

Academic Study

**Performance of the
Palestinian Legislative
Authority 1996–2013**

Aziz Haroon Kayed



Al-Zaytouna Centre for Studies & Consultations

Performance of the Palestinian Legislative Authority 1996–2013¹

Aziz Haroon Kayed²

Introduction

In order to be objective, no study of the Palestinian situation can afford to overlook the extraordinary context in which events take place. Any evaluation of the performance of an authority, party, or institution in Palestine must take into account objective circumstances, both internal and external, faced by the Palestinians and influencing this performance in various ways and at various levels.

At the level of legislative authority, which is the Palestinian Legislative Council (PLC), following the founding of the Palestinian National Authority (PA) in 1994, legislative elections were twice held, first on 20/1/1996. Fatah and some independents took part in the election, but other factions, particularly Hamas, boycotted it, as Hamas rejected all agreements signed between the Palestine Liberation Organization (PLO) and Israel and opposed the political status quo that resulted from them.

The term of the Legislative Council that emerged out of these elections, which took place on the basis of the system of electoral districts, was supposed to expire on 4/5/1999, the end of the transitional phase according to political agreements signed between the PLO and the Israeli government. However, the Palestinian Central Council (PCC) of the PLO extended the PLC term indefinitely because the transitional phase did not come to an end. After the failure of the “Camp David” negotiations in 2000 and the outbreak of *al-Aqsa Intifadah*, the PLC continued its work, like other Palestinian institutions, by default. The term of the first PLC thus lasted for 10 years, contradicting Palestinian law. However, this can be seen as the result of exceptional Palestinian circumstances.

The second elections took place on 25/1/2006. Most factions that boycotted the elections the first time around participated, including Hamas, the Popular

¹ This study is an academic study that was published in the Arabic book of al-Zaytouna “The Palestinian National Authority: A Study of the Experience and Performance 1994–2013,” edited by Dr. Mohsen Moh’d Saleh, 2014.

² A researcher in the Palestinian political, legislative, social and human rights issues. He holds a Masters Degree in Political Science, obtained from the Jordanian University, 1993. He worked in various legislative, executive, research governmental and non-governmental organizations. Currently, he’s the manager of the al-Aqsa satellite channel bureau in the West Bank.

Front for the Liberation of Palestine (PFLP), and the Democratic Front for the Liberation of Palestine (DFLP). These elections were based on the amended electoral law, which increased the number of members in the council from 88 to 132, with half of the seats included in the district system and half in the electoral list system. The election resulted in a PLC that served for one year, and which faced many hurdles both internal and external.

One obstacle was Israel's arrest of 43 Hamas members of parliament (MPs) in the West Bank (WB), including Speaker Aziz Dweik, and Secretary of the Council, Mahmud Ramahi, after Israeli soldier Gilad Shalit was captured by Hamas fighters in the Gaza Strip (GS) on 25/6/2006, only five months after the election. Another obstacle was the international siege on the PA and its various institutions, including the Legislative Council, after Hamas's victory and its formation of the tenth Palestinian government in March 2006.

There followed bickering and obstructionism during the Council sessions, in parallel with political and security tension between Hamas and Fatah. This continued until the PLC became completely paralyzed because of the Palestinian split that began on 14/6/2007 and that continues to date. Although the term of the PLC ended on 25/1/2010, four years after the election, the PCC of the PLO extended the expired term on 16/12/2009, as well as extending the expired term of President Mahmud 'Abbas indefinitely because of the difficulty of holding new elections in light of the split. Thus, the experience of the first Legislative Council was repeated due to extraordinary circumstances.

The results of the Palestinian division had direct political and geographical implications for the PLC. The Council found itself in a new, unique state: Members of the Change and Reform bloc affiliated to Hamas, who were present in GS, held continuous meetings under the chairmanship of the First Deputy Speaker Dr. Ahmad Bahar. The members of the Council from the other blocs, from both the WB and GS, formed the so-called Commission of Parliamentary Blocs, Parliamentary Committees, and Action Groups, which then met in Ramallah. Thus, the post-division PLC was no longer one council, but was in a state of duality. Each side did not recognize the decisions, recommendations, and laws issued by the other. Legal opinions on what happened and what continues to happen in the name of the PLC will be noted later in this chapter.



With the above in mind, it is clear that it would not be fair to evaluate the performance of the council as a single entity since its establishment in 1996 until the present time. The first PLC served throughout 10 years of stability, while the second did not have any chance to function normally in a way that would allow us to evaluate its work accordingly.

Therefore, in this chapter, we make the distinction between two different councils when discussing and evaluating the various aspects of the council's performance. Indeed, they cannot be treated equally from any perspective, whether in relation to the circumstances surrounding the work of each council, or the time period in which they operated.

Proceeding from the above, this chapter analyses the performance of the PLC's 1996–2013 period in three parts: the first is a theoretical framework dealing with various aspects of the role of the PLC as a parliament, on the basis of which we can evaluate its performance, such as its legislative, regulatory, and political role. The second is a review and analysis of the performance of the first PLC, which served from 1996 to 2006. And the third is a review and analysis of the role of the second legislative council, which was elected in early 2006 and remains in a state of complete paralysis.

First: The Theoretical Framework of the Legislative Council's Role

Parliaments have two main functions: A legislative function concerned with passing laws and legislation of various kinds, and a regulatory function to monitor the government's performance through various mechanisms. However, in the Palestinian case, because of the ongoing Israeli occupation and the continued Palestinian struggle for liberation, it is also possible to talk about a patriotic and political role for the PLC alongside other Palestinian institutions and factions at home and in the Diaspora. It is also possible to note another PLC role, namely, participation in strengthening the foundations of democratic transition and human rights in the new Palestinian entity, the PA. Again, this all forms part of the special Palestinian circumstances, where the role of the Legislative Council is a complex one.

With the rise of the PA, the WB and GS were governed by multiple legislations. In addition to the Jordanian legislation, which was applied in the WB, and the Egyptian legislation, which was applied in the GS, there were also

some legislation and laws that dated back to the period of Ottoman rule, and others to the British colonial period, as well as the Israeli military orders after 1967.

Under this mix of legislation, and in order to end the duplication of legislation between the WB and GS, the main mission of the Legislative Council was to establish “a unified Palestinian legal system and draft new unified laws.”³

According to the Basic Law, the PLC is the elected legislative authority (Article 47), and it alone is entitled to discuss draft laws beginning with general deliberations, then first and second reading, and then a third reading if needed. After that, draft laws are to be submitted to the head of the PA for endorsement, as part of specific measures and timeframes stipulated in the rules of procedure (Articles 65–72). The members of the Council and its committees, just like ministers in the government, are entitled to submit draft laws in the Council. Legislative competence is therefore the inherent jurisdiction of the PLC.

At the level of the regulatory role, the Basic Law stipulates that the prime minister and his cabinet members are jointly and individually accountable to the PLC (Article 74).

Like other parliaments, the Legislative Council holds, based on the Basic Law and Rules of Procedure, many of the tools of parliamentary oversight over the agenda of the executive branch, including: addressing inquiries and interpellations to the government; the formation of committees to conduct information gathering and fact-finding regarding any public matter or regarding any public institution; withdrawal of confidence from the government or ministers (Basic Law articles 56–58). The Council also has the right to discuss the government’s program, the general budget, and development plan, and the right to ratify some of the top appointments, loan agreements, and the final account of the PA budget. All these are tools that the Council should use to oversee the work of the government and hold ministers accountable.

Therefore, following up the work of the PLC and evaluating its performance requires a study of the ability of the PLC to wield its powers and competences

³ Ahmad Qurei‘, *al-Dimuqratiyyah wa al-Tajrubah al-Barlamaniyyah al-Filastiniyyah: Tajrubati fi Ri’asat Awwal Majlis Tashri’i Filastini* (Democracy and the Palestinian Parliamentary Experience: My Experience as the Head of the First Palestinian Legislative Council) (Beirut: the Arab Institute for Research and Publishing, 2006), p. 123.



mentioned in the Basic Law of the PA and the rules of procedure of the PLC itself. It is also important to study the PLC's ability to consolidate its position in the fledgling Palestinian political system by developing a clear relationship with the other branches of power, especially the executive authority.

It is worth mentioning that the powers of the PLC are set out in the interim agreement signed by the PLO and the Israeli government in 1994; however, our assessment of the performance of the PLC is based on Palestinian law and in the context of the Palestinian situation, rather than Israeli conditions set out in political agreements. This approach has a patriotic logic, as we rely on something we developed with our own hands, rather than on unjust agreements imposed from outside. Furthermore, the Occupation itself has flouted these agreements and their provisions, and cancelled all agreed phases when it raided the areas controlled by the PA during *al-Aqsa Intifadah* in 2002.

Second: The First PLC 1996–2006

Based on the theoretical framework above, and what we have mentioned about the first PLC in the introduction, we can trace the performance of the PLC as follows:

1. The Legislative Role

Despite the short age of the first PLC, it was able to discuss social, economic, and administrative laws numbering 115, including 94 passed by the PLC, endorsed by the president of the PA, promulgated and published in the Official Gazette, that went into force. Other draft laws were still awaiting the approval of the president, in the stage of the three readings, in public discussion, or were still being studied by parliamentary committees.⁴

This number of laws may be acceptable for a fledgling legislative authority in a country still in one way or another linked to the occupation. However, on the other hand, discussing 115 draft laws in 10 years is not an achievement for a legislative authority in a country that is in dire need of building an independent and unified legal system. The dire need for such a system is in order for the country to be free from the consequences of the occupation and previous phases that included a mixture of legislations, each belonging to a different philosophy.

⁴ Committees Department Files, Laws and Draft Laws, PLC, Ramallah, 2006. (in Arabic)

Nevertheless, the PLC blames the head of the executive branch for deliberately stalling the signing of laws passed by the PLC and referred to him, where it was “a rare occurrence that President ‘Arafat signed or ratified a law within the constitutional deadline. This is due to the nature of the president, who did not like commitment to constitutional provisions or rules and regulations that could constrain his powers.”⁵

Although there were many reservations over the content of the laws and how much freedom and democracy they reflected, and over the articles they contained that required legal and human rights-related review, it is still worthwhile to refer to some laws approved by the PLC. On the social level, the Labor Law, the Child Law, the Law of Charitable Associations and Community Organizations, the Higher Education Law, the Disability Rights Law, and the Environmental Law and others were passed. In economic and financial affairs, the following laws were passed: The Monetary Authority Law, the Investment Promotion Law, the Anti-Graft Law, the Public Procurement Law and others. At the administrative level, the following laws were passed: The Local Bodies’ Law, Law on the Elections of the Palestinian Local Bodies’ Councils, the Personal Status Law, and the Civil Service Law and others.⁶

In spite of the importance of these laws passed by the PLC, and signed by the head of the executive branch, the Council failed to force the PA to implement a great number of these laws. A considerable period of time passed until the government and especially President ‘Arafat became convinced of the need to implement the approved laws.

Despite passing many laws, the PLC also failed to pass important legislation proposed before it in an important phase for the consolidation of the pillars and columns of the democratic political system, such as the Political Parties Law, and the Prevention of Torture Law. It also failed to adopt other relevant laws with a national character, such as the Nationality Law, and the National Service Law. Perhaps this failure was due to the unwillingness of the Palestinian leadership at the time to open up a public debate on issues that may raise the objection of the Israeli occupation, such as the issue of nationality or national service. Another

⁵ Marwan al-Barguthi, *al-Ada’ al-Tashri’i wa al-Raqabi wa al-Siyasi li al-Majlis al-Tashri’i al-Filastini 1996–2006* (Legislative, Supervisory and Political Performance of the Palestinian Legislative Council 1996–2006) (Beirut: Centre for Arab Unity Studies, 2010), p. 283.

⁶ For all laws issued by the PLC, see The Palestinian Legislative Council, Ramallah, Laws 1996–2006. (in Arabic)



reason for this failure might be that some draft laws were of a controversial political nature, such as the issue of political parties whose functions interfere with those of the Palestinian factions that predate the PA. This matter can be seen as part of the complexity of the Palestinian situation, where the national liberation overlaps with democratic construction.

In addition to laws, the PLC would make decisions on various political, social, economic, and administrative issues, before submitting them to the executive branch in the form of requests and recommendations. Although the first PLC issued more than 860 decisions, their actual outcome was close to zero in terms of the recognition of senior figures in the PLC. A large number of these decisions had an impact that did not go past the PLC hall, and their implementation did not go beyond their recording in the PLC archives. This was due in part to the fact that the executive branch ignored most of these decisions. On the other hand, these decisions were considered to be non-binding recommendations in the opinion of many. In addition, a significant number of these decisions were of a propaganda or political nature, which neither the executive power nor the PA had any capacity to implement, such as decisions on Jerusalem, aimed at preventing Israeli actions that threatened the Arab identity of the holy city and its institutions, and those related to settlement building or prisoners or refugees.⁷

The PLC Speaker himself admits that the decisions of the PLC were, in the context of the application process, subject to stalling in implementation, if not absolute neglect, which created an atmosphere of frustration at the feasibility of their activities if they eventually will meet this fate.⁸

The PLC could have tried to issue laws that were binding for the executive power, rather than focus on issuing decisions that were no more than media and political statements, and/or non-binding recommendations, or making political demands that were beyond the capacity of the Palestinian leadership to deliver.

2. Supervisory Role

A number of prominent members of the first PLC believe that the Council had real difficulty in monitoring the government and the executive authority in general, and President Yasir 'Arafat in particular. Over the course of nine years,

⁷ Marwan al-Barguthi, *op. cit.*, p. 229.

⁸ PLC, *Taqrir Ri'asat al-Majlis Hawl al-Dawrah al-Uwla* (Council Presidency Report About the First Session) (Ramallah: PLC, 1997), p. 11.

from the emergence of the PA in 1994 and until the Basic Law was amended in 2003 to create the post of Prime Minister, the PA president was the head of the executive branch. It was he who appointed and dismissed the Council of Ministers and ministers, and put the government to a vote of confidence, while the Council cannot hold the president accountable as he is elected directly by the people, and the PLC has no authority over him.⁹

One fact that contributed to aggravating these problems is that President Yasir ‘Arafat was, for the majority of the Palestinians, a national symbol, and the founder and leader of the Palestinian revolution. President ‘Arafat was the head of the three main entities; the PLO, the PA and Fatah, which made holding him to account by the PLC very difficult. For one thing, the PLC had no power to hold the PLO accountable, as it is considered, even if in theory, the reference frame of the PA. This is not to mention the symbolic status of the president as a national leader, who is difficult to hold accountable by the PLC.

Marwan al-Barguthi, member of the PLC and a leading figure in the Fatah movement, admitted that President ‘Arafat used the PLO to put pressure on the PLC and marginalize it, in cooperation with members of the Executive Committee and members of the revolutionary council in Fatah, as well as members of the Palestinian National Council (PNC) and PCC. All of them took joy in President ‘Arafat’s repeated assertions that the PLO was the reference, and that it was more powerful than any other bodies, that the PNC was the decision-maker, and that the PLC was a partial body that would not decide the fate of the Palestinian people.¹⁰

Al-Barguthi added that this was not siding with the PLO, which President ‘Arafat marginalized along with its institutions after the establishment of the PA, but was rather done to use the PLO to bully the PLC, while he sometimes used the PA to bully the PLO. He also said that President ‘Arafat removed any political role or function from the PLC, and insisted that the political decisions and negotiations, and any agreements, remained the powers of the PLO. Ministers were influenced by the position of the President vis-à-vis the PLC, and some of them turned their backs to the PLC, failing to cooperate with it sufficiently, sheltering themselves under the president’s umbrella. Though the

⁹ Marwan al-Barguthi, *op. cit.*, p. 278.

¹⁰ *Ibid.*, p. 280.



PLC succeeded in holding a number of ministers accountable, the Council's decisions were not taken seriously enough to be effective.¹¹

Yet on the other hand, Speaker Ahmad Qurei¹² was also responsible for weakening the supervisory role of the PLC, because of his participation in Palestinian leadership meetings, which were a framework of leadership attended by the PLO executive committee, the Palestinian government, the PNC presidency, members of the negotiating team, and leaders of the security services. Therefore, the presence of the speaker of the PLC in these meetings weakened the latter's ability to hold the president and government accountable.

Furthermore, the participation of the PLC speaker in the delegation negotiating with the Israeli government weakened the supervisory role of the PLC, because the negotiations, as is the norm in the Palestinian reality, are the function of the PLO, not the PA, or indeed, the PLC. Thus, the participation of the PLC speaker in the meetings of the Palestinian leadership and the negotiating team prejudiced the principle of separation of powers, and weakened the PLC's role in monitoring the government.

What also weakened the supervisory role of the PLC was the participation of deputies themselves in the government. By examining the names of the ministers over the 10 years, it can be seen that more than 32 deputies had held ministerial positions in various governments, most of them serving for long periods of time. Most or all of them, upon assuming their posts, were partisan in favor of President 'Arafat and the government in which they served as ministers. In addition, some deputies engaged in opposition in the hope of being rewarded with ministerial posts, and this all naturally weakened the role of the PLC concerning executive power, which weakened the oversight performance of the PLC.¹²

Nevertheless, there is no doubt that the PLC tried to exercise a supervisory role vis-à-vis the government's performance through the tools granted to it in the Basic Law and Rules of Procedure.

At the level of questions addressed by the deputies to the ministers in the PLC sessions, the PLC constantly included a permanent item on its agenda, namely, *Questions Addressed To Ministers*, from the second term of the parliament. In the

¹¹ *Ibid.*, p. 281.

¹² *Ibid.*, pp. 288–289.

course of 10 years, PLC members addressed 335 questions to a number of ministers, on topics related to financial, social and political affairs and issues of local governance and so on. The ministers' answers would be given usually without influence. What can be deduced is that this limited number of questions in that long space of time was not effective as an instrument of oversight, as it did not lead to a change in the conduct of the executive branch, which continued with the same violations, especially concerning the security forces.¹³

In terms of interrogating ministers, the PLC used this oversight tool only twice in 10 years, first on 16/4/1998, interrogating Minister of Local Government Sa'ib 'Uraiqat about the lack of local elections; and then on 28/1/1999, when Finance Minister Muhammad Nashashibi was interrogated about the failure to present a budget.¹⁴

Although many violations continued, the PLC, in the opinion of its members, did not utilize questioning as an instrument of oversight, using it only in two terms in a very limited, partial, and ineffectual manner. This reflected weakness in the role of the PLC in exercising effective oversight over the government and the executive branch and its agencies.¹⁵

At the level of commissions of inquiry, the PLC formed only nine such commissions over the ten-year period, looking at violations of food safety, political detention, the death of civilians during interrogation, the Egyptian cement case, and the assault on deputies and other issues.¹⁶

Although the commissions of inquiry issued reports each time condemning individuals in the executive branch, no real accountability was carried out in each case. Here, there is a repeated admission that the lack of effectiveness is for several reasons, including the fact that some ministers and officials in the security forces and the executive branch did not cooperate sufficiently with the commissions. It may also have been due to the absence of principles governing the work of special committees and their mechanisms, as well as the non-cooperation of the executive branch with the investigation committees in most cases.

¹³ *Ibid.*, p. 271.

¹⁴ The Palestinian Centre for Human Rights (PCHR), *al-Majlis al-Tashri'i al-Filastini: 'Ashrat A'wam min Ghiyab al-Musa'alah 1996–2006* (Palestinian Legislative Council: Ten Years of Absence of Accountability 1996–2006) (Gaza: PCHR, 2006), pp. 84–86.

¹⁵ Marwan al-Barghuthi, *op. cit.*, p. 275.

¹⁶ *Ibid.*, p. 277.



As for the vote of confidence, the first PLC granted confidence to all governments formed during its tenure of 10 years. A vote of no-confidence was not used as a tool of parliamentary oversight, even in times of real crisis between the PLC on one hand and the president and the government on the other, albeit the PLC did hint that it could block confidence from time to time. However, this never reached the actual voting stage. This may be attributed to several reasons, most notably the fact that many deputies also held ministerial posts in the successive governments. Another reason is the absence of opposition blocs in the PLC, moreover, the domination of Fatah; and the position of the speaker and PLC office, who had a negative role in this regard, especially the speaker who behaved as though he was part of the executive branch rather than head of the PLC. As a result, President ‘Arafat and his government were able to circumvent some proposals to block confidence from the government before they reached the final stages by tricking the PLC and having the government resign, or by carrying out a reshuffle and appointing some of those behind the proposals to the cabinet.¹⁷

In effect, the Palestinian government was forced to resign twice. The first time was the government of President ‘Arafat, which resigned on 11/9/2002 after the PLC threatened to block confidence, where a new government was formed and which obtained the confidence of the PLC on 29/10/2002.¹⁸

The second was the government of Mahmud ‘Abbas, (Abu Mazin), who submitted his government’s resignation to the PLC on 6/9/2003 in the wake of sharp disputes with President ‘Arafat on powers and the responsibilities of the security forces. It is worth bearing in mind that one day before the resignation, 18 deputies submitted a memo to the speaker to block confidence from the government, forcing Abu Mazin to resign. In the wake of Abu Mazin’s resignation, President ‘Arafat appointed Ahmad Qurei‘ to form a new government. Because of sharp internal differences, Qurei‘ failed in this task within the period specified in the law. The president subsequently worked to declare a state of emergency, and formed an emergency government headed by

¹⁷ *Ibid.*, pp. 266–267.

¹⁸ Ahmad Qurei‘, *al-Dimuqratiyyah wa al-Tajrubah al-Barlamaniyyah al-Filastiniyyah: Tajrubati fi Ri’asat Awwal Majlis Tashri‘i Filastini*, p. 136.

Ahmad Qurei' on 5/10/2003, which expired on 4/11/2003, until Qurei' succeeded in forming a new government.¹⁹

Concerning the general budget of the PA and oversight by the PLC, theoretically speaking, the PLC continued to ask the government to submit a budget at the beginning of each year, to discuss and approve it. But on the other hand, the speaker of the PLC admitted that the latter was put under immense pressure when discussing the budget, and that its relationship with the executive branch, before the post of prime minister was introduced, had seen a lot of tension. He added that there had been delays in presenting the budget, the preparation of which did not reach the level expected, in that it should reflect the government's annual plan.²⁰

The complaint is not limited to the PLC. The Finance Minister himself complained that "tax and customs money and some aid and investments did not appear in the general budget." He also admitted that he did not have all the funds required, and that they did not all enter the treasury. This was because the president had established a number of institutions that the PLC considered to be monopolistic, and whose funds were placed in a special fund under his personal supervision. Therefore, the government was not only consistently late in submitting the budget, but also presented it in an incomplete way, making the task of monitoring public funds extremely troublesome.²¹

In order for the supervisory role of the PLC over public money to be complete, and ensure the government was committed to the budget approved by the PLC according to the Basic Law (Article 62), the government must in the following year submit the final accounts of the PA. Otherwise, there was no meaning to the budget if the government is not committed to it. Unfortunately, this did not happen during the 10 years except once, where the government presented the final accounts for the year 1997 in mid-1999, six months late according to the Basic Law, and was approved by the PLC on 17/5/2000, a year after it received it.²²

¹⁹ Marwan al-Barghuthi, *op. cit.*, p. 258.

²⁰ Ahmad Qurei', *al-Dimuqratiyyah wa al-Tajrubah al-Barlamaniyyah al-Filastiniyyah: Tajrubati fi Ri'asat Awwal Majlis Tashri'i Filastini*, p. 138.

²¹ Marwan al-Barghuthi, *op. cit.*, p. 285.

²² Ahmad Abu Dayyah and Jihad Harb, *Halat al-Sultah al-Tashri'iyyah* (The State of Legislative Authority) (Ramallah: The Coalition for Accountability and Integrity—AMAN, 2007), p. 8.



All indications show that the government was deliberately neglecting the issue of final accounts and that the PLC was not able to force it to do otherwise. Therefore, the PLC could not oversee the government's commitment to the approved public budget.

In the same vein, PLC did discuss and pass general development plans as required by the Basic Law in Article 59²³ except once, in 1998 This was due to the failure of the PLC and its marginalization by the executive branch. It did not discuss and approve the PA's loan agreements with foreign parties. The government only referred three agreements out of dozens to the PLC, bearing in mind that this was at the request of the creditors, namely the Islamic Development Bank (IDB) and the Kuwaiti Fund for Arab Economic Development. It is worth noting that the Basic Law also requires this under Article 92.²⁴

Concerning the PLC's oversight of the security forces, nobody would disagree that the PLC's failure in that field was glaring. From the outset, and as Marwan al-Barguthi attests, the security forces had overlapping, conflicting, and rival powers and functions, sometimes clashing with each other. They were not subject to legal constraints, and did not have specific powers. Instead, every commander set the criteria for his own agency. Some agencies had private sources of funding, whether by levying taxes or customs or even royalty, or from third parties. As a result, some of these agencies became the kingdoms or fiefdoms of their own commanders, who became their "owners." Furthermore, as joining these agencies was not subject to specific laws, the security forces were inflated to include tens of thousands of members. In 2006, the number of full-time personnel in these agencies was more than 61 thousand. In addition, some leaders of these security forces used their positions to increase their influence and enrich themselves, and corruption became widespread in the ranks of officers and commanders, many of whom quickly became business owners, acquired palaces, bought luxury cars, and opened large bank accounts. Their sole reference point was President 'Arafat, loyalty to whom was enough to overlook anything else. The security forces were able to cajole a number of deputies to defend their interests, since

²³ Naseem Shaheen, *The Role of the Palestinian Legislative Council in Drawing Economic Policies From the Point of View of its Members*, Master's Thesis, al-Quds University, Deanship of Graduate Studies, 2012, p. 78. (in Arabic)

²⁴ *Ibid.*

some deputies came from the security forces, while others benefited from this relationship in one way or the other.²⁵

The PLC failed for a long time to draft laws for the security forces, and failed to force the president and the cabinet to enforce decisions related to security affairs. In a flagrant defiance of the PLC, the security forces on more than one occasion attacked deputies without the PLC being able to hold the perpetrators and those behind them accountable. Some showed contempt for the deputies and engaged in incitement against them. The PLC tried to summon some officials in the security forces, but the majority of them did not respond to calls by the committees and the PLC speaker. On numerous occasions, the PLC clashed with the security forces, either due to torture or to political detention. In 2004 and 2005, the PLC issued special laws related to the security agencies, such as the National Security Law and the General Intelligence Law. However, this fell short of a patriotic and modern Palestinian security institution being built, one that could be subject to the law away from partisanship and factionalism.²⁶

What bears witness to the above is the fact that the PLC, for 10 years, did not interrogate one security official. The PLC only addressed five questions to the 10 security forces, and only held six hearings for them and formed only 14 investigative commissions to address violations by the security forces, even though the first four years of the PLC tenure saw numerous major violations against the population. Since the Interior Minister in that period was the president of the PA himself, the supervisory performance of the PLC was incomplete and hostage to the executive branch, particularly the security forces. Yet it should be noted that legislative supervision of the security forces developed dramatically after 2004, thanks to a decision by the PA president to merge the security forces into three agencies.²⁷

3. The PLC's Role in Reform and Combating Corruption

The PLC is supposed to play a key role in reform and the fight against corruption, through its two main functions, namely, legislation and oversight.

²⁵ Marwan al-Barghuthi, *op. cit.*, p. 285.

²⁶ *Ibid.*, p. 287.

²⁷ Bahaa al-Deen al-Sa'di, *al-Raqabah al-Barlamaniyyah 'Ala Adaa' al-Ajhizah al-Amniyyah* (Parliamentary Oversight of the Performance of the Security Forces), Legal Report Series (62) (Ramallah: The Independent Commission for Human Rights (ICHR), 2005), pp. 58–91.



The first PLC made an effort, albeit modest, in this area, and tried to gain a strong position for itself in the nascent Palestinian system. The PLC discussed the 1997 Report of the General Supervisory Commission, passed an anti-graft law, and made dozens of decisions related to reform, freedoms, and human rights. However, it could not force the president and the government to turn over any official, minister, or senior officer for trial for corruption or to retake funds they had appropriated, and even though the PLC weakened the corrupt individuals relatively, and limited waste a little, it was not able to make a real change in this area.²⁸

Despite the effort made by the PLC, the results were limited. It did not succeed in dealing with 1997 Report of the General Supervisory Commission, which revealed significant irregularities in the administration, as well as graft and corruption. Although President ‘Arafat bowed to the PLC pressure and reshuffled the cabinet, all those accused of corruption retained their posts. Furthermore, the fact that the cabinet lineup obtained a vote of confidence from the PLC despite everything.

The PLC also failed to make real reforms in PA institutions or to fight corruption. A number of PLC members were involved in the corruption according to the 1997 Report of the General Supervisory Commission. Furthermore, the Speaker did not show determination in tackling corruption in earnest. During the 10 years of PLC work, none of the accused were put on trial or investigated. Dozens of reports prepared by the permanent committees of the PLC, or the committees investigating corruption and violations, and their recommendations were thrown into the archives of the PLC. The PLC did not investigate the real “fat cats” who were known to everyone, but who enjoy the protection of the president and the security forces. None of them were put on trial.²⁹

The PLC failed in establishing the principles and foundations of the rule of law, despite its modest attempts through non-binding resolutions, because the president made his decisions in isolation from the constitution, laws, or PLC decisions. As a matter of fact, he adhered minimally if at all to the law. The PLC failed in upholding the principle of the separation of powers, and even more so,

²⁸ Marwan al-Barghuthi, *op. cit.*, p. 316.

²⁹ *Ibid.*, p. 341.

“the presidency of the PLC had a negative role in mixing and combining between these powers, when the speaker agreed to participate in the meetings of the Palestinian leadership and as a member in the delegation handling negotiations with the Occupation.”³⁰

4. The Relationship Between the First PLC and the Executive Branch

The evaluation of the PLC is not confined to counting the number of sessions it held, the number of laws it discussed or decisions it passed, or even the number of questions it addressed to the ministers, the commissions of inquiry it formed, or the interrogations it summoned ministers to. Rather, we should assess the PLC’s exercise of its legislative and supervisory role and the effect this had on cementing its natural role in the Palestinian political system. In this context falls the ability of the PLC to foster a balanced relationship between the authorities, especially between the PLC and the executive branch, which emerged because of the PLC’s discussion of laws and its decision-making, and for trying to exercise a supervisory role viz a viz the government's performance.

The relationship between the PLC and the executive branch had ups and downs, sometimes even reaching full blown crisis. Three factors determined the shape of this relationship: the political agreements signed between the PLO and the Israeli government; the Palestinian electoral law; and the PLC bylaws. To some extent, the discussions of the draft Basic Law also played a role. Other factors were concerned with the actual nature of this relationship arising from the legacy of the pre-PA era, the control by a Fatah majority of the PLC and the executive branch, in addition to the newness of the experience, preventing a correct understanding of the relationship between the two.

The PLC blames the executive branch for the tension and confusion, as was reflected in the discussions regarding the Basic Law and the PLC bylaws, the delay in forming cabinets, and the failure to submit budgets on time. This was in addition to delays in submitting draft laws, and the attempts to contain and marginalize the PLC in various ways, including through deliberate neglect in the official media, and the ignoring of PLC decisions, which were rarely noted let alone implemented. This led to a state of frustration and resentment among the PLC committees and members, dented its credibility in the eyes of the people,

³⁰ *Ibid.*, p. 338.



and gave a negative image of the PA's willingness to build the democratic experience to which the Palestinian people aspire.

As for the executive branch, it blamed the PLC for the problem, claiming the instability of their relationship was because the PLC exceeded the powers given to parliament, issuing decisions on issues that do not fall within its remit.³¹

The first problem with President 'Arafat emerged when he insisted that deputies should swear the constitutional oath before him, while the majority of deputies voted in favor of doing so at the PLC and to the Palestinian people, arguing that they were responsible before the people whom they represent and not the president. As a result, the president left the PLC session in protest, but the PLC stood its ground and the deputies swore the oath as they wanted.

The second clash took place over the formation of the cabinet. According to the electoral law, and later the Basic Law, a new government should have formed after the election that took place on 20/1/1996. However, although the PLC called on President 'Arafat from the outset to reshuffle the cabinet and put the new lineup to the PLC for a vote of confidence, the president turned his back on the PLC. He did not form a government until five months after the election, submitting the lineup to the PLC on 27/6/1996.³²

The major clash took place over the Basic Law, which serves as the constitution of the PA. Discussions of this law reflected a clear tension between the PLC, which saw the approval of the law as a test of the strength of the PLC and its political weight in the PA, and the executive branch, led by President Yasir 'Arafat. The latter dragged his feet before he finally approved the law in 2002, the PLC having approved the draft law at the third reading on 2/10/1997. However, the president did not approve it until 29/5/2002, nearly five years later, under internal Palestinian pressure in parallel with international pressure to approve the law and implement financial, administrative, and security reforms in the institutions of the PA.³³

³¹ For more information on the relationship between the two authorities, see Aziz Kayid, *Ishkaliyyat al-'Ilaqah bayna al-Sultatayn al-Tashri'iyyah wa al-Tanfidiyyah fi al-Sultah al-Wataniyyah al-Filastiniyyah* (The Problematic Relationship Between the Legislative and Executive Branches of the Palestinian National Authority), Legal Report Series (20) (Ramallah: ICHR, 2000).

³² Marwan al-Barghuthi, *op. cit.*, pp. 281–282.

³³ *Ibid.*, p. 234.

It is to the PLC's credit that a month and a half after it began its duties, it made a decision to begin drafting a constitution for the country and the PA. The PLC approved the law after three readings and within a year of commencing its drafting. The PLC sent the draft law to the president after the second reading, but the president showed no interest in it, returned no remarks, and refused to approve the Basic Law without explanation. Some believe that the president thought the PLC had no right to draft the Basic Law, especially since he had appointed a committee from the PLO and a number of experts to draft the constitution, though they never completed the task. Others believe President 'Arafat did not want a constitution that would restrict his powers and give the PLC a lot of powers. Some attribute this situation to the culture of the ruling elite in power, who were not able to adapt to the new political reality, or who refused to accept the principle of accountability as the basis of the relationship between the legislative and executive branches.

At the level of the PLC bylaws, the council approved them in 1997 to organize the work of the PLC, its meetings, its committees, and everything related to administrative and organizational affairs within it. Although the internal systems of parliaments in most countries of the world are tantamount to laws when they are signed by the head of the state, Palestinian President 'Arafat refused to agree to the PLC having binding bylaws, and refused to sign them. To this day, the bylaws remain guidelines rather than law, and this is also part of the tension between the legislative and executive branches.

Third: The Second PLC From 2006 Until the End of 2013

The second PLC was elected on 25/1/2006, on the basis of an electoral system that splits the seats equally between districts and lists. 11 lists took part in the election representing all Palestinian factions with the exception of Islamic Jihad Movement (PIJ). The Change and Reform bloc of the Hamas movement won 74 seats, with an additional four seats going to Hamas-backed independents. Fatah won 45 seats, with the remainder of the 132 seats secured by other blocs.³⁴

³⁴ For more information on the results of these elections, see The Second Legislative Elections in 2006, Central Elections Commission - Palestine, Ramallah, May 2006, www.elections.ps (in Arabic)



The second PLC differs from the first PLC not only in the number of members, the electoral system on the basis of which it was elected, and the blocs represented in it, but is also many fundamental ways, at all levels and across all fields. These fundamental differences made any comparison between the two councils extremely difficult to make.

From the first session, there was a heated debate and clash between Fatah and Hamas, when the PLC discussed the legitimacy of the session held by the previous council on 13/2/2006. That session was held after the election, and during the session, the PLC passed important and fateful decisions related to the political, judicial and administrative system of the PA and the PLC itself. Most of these decisions increased the powers of the head of the PA and limited those of the PLC and the government. The decisions included amending the law on the constitutional court, the powers of the president in appointing judges without the approval of the PLC, and to appoint the director of the General Personnel Council and the chairman of the State Audit and Administrative Control Bureau without the consent of the PLC as well. The session appointed a secretary-general for the PLC from outside the council, and from the Fatah movement, bearing in mind that the person in question was a candidate who had been defeated in the election. He was given powers of the secretary, who should be a deputy in the PLC, thus, isolating the secretary from Hamas from the rest of the officials, departments, and sections of the PLC. This was in addition to approving hundreds of new appointments, promotions, and transfers in the civil and security forces.

Hamas rejected these decisions, viewing them as a bloodless coup. Hamas deemed the meeting of the expired PLC following the second election as a breach of the Basic Law, on the basis that the term of the first PLC had expired and it had no right to hold sessions after the election. Furthermore, many observers deemed the decisions to be biased in favor of Fatah, which controlled the Palestinian presidency, and aimed at undermining Hamas, which now controlled the government and the PLC.

However, Fatah argued that the term of the first PLC ended when the second PLC took over, and not automatically after the election. The speaker at the time, Rawhi Fattouh, argued that the PLC had a right to exercise its powers until that final day.

Thus, a heated debate raged, in which legal matters were mixed with political issues. The debate culminated with a vote in which Hamas, with its parliamentary majority, prevailed, drawing the ire of Fatah, which refused the decision and took it to the Supreme Court as it was considered the constitutional court. Thus, from the beginning, there was a tension between the two sides, which dominated the climate in the PLC, marked by objections, quarrels, filibustering, and quorum-blocking. This caused many sessions to be adjourned and postponed, and events were mostly seen as deliberate attempts to obstruct the sessions of the PLC.³⁵

Thus, from the outset, the PLC faced fundamental challenges that ultimately led to its paralysis. The most important of these challenges were: the international blockade; Israeli policies; and internal bickering. After the elections, with Hamas holding a majority of seats and forming the Palestinian government, the PA as a whole faced a tightened international siege, politically, financially, and diplomatically, paralyzing the work of the government and the PLC. Four months after the elections, following the capture of Israeli soldier Gilad Shalit by Hamas fighters in the GS, Israeli forces arrested more than forty deputies affiliated to Hamas in the WB and a number of ministers, which further hampered the work of the PLC and the government. During that period, tensions escalated between Fatah and Hamas, and reached a peak in mid-2007, when a real split emerged on the ground with Hamas taking control of GS and Fatah taking control of the WB. Since then, the Palestinian people and the PA institutions, including the PLC, have remained in an unprecedented political era.

In light of the schism, there was much talk about early elections. The president himself announced on 15/12/2006 that he would call early legislative and presidential elections, because of the failure of the efforts being made to form a national unity government that would be able to lift the siege imposed on the Palestinian people.³⁶

This idea did not advance not even one step, and did not go beyond rhetoric and political maneuvering. This was not just because Hamas rejected it and saw it as a coup against their election and legitimacy, but because early elections meant

³⁵ For details on the events of this period, see PCHR, a report about: Evaluating the Performance of the PLC During the First Session Between March 2006–July 2007, 22/4/2008, <http://www.pchrgaza.org/arabic/studies/Legislative%20Report%202007.pdf> (in Arabic)

³⁶ *Al-Ayyam* newspaper, Ramallah, 16/12/2006.



dissolving the PLC without any legal justification, whether in the Basic Law or other laws and legislation. And as Ahmad Bahr pointed out, the president was not entitled to dissolve the PLC, because the council is its own master.³⁷

We can conclude that the second PLC has undergone two completely different phases: the first covering the first year of the council, from the election in 2006 until the division in mid-2007; and the second covering the years of division, from mid-2007 until the time of writing.

1. First Year of the Second PLC Term

Despite the circumstances in which it was operating, namely the international siege, Israeli policies, and internal differences, the PLC tried to carry out its legislative and supervisory role through the means available to it in the Basic Law and the rules of procedure. However, circumstances impeded the work of the PLC to the extent that the first year ended with an outcome that almost equated to zero at the level of legislation and oversight.

At the level of legislation, the PLC only passed one law in its first year, which was the General Budget Law, 2006. The passing of such a law is not considered an achievement. It is worth noting that the PLC received 25 draft laws in that year, passing some in public deliberations and referring others to specialized committees for their advice, but the PLC was not able to get these laws to the first reading stage. This was due to internal disputes and obstructionism at the PLC, as well as the fact that Israel had detained dozens of deputies.³⁸

At the level of oversight, the PLC did not use the tools available to it save for a few occasions. In 2006, the deputies put only 12 questions to ministers regarding issues related to health, finance, religious endowments, employment, and so on. These questions did not include any related to the lawlessness that had increased markedly during that period. Ministers were interrogated only once, specifically the interior minister in the government of Ahmad Qurei', before the formation of the Hamas government, regarding the raid by occupation forces at the Jericho prison and the kidnapping of Ahmad Sa'dat, secretary-general of the PFLP and member of the PLC. At the level of commissions of inquiry and fact-finding commissions, the PLC only formed two committees that year, one to deal with

³⁷ *Alquds* newspaper and *al-Ayyam*, 16/2/2006.

³⁸ See PCHR, a report about: Evaluating the Performance of the PLC During the First Session Between March 2006–July 2007. (in Arabic)

the kidnapping of Ahmad Sa‘dat, and one to investigate assault by Fatah militants against public institutions, including the cabinet and officers of Hamas deputies, one of whom was kidnapped. In both cases, the result was theoretical recommendations that did not deviate much from blaming the occupation, condemning political detention, and calling for resolving problems by peaceful means. With regard to withdrawing confidence from the government, as an instrument of oversight, this was not possible in light of the political tension experienced during that stage.³⁹

While outlining the failure of the PLC in its first year in oversight and legislation, we must note that other political developments overshadowed the PLC’s role. The corridors of the PLC saw more political quarrels than the council exercising its required role, and its sessions were dominated by political statements and counter-statements. Thus, the PLC did not have adequate opportunity to do its part as a parliament.

We must note here that the PLC, with its members and parliamentary blocs, who entered it from political, partisan, and factional backgrounds, played a major role in the political dialogue between various Palestinian factions. This political dialogue began with the call for national dialogue, and then with the conclusion of the National Reconciliation document, and the formation of the National Unity Government in March 2007. However, this government lasted for less than three months, on account of internal disputes and security lawlessness.

This phase ended with the occurrence of Palestinian division on the ground, which Hamas views as a military settlement, while Fatah sees it as a coup, on 14/6/2007. The Palestinian people, with all its factions and institutions, entered a new unprecedented phase after that. President Mahmud ‘Abbas, issued three presidential decrees, the first dismissing the National Reconciliation Government headed by Isma‘il Haniyyah, and the second declaring a state of emergency throughout the WB and GS, and the third appointing Salam Fayyad to form an emergency government.⁴⁰

³⁹ See *Ibid.*, pp. 34–40.

⁴⁰ For these decrees see *Al-Waqai‘ al-Filastiniyyah* newspaper (Official Gazette), no. 71, 9/8/2007, The Office of the Fatwa and Legislation, State of Palestine, site of Ministry of Justice.



2. The Second PLC After the Split

Although the political scene mixed with the constitutional disputes, the political conflict became the master of the situation. Law and legislation were no longer relevant in the new political system. Indeed, although the president had the right to dismiss the government and prime minister, the government was to continue to serve until the new one obtained the confidence of the PLC. Since the government of Salam Fayyad did not seek to gain this confidence, Hamas deemed it to be illegitimate, which is why the government of Isma‘il Haniyyah continued to serve lawfully and had the confidence of the PLC even though it had been dismissed.

Although Fatah claimed that the emergency government did not require the confidence of the PLC, the Basic Law that grants the president the right to declare an emergency in certain circumstances for a period of 30 days does not contain any provisions related to an emergency government. Rather, it tackles procedures in states of emergency, and explicitly states that the PLC may not be dissolved or suspended during the emergency period, and that the 30-day emergency may not be extended except with the approval of the PLC with a two-thirds majority voting in favor. The Basic Law stipulates that the PLC may review all or some procedures and measures adopted during the emergency period (Basic Law articles 110–114).

Nothing of the sort happened. The Basic Law and the PLC were suspended, and events unfolded as a *fait accompli*. Fatah and the PLO factions, with the exception of the PFLP, supported the government of Salam Fayyad and participated in his successive governments despite the fact that they had not obtained a vote of confidence from the PLC. Meanwhile, Hamas continued to recognize the government of Isma‘il Haniyyah, which had the confidence of the PLC, although it had been dismissed. The international community in general, and especially the United States, the European Union, and Israel, supported President Mahmud ‘Abbas, and Salam Fayyad politically and financially, while they continued their siege on the government of Isma‘il Haniyyah and the GS in general. Israel continued with its arrests of Hamas deputies.

The PLC was dragged into the political situation, and failed to convene even one session after 14/6/2007. Ordinary sessions of the PLC mixed with extraordinary sessions, while Fatah no longer recognized the PLC office

commission consisting of the speaker, his deputies, and the secretary, on the basis that the ordinary session had expired. Meanwhile, Hamas insisted on this commission continuing to serve on the basis that the commission should continue to exist until a new one was elected, as had been the norm in the first PLC for 10 years.

Thus, the division deeply affected the PLC. The results of the split directly impacted the PLC politically and geographically, with a new, unique state emerging at the PLC. PLC members affiliated to Hamas who were present in GS only held successive meetings headed by the First Deputy Speaker Ahmad Bahr, after obtaining 35 signatures from the Hamas-affiliated deputies in the WB, guaranteeing a legal quorum to hold the sessions. Although Hamas prepared a legal memorandum and sought the help of legal experts regarding the constitutionality of these signatures, the other blocs also sought the opinion of other legal experts to challenge these signatures and mandates as unconstitutional.⁴¹

On the other hand, PLC members from other blocs in both the WB and GS formed the so-called Parliamentary Blocs Commission, Parliamentary Committees, and Working Groups, holding meetings in Ramallah, excluding all Hamas-affiliated deputies. Thus, the PLC was no longer a unified body after the split, but now lived in a strange duality, with no side recognizing what was issued by the other, be it decisions, recommendations, or laws.

Under this formula, it is noted that all PLC members played some kind of role in the WB and GS, through sessions and committees, with the exception of Hamas deputies in the WB. Those deputies had no representative framework to bring them together except for the parliamentary bloc to which they belonged. In effect, PLC personnel in Ramallah prevented Hamas deputies from holding a session called by Speaker 'Aziz Dweik by force, after his release from Israeli jail, on the grounds that, the mandate of speaker of the PLC had ended.⁴²

⁴¹ For the legal opinions on the procuration, see Hussein Abu Hannoud and Sami Jabarin, *Mada Qanuniyyat Tawkilat al-Nuwwab al-Asra Zumal'uhum fi Kutlat al-Taghyir wa al-Islah fi al-Shu'un al-Muttasilah bi al-'Amal al-Barlumani* (The Extent of Legality of Detained Deputies Retaining Their Colleagues in the Change and Reform Bloc to Deal With Matters Related to Parliamentary Work), The Legislative Process Series (Ramallah: The Palestinian Initiative for the Promotion of Global Dialogue and Democracy, 2008), pp. 4–31.

⁴² *Al-Quds al-Arabi* newspaper, London, 2/3/2010.



3. The Legislative Role

The two sides continued to pass laws and publish them in the official gazette, each side basing itself on constitutional texts in the Basic Law, while at the same time rejecting the decisions made by the other side. Interestingly, the Official Gazette in which the laws were published carried the same name, Palestinian Facts, despite the huge gap between them.

The PLC in GS would receive draft laws, discuss them, and approve them through first, second, or even third readings, before submitting them to the president of the PA, by correspondence of course given the communication breakdown. Since the Palestinian presidency did not recognize any of this, it ignored the laws and did not respond to PLC correspondence, prompting the PLC to resort to Article 41 of the Basic Law, which considers a law approved if the president of the PA does not refer a law back to the PLC with his observations and the reasons of his objection within 30 days. Using this mechanism, the PLC passed 22 laws between 2006 and 2010, addressing financial, judicial, national, and personal status issues among others.⁴³

In WB, President ‘Abbas has continued to issue decrees based on Article 43 of the Basic Law, which grants the president the right to issue laws in exceptional circumstances when the PLC is not in session. Although there is a constitutional opinion objecting to this measure based on the fact that exceptional circumstances do not apply, the president, with support from the Fatah bloc, has continued to use this mechanism. The number of decrees issued by the president until mid-2013 was 76.⁴⁴ Thus, the PLC’s authority to legislate was transferred to the president through presidential decrees, which require the PLC to approve them at the first session, something that does not seem possible in the near future.⁴⁵

⁴³ PLC, *Arba‘ Sanawat min al-‘Ata’ Raghma al-Hisar* (Four Years of Tender Despite the Blockade) (Gaza: PLC, 2010), p. 67.

⁴⁴ Mo‘in al-Barguthi and Mazen Nouredine, *The Role of the Legislative Council in the Fight Against Corruption: Blocs, Lists, and Groups of Parliamentary Work*, A Series of Reports no. 64, AMAN, Ramallah, 2013, pp. 9–12, <http://www.aman-palestine.org/ar/reports-and-studies/1548.html>

⁴⁵ For the legal opinions on the law-making, see Tariq Tuqan, *al-Qararat bi Qawanin al-Sadirah ‘an al-Ra’is Wifqan li Halat al-Darurah* (Decisions-Laws Issued By the President According to Necessities), *The Legislative Process Series* (Ramallah: The Palestinian Initiative for the Promotion of Global Dialogue and Democracy, 2008), pp. 32–52.

The state of Palestinian legislation is complex, with legal justifications and political attitudes overlapping. This has prompted many legal and civil organizations and parties to call for an end to legislating under a state of division, and the reassessment of laws passed to correct the Palestinian legal environment and to prevent this legislation perpetuating and prolonging the split.⁴⁶

However, as is clear from what has continued to happen on the ground, the laws issued in GS are presented and discussed in the PLC and go through the usual measures, on the basis of the president approving them after 30 days of receiving them. However, the laws passed in the WB are not discussed in the PLC, but are issued directly by the president as laws.

4. The Supervisory Role

Things became confused because of the presence of two governments and two frameworks for the PLC. The supervisory role was exercised by Hamas deputies in GS vis-à-vis the government there, and members of other blocs in the WB vis-à-vis the government there. It was no longer possible to exercise the full role, because each side did not recognize the government of the other side, and thus, could not oversee its work. In other words, oversight was not serious in its nature and failed to follow routine procedures.

Regarding the formation of governments or cabinet reshuffles, this has been done in the WB exclusively through presidential decrees, without presenting matters to the PLC, which means depriving the PLC of core powers and turning the Palestinian political system to presidential system. In GS, governments are formed by seeking a vote of confidence in the PLC present in GS. This is what happened with the cabinet reshuffle in March 2011, which included seven ministers,⁴⁷ and a later reshuffle in August 2012, which also involved seven ministers.⁴⁸

The same applies to the continuation of appointments to senior posts, which require the approval of the PLC. In the WB, these appointments are done only through presidential decrees and are not presented to the PLC, such as the case with the appointment of the Anti-Corruption Commission Rafiq al-Natsheh, and

⁴⁶ PCHR, Position Paper: The Palestinian Centre for Human Rights Has Reservations on All Legislation Issued Under the Division, 23/6/2009, www.pchrgaza.org/arabic/documents (in Arabic)

⁴⁷ *Al-Quds al-Arabi*, 10/3/2011.

⁴⁸ *Alquds*, 2/9/2012.



the Head of State Audit and Administrative Control Bureau Mahmud Abu al Rub and Samir Abu Zneid afterwards. In the GS, the appointments are made after the approval of the PLC in GS, as was the case with the confirmation of Prosecutor General Isma‘il Jaber, and the head of the Financial and Administrative Control Bureau Isma‘il Mahfuz.⁴⁹

Regarding the general budget, the government in the WB drafts the annual budget and submits it to the president, who approves it through presidential decree without presenting it to the PLC. This has prompted parliamentary blocs to urge the president not to approve a budget for this year (2013), which was worth ⁵⁰\$3.8 billion, because it was not presented to them. However, their call went unheeded, and the budget was approved.⁵¹

In GS, the caretaker government presents its annual budget to the PLC in GS, and receives approval after deliberations. This was the case with the 2013 budget, which was worth only \$900 million.⁵²

Under this “low-key” oversight role, it is not easy to find important issues related to the deployment of supervisory tools by either wing of the PLC in the WB or GS, and measure their impact on the performance of the government.

In WB, for example, working commissions formed a parliamentary committee to investigate financial and administrative corruption in the health sector. After investigation, the committee called for the resignation of the Minister of Health and Chairman of the Medical Council, but the minister rejected the decision on the grounds that the commission was illegal and did not represent the PLC, and the case went nowhere.⁵³

The legal reports consider that the working committees, which number six and were formed in the WB, did not investigate human rights violations, such as those against the right to life and physical safety, as well as torture, mistreatment, arbitrary detention on the basis of political affiliation, sacking from public posts,

⁴⁹ *Felesteen* newspaper, Gaza, 10/10/2012.

⁵⁰ US Dollar.

⁵¹ *Al-Hayat al-Jadida* newspaper, Ramallah, 29/3/2013.

⁵² *Al-Hayat* newspaper, London, 1/1/2013.

⁵³ *Al-Hayat al-Jadida*, 10/6/2011.

assault on media freedoms, and restrictions on fundamental rights such as the right to form associations, travel, and assemble peacefully.⁵⁴

In GS, the Minister of Economy was interrogated about the bakery strike in GS.⁵⁵ The Minister of Interior was questioned regarding the frequency of the death of detainees during interrogation.⁵⁶ It is noted that after the ministers answered, interrogation sessions were concluded quietly.

In the context of withdrawing powers from the PLC, it is worth noting the dispute between President Mahmud ‘Abbas and Muhammad Dahlan, a member of the PLC and Fatah leader, deteriorated to the extent that parliamentary immunity was removed from the latter. Apart from the causes of this conflict and its developments, a legal dispute erupted regarding lifting the parliamentary immunity of PLC members. The debate was summed up by Second Deputy Speaker Hassan Khreisheh, who pointed out that the president’s decree was illegal. Lifting immunity requires measures stipulated by the Basic Law and the PLC rules of procedure, where the public prosecutor and the PLC itself are involved, and the latter alone has the right and the jurisdiction to decide in this regard.⁵⁷

It is clear from the foregoing that it is difficult to talk about the performance of the second PLC as an independent standalone legislative authority. The PLC suffered a deep political and administrative division, and faced grave internal and external challenges, where political pressure and legal texts overlapped. Under this PLC, there was no unified legislation and real oversight was absent.

The second PLC also came under an Israeli attack that placed a third of its members behind bars. It also faced an international siege that denied it its rightful place among the world’s parliaments. Under these conditions, the executive authority went too far in using its legislative powers at the expense of the PLC, and many executive and legislative powers became concentrated in the hands of the president.

⁵⁴ ICHR, *al-Taqreer al-Sanawi al-Thamin ‘Ashar li ‘Am 2012* (The Eighteenth Annual Report for the Year 2012) (Ramallah: ICHR, 2013), pp. 190 – 191.

⁵⁵ *Addustour* newspaper, Amman, 28/3/2008.

⁵⁶ *Addustour*, 4/7/2008.

⁵⁷ *Al-Hayat al-Jadida*, 16/1/2012.



It is not easy to find successes in the second PLC in one year of instability and then many subsequent years of full disruption. At the same time, it would not be objective to talk only of failures, because the PLC was not given a chance, and because Palestinian and Israeli challenges proved too much to cope with. Therefore, talking about the experience of the second PLC must be part of talking about the complex Palestinian political process, rather than part of analyzing parliamentary experience and legal texts.

Summary

This chapter dealt with the experience of the Palestinian legislative authority represented by the PLC. It was clear that the experience did not reflect one of an entrenched legislative authority in a nascent political system. It was also clear that this 18-year-old experience was riddled with shortfalls. Indeed, the outcome of 18 years of parliamentary work was subpar, whether at the level of legislation, oversight, democratic transition, or national liberation.

Of course, the experience was not entirely one of failure. Modest successes were achieved at the level of legislation and institutional development. However, the final outcome after 18 years was not satisfying for the Palestinian people when compared to the legislative authority they desire to have, not to mention the entity they aspire to have, namely, an independent state and a democratic system.

Certainly, the outcome is not the fault of the PLC alone. The entire PA might have entered into an unknown territory after the state of failure, decline, and division, which not only affected the legislative authority, but also other branches, factions, institutions, civil agencies, and security forces, and even the PLO which sometimes functioned and at many other times did not.

Certainly, the PLC is not alone in being responsible for what happened. Rather, the responsibility was multiple and each side bore a share. No doubt, there are reasons outside the control of the PLC itself, such as the policies of the Israeli occupation, especially as regarding the second PLC. However, there were other reasons related to the recent nature of the PA experience, where national action overlapped with democratic transition. There were also other factors that the PA inherited from the revolution stage, which was not governed by internal laws, especially as regards the executive branch's contempt for the PLC.

The shortfall also has to do with the partisan mentality, which at certain times placed partisan interests above the national interest, and abandoned all principles of democracy such as the peaceful rotation of power, the regularity of elections, and so on.

The PLC did not represent a fully-fledged legislative authority in its 18 years. In the first 10 years, the PLC was a parliament of a single party, whose members were the vanguard that reaped successes—modest as they were—but also bear responsibility for the failure, which was huge. In subsequent years, the legislative branch became a “political bastion,” where the opposition obstructed the work of the majority, and where partisan alignments dominated the scene. Political squabbles turned into a bloody confrontation and then a painful schism, which affected everything, including the legislative authority that became divided geographically, making it difficult to tell success and failure apart.

If this chapter of the book is to make any recommendation, it would be that the internal ranks should be strengthened to achieve national liberation. There must be a real national reconciliation that inevitably entails painful decisions. And so that talk about national reconciliation does not become a slogan eroded by events and time, the Palestinian factions must reassess and critique themselves, including their national position regarding core issues, liberation, ending the occupation, and establishing the state. Moreover, the reassessment and critique should also include the internal structure related to the rule of law and institutions, the peaceful rotation of power, and respect for electoral results. In other words, electoral legitimacy must be restored, the PLC must be rebuilt, and a single government must be formed in a way that reflects the results of the elections. The compass must then be reset in the direction of the major challenge: ending the occupation and liberating the homeland.



دراسة علمية

أداء السلطة التشريعية
الفلسطينية 1996-2013

عزيز هارون كايد

