, President of the Executive Committee of the PLO shall issue...”
- Compel candidates to the presidency to be part of a list or a party.

Legislative electoral systems underwent different phases, starting with a regime of relative majority, which promotes tribalism and weakens partism in the political system. It later shifted to an evenly mixed system combining both a constituency and proportional representation systems. This system started to generate political pluralism to reach a fully-proportional representation system. Despite the positive aspects of the new general elections law, currently, in effect, some articles preempt the shape the legislative power and undermine the right to free elections outlined in the Basic Law. We will address these problems in detail through the application of the indicators considered by the present study. These include the precondition resign from office to become a candidate and the obligation to belong to a party or list to run for president. This system compromises the right of independent officials to run for the elections.

III. Institutional framework and PLC elections stakeholders:

Before the formation of the PNA in 1994, and before the establishment of the PLC, the late President Yasser Arafat issued a resolution on 20 November 1993 to form “Local Government and Elections Commission”, to be presided by Saeb Erekat. The resolution defined the missions of the Commission, which include the preparation of a detailed perspective of the structure of local government in Palestine to submit it to the leadership for approval, propose a draft municipal and village councils elections law and prepare a proposal of the requirements of the organization of municipal and village councils, as well as drafting a full proposal of the needs to conduct legislative elections, including the preparation of an electoral system. The same resolution provided that the Commission’s members, legal counsels, and experts shall be nominated at a later stage⁵.

Law No (14) for the year 1995 on elections provided for the formation of the Central Elections Commission to administer the general elections. The first CEC was established on 21 December 1995 via presidential decree No (3) for the year 1995. Mr. Mahmoud Abbas, who was the Secretary of the Executive Committee of the PLO, was nominated president of the Central Elections Commission. CEC then administered the first presidential and legislative elections on 20 January 1996⁶.

On 10th October 2002, President Yasser Arafat issued a presidential decree appointing Dr. Hanna Nasser President of the Central Elections Commission, which was formed by a presidential decree of 27 October 2002. The other members have also been appointed. CEC’s membership was changed several times to guarantee the independence of members. Some members resigned following their appointment to public posts in the executive branch.

5 CEC web page: <https://www.elections.ps/tabid/597/language/ar-PS/Default.aspx>

6 Ibid.

To perform the authorities vested in it by the law, CEC established an administrative body “Elections Management Unit”, which is presided over by the Executive Director, who is appointed by CEC. The Unit works under the full supervision of CEC.

Article (19) of the General Elections Law prescribes that the CEC shall be the highest authority responsible for the administration and supervision of the elections. It shall be responsible for the preparation, organization, and implementation of the elections and shall guarantee that elections are conducted freely and with integrity. CEC shall comprise nine members, including judges, scholars, and lawyers with expertise. The same presidential decree nominated its president and secretary-general. Article (22) of the Law prescribed that CEC shall be independent, “CEC shall be a permanent body with legal personality and shall enjoy administrative and financial independence. Budget allocations to CEC shall be made as an independent financial center on the public budget.

CEC was established with the membership of the nominees in the presidential decree, who shall be the point of reference, monitoring, and implementation (electoral administration). Members of CEC shall meet periodically once a month or upon an invitation from its president. CEC shall be deemed in ongoing meetings since the call for elections. It shall discuss and approve the necessary measures to manage the electoral process and shall ratify the decisions relevant to its policies⁷.

- CEC shall apply the law and its executive regulations. It shall prepare the draft regulations by the law. It shall devise its internal regulations and shall supervise the organization and implementation of the electoral processes and any other task. For instance, without being limited to, it shall prepare a voters' list and register electoral lists; it shall prepare lists of candidates and shall publish the lists and arbitrate on challenges. It shall announce the final results. Furthermore, CEC shall organize public awareness activities to inform citizens of the electoral issues. Since its restructuring as a permanent commission in 2002, CEC has organized several electoral processes and events, including the election of the PNA president in January 2005 and the election of PLC members in January 2006, and local councils' elections in several electoral cycles. It also prepared and regularly updates the voter's registry. The CEC continually upgrades the capacities of its staff to be ready to organize and supervise any elections held by the law⁸.

- Constituencies and their allocated seats are defined in the presidential decree on the general elections. The Ministry of Local Government demarcates the administrative jurisdiction of the constituencies before the holding of the local elections⁹.

- The public security oversees the protection of CEC, its offices, and voting centers during the electoral process.

- The judicial authority shall, via an elections court, consider the challenges against CEC decisions throughout the general elections process.

⁷ Effectiveness and resilience of the integrity system in the activity of CEC, AMAN, January 2013

⁸ CEC web page: <https://www.elections.ps/tabid/597/language/ar-PS/Default.aspx>

⁹ Independent Commission for citizens' rights, Report on general elections management and supervising committees, special issues series, No. 17, Ramallah, September 2020

IV. Palestinian Legislative Elections context:

The Declaration of Principles signed between the Palestinian and Israeli sides in Washington on 28th September 1993 regulates the elections. Article 3 states that “So that the Palestinian people in the West Bank and Gaza Strip may govern themselves according to democratic principles, direct, free and general political elections will be held for the Council under agreed supervision and international observation, while the Palestinian police will ensure public order.”

The Interim Israeli Palestinian Accord on the West Bank and Gaza Strip signed in Washington on 28th September 1995 included in its Annex II an elections protocol that details the electoral process under the following subjects: bases of elections, right to elect, electoral registry, qualifications and nomination of candidates, electoral campaign, international oversight of the elections, arrangements of elections in Jerusalem, the agreed-upon form of voting information and terms of reference of international observers, privileges, and immunity granted to international oversight delegates.¹⁰

Taba Accord of 1995 prescribed for the right of the Palestinians who live in Jerusalem to take part in the elections as per the provisions outlined in the Accord and Article 6 of the second annex to the Interim Agreement on “Elections in Jerusalem¹¹”

First Legislative Elections

The first legislative elections encountered many obstacles since the PNA did not have a voters' registry. To overcome this problem, schools teachers conducted an internal survey of all of the houses of the Palestinian citizens in the cities, villages, and camps. Furthermore, the Israeli-Palestinian interim negotiations were still going on while the redeployment of the Israeli occupation forces in Hebron has not been completed. For this reason, the Palestinian police were not present to guarantee the security of the voting centers. In Jerusalem, the Israeli occupation forces deployed thousands of soldiers and did not grant the CEC access to observe the ballot boxes directly. Other problems related to complicated access because of the lack of territorial contiguity between the West Bank and Gaza Strip and the Israeli occupation's control of the passages between the two regions. This made it difficult to transport elections material and hindered the mobility of CEC staff¹².

As for the electoral campaign, CEC said it was not heated because the Palestinian TV did not have the technical capacity to host candidates' debates on the one hand and because the opposition boycotted the elections because they opposed Oslo Accords. Furthermore, most of the electoral propaganda focused on ending the occupations and did not propose any actual programs. The propaganda focused on the candidates themselves rather than an electoral program¹³.

10 Israeli-Palestinian Interim Agreement on the West Bank and Gaza Strip, signed in Washington on 28th September 1995, Annex II – Special Protocol on Elections, as mentioned in CEC report on the link: https://info.wafa.ps/userfiles/server/pdf/Election96_Docs.pdf

11 Taba Accord, https://info.wafa.ps/ar_page.aspx?id=4891

12 Speech of the CEC Secretary General, Mohammad Ishtieh, President of PECJAR on the opening of the CEC special report on the public Palestinian elections of the PNA president and PLC members in 1996, on the link: <https://www.elections.ps/tabid/263/Default.aspx>

13 Ibid.

The first Palestinian legislative elections under the PNA took place on 20 January 1996. They, in the words of the then CEC president, Mahmoud Abbas, represent the foundation stone of the establishment of an authority based on a constitution and legal legitimacy¹⁴.

The first constituency-based legislative election resulted in a legislative council with 88 members, mostly from a single party (50 members from Fatah and 36 independent members). A few members were from the opposition party in the PLO, which included the Democratic National Alliance (1 member) and the Palestinian Democratic Union- FIDA (1 member), and some Islamic streams.

At the political level, the first PLC's term was supposed to end with the end of the Interim period defined by the Oslo Accord, that is in 1999. However, the political situation in Palestine changed drastically with the eruption of the Second Intifada and the stumbling of the Israeli-Palestinian negotiations. Consequently, the Interim Period has not come to an end by either Israel or the PLO. The PLC henceforth extended its term to around ten years, until the second legislative elections in 2006.

The second legislative election:

To hold the second legislative elections, the Palestinian factions met in Cairo in the period from 15 to 17 March 2005 following a call from the PLC to amend the legislative elections law and adopt a mixed electoral system (50% on lists basis and 50% on constituency basis) and to increase the membership to 132 members in addition to providing for a women's quota on the electoral list. Consequently, the PLC enacted Law No (9) for the year 2005 following a consensus among the convening factions¹⁵.

The second legislative elec took place on 25th January 2006 and resulted in Hamas's Change and Reform List winning 74 seats, representing 56% of the PLC. Fatah won 45 seats or 34% of the Council while the other seats were distributed among independent candidates and other small lists¹⁶.

The peaceful rotation of power was faced with many complications that resulted in a domestic disaster. Palestinian, international, and Israeli reactions led to a Palestinian political crisis that ended in a political confrontation followed by an internal killing in the Gaza Strip. Consequently, the Palestinian political system was split into two parts with Hamas controlling the Gaza Strip while the Fatah-led PNA continued to rule the West Bank.

14 Speech of the CEC President, Mahmoud Abbas, Secretary General of the PLO on the opening of the special CEC report on the Palestinian general elections of the PNA President and PLC members in 1996, on the link: <https://www.elections.ps/tabid/263/Default.aspx>

15 Independent Commission for citizens' rights. On the Second Legislative Elections held on 25th January 2006, special reports series, 44, p.3 3

16 Statistical and political study on the outcome of the second Palestinian legislative elections, held on 25th January 2006. Middle East Studies Center. Aman on the link (http://mesc.com.jo/Studies/Studies_3.html#34). Independent candidates backed by Hamas won 4 seats, representing 3%. Martyr Abu Ali Mustapha List, which is affiliated with the Popular Front won 3 seats, representing 2.3% while Al-badil (coalition of the Democratic Front for the Liberation of Palestine and the Palestinian People's Party and the Palestinian Democratic Union and Falastin Al-Mus taqillah, which is affiliated with the Palestinian National Initiative, on the one hand and The Third Stream on the other won two seats each, representing 1.5% of the PLC seats.

The political split affected the parliament, which witnessed rising conflict between Fatah and Hamas blocks in the first session. Following this session on 6th March 2006, the PLC repealed all of the resolutions made by the first PLC on 13th February 2006 after which the Israeli occupation authorities arrested around 45 MPS, mostly from Hamas, including the speaker of the Council. At the beginning of March 2007, both Hamas and Fatah asked President Mahmoud Abbas to extend the first annual term of the second PLC. Following this request, the Palestinian president issued a decree on 5 March 2007 to extend the term for another four months to set the domestic political context for the formation of the eleventh government (the national unity government)¹⁷.

Hamas block thought that the detention of MPs disrupted the numerical majority at the PLC and feared that laws and resolutions would be enacted against its will. Therefore, the sessions of the PLC were not regular during this term. On 5th July 2007, the PNA President Mahmoud Abbas issued a presidential decree to announce the opening of the second PLC term on 11 July 2007. But Hamas bloc refused to hold the opening session of the PLC. The First Deputy Speaker called for an extraordinary session to avoid holding elections of another speaker of the PLC while Hamas did not enjoy the numerical majority. Hamas's Bloc supported the military coup d'état in mid-2007 to overthrow the PNA in the Gaza Strip. Its military militias controlled the presidency premises and the security forces headquarters and took control of the Gaza Strip. Subsequently, the annual ordinary term of the PLC has not opened and the parliament became nonfunctional¹⁸.

PLC elections in the Fatah-Hamas reconciliation agreement:

Fatah and Hamas had several rounds of talks to reach reconciliation in addition to some factional consensual attempts, including the Prisoners' Document of 2006, Mekkah Accord of 2007, which called for the suspension of armed clashes and the formation of a national unity government, as well as Sanaa Declaration of 2008, Cairo Talks on 12th March 2009. Reports mentioned that both parties tried to reach a consensus on the Palestinian security apparatuses issue and on 15th March they tried to reach an on the organization of presidential and legislative elections by 25th January 2010. Cairo submitted a proposal to hold general elections in the Gaza Strip and West Bank in the first half of 2010 in addition to reforming the Palestinian security agencies under Egyptian supervision and release of the political prisoners on both sides.

Before the elapse of the presidential and second legislative terms in 2010 and based on the Basic Law, President Mahmoud Abbas issued Decree Number 35 for the year 2009, which stipulated that "the Palestinian people in Jerusalem, the West Bank, and Gaza Strip are invited to free and direct general presidential and legislative elections on Sunday 24th January 2010¹⁹.."

17 Harb, Jihad and Jabarin, Sami, Report on the performance of the PLC 2006-2008, Miftah 2008

18 Harb, Jihad and Jabarin, Sami, Report on the performance of the PLC 2006-2008, Miftah 2008

19 <http://muqtafi.birzeit.edu/pg/getleg.asp?id=16055>

However, CEC was unable to organize elections in the Southern Governorates (Gaza) because Hamas refused to cooperate with the Commission. CEC informed President Mahmoud Abbas of its decision to request the postponement of the elections because of its inability to organize it in the Gaza Strip. Following CEC's decision, President Mahmoud Abbas promulgated another decree delaying the presidential and legislative elections, called Decree No (1) for the year 2010, issued on 22nd January 2010. The Decree stated that "following a request of the CEC on 12th November 2009 to postpone the presidential and legislative elections because of the inability to organize them in the Southern Governorates, it is decreed that the date of presidential and legislative elections assigned in Presidential Decree No. (35) of 2009 issued on 24th of October 2009 shall be postponed. The date of the upcoming presidential and legislative elections shall be assigned by presidential decree to be issued when the circumstances allow for conducting elections²⁰."

On 20th December 2011, the factions convened to devise the mechanisms to enforce the Palestinian National Consensus Agreement signed by the factions in Cairo on 4th May 2011. The agreement nominated the members of the Central Elections Commissions to submit to President Mahmoud Abbas to issue the necessary decree for their appointment. It was agreed to activate the PLC via consultations and recommendations submitted by the parliamentary blocs to the President²¹. In June 2011, negotiations on the formation of a national unity government were suspended because of disagreement on who will be the Prime Minister.

President Mahmoud Abbas and the head of Hamas's Political Bureau, Khaled Mashaal, signed the Doha Agreement in February 2012, and on 1st April of the same year, the implementation of the reconciliation was described as stumbling without achieving any progress regarding the joint elections schemes. In May 2012, Fatah and Hamas signed a new agreement in Cairo that stipulated a new national unity government and the organization of Palestinian elections three and a half months after the Doha Agreement. The new Cairo Agreement undertook basic steps to implement the Doha Declaration, mainly as regards registration of new voters in the Gaza Strip and the formation of a temporary government.

On 23rd April 2014, Fatah and Hamas signed a new reconciliation agreement to establish a national-unity government within five weeks, following which presidential and parliamentary elections will be held within six months²². In his address before the UN General Assembly on 26th September 2019, President Mahmoud Abbas confirmed that following the deliberations of the General Assembly, he will call for general elections in Jerusalem, the West Bank, and Gaza Strip and called on the United Nations and the international community to supervise these elections. He also said that he holds any party that tries to hinder the elections on their set date full accountable²³.

20 <http://muqtafi.birzeit.edu/pg/getleg.asp?id=16092>

21 The official text agreed upon by the Palestinian factions following their meeting in Cairo on 20th December 2011
https://info.wafa.ps/ar_page.aspx?id=7650

22 <https://info.wafa.ps/userfiles/server/pdf/23-4-2014.pdf>

23 The UN News: The Palestinian President Mahmoud Abbas: We will conduct the general elections and and called on the United Nations and the international community to supervise these elections. <https://news.un.org/ar/story/2019/09/1040402>

On 24th September 2020, Fatah and Hamas published a joint statement following their meetings in the Turkish capital of Istanbul in which they discussed the Palestinian reconciliation via the organization of elections and settlement of the unsolved issues between the two movements since the Palestinian inter-killing in the summer of 2007. The two parties decided to refer their agreement to a leadership meeting attended by the Secretaries-General of the factions prior to the official announcement by the Palestinian President of the date of the elections²⁴.

The Palestinian President Mahmoud Abbas issued Decree No (1) for the year 2021 on 15th January 2021 to call for presidential, legislative, and national councils' elections. According to the Decree, the Palestinian people in Jerusalem and all constituencies of the nation are invited to general, free, and direct elections to elect members of the Palestinian Legislative Council on Saturday 22nd May 2021, and to elect the President of the State of Palestine on Saturday 31st July 2021. The Legislative Council Elections shall be considered the first stage for the election of the Palestinian National Council. The formation of the Palestinian National Council shall be completed on 31st August 2021, in accordance with the Basic Law of the Palestine Liberation Organization, and shall take place wherever possible²⁵.

Following this decree, the Palestinian factions held meetings on 8th and 9th February 2021 in Cairo and agreed to hold the elections on the dates assigned in the presidential decrees issued by President Mahmoud Abbas. They issued a statement with a set of commitments and guarantees signed by the factions to ensure the smooth conducting of the elections. They mainly pledged to respect and accept the outcome of the elections and agreed on the elections court, security, electoral propaganda, and other matters related to the electoral process. The factions agreed to convene in March with the presidency of the Palestinian National Council and CEC to agree on the bases and mechanisms to complete the formation of the new PNC to activate and develop the PLO²⁶.

24 <https://www.aljazeera.net/news/politics/2020/10/14>

25 https://www.elections.ps/Portals/0/PresidentialDecree_PLC_Presid_2021.pdf

26 Khalil, Nael <https://www.alaraby.co.uk/politics> On 9th February 2021

The experiences of the first and second legislative councils and their effect on the political system:

Dr. Azmi Shuaibi²⁷, a former member of the first PLC, through his observation of the activities of the second PLC, stated that the first PLC, notwithstanding the absence of significant political opposition, still embarrassed the political system in many instances:

- The PLC endeavored to safeguard its independence by rejecting the internal bylaws prepared by the then President of the PNA in cooperation with the speaker of the PNC to regulate the PLC activities. It insisted to prepare its bylaws, which were disapproved by the President but were adopted and enforced by the PLC.
- The PLC issued many legislations against the will of the political system, including the Basic Law, the Judicial Authority Law, the Civil Society Organizations Law, the Civil Service Law, and many others.
- In the area of accountability and checks and balances of the government, the PLC threatened to vote a motion of no confidence against the government on several occasions. It objected in many instances to the policy of public funds and resources management and submitted reform plans proposals in the different areas of authority. It also published reports about corruption and the necessity to hold corrupt senior public officials accountable.

The experience of the second PLC had a different impact on the governance system. It resulted in the loss of the ruling party of the majority in the Council. The new Council refused to abide by the instructions of the President or to ratify the resolutions made in the last session held by the previous PLC. This situation undermined the political system via control of the decision-making positions in the government and the legislative authority by control of the presidency of the PLC.

In general, the legislative elections in Palestine are not held regularly or smoothly. They encounter many complications because of the Israeli occupation and the obstacles it lays to the organization of the elections in Jerusalem and the internal political differences. This situation affected the nature and form of the Palestinian political system because of the executive power's hegemony over the other authorities. Decisions to hold the elections were made and repealed, while the two major factions agreed on bases that serve their interests on the electoral system, elections court, and security to secure the elections in the West Bank and Gaza Strip. All of the formulas and aspects related to the elections have been subject to consensus. The only independent element is the CEC, which has not been formed based on quotas nor controlled by the different parties.

In conclusion: both conflicting parties endeavored to exploit the elections to reinforce their control of the key public decision-making positions in the political system, i.e., the legislative power.

27 Dr. Azmi Shuaibi, member of the first PLC, interview on 5th June 2021

Justice, Integrity, impartiality, and Independence

The Elections of the Legislative Council and the Supervisory Bodies

Fair, free elections and integrity

To have free, fair and of integrity legislative elections, several principles must be observed in the entire legislative process. These include legal principles that guarantee and safeguard the integrity of the process and do not allow any party to employ it to any interest other than that of the public; the principles also include the adoption of the best practices in the implementation phase.

Fair elections

- Respect of electoral rights:

The Elections Law No (1) for the year 2007, as amended, has guaranteed most of the electoral rights. It stipulated the necessity to establish an independent administrative framework to administer the elections and enable every right holder to exercise his/her right to be a voter and/or a candidate. The third chapter of the law addresses (Elections Management and Supervision) and elaborates on the formation, mandate, and decision-making mechanism of the Central Elections Commission. Article (12) reiterates CEC's administrative and financial independence and that it shall be a legal personality with independent budget allocations as a financial center. It also has the right to prepare the voters' registry and accept candidacy applications.

The General elections Law of 2007 grants in Article 19 to every party in the elections processes the right to challenge CEC's decisions before the Commission itself. Article (2) provides that a special elections court shall be formed. Furthermore, in several articles, including Article (14), the law grants all the parties to the election process and in every stage of the process the possibility to challenge CEC decisions or have recourse to CEC to settle any dispute resulting from the electoral process. Articles 21 to 26 detail the litigation mechanisms before the Elections Court.

- Representation of Minorities

Following pressure from women organizations on the first PLC, the women's candidacy quota has been raised to around 20%. Article (4) of the General Elections Law for the year 2005 provides that each electoral list nominated for the proportional elections (lists) shall include a minimum limit for the representation of women that is not less than one woman in the first three names in the list; the next four names that follow; and every five names that follow.

Article (5) of the Decree-Law No (1) for the year 2007, as amended, provides for the necessity that each list of candidates must have a minimum representation of women, whereby the first three names must have a woman and then at least a woman in the four names that follow. Article (5) of the same law stipulates that a decree will be promulgated to allocate the quotas to Christians, considering them a minority.

The second PLC is more representative of the different communities of the Palestinian society than the first one. It has deputies from multiple political parties after the left and Islamic factions (Hamas) have run for ht elections. It also has a specific quota for women and Christians while the candidacy age has been lowered to twenty-eight years.

Free elections:

- Competition among diverse forces:

The 2007 Elections Law, as amended, stipulates in Article 6.3 that seats shall be allocated to each electoral list that has won 1.5% of the voters' valid votes, in a manner proportional to the number of votes it won. This threshold provides any list with this number of votes to win two seats in the PLC²⁸.

Considering the low threshold (1.5%), the number of participating lists will increase, but those who access the council will be supported by the larger factions. It is expected that a very small number of the other lists will accede to the PLC.

The Secretary-General of the Palestine People's Party, Mr. Bassam Al-Salihi, believes that the proportional system is fairer than any other electoral system, especially if the threshold is maintained as before. He added it would be better than the law setting a limit for every list of candidates to not exceed 60 candidates. This way, it will ensure higher respect for plurality²⁹. Fatah member, and MP in the second PLC, Dr. Najat Al-Astal said that the proportional representation system is used in most countries of the world and that it provides room for smaller lists so that voters' votes will not be wasted, unlike the constituency system³⁰.

- Freedom of elections:

Chapter XII of the law tackles electoral crimes and penalties. Clause 1. f considers any person who influences the right of voters to cast their ballots or obstructs the electoral processes in whatever way shall be considered as committing an offense. Article 109 covers electoral bribes and considers any form of influence on voters and their choices as an offense punishable by the law.

In this regard, CEC's Executive Director, Mr. Hisham Kuhail, explained that the punishments imposed in the law on elections are enforced by CEC at the procedural level. He also clarified that adjudication in some cases is delayed because of investigation and the necessity to have a legal delegation by the Attorney General, as was the case relevant to the change of the venue of registration in Hebron Governorate. CEC has referred a file to the Attorney General around a month ago, but he has not made a decision in this regard to date³¹.

- Control of votes weight and winning chances:

In the previous elections systems, the weight of a vote was valuable since it decided who wins. Kuhail mentioned that CEC has not received any change of residency address as relevant to the legislative elections in the previous elections, but this happened during the presidential elections in 2005, more specifically in the security forces, when a civil registry was opened many addresses were changed.

28 Dr. Taleb Awad, Electoral Expert, Interview on 29th March 2021

29 Bassam Salhi, General Secretary of Palestine People's Party. Interview on 3rd April 2021

30 Dr. Najat Al-Astal, former PLC member from Fatah, interview on 8th April 2021

31 Hisham Kuhail, CEC Executive Director, interview on 27th March 2021

In a proportional electoral system, a voter has the right to vote for one electoral list, which gives each vote equal weight. However, in some cases, the vote may be equal to nil if the law does not provide for a mechanism to handle the excess of votes, as is the case in Palestinian law. The Saint Laguë system has been used to distribute seats, but this system does not account for the excess of votes given to the lists that do not bypass the threshold of 1.5%. In this case, the votes are nullified and are not equal to the votes given to a list that has passed the threshold.

Elections with integrity:

- The Right to be a vote and candidacy:

The law guaranteed the right to vote to every citizen as per Article (28) of the Decree-Law on General Elections. The Article mentions the scope of the right to vote, stating it is a right to every Palestinian in the West Bank, including Jerusalem and the Gaza Strip who fulfill the terms outlined in the law regardless of their religion, political opinion, or affiliation, or political, social, economic or intellectual status.

- Candidacy procedures

Article 13.11 of the 2007 Elections Law provides that the CEC shall be responsible for the preparation of the final names of the electoral lists and their candidates and shall publish them in one daily paper at least, as per Article (40). Every voter, list, or candidate shall have the right to challenge or file a complaint against any infraction of the terms of candidacy in any of the lists of candidates. The challenge/ complaint must be submitted with evidentiary exhibits.

CEC publishes a procedural manual for the submission of challenges and complaints on its website. The manual shows details on the mechanisms of the submission and follow-up of challenges. A challenge or a complaint submitted to CEC is examined in a maximum period of three days, after which a decision is made and notified to the plaintiff in writing. Any person who wishes to appeal to a CEC decision before the elections court may submit a challenge within three days from the date of notification of the CEC decision. The court adjudicates the challenges submitted thereto within 7 days maximum. Its decision is definitive and unappealable. It appears on the CEC official page that these measures are in force. CEC publishes the number of cases and challenges filed therewith and details about their different stages³².

³² Challenges, complaints and electoral lists https://www.elections.ps/tabid/1163/language/ar-PS/Default.aspx?fbclid=IwAR1CV0wkRi80pynIQIMNFr7fV-1FuJtKZUv5LAVv_MpwalGbK2CQPqRQ3M
Dismissal of challenges by the court <https://www.elections.ps/Default.aspx?TabId=1069&ArtMID=8994&ArticleID=2772>

Restrictions on candidacy:

The law states that registration is a prerequisite for voting. Article (27) addressed the eligibility to elect, paragraph 1.c provides that the name of the candidate must be listed in the final voters' registry; paragraph 1.d says that he/she should not be disqualified of the right to vote as per the provisions of Article (29) of the same law, which lists the issues that disqualify a voter of the right to vote, which include being convicted by a court decision or legally disqualified by a judicial resolution or convicted with an offense against honor or integrity or be a holder of the Israeli citizenship. Article 28.3 of the law prescribes that the right to vote may be suspended if the voter is registered in more than one electoral constituency. Voters must exercise this right in their constituency of registration. Paragraph 2 of the same article prohibits voting by proxy.

As for the candidates, the law grants them the freedom to run as part of electoral lists and defines the controls of candidacy in Article (8) of the amended law, 'The following categories of employees shall not run as candidates for membership of the Council or the position of the President unless they resign prior to the date set for the announcement of the final list of candidates: Palestinian National Authority employees (civil and military) and/or those who are paid a salary or monthly allowance by the State treasury or public funds affiliated thereto or under the supervision thereof. Employees of public institutions and international organizations and heads of local authorities. d. Chairpersons, directors, and employees of NGOs. Some political analysts believe that the restrictions on candidacy on NGOs employees and academic staff are unnecessary and restrain participation.

The condition of resignation is consistent with the principle of preventing candidates from abusing their positions during their candidacy either by prohibiting them from using their influence or blackmailing or bribing voters. It also prevents them from using the resources of the organizations in which they work. The law did not limit the restrictions to the public sector employees who are paid from the public treasury but extended to members and heads of local authorities, and NGOs directors and staff as well as employees of public and international organizations.

But on the other hand, to prescribe the obligation to provide any evidence of resignation as a precondition to run (that is before the acceptance of candidacy) substantially undermines the freedom of the electoral process and equal candidacy opportunities. This term allows any official to reject any staff member's resignation or make a decision regarding the resignation, which deprives the employee in question to run on an electoral list. There are fears that the ruling parties may abuse this article to prevent their adversaries from running in the elections, whether they be from other parties or factions, or independent. Furthermore, those who consider running may be harmed in case their candidacy is not accepted for whatever reason.

Article 45 defined the terms of candidacy, which include that the candidate must be at least 28 years of age on polling day and that he/she must be registered in the final voters' registry and to be a permanent resident of the Palestinian Territory and never convicted of a felony or misdemeanor which violates honor and honesty.

The law also prescribed that candidates deposit ten thousand Dollars in the CEC account as candidacy fees, which may not be refunded unless the list withdraws its candidacy within the legal delay or if its application for candidacy is rejected. The law does not say that the money shall be refunded if the list wins the elections. In addition, the lists must deposit another ten thousand Dollars as insurance to abstain from violating the terms of electoral propaganda. It is prohibited to be a PLC member and run for the position of the President unless the MP submits his/her resignation from the Council.

Kuhail mentioned that candidacy fees are non-refundable ten thousand Dollars, in addition to another refundable ten thousand Dollars in insurance. He believes that considering that the minimum number of candidates on a list is 16, the deposit value is reasonable if shared by all candidates. However, it becomes unfair if we compare the capacity of small lists with that of big parties. The deposit paid by the larger parties must be larger than this sum prescribed by the law³³.

- Voters Registry

Article 30.4 of the Decree-Law on the General elections of 2007, as amended provides that CEC shall register voters in accordance with the law. Article 31 detailed the mechanisms to update the voters' registry. Paragraph (1) stipulates that the Commission shall update the preliminary voters' registry annually and/or before every election by auditing the registry, opening the registry for new voters, and declaring the registry for the challenge as per the provisions of this law. Articles 32 and 33 addressed the mechanisms of the challenge of the preliminary voters' registry, while Paragraph 2 of the same article says that CEC shall seek the help of the civil registry's department or the Bureau of Statistics or any other body to edit the registry.

CEC Executive Director pointed out that the voters' registry is updated by CEC when legislative elections are announced. It is edited via outsourcing an organization that surveys the number of registered voters and their constituencies. These outsourced organizations receive the updated voters' registry from CEC and compare it with their survey outcome. This process is considered as external editing of the registry.

- Periodicity of the Elections:

Article 47.3 of the Amended Basic Law of 2005 set the PLC term to four years from the date of its elections. Elections shall be organized periodically once every four years. Article 47-bis stipulates that The term of the current Legislative Council shall end when the members of the new elected Council take the constitutional oath. This article has a legal gap since it does not determine the delay in calling the new council to convene after announcing the outcome of the elections. The Basic Law grants the President the right to call for opening the first regular session of the PLC while it does not specify the delay following the announcement of the outcome of the elections. This gap enables the president to obstruct the convening of the PLC. It should be noted that the Elections Law has not provided for a delay during which the President must call the PLC to convene following the announcement of results. However, the PLC internal bylaws addressed this gap in Article (2) and invited the President to call for the opening session at the beginning of the second week following the official announcement of the election's outcome.

³³ Kuhail, idem.

According to Article (2) of the Law, The President shall, within at least three months before the expiry of his/her term or the council's term in office, issue a decree calling for presidential or legislative elections throughout Palestine indicating the date thereof.

The legislative elections have repetitively encountered a problem relating to its periodicity. The first elections were held in 1996 and were supposed to come to term with the end of the Interim period as the basic law for 2003 mentioned, but it took ten years to hold another election. This means that the first PLC continued for ten years. The Basic Law was amended in 2005 to define the PLC term to be four years from the date of its election. The elections must be held periodically every four years. Nevertheless, the following legislative elections were held in 2006, and according to the law, the subsequent elections were supposed to take place in 2010. Elections expert, Dr. Taleb Awad, referred to the complications triggered by the political divide, which disrupted the PLC activity and elections periodicity³⁴. Mr. Mahmoud Abbas called in October 2009 for the organization of legislative and presidential elections on 24 January 2010, but CEC responded that it was unable to organize these elections because of the split. Since that date, no other decree had been issued to set a new elections date. There were many agreements on the election of the PLC among the factions as part of the reconciliation agreements, but they failed. The result was the dissolution of the PLC by a constitutional court decision since its term has expired without conducting any elections. The factions agreed to hold elections by the end of 2019, but the outspread of the COVID pandemic prevented their organization. By the end of 2020, a decree was issued following the consensus of different political factions on the elections³⁵.

Awad referred to a legal gap in the Palestinian Basic Law, which relates to the cases that allow for the extension of the term of the Parliament or its dissolution. Extending the term usually necessitates a constitutional provision that allows for the extension for a specific period as is the case in the Jordanian constitution, which adjourns the elections for a period that is not less than a year and does not exceed two years. Furthermore, in the event of the dissolution of the parliament, elections must be organized within 120 days from the date of its dissolution. In the event the elections are not held within this period, the Jordanian constitution allows the dissolved parliament to resume its activity³⁶.

As for Bassam Al-Salihi, he thinks that the decision to hold the elections is a mix of an individual decision and a decision based on consultations with the factions. The last elections were organized following consultations on the participation of all the factions and after setting a schedule for the elections. However, the fact that elections have not been conducted in the past is attributed to a large extent to the President's decision. The President's will this year was the determining factor behind the conducting of the elections and consultations with the factions that helped to provide better guarantees for the organization of the elections³⁷.

34 Dr. Taleb Awad, Elections Expert, interview on 29th March 2021

35 Taleb, Awad, *ibid*.

36 Taleb Awad, *ibid*.

37 Al-Salihi, *ibid*

- Codes of Conduct and Financial Disclosure Statements:

The law does not include any provision that compels candidates to submit a financial disclosure statement, which means that there isn't anything to publish. This undermines the transparency of electoral funding. However, CEC and its staff members do submit financial disclosure statements, but they are not published as per the provisions of the law.

On the same point, Hisham Kuhail explained that CEC and its members have a code of conduct, which was developed by AMAN Coalition in addition to a procedural code of conduct that applies to all CEC staff and includes many controls. As for the security forces, they have a code of conduct, and the agents designated to secure the elections receive proper training. The codes of conduct are effective and violators are held accountable. Regarding the courts, they do not have a code of conduct, but a meeting is organized at the temporary court's seat to clarify the work mechanisms³⁸.

Furthermore, Kuhail explained that CEC monitors the conduct of the elections parties to assess employees' compliance, while the polling station's manager oversees the activity of teachers and security agents affected to the ballot stations. He added that the Elections Court is independent and is not subject to CEC's oversight³⁹. On this point, the Executive Director of the Judicial Independence Commission, Mr. Majed Al-Arori, explained that the judges' code of conduct applies as well to the judges of the Elections Court⁴⁰.

³⁸ Kuhail, *ibid*.

³⁹ *Idem*.

⁴⁰ Majed Al-Arori, Executive Director of the Judicial Independence Commission, phone interview on 22nd April 2021.

Elections supervisory bodies

Impartiality without any bias to any specific political party

Mr. Hisham Kuhail mentioned that CEC was formed to be an independent commission since the establishment of the PNA and before the organization of the first presidential and legislative elections. The structure of the Commission has been established based on the recommendations made to President Yasser Arafat by many bodies to establish an independent commission as per international best practices⁴¹.

The Election Law prescribed in Article 12 that the Commission shall be independent and shall enjoy a legal personality and financial and administrative independence. The law also provided for its formation at the political and administrative levels. Article 9 of the law states that the Commission shall be established by a presidential decree at the political level to manage and supervise the elections. Its mission shall be to prepare for and organize the elections and to take all the required action to ensure elections' integrity and freedom. Furthermore, CEC shall appoint its administrative corps, which shall perform the necessary administrative and technical tasks to enable CEC to fulfill its mandate. The administrative corps shall comprise the Central Elections Office and Electoral Areas Offices.

Mr. Hisham Kuhail added that the law set the public policy of CEC's activity in terms of its tasks and role, entrusting the Commission with the implementation of the electoral system prescribed by the law. Administratively speaking, CEC prepares its internal policies and procedures⁴².

Mechanisms of selection of CEC members:

Article 9 of the Elections Law prescribes that The Commission shall be composed of nine members to be selected from the Palestinian judiciary, academics, and experienced lawyers, and others. Although the law has specified the terms of selection of CEC members in Article 10, it has not specified the mechanisms of their nomination and selection and arbitration on the selection between two candidates with the same qualifications, except for the provisions of Article 8 of CEC's internal regulations that granted CEC's president, in the event of a vacancy of CEC's Secretary-General position or any member for whatever reason, the right to nominate a substitute candidate at least for the approval of the State of Palestine. But the bylaws do not clarify the nomination mechanism either.

Kuhail further explained that CEC is formed by the President following consultations with the political parties. He added that the last factional consensus signed in Cairo in 2021 included changes of some of CEC members because they hold governmental posts. With this exception, CEC has not been fully changed since 2012. CEC members must be independent and not affiliated with any party. Upon resuming office, a CEC member must sign a document stating that he/she shall work to serve CEC in isolation of his/her political affiliation. Kuhail also added that generally speaking the law is fully observed when it comes to the formation of the Commission. In an

⁴¹ Kuhail, *ibid*.

⁴² *Idem*.

incident, the President nominated a party member to the CEC who was also a candidate to the legislative elections but CEC's president rejected the nomination. The President later retracted the nomination. This is a sign of CEC's power, impartiality, and independence.

Political analyst and elections expert, Dr. Ali Al-Jirbawi thinks that the best mechanism to select CEC members is via elections. The Executive Authority may recommend or nominate members and submit the proposal to the legislative power for approval, which will subject CEC to accountability⁴³ and immune it against external influences.

CEC Decision-making mechanism:

The Elections Law has not provided for any decision-making mechanism in the Commission but CEC's internal regulations regulated this matter stating that CEC shall make its decisions by a majority vote of the attending commissioners and not the majority of the members. In case of equal votes, the CEC President, or any other commissioner chairing the session on his behalf shall provide the casting vote⁴⁴. Despite these provisions, Kuhail mentioned that in practice CEC makes its decision by a majority of commissioners' votes without the need to have the votes ratified by any executive body⁴⁵.

Criteria applicable to changing commissioners:

Article 11 of the Elections Law states that if the position of the chairperson or member of the Commission becomes vacant due to resignation, death, illness, or any other reason, the chairperson shall appoint a new member within a maximum of two weeks from when the position becomes vacant.

Although the Law has not specified the other reasons, the CEC internal regulations state in Article 9.6 that Although the law has not specified the other reasons, the CEC internal regulations state that the President of the Palestinian National Authority may dismiss any of the commissioners upon his initiative or a recommendation of the Commission by a two-thirds majority. However, the regulations do not specify the justification of removal. The same regulations provided for an article that grants CEC the authority to recommend to the President of the State to replace a commissioner in case of his absence for three consecutive Commission's meetings or activities without any acceptable justification.

CEC Administrative and Financial Independence

The law stipulates that CEC shall be a legal personality with administrative and financial independence. It also provides that its budget will be allocated as an independent financial center on the public budget. Kuhail also mentioned that CEC prepares its budget and submits it to the Ministry of Finance for implementation by the Public Treasury. The budget is sufficient for the management of CEC's works. Furthermore, CEC receives in-kind external assistance in the form of equipment or projects related to electoral awareness. CEC has a financial or administrative system ratified by the Commission. Both systems are applied but they are not published on the CEC page but shared by CEC upon request from any entity⁴⁶.

43 Dr. Ali Al-Jirbawa, Political analyst and elections expert. Phone interview on 15th April 2021

44 Article 6.16 and 6.17 of the CEC internal regulations, ratified in 2004 and amended in 2015.

45 Kuhail, Ibid.

46 Kuhail, ibid.

Formation and selection of the members of the Elections Court

Article (20) of the Elections Law provides for the creation of an elections court, composed of a president and eight judges nominated by the High Judicial Council. The formation is enacted via a presidential decree. Practice shows compliance with the law in the formation of the court.

Kuhail also explained that the formation of the current elections court has emanated from the factions consensus in the Cairo Accord of 2021, which states that “The formation of the Elections Court shall be via consensus of judges in the West Bank, Gaza Strip and Jerusalem. The Court shall have sole jurisdiction on all matters related to the electoral process, outcome, and suits.” This consensus gives legitimacy to the judges of Gaza, who had not been nominated to the court since the split. Following the consensus, the nominated judges were submitted to the president via the High Judicial Council, and a decree was issued to form the court.

Al-Salihi pointed out that the current composition of the elections court stemmed from the reconciliation between Fatah and Hamas but is not the best because of political considerations. However, this composition does not compromise its activities because the judges are reputable and were appointed following the nomination of the High Judicial Council endorsed by a presidential decree⁴⁷.

Majed Al-Arori, based on his observation of the conduct of business at the court through the Judicial Independence and Rule of Law Commission, confirmed that it enjoyed sufficient human and financial resources, which enables it to expedite its rulings. He added that the court is immune against any external influence and that it has dismissed challenges submitted by Fatah and others submitted by Hamas. This is an indication that it is not influenced by any political considerations especially under the single-party regimes in the West Bank and the Gaza Strip⁴⁸.

Immunity of the parties of the electoral process

A review of the General Elections Law shows that it does not grant CEC and its staff immunity in their action nor does it protect the security agents assigned to the protection of CEC. As for the judges of the court, they enjoy the immunity prescribed by the Law on the Judiciary.

Notwithstanding the absence of any legal provisions to guarantee this immunity, Kuhail confirmed that in practice CEC and its staff enjoy immunity due to the power of the practices imposed by the presidency of the state and chairmanship of the Commission. However, in the event these regulations change, there are no guarantees as to the immunity of CEC in the absence of an explicit law.

Impartiality of Elections Supervisory Bodies

The law has not explicitly provided for the impartiality of the Commission but restricted its activity with several provisions that imply that it should be impartial vis-à-vis all candidates. Article (14) grants the right to challenge any decision made by CEC before the court regarding the approval or disapproval of the candidacy applications for the presidential or council membership posts, whether or not to conduct re-elections in any general elections, and the approval or disapproval of the

47 Al-Salihi, *ibid.*

48 Al-Arori, *ibid.*

registration requests submitted by an electoral list. Article 19 requires the Committee to decide on the objection submitted to it within three days from the date of its submission, and that its decision in this regard be subject to appeal to the Court.

On another note, Kuhail explained that the CEC chairman and members do not receive salaries in exchange for their membership but rather a monthly reward of USD 250. He confirmed that many members refuse to accept the reward out of their belief that their work is a designation of responsibility and not a job. For this reason, they stay away from any pressure by the executive power that may affect their conduct of business or neutrality. Moreover, the scale of the pay of CEC staff is sufficient and satisfactory because CEC enjoys financial and structural independence⁴⁹.

Kuhail added that CEC has not encountered any instance that discredits its activity or impartiality by any faction or political party. He explained that it treats all political forces and candidacy lists equally and encourages all parties and lists to comply with the delays and procedures of the electoral process.

Awad further pointed out that there is unanimity regarding the impartiality of the Commission, especially when its structure emerged from a factional consensus in 2012. It is therefore difficult to discredit its work by any of the political forces. He stressed the importance of developing its regulatory framework to define the mechanisms and terms of its formation and the roles of its members to improve the existing situation especially regarding the full-time functioning of the commissioners⁵⁰.

All the interviewees from the factions agreed on the impartiality and professional conduct of CEC and had no remarks on its conduct⁵¹.

Immunity of CEC members and staff against external influence

Kuhail referred to the gaps resulting from the absence of a law on the Central Elections Commission regarding the immunity of its members and staff. There isn't any legal provision that grants them immunity, but in practice, they are deemed immune against external influences because the current political system applies the principle of non-interference in the Commission's business. However, if the system or the current Commission changes, there are no guarantees that no party will be able to influence CEC or its staff because of the absence of the law and penalties against this offense. Moreover, there aren't any provisions to regulate the body to which CEC may file a complaint in case it is subject to any external pressure. Generally speaking, CEC enjoys independence and respect for this independence. On the one hand, it does not intervene in the oversight of the Elections Court and is not subject to any influence by the executive power or security forces on the other hand⁵².

49 Idem

50 Awad, Ibid.

51 Al-Salihi, Al-Astal, Daraghma, Ibid.

52 Kuhail, ibid.

Appointment and impartiality of CEC staff

CEC appoints its staff based on its administrative regulations. It forms special committees to sort the employment applications and conduct written and oral exams. The Executive Director issues the instructions applicable to the employment process, which is preceded by an announcement of vacancies within two weeks after the positions become vacant. The announcements are published in two daily papers and on the CEC website as well as on an advertisement pannel. The job ad includes all the details related to the position and the terms of occupancy as per the job descriptions and the organizational chart adopted by CEC⁵³.

As for the field teams in the polling centers and stations, they are appointed during the registration phase from among the unemployed. In the phase of publication challenge, a request is submitted to the Ministry of Education to use the services of its staff. An employee is appointed by CEC to the supervision of each polling center.

Kuhail clarified that CEC staff and field workers are trained on the rules of impartiality and are required to sign the Commission's code of conduct.

Role of the security forces and their impact on the elections

The General Elections Law regulates the role of the security forces and their influence on the electoral process in two cases, namely: protection of the electoral process and preempted voting of the security agents to enable them to secure the elections.

Role of security units taking part in the election process and controls of their work

Article 88 of the General Elections Law regulated the security forces' role in the elections process and stipulated that Several Police Force personnel in official uniform shall be stationed outside and in the surrounding area of the polling center to ensure that the orders of the chairperson are followed. Police personnel shall not be admitted inside the polling center unless instructed by the chairperson and only for a time that is necessary for preserving security and order as deemed fit by the polling center staff. The article also explicitly provided that Security forces shall preserve the safety and security of citizens and the electoral process without affecting the integrity of elections, violating the elections law, or impairing the rights of voters. It is prohibited for any person other than Police personnel in official uniform to carry a firearm, weapon, or any other tool that is subject to punishment by law either inside a polling center or at its entrance. 5. Police personnel may not access the polling center on polling day or during vote counting except upon request from the chairperson of the polling center staff

Kuhail further said that CEC has developed a code of conduct and trains security agents assigned to the elections process on this code, which is effective on the ground.

⁵³ CEC administrative regulation, September 2016, see advertising a vacancy on CEC page, <https://www.elections.ps/tabid/1139/language/ar-PS/Default.aspx>

Speaking of the security forces assigned to secure the elections, CEC Executive Director, Mr. Hisham Kuhail, confirmed that the security forces have shown full compliance in the previous elections while performing their role. He further underlined that CEC is committed to monitoring the performance of the security forces via the directors of the polling centers and the observers who are present in these centers. Furthermore, CEC has a complaints system, which is accessible to all the parties of the electoral process in the event any security agent or any other party breaches the CEC's declared principles. On the security forces' financial allocation, Kuhail confirmed that they were sufficient and responding to any amendments⁵⁴.

Impartiality of the security agents entrusted with the protection of the polling centers

Although Security Service Law explicitly prescribes the prohibition of recruitment of security agents who are members of a political party, the enforcement of the law is problematic in Palestine where the democratic and state-building overlaps with the national liberation⁵⁵. Nevertheless, the law prescribes controls to prohibit security agents from interfering in the elections or threatening their integrity. Article 88.3 of the Election Law provides that Security forces shall preserve the safety and security of citizens and the electoral process without affecting the integrity of elections, violating the elections law, or impairing the rights of voters. Furthermore, Article 88 stipulates that police personnel who are assigned to preserve election security shall work in full and direct coordination with the Commission, electoral area offices, and polling center staff members. Based on these provisions, CEC has prepared a code of conduct for the security forces and provides them with the necessary training before starting their duties in securing the polling centers. Kuhail also pointed out that when a complaint is filed against a security agent, the polling center's director immediately removes him from the center.

Effect of the security forces on the elections

According to the General Elections Law, the members of the security forces vote preemptively. The purpose is to ensure the availability of sufficient agents to secure the elections on the one hand and to enable the security agents to vote in their place of residency as per the voters' registry in the event they serve in another district. On this matter, Awad mentioned that in an election system that considers the territory as a single constituency, preemptive voting is unnecessary because the security agents may vote in their place of duty. The organization of this process requires special efforts. Awad added that security forces' preemptive voting is subject to the oversight of the representatives of the electoral lists and the civil society organizations. There could be an external influence on the security forces, but much effort is needed to prove this influence⁵⁶.

Al-Salihi explained that it is not possible to control the voting of the security forces because they are mostly of the same political affiliation. He further said that pre-emptive voting is applied to the security forces in limited polling stations to prevent any leaking of the outcome of their votes. If the voting organization was not 100% clear, it will leave room for officials' monitoring, which contradicts the principle of free voting. He added there isn't any proof that the security forces voted in a certain direction but this may not be excluded⁵⁷.

⁵⁴ Kuhail, *ibid*.

⁵⁵ Interview with Jihad Harb, an expert in governance and politics on 10th June 2021

⁵⁶ Awad, *ibid*

⁵⁷ Al-Salihi, *ibid*.

With the hegemony of the two ruling parties in the West Bank and Gaza, party loyalty of the security forces toward the ruling party may not be excluded. Dr. Najat Al-Astal explained that these loyalties are visible in our political system, as is the case in other political systems. Thus, the matter is related to the impartiality of the security forces and the personal conviction of every security agent. It was noticed in the 2006 elections that 17% of the security forces have not voted for Fatah and that 11% of them have voted for Hamas. She added that it is not possible to ignore the current polarization, which may affect the security apparatuses⁵⁸.

Second PLC member, Ayman Daraghmah, from the Change and Reform Bloc confirmed that some members of the security forces announced after the 2006 legislative elections that they had been instructed by their commanders to vote for a specific list and to instruct their families to vote for the same lists⁵⁹.

⁵⁸ Al-Astal, *ibid*.

⁵⁹ Dr. Ayman Daraghma, member of the second PLC from the Change and Reform bloc, phone interview on 11th April 2021.

Transparency of the electoral process

The General Elections Law stipulated that the elections shall be transparent and public in all the stages to enable the observers and media to monitor the process in all of the stages and to enable the media to cover the elections.

The law also listed the procedures and documents to be published by CEC including financial and administrative reports on its activities in the three months following the announcement of the outcome of the elections. A copy of the reports must be submitted to the President and the PLC. The district offices shall publish the final voters' registry in their locations, while CEC shall publish awareness brochures and advertisements to encourage the voters to participate in the elections. It shall particularly publish the elections law, registration, voting, and appeal procedures that are of interest to the voters. Furthermore, it shall publish a special brochure for the police forces to instruct them on how to behave during the elections in the event they discovered a flaw in the process. Another brochure must target the candidates to the presidency and parliament membership to highlight the public spaces designated for the electoral campaigns and hanging of posters and banners.

Finally, the law compels CEC to publish the preliminary results of the elections in the media outlets within 24 hours from their preparation.

But, on the other hand, the law does not bind the courts to publish a report on their activity or to post their decision on the electoral appeals or complaints, noting that the international index on elections open data consider these practices good in terms of publication of data on the complaints' procedures. The information must include the mechanisms to file a complaint and the criteria applicable to the complaints. It should also inform the public of the appeal track against the decisions (which are usually stipulated in the elections law). Publications must also include the types of complaints, conflicts, number of complaints, and the appeals against the elections outcome as well as the parties filing these complaints and appeals and the proposed solutions (if any). Other information includes the outcome of the measures taken, the number of ongoing administrative investigations, and the measures to respond to any misconduct or flagrant abuse of power as well as the number and types of penalties, fines, and imprisonment sentences pronounced by the administrative or judicial courts regarding elections matters.

The data may also refer to the number of penal investigations in electoral violations and pertaining prosecution as well as the charges and the bodies responsible for any required measures as well as the outcome of these measures. They further include the number of administrative and civil procedures (cases) relevant to the suppliers and other contractors concerned with the electoral purchases and other contracts and the parties involved in these cases in addition to the claims and the conclusion of the cases (including any penalty when imposed). In some countries, the data includes specific information on electoral violence, the number and type, and severity of incidences, and the law enforcement agencies and/or public security bodies that address these incidents⁶⁰.

60 <https://www.openelectiondata.net/ar/guide/key-categories/complaints-and-disputes/>

On the other hand, the law does not compel the security forces to publish reports on their activity noting that best practices of the elections open data indicator require that the law-enforcement agencies and/or security organizations publish all the plans that do not include sensitive information on the deployment of the security forces. They should also publish their strategy of deployment of staff of the polling centers on the day of the elections including the number of security officers who must be present in each office. The police also need to gather information on the election violence incidents and make them public. The election violence reports must be detailed and include information in the incidents' type, date, time, and place in addition to the victims, perpetrators, witnesses, gender, age, and political affiliation, if available in addition to a brief description of the incidence. The data derived from the judicial bodies must include information on how the complaints on acts of violence and security procedures have been handled, including a briefing of the legal action structure and the legal settlement of the security incidences related to the elections⁶¹.

CEC is also committed to the publication of its annual report on its page. The latest annual report of 2019 covers CEC's achievements and activities in addition to their annual budget, but in brief⁶².

Although the legal provisions promote the transparency of the electoral process, the elections law does not compel CEC to publish the financial reports of the lists.

In general, CEC is responsible for the publication of information on the electoral process and its parties. It does not receive reports from the security forces that secure the process but monitors their activity via the directors of the polling centers and the local and international observers.

CEC also publishes periodic and complete information on the electoral process on its web page in addition to paper bulletins and SMS to deliver information to citizens and share information on the procedures in the different polling centers, including in the marginalized areas.

Otherwise, CEC is not compelled to publish details on the cases it considers. Majed Al-Arori explained the Court only calls out the reference number of the case without uttering the names of the appellants. This means that the parties are known to the official bodies in the courts, but not to the observers attending the hearing⁶³.

61 <https://www.openelectiondata.net/ar/guide/key-categories/security/>

62 CEC, annual report 2019, <https://www.elections.ps/Flipbook/AnnualReport/mobile/index.html#p=1>

63 Al-Arori, *ibid*.

Sources of Funding:

Article 68 of the Elections Law states that any electoral list or candidate participating in the elections is prohibited from receiving any funds for his/her campaign from any foreign or external non-Palestinian source whether directly or indirectly. Each electoral list or candidate who participated in the elections has to submit within one month of announcing the final results a detailed statement of all funding sources and the amounts spent during the election campaign.

The Commission may request auditing of the statements mentioned above by a certified auditor. This provision establishes a post-audit of the sources of funding but the law does not provide a mechanism to oversee the access to funding during the candidacy. However, it prescribed punishments that imply the existence of this oversight during the candidacy. Article 111 stipulates that any person who violates Articles (68 and 69) of this law shall be punished with imprisonment for a period no longer than six months, or a fine that is not less than one thousand USD, or the equivalent thereof in the legally circulated currency, or with both penalties. The Court shall have the right to remove his/her name from the list of candidates and confiscate those funds.” However, the law does not bind CEC to publish these reports to citizens although it does not prevent it from doing so. At any rate, CEC has never undertaken this initiative in any election cycle until the publication of the present report.

Commenting on this, Kuhail considered the lack of oversight mechanisms of the sources of funding as a weakness of the Commission. There aren’t any legal provisions to regulate oversight, not to mention the non-promulgation of a political parties’ law to govern their sources of funding⁶⁴.

The funding ceiling has been determined in Article 69 of the Elections Law, which prohibits any electoral list from spending any sum beyond USD 1 million, or the equivalent thereof in the legal currency, on its electoral campaign.

Dr. Taleb Awad further explained that the ceiling of electoral propaganda spending was specified in 2005 and has not been updated. With the rise in the number of voters and the economic inflation, this ceiling is deemed insufficient. CEC and the law have not stipulated electoral funding monitoring mechanisms, like compelling each list to open a bank account; it is, therefore, recommended that CEC issues executive regulations or instructions to organize this part of the elections.

Dr. Ayman Daraghma confirmed that oversight of the funding of the election is a gap that CEC cannot control directly or accurately because of the weak legal framework⁶⁵.

Al-Jarbawi explained that elections are affected by either party loyalty or money. He considered that electoral money is very important especially when party loyalty is not very strong, whether it is the legitimate money that is compliant with the Elections Law or the illegitimate money. Many countries, to the contrary, prescribe controls on each party or list, including limitations on the advertisement time purchased on the media outlets, or appearance on TV and other outlets. As for the illegitimate money spent to purchase loyalties, it is mainly used in poor countries.

⁶⁴ Kuhail, *ibid*.

⁶⁵ Daraghmah, *ibid*.

When this money is not monitored or has not declared or known sources, the ruling party may use state resources while other parties secure this money from other sources without any internal or external control. External sources are the most dangerous because they usually come with political objectives as when a party receives internal funding, the purpose is to influence the outcome of the elections⁶⁶.

Al-Salihi pointed out that the absence of oversight mechanisms of electoral funding requires a more thorough investigation of the sources of funding of the parties and movements. However, this particular aspect is problematic since it is known that a substantial part of the funding of parties is external. It is, therefore, associated with objectives other than the elections. This is the case of movements like Islamic Jihad, Hamas and, Fatah. It is necessary to pinpoint the risks of the petrodollar and foreign funding intervention in electoral campaigns or funding of lists or frauds. He suggested that the radical solution to this problem is political stability following independence⁶⁷.

Al-Salihi added that in the absence of oversight mechanisms of electoral funding, the intervention of security apparatuses becomes quite probable, noting that security agencies in the West Bank and Gaza Strip are not impartial because they belong to different reference frameworks. Consequently, they do not intervene only to keep order but arrive with a political agenda. In some cases, funding to some parties or lists is hurdled to serve other parties. With a ruling party that has broadly uncontrolled access to public resources to cover things like meetings of Fatah's central committee at the presidential headquarters "Al-Muqataa", and Hamas's control of the revenues from the crossing points with Egypt, which it exploits solely without any repayment to the state treasury⁶⁸.

Al-Astal also underlined the importance of the oversight of political money, which has been visible immediately before the elections in the form of financial or in-kind assistance. This money compromises the integrity of the electoral process, especially when it exploits the high unemployment and poverty rates noting that the current elections round will be held in a context of economic collapse following the COVID-19 outbreak⁶⁹.

Nevertheless, Al-Jirbawi did not expect the political money would play a detrimental role in the elections because citizens are dissatisfied with the policies of the two major parties. He expects that the ballot boxes will be an opportunity for accountability. On the other hand, the ruling party (Fatah) is not expected to form the majority under the current electoral system and the same applies to Hamas. The trend will be one of the coalitions rather than exploitation of political money for these formations⁷⁰.

Speaking of the application of the penalties on the violators, Hisham Kuhail recalled an incidence in which a candidate in the previous election bypassed the legal [spending] ceiling and was reported to the public prosecution but no penalty has been pronounced against him⁷¹.

66 Al-Jarabawi, *ibid*.

67 Al-Salihi, *ibid*.

68 *Idem*.

69 Al-Astal, *ibid*.

70 Al-Hirbawi, *ibid*.

71 Kuhail, *ibid*.

- Lack of a law on the parties and its impact on financing:

Although the PNA has been established almost 26 years ago, and that two PLCs have been elected while preparations are underway to elect a third PLC, there isn't any law to regulate the activity of political parties to date.

Al-Salihi explained that the reason behind the non-promulgation of a law on the political parties is a political one because we are still in a phase of national liberation. However, it could be possible to overcome the absence of the law by providing for some controls on the activities of the parties, including on their financing⁷².

Al-Astal thinks that the electoral lists do not represent political parties, but rather movements because a political party can't have military militias. Therefore, these are liberation movements and not parties. She added that common practice usually regulates the work of the factions, underlining that it is an independent, sovereign, state without any presence of military occupation forces or military militia of the different movements, and that has a unified national army is a precondition to promulgate a law to regulate the political parties⁷³.

Electoral Propaganda:

Article (65) of the Law prescribes that the Commission shall, in coordination with the official Palestinian media, prepare a special program indicating the times and dates designated for free and unpaid advertising for all candidates and electoral lists in the elections. In preparing the program referred to in paragraph (1), all candidates and electoral lists shall be given equal and appropriate opportunities. Any objection filed against the said program shall be submitted to the Commission, which shall adjudicate on it within a maximum of twenty-four hours.

The Article shows that the law regulates the official media but does not refer to the private media, which is the actual arena of competition. The list with access to higher funding can have access to a larger public and influence at the expense of the other lists. This will benefit the larger parties that have more money and penalize the smaller parties or the lists of independent or young candidates.

Local and international observers, as well as CEC staff in the polling centers, reported that CEC received 144 written complaints in 2006 against candidates and lists that violated the provisions of the electoral propaganda. However, reports do not show if any penalties have been inflicted upon the violators.

CEC Executive Director clarified that the Commission applies several procedures to monitor electoral propaganda. During the 2006 legislative elections, a Palestinian media organization was outsourced by the Commission to monitor and report on the media coverage of the legislative elections. Furthermore, the three major Palestinian papers (Al-Quds, Al-Ayyam, and Al-Hayat Al-Jadida) and local and satellite TV channels programs were monitored via a team of data collectors and observers working with report editors, media representatives, analysts, researchers, and experts⁷⁴.

⁷² Al-Salihi, *ibid*.

⁷³ Al-Astal, *ibid*.

⁷⁴ CEC, 2006 elections report, on the link: https://www.elections.ps/Portals/30/pdf/Final_Report_PLC_Elections_2006_-_Text.pdf

The General Elections Law provided for audits of the electoral processes, including electoral propaganda via outsourced local and international observers and media representatives. The law grants them the facilities needed via the elections law implementing agencies and orders police forces, in particular, to provide them with the facilities they need.

Kuhail noted that CEC does not dispose of any oversight mechanism to monitor the exploitation of public funds or state resources for electoral propaganda purposes. It can intervene only when it receives a complaint, which it investigates immediately upon receipt. Awad explained that these problems may be overcome if a law is enacted to regulate political parties and prohibit partisan activities in public institutions.

Effectiveness of Social Oversight and Accountability of the Elections

Article (70) of the General Elections Law stipulates that the electoral process with all its phases stipulated in this law shall be conducted publicly and transparently in a manner that enables the observers and the media to observe the process in all its phases and also enables the local and international media representatives from covering it. 2. All local and international observers and media representatives shall be accredited by the Commission. 3. The Commission shall issue a card for such observers and representatives upon request according to the relevant procedures. All persons and bodies implementing the provisions of this law, and the Police Force shall provide all necessary help and facilitation to any person who holds such accreditation card stipulated in paragraph (2) above.

Article (12) provides that the Commission shall publish an administrative and financial report on the activities of the Commission three months after the announcement of the final election results. A copy shall be submitted to the President and the Council.

But at the same time, the law does not have provisions that compel the courts or security forces to submit reports on their activity during the electoral process. Kuhail explained that these parties do not submit any reports on their activity.

Elections Process Complaint System

The law does not explicitly prescribe mechanisms of complaints relating to the electoral process. It focuses only on the challenges and appeals. However, in 2021, CEC developed a procedural manual that covers the submission of challenges and complaints. It also includes details on the submission of complaints and grievances to CEC or its district offices and the relevant response mechanisms⁷⁵.

On this point, Kuhail mentioned MoUs between CEC and the Independent Commission for citizens' rights (the Ombudsman), regarding the processing of complaints relating to the electoral process.

⁷⁵ CEC, Procedures to submit challenges and complaints as per Law No (1) for the year 2007 on the General Elections, as amended, on the link: <https://www.elections.ps/Portals/0/sakwaa.pdf>

He added the CEC has also developed and published a code of conduct for the representatives of the electoral lists who observe the process, detailing their rights and obligations and submission of complaints by them⁷⁶. It also educates lists representatives and observers on the code of conduct during the electoral process⁷⁷.

Reports on the 2006 legislative elections showed that many local and international observation agencies produced reports on the different phases of the process. The reports depended on the comments provided by the observers who monitored the different aspects. CEC published with its report two annexes that included local and international reports.

Moreover, civil society organizations publish analytical reports on the elections process and discuss their findings and recommendations with CEC, which usually responds to the recommendations. This is the case of the reports prepared and published by AMAN Coalition⁷⁸.

⁷⁶ <https://www.elections.ps/Portals/0/observ.pdf>

⁷⁷ Kuhail, *ibid*.

⁷⁸ See reports by AMAN Coalition for Integrity and Accountability. Elections with transparency and integrity, CEC's positive experience, March 2013-2017, on the link: <https://www.aman-palestine.org/reports-and-studies/8583.html>
Coalition for Integrity and Accountability, effectiveness and immunity of the integrity system in the activity of CEC, 2013, on the link: <https://www.aman-palestine.org/reports-and-studies/8492.html>

Context of the Legislative Authority

The legislative election system and results require a diagnosis of the context of the legislative authority, the product of this entire process. The diagnosis should examine the structure resulting from the elections as an entry point to controlling the accountability, checks and balances, and enactment of legislation by the legislative power and its oversight of the executive power. If the interests of both powers converge, or if the executive branch hegemonizes the legislative branch, the integrity of governance shall be shaken. In contrast, if the outcome of the elections is a strong and independent legislative authority, the integrity of governance shall be reinforced.

A regulatory framework to govern the legislative power and guarantee its independence

The internal bylaws of the PLC and the Basic Law are the regulatory framework that governs its activities. Although the PLC internal bylaws have been prepared by the PLC, they do not have the status of law but are the PLC's legal reference. It was drafted to ensure the PLC's independence and separation of power; however, it includes some provisions that allow the President of the State to control some of the PLC activities like announcing the beginning of the session or regulating the MPs' activities via the law on the rights and duties of PLC members No 10 for the year 2004.

Based on these laws (the Basic Law, PLC's internal bylaws, and the Law on the rights and obligations of PLC members No 10 for the year 2004), the PLC possesses several oversight and accountability tools, which enable it to oversee the executive authority and hold it accountable to the extent of voting a motion of no confidence against the government. However, the Basic law and internal bylaws have not stipulated any tools to question the President of the State or hold him accountable although they state that the PNA President must deliver the constitutional oath before the PLC.

The Basic Law also vests in the legislative power the right to give a vote of confidence or no confidence to several positions in the state, which require independence for the performance of their activity like the State Administrative Audit and Control Bureau and the General Personnel Council. The Basic Law, as amended in 2005, reiterates the principle of the separation of powers (legislative, executive, and judicial) in the Palestinian political system. Article 2 provides that the people are the source of power, which shall be exercised through the legislative, executive, and judicial authorities, based upon the principle of separation of powers and in the manner set forth in this Basic Law. Article 5 prescribes that the governing system in Palestine shall be a democratic parliamentary system, based upon political and party pluralism. The President of the National Authority shall be directly elected by the people. The government shall be accountable to the President and the Palestinian Legislative Council.

Still, the implementation of the separation of powers is problematic because some executive institutions may control the activity of the legislative authority. For example, the publication of the laws is an administrative procedure and precondition of the effectiveness of the law. It is controlled by the executive authority, represented by Diwan Fatwa and Tashri, which is affiliated with the Council of Ministers.

There were incidences when enacted legislation was hindered because of non-publication on many pretexts, most notably lack of the necessary financial resources. Furthermore, the executive regulations of the enacted laws are not published or a long time passes before these regulations are issued by the Council of Ministers, which impedes the implementation of a lot of laws⁷⁹.

Dr. Ayman Daraghma confirmed that the law regulates and reiterates the functions and role of the PLC as well as the principle of the separation of powers and non-interference in its activity. The main problem, however, is non-compliance with the law. The executive power may intervene and influence the PLC's work, which results in disrespect of the rule of law⁸⁰. On this matter, Bassam Al-Salihi confirmed that the parliamentary blocs have not played any role to protect the legislative power. The blocs of Hamas and Fatah fully merged with the executive branch. In this context, the executive authority obstructed the role of the legislative power as prescribed in the law. Despite the legal gaps that allow for this overlapping of powers, the major problem is not the law but rather PMs' understanding of their independent role to protect the legislative authority⁸¹.

Under the disruption of the legislative authority, the PLC Secretary-General, Ibraheem Khrieshe, confirmed that it will be difficult to assess the extent of the separation of powers because the executive authority is hegemonizing the state institutions. Khrieshe also explained that in the event the PLC is reactivated, the separation of powers is expected to be restored in the same way as before the disruption of the legislative authority⁸².

The legislative authority vested in some executive bodies and their role in governance integrity:

The Basic Law granted the PNA President the right to issue laws following their ratification by the PLC within thirty days from the date of referral thereto. It also allowed the President to refer laws to the PLC within the legal period with his comments and the reasoned objections; if the legal period elapses and that the President does not resend the laws to the PLC, the laws shall be deemed promulgated and shall become effective following their publication in the Official Gazette, which is published by the Diwan Al-Fatawa and Al-Tashria, which is affiliated with the Council of Ministers. The Basic Law, in Article 43, states that The President of the National Authority shall have the right, in cases of necessity that cannot be delayed, and when the Legislative Council is not in session, to issue decrees that have the power of law. These decrees shall be presented to the Legislative Council in the first session convened after their issuance; otherwise, they will cease to have the power of law. If these decrees are presented to the Legislative Council, as mentioned above, but are not approved by the latter, then they shall cease to have the power of law. Although the text is very clear that the President has this right only in the cases of necessity that may not be delayed, the situation de facto is quite different. Since 2007, (following the disruption of the activity of the PLC), the President promulgated around 260 decree-laws⁸³, which have not stemmed from an emergency and have affected all areas of life, including the justice and judiciary sector.

79 Separation of Powers: the Palestinian Case – the Legislative Authority. https://www.aman-palestine.org/cached_uploads/download/migrated-files/itemfiles/6b0fd1f06d0a9f1bf2581faea0433bf9.doc

80 Darghma, *ibid*

81 Al-Salihi, *ibid*.

82 Ibrahim Khrieshe, PLC Secretary-General, interview on 13th April 2021.

83 <https://felesteen.ps/post/>

In its comments on the decree-laws in 2020 on the amendment of the laws on the Judicial Authority, Administrative Courts, and the Formation of Courts, Al-Haq Institute pointed out that the enactment of these laws represents a serious conflict of interest and lack of integrity and transparency in the preparation and enactment process. This raises questions about the integrity of governance in Palestine. These laws included many violations of the principles of the rule of law, separation of powers, and independence of the judiciary. The Institute described the laws as a grave breach committed by the executive power over the legislative and judicial authorities. Furthermore, they were issued immediately before the decree-law that called for the organization of legislative and presidential elections. These laws revealed the intentions of the executive power to hegemonize the judiciary by legitimizing its control on the appointment and removal of judges⁸⁴.

Other laws were amended in a manner that represents a flagrant conflict of interest, including Law (4) of 2020 in addition to amending the law on the PLC members, administration, and governors' pay no 11 for the year 2004, as amended, as well as the Law No 12 of 2020 on amendment of the public pension law No. 7 for the year 2006, as amended. The executive power had to withdraw these laws following popular pressure.

Role of the opposition blocs in the PLC activities:

Article (5) of the PLC internal bylaws prescribes that members of the Legislative Council with common goals or interests may assemble or organize themselves in parliamentary blocs, provided that their number is no fewer than five (5%) percent of the total number of members. The article is a guarantee to enable the opposition to assemble in groups and blocs and play a role that may have an influence and express their opinion. Every bloc has the right to devise its internal regulations.

Al-Salihi pointed out that the respect of the role of the opposition was achieved because of willingness to joint action in the PLC and compliance with the bylaws. The official work mechanisms are weakened if the major blocs are not willing to open a larger margin for the opposition. The bylaws of the PLC require the parliamentary bloc to have a number of members that is not fewer than 5% of the total number of members. This condition does not apply to any list. The PLC, therefore, adopted lists rather than blocs based on the will of the larger blocs. The bylaws do not provide sufficient room for this role without the will of the larger parliamentary blocs⁸⁵.

Al-Astal commented on her PLC experience explaining that PLC has not reached mutual respect among the blocs because of larger blocs' resistance and attempt to hegemonize the Council without giving any real role to the opposition⁸⁶.

⁸⁴ Attorney Ashraf Abu Hayyah, Al-Haq Institute Comments on Decree Laws of 2020 on the amendment of the laws on the judicial authority, administrative courts and formation of courts, Al-Haq Institute, Ramallah, 10th February 2020, on the link: <https://www.alhaq.org/ar/advocacy/17892.html>

⁸⁵ Al-Salihi, *ibid*.

⁸⁶ Al-Astal, *ibid*.

Daraghmah explained that the blocs could not sustain the results of the elections with a winning bloc and opposition. The blocs that did not succeed had recourse to the executive power, which also hindered their role in the formation of the administration, and consequently, these blocs could fulfill their mandate the PLC⁸⁷.

Immunity of PLC members:

Article 95 of the internal bylaws cover the PLC members' immunity in the exercise of their function, including members may not be questioned in civil or criminal proceedings due to opinions they express, facts they mention, their voting in Legislative Council sessions or committee meetings, or because of any action they perform outside of the Legislative Council in the course of performing their parliamentary duties. The bylaws also prescribe that members shall enjoy immunity throughout their term in the PLC. Only if caught red-handed in a felony, penal procedures may be initiated against any member provided that the PLC is immediately notified of any such measures to enable it to act as it deems fit. The PLC presidency, in case of recess, handles this mission. A member shall not relinquish parliamentary immunity without prior approval of the Legislative Council. The decision shall be taken by the absolute majority of the Legislative Council. Immunity shall not lapse upon the end of the membership in the Legislative Council, in the limits prevailing during the period of membership.

The PLC Secretary-General explained that the immunity of MPs before the second elected Council in 2006 was safeguarded. Previous instances of jeopardy to their immunity before this date were minimal, similar to many other countries⁸⁸.

Al-Astal further added that some bodies do not quite understand the significance of MPs' immunity, as reported in some individual conduct by customs staff at the crossing points, for instance⁸⁹. Daraghma, on this point, mentioned that some MPs' houses were raided and their computers and personal documents seized. Offices of members of the Change and Reform Bloc were also raided while the members were not allowed to renew their diplomatic passports and their salaries were suspended⁹⁰.

Financial and Administrative Independence of the Legislative Power:

Except for the preamble of the PLC internal bylaws, which provides that "On that basis, it is necessary to establish the working procedures for the elected Legislative Council, based upon the principle of separation of powers, which confirms the independence of the Legislative Authority and its right to legislate and to control the Executive Authority and hold it accountable," there aren't any explicit provisions that prescribe the administrative and financial independence of the PLC, similar to other institutions that have their own financial and administrative systems. For this reason, the concept and use of this independence remain ambiguous. Although the PLC has its own financial system, its staff members are subjected to the Civil Service Law and are paid by the State Treasury.

87 Daraghma, *ibid*.

88 Khrieshe, *ibid*.

89 Al-Astal, *ibid*.

90 Daraghma, *ibid*.

Al-Salihi underscored that it is better to ensure that the PLC budget is independent of the executive authority, to ensure more effective oversight. Al-Astal added that in the absence of any PLC role, the executive authority managed to control the PLC budget, and delay the transfer – or refrain from transferring – the full sum of the budget. She reiterated that the PLC budget must be independent and itemized as an independent financial center to enable the parliament to control its budget without having recourse to the executive authority. The budget must also be subject to effective oversight. However, the executive authority's control of the funds enables it to control the decision-making. In many instances, disbursement of the budget necessitated placing pressure on the executive authority⁹¹.

Administratively, Ibrahim Khrieshe, PLC Secretary-General, explained that the PLC has enjoyed an independent financial system since its establishment and that it has been committed to this independence. The PLC budget appears as an independent item on the public budget while its financial processes are managed independently. The executive authority does not intervene in the management of the PLC funds except for the transfer of the budget. He added that under normal circumstances and PLC functioning, the executive authority was not interfering in the legislative authority's financial management. However, with the paralysis of the PLC, the situation has turned upside down as the government started to interfere in the PLC's financial management. This is however an exceptional situation⁹².

To date, there isn't any law to govern the PLC staff, as stated by PLC Secretary-General, Ibrahim Khrieshe. They are still subject to the civil service law in terms of their rights and conditions of employment, but they are independent at the level of internal affairs⁹³.

Remuneration and privileges of the PLC members during and after the elapse of their term in office

The Law on PLC and Administration Members and Governors Pay No (11) for the year 2004, as amended, regulates the remuneration, privileges, and pension of the PLC members. Upon their election and commencement of their term, the PLC members are paid by the state treasury and receive their pension from the same treasury. The Speaker of the PLC receives an annual pay of USD 4000 for the period extending from the date of resuming office until the elapse of his term or vacancy of his position, whichever is closer. A member receives USD 3000 for the period from swearing in the legal oath till the elapse of his term or vacancy of his seat, whichever is closer. The members also receive a pension paid to them or to their heirs, calculated at a maximum of 12.5% of their monthly pay for every year they spent in the PLC, which does not exceed 80% of the monthly pay, subject to the increasing living expenses. The pension is paid monthly immediately after the member leaves office. For this purpose, the fractions of a year are computed as a full year.

91 Al-Astal, *ibid*

92 Ibrahim Khrieshe, PLC Secretary – General, Interview on 13th April 2021

93 Khrieshe, *ibid*.

The Law was drafted by the first PLC members and revised by the government after the second reading. It was ratified to apply to the same body that legislated it (PLC and government). This practice is a type of conflict of interest. It should be noted that PLC pensions are paid by the state treasury and not the Pension Fund. Consequently, the members are not compelled to contribute to the Pension Fund, which undermines social justice on the one hand and opens room for the executive authority to control MPs via its control of their pay on the other hand⁹⁴.

PLC members and staff code of conduct:

Codes of conduct are particularly important for legislators because they guarantee freedom of voting in the event of any infractions by party members in the executive power.

The PLC does not have a code of conduct to govern the members. At the staff level, the PLC Secretary-General referred to several drafts prepared in the past but following the interruption of the activity of the PLC since 2007, these codes are no longer appropriate for the current situation. They need to be updated.

PLC members and staff financial disclosure statements:

The amended Basic Law of 2005 compels every PLC member to submit a financial disclosure statement for himself, his spouse, and minor children detailing their wealth, whether as movable or immovable assets in Palestine and abroad, as well as their debts. The statement is kept as a confidential document by the High Court of Justice and can be accessed only with a court's permission within the limits allowed by the law. The law has not prescribed periodic submission of financial disclosures and punishments in case of non-submission.

PLC staff are subject to the same laws as other state employees. The Anticorruption Law compels staff to submit periodic financial disclosure statements, which are kept at the Anti-Corruption Commission. Non-submission is punishable by a fine ranging from JD 100 to 1000 for every month of delay.

Convening PLC sessions:

The Basic Law stipulates that the PNA President shall open the PLC's first regular session and deliver its opening statement. But the PLC's internal bylaws expanded the President's mandate in Article 16, which prescribes that "The Legislative Council shall convene its ordinary annual session in two periods upon the call of the President of the National Authority. Each period shall last for four (4) months. The first period shall begin during the first week of March, and the second shall begin during the first week of September. Upon the request of the Council of Ministers or one-fourth (1/4) of the members of the Legislative Council, the Speaker shall call the Legislative Council to convene in an extraordinary session. If the Speaker does not call for such a session, it shall be deemed convened at the time and place specified in the request of its members or the Council of Ministers

94 Coalition for Integrity and Accountability-AMAN, Remunerations and Pensions of Political Officials and their impact on the state treasury, November 2020.

The law has generally been observed relating to the dates of session opening, except for the second session of the second PLC, which coincided with the complex situation that resulted from the political divide between Fatah and Hamas.

Independent security for the legislative authority

Article 51 of the Basic Law provides that the Council shall be solely responsible for maintaining order and security during sessions and committee meetings. Security personnel may not be present in the Council premises unless requested by the Speaker or by a Committee Chair, as the circumstances may require.

Article 107 of the PLC bylaws provides that the Legislative Council shall be responsible for maintaining order and security on its premises. For these purposes, a special police force for the Legislative Council shall be established, under regulations determined by the Legislative Council. The Speaker shall oversee the execution of the above. No Security Forces or Police shall enter the premises of the Legislative Council, unless by decision of the Speaker.

The PLC Secretary-General explained that the PLC does not have security forces per se, but rather doors' guards. They are civil servants who perform their role under the PLC's administrative system. They are subjected to civil service, not military service law. He also mentioned that previous efforts were made to establish special PLC security forces and police, as outlined in the bylaws.

Findings:

I. Findings related to the electoral process and the form and role of the legislative authority that is expected to be elected

Legislative elections regulatory and institutional framework:

The electoral system is the determinant of the political system of any country. The present study concluded that the executive authority in the political system is the key player – in the drafting of the electoral system and holding of the electoral process. The executive power in Palestine has controlled the shaping of the electoral system by drafting an elections law. In the absence of legislative power in the past fifteen years, it has monopolized power and hegemonized the other authorities.

- The first elections law was drafted by the executive authority because of the recent establishment of the PNA and the non-existence of a legislative council at the time. The PLC has not had a chance to draft an elections law, except for in 2005. The second elections in 2006 were conducted under this law. Then, following the disruption of the activity of the legislative authority because of the political split, the law has been substituted by a new law drafted by the executive authority in 2007 and amended by it in 2021.
- The electoral systems in the Palestinian political system started with a majority (individual) system that promoted tribalism and weakened parties. It then changed into a mixed system drafted by the first PLC to promote pluralism via a proportional system and a majority system, evenly distributed to reach a fully proportional system that lays the foundation of party pluralism. In general, the election laws have observed the integrity, independence, and transparency of the electoral process and allocated seats to minorities and marginalized groups.
- The first central elections commission was established in 1995 with an independent legal personality to be the official body supervising the elections. The factions agreed on its composition in 2021. It enjoys unanimity of factions and observers on its professionalism and impartiality.
- Since its establishment in 1995, it has not been regulated by law, but rather by the provisions relating to its mandate and role in the elections law together with its internal regulations, which the Commission prepared to govern its work. This legal gap resulted in a lacuna in its activity, mainly as regards its immunity and the immunity of its staff against external influence.

Legislative elections in the past at present time:

The first legislative elections took place in 1996; the second in 2006 with a ten-year gap. To date, the third election has not been held. The second PLC continued to operate until it was dissolved by the President based on a constitutional court order.

Indicators of fairness, impartiality, independence, and integrity of the electoral process and its parties:

1- The elections are free, fair, and with integrity

A. The elections laws included the principles that guarantee the freedom, fairness, and integrity of the elections. The laws safeguarded the representation of minorities and marginalized groups and allowed for competition among the different political forces. The law stipulated all the electoral rights, except for the possibility to have recourse to another body (the right to appeal) following the adoption of the results of the elections by the elections court, consistent with the general elections law.

B. The law enshrined the principles of integrity of the electoral process, including updating and auditing of the voters' registry by external bodies. It also detailed the process of candidacy and challenges to electoral lists. CEC has endeavored to compel the different parties to abide by codes of conduct and submission of financial disclosures.

C. The elections law prescribed punishments against the violators of its provisions. CEC must refer all electoral crimes to the bodies with jurisdiction to consider them. However, judgments in these offenses are delayed in some instances.

2- Independence of Elections Supervisory Bodies:

A. CEC and its members are nominated by a presidential decree to comprise independent members including judges, academic experts, and other experienced members. It enjoys financial and administrative independence to perform its mandate.

B. Consistent with the law, the elections court has been formed without interference to include members from Gaza, the West Bank, and Jerusalem nominated by the different factions and approved by the High Judicial Council and later ratified by a presidential decree. Observers reported that the court is independent in its decision-making.

3- Impartiality of Elections Supervisory Bodies:

Factions, observers, and experts are unanimous that CEC is entirely independent and treats all candidates equally. It also trains its staff and polling center personnel and security forces to be impartial in the management of the electoral process. Although some feared that the elections court may be politicized because its members are nominated by the factions, observers confirmed it is impartial in its judgments and does not consider the party or factional affiliation of the appellants.

4- Transparency of the Electoral Process:

The elections law promotes transparency of CEC's operations and activities. It stipulated measures of publication within specific legal delays. The only exception on obligatory publication is binding CEC to publish the financial reports of the candidates' lists.

5- Sources of funding

The elections law set the ceilings and sources of funding but did not specify CEC's oversight mechanisms. CEC has not taken the initiative to devise relevant regulations and instructions.

6- Electoral propaganda

The elections law regulated access to the official media in the election campaign but did not regulate access to private media by the electoral lists. This situation undermined the justice in competition among the lists because richer lists and candidates have more access to voters than the smaller ones.

7- Effectiveness of community oversight of the elections:

CEC and the elections process are subject to the oversight and accountability of local and international observers. The law specifies that they shall be present during the election process to promote its transparency and integrity. However, they do not have access to the financial reports of candidates, which are not published or subject to accountability. Responding to comments and reports from observers and civil society organizations, CEC developed a complaint and appeal system relating to the electoral process.

Diagnosis of the state of the legislative authority

1. Role of the opposition in the PLC

The PLC internal regulations allow members to assemble and form blocs to serve common goals and interests provided that they are not fewer than 5% of the total number of members. Under the hegemony of two large parties, this percentage is considered high and does not allow small factions or other lists to form blocs. This legal provision weakens the opposition.

2. PLC members' and staff financial disclosures and codes of conduct

The PLC members comply with the submission of their financial disclosures upon resumption of office. The disclosures are kept by the High Court. But they are not submitted periodically to detect any misuse of power by the members or any illicit gains. PLC staff members submit periodic disclosures regulated by the law.

On another note, there are not any codes of conduct for the PLC members and staff.

3. Security of the legislative authority:

Although the Basic Law and internal regulations provide that the PLC shall have its security, the PLC has not formed these forces to date.

Assessment of risks and effect of the intervention of political officials in the election of the PLC to control the outcome, form, and role of the new legislative power

The present study found many complications that obstruct the periodicity of the election of the legislative council. The major obstacle is the Israeli occupation's restrictions on the organization of the elections in Jerusalem. Moreover, the political system granted the executive power authorities that enable it to control the election of the legislative power, compromising the integrity of governance and securing the executive power more force to serve its interests in the following manner:

- The Basic Law allows the President to issue legislation in cases of utmost emergency when the PLC is not in session. However, due to the disruption of the PLC since 2007, the executive authority managed to issue several laws that weakened the Palestinian political system and re-inforced the executive power's hegemony over all institutions. The political repercussions of the political split on the elections system resulted in amendments to the law. After the political divide, the executive authority repealed the general elections law and proposed a new decree-law that imposed conditions on candidacy like political affiliation. The most recent amendments to the law resulted from political understandings among the Palestinian factions, mainly Fatah and Hamas. The amendments affected the parties to the electoral process because of the creation of bodies in Gaza to counterpart the ones in the West Bank (security and justice system). Every faction seeks its interests within the Palestinian political system.

- The law accords the President the right to call for elections within a period that is not shorter than 3 months before the expiry of his term or that of the PLC. The call is made through a decree that sets the election date. In practice, following the political split, the mandate of the president expanded to repeal or postpone the periodic holding of the elections. Many of the interviewees confirmed that the political will of the president is a determining factor for the organization or postponement of the elections in addition to consultation with the political factions.

- The non-periodicity of the legislative elections harmed the Palestinian political system most notably observed by the weak politically homogenous first PLC's oversight of the executive power, which was of the same political affiliation. Furthermore, oversight of the second PLC was hindered by the political split. Consequently, the executive authority hegemonized the other authorities because it plays the legislative role in the absence of the PLC. It also extended its power to control the judicial authority by amending the effective laws via decree-laws. The result was the creation of interest groups that seek to sustain the situation, undermining the principles of governance integrity and public interests.

- The law and political system accord the executive authority and the PNA President discretionary power to nominate the members of the Elections Commission, which is formed by a presidential decree. The decree does not detail the mechanisms of selection of the members while the President of the PNA has the power to remove CEC's president or commissioners "for any other reason" other than the reasons explicitly defined in the law. Furthermore, the law does not oblige the President to give justification for the removal. CEC's internal regulations allow the President of the State of Palestine to remove CEC commissioners by a sole decision (without presenting any justifications) or based on CEC's recommendations by a two-thirds majority.

- Notwithstanding the demands to enact a CEC law, neither the legislative nor the executive power has taken the initiative to draft one. This situation deprives CEC of the immunity of staff and leaves it vulnerable to external effects in case of changes to its composition or the supporting political system.

- Before it was amended, the elections decree-law included restrictions on candidacy that contradicted the Basic Law because they would preempt the outcome of the legislative elections. The Decree-Law prescribed that the candidates must be affiliated with a political party. This condition is flagrant discrimination against the freedom of political opinion. It also stipulated that the candidates must submit proof of their resignation from a list of posts to be accepted. This is a violation of the right of employees to run in the elections.
- Candidates to the legislative elections are not required to submit a financial disclosure. This weakens the financial oversight of the elections because the disclosures are important tools of post-audit when compared with the financial reports submitted by the electoral lists to CEC.
- The absence of a law to regulate political parties and their sources of funding undermines the oversight mechanisms of the electoral funding prescribed in the general elections law. This vacuum leaves broad room to use domestic and foreign political money to influence the outcome and integrity of the elections. It enables the ruling parties and influential bodies to abuse state resources to fund their electoral campaigns. The elections law has not provided for CEC's oversight mechanisms on the use or facilitation of utilization of state institutions and resources by candidates and lists. The exploitation of this situation seriously compromises the integrity and outcome of the elections.
- There are concerns regarding influencing the votes of security forces in favor of certain lists in the absence of a definition of who the security forces are in the elections law. With two ruling parties in the West Bank and Gaza, each having its security forces, combined with preemptive security forces voting, it is easy to find out the trends of voting of the security agents in each polling center. This makes it easier for the security forces' leaders to control the votes of their agents.

The Legislative Power:

The form of the legislative power depends on the applicable electoral system. Since the legislative power has not enacted the electoral system, the executive power defined the shape of the system and its resulting authority. Therefore, the executive authority endeavored to create a system that produces a legislative power that converges with its interests.

Using the Basic Law and other laws pertaining to the elections together with the dilemmas of the political system, the executive power hegemonized the legislative authority in several areas, as follows:

- The Basic Law accords the President the right to call the first PLC regular session to convene but has not specified the delay during which this convening must take place after the announcement of the results of the elections. This is a gap in the law because the President may delay the convening of the council. The PLC's internal regulations vest in the President the mandate to convene the PLC's regular sessions. This is another gap that enables the President to control the convening of regular sessions.

- In its operation, the PLC depends on executive power agencies, like the Diwan Al-Fatwa wa Al-Tishri, which is the body responsible for the publication of the Official Gazette – a precondition for the entry into force of the laws. In some instances, the Diwan hindered the publication of some laws.

- The legislative power also depends on the executive branch for its budget. Since the disruption of the PLC, the executive authority has been procrastinating the transfer of its budget in a manner that undermines the financial independence of the PLC. Furthermore, PLC members depend on the executive power for their pay and pensions, which are expended by the state treasury without any contributions by the members to the Pension Fund. This situation compromised the independence of the legislative power and loyalty of its members. The executive authority has exercised the power of suspension of payment of salaries or pension pays to MPs who supported streams other than that of the government. This is a flagrant violation of the MPs' immunity.

- The political system allows MPs to become ministers in the executive branch during their term in the legislative power. In the Palestinian case, this weakens the PLC and enables the executive authority to hegemonize it.

- On another level, the law accords PLC members a lifetime pension equivalent to 80% of their monthly pay, transferred by the state treasury without any contributions deducted from their pay to the Pension Fund. This also affects MPs' loyalty and enables the executive authority to control the Council via its control of the pay.

Recommendations:

I. Recommendations related to the electoral process and shape and role of the legislative power that is expected to be elected:

- A. Treat the right to challenge or appeal the court's decision in the event the challenge is filed against the outcome of the elections.
- B. Encourage judicial bodies to expedite the adjudication of electoral offenses referred to them by the CEC.
- C. Comply with the formation of the elections court by the law away of any political understandings to ensure its independence and impartiality.
- D. Put controls on the use of private media to achieve justice among competing candidates to access the media and the voters.
- E. Ratify a law to regulate the legislative power and grant its members and staff immunity in addition to designating their remunerations and pension payments in a manner that guarantees the independence of this authority.
- F. Adapt the PLC internal bylaws to the current electoral system (on a proportional basis) regarding the formation of legislative blocs. The internal bylaws treat any winning list or coalition of lists as a block regardless of the number of seats they represent. The proposed adaptation will enable the opposition to form a bloc and enjoy clear rights like other large blocs.
- G. Add a provision to compel PLC members to submit periodic financial disclosure statements instead of submitting only one statement.
- H. Endeavor to form a special security unit at the legislative power "PLC guards" to ensure they are independent of the other executive power security organs.

II. Recommendations to minimize the risk and effect of the intervention of political system members in the elections of the PLC and control of their outcome as well as the shape and role of the new legislative power:

- 7- Address the international community to place pressure on the Israeli authorities to ensure they do not obstruct the organization of elections in Jerusalem.
- 8- Comply with the periodicity of the elections regardless of the political situation to redress the balance of the political system and separation of powers and prevent executive power's control of other authorities to promote governance integrity in Palestine.
- 9- Revise the current elections law to draft a new law by the legislative power in isolation of any political considerations or narrow partisan interests. The new law must provide for the prevention of executive power's intervention in the electoral process. It needs to clarify the mechanisms for the nomination of CEC members. They should be nominated by the executive power and approved by the legislative power before the President issues their appointment decree. This mechanism, similar to other state institutions, will enable the legislative power to hold CEC accountable and will immune the Commission against external influence.
- 10- Enact a CEC law to organize its technical activity and administration in terms of its formation, removal, and immunity of its members and administrative corps to minimize external interventions in its activity.

11- Amend the Basic Law to specify the cases of PLC's extension of the term and dissolution with guarantees to avoid its disruption and the resulting constitutional vacuum.

12- Amend the provisions on the preemptive voting of security forces to define the security forces (police force) whose members will participate directly in securing the elections process. It is important to specify the mechanisms of participation of other security apparatuses on regular election days to overcome the concerns relating to gearing security forces' votes toward a specific list or control of their votes during the sorting of votes in the preemptive polling center. This will guarantee the integrity of the elections and eliminate chances of punishing security agents if their vote contradicts the orders.

13- Modify the elections law to postpone the resignation of candidates till after the acceptance of their candidacy to prevent the political system from controlling the candidates to the legislative elections and to ensure fairness of candidacy.

14- Promulgate procedures and policies to control electoral funding and combat the use of political money and exploitation of public resources. This includes:

- Enact the political parties' law
- Add legislative elections candidates to the parties governed by the Anticorruption Law.
- Provide explicitly in the elections law for the obligation to publish candidates' financial reports and issue regulations and instructions to control electoral funding by CEC.
- Devise mechanisms to enable the CEC to monitor the observance of electoral propaganda controls, especially when there is the potential use of state institutions or resources by any of the lists or facilitation to do so.

15- Prescribe in the Basic Law or the Elections Law the legal delay during which the President must convene the PLC for its opening session following the announcement of the results of the elections and consider the Council in session upon the expiry of this delay.

16- Grant the PLC the authority to publish the laws that have completed the full reading cycle.

17- Activate SAACB control of the executive power's enactment of decree-laws when the Council is not in session. For this purpose, SAACB must be guaranteed independence of any intervention or influence by the parties to the political system.

18- Issue laws on the legislative authority to guarantee its financial and administrative independence and remove any potential control thereof by the executive power, via payment of budgets and MPs' pays and pensions. The financial and administrative independence must also apply to the PLC staff to guarantee the complete independence of the legislative branch.

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