



An Advisory Opinion on the Dissolution of the Palestinian Legislative Council

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*Assessing Constitutionality of the Constitutional Court Verdict to Dissolve the
Palestinian Legislative Council and the Repercussions for Democracy and National
Interests.*

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What is the Elected Legislative Council?

The Palestinian Legislative Council (PLC) is the constitutional institution established by the Palestinian Basic Law to embody the popular participation of Palestinians in public political life; by establishing laws governing the instruments of governance, assigning power to the rulers chosen by the people, and defining their competencies to implement national policies for governing the political entity (the state). It also determines the provisions for holding these rulers accountable for implementing policies, regulates the separation of the functions of the legislative, the executive and the judiciary branches and how they cooperate and oversee each other, all together constituting one political entity (state). The people elect their legislative council (parliament) to act on their behalf, and enact legislation by establishing laws governing public life, participation in governance, and oversight of the executive authority in implementing these laws. It prevents the executive branch from becoming an absolute arbiter who passes and implements law and passes orders to the judiciary to legitimize its violations of the constitution and laws, as this violates the basic rules of parliamentary democracy adopted by the Palestinian Basic Law (the Constitution of the Palestinian Authority—PA). Article 2 of the Basic Law² stresses this, stating, “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 of the Basic Law affirmed that, stating, “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 to the Palestinian Legislative Council.” Article 36 of the Palestinian Basic Law (2005) sets out the period for which the PA president may remain in office as follows: “The term of the

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² All articles in this text are of the 2003 Amended Basic Law, unless mentioned otherwise. The English translation of the articles is from the following:
2003 Amended Basic Law, site of The Palestinian Basic Law, 18/3/2003, <https://www.palestinianbasiclaw.org/basic-law/2003-amended-basic-law>; and 2005 Amendment to the Basic Law, The Palestinian Basic Law, 27/7/2005, <https://www.palestinianbasiclaw.org/basic-law/2005-amendments>

presidency of the National Authority shall be four years. The President shall have the right to nominate himself for a second term of presidency, provided that he shall not occupy the position of the presidency more than two consecutive terms.”

According to Article 47 of the Palestinian Basic Law, the “Palestinian Legislative Council is the elected legislative authority.” Its powers in accordance with Article 47 bis are extended until the election of a new PLC, and the new elected members take the constitutional oath. Article 47– Clause 3 of the Basic Law (2005) specifies the electoral cycles for the PLC as every four years stating, “The term of the Legislative Council shall be four years from the date of its being elected and the elections shall be conducted once each four years in a regular manner.” Article 48 of the Basic Law did not specify any limitation on the number of terms for which a PLC member could run for office, in line with what is observed for electing members of parliament in other democratic systems.

Article 47 bis of the Basic Law (2005) states, “The term of the current Legislative Council shall terminate when the members of the new elected Council take the constitutional oath.” This was one of the amendments introduced by the previous PLC, which was controlled by a majority from Fatah and had no members from Hamas.

Since the last legislative elections held of early 2006, in which Hamas won the PLC majority seats, the PLC stopped convening regularly. In this period, Fatah refused to participate in forming the government, while some bet on the failure of a Hamas-led government, Hamas settled the confrontation with Fatah supporters in Gaza Strip (GS) led by Dahlan, and the Joint meetings between the West Bank (WB) and GS were also suspended. The PLC was not called to convene again and it remained almost paralyzed in WB while it continued to convene partially in GS.

The crisis in the Palestinian political system, which has led to the suspension of PLC meetings in both GS and WB as well as Fatah’s refusal to deal with the results of the elections, is the result of the encroachment of the previous PLC on the current PLC, which was dissolved by the Constitutional Court (the constitutionality and independence of the Court itself is controversial), as the previous PLC established internal rules of procedure that were in violation of the Basic Law (Constitution) as follows:

The PLC Standing Orders Contradict the Basic Law

The Palestinian Basic Law, in article 47, paragraph 2, provides that: “The Legislative Council shall assume its legislative and oversight duties as prescribed in its Standing Orders, insofar as they do not contradict the provisions of this law.”

Article 51 of the Basic Law provides that “The Council shall accept the resignation of its Members and establish its own Standing Orders, as well as procedures for questioning its Members, in a manner that does not contradict the provisions of this Basic Law or general constitutional principles.”

In Article 52, the Palestinian Basic Law restricts the authority of the PA president in relation to convening PLC meetings to only after a new Legislative Council has been elected, stating “The President of the Palestinian National Authority shall open the first ordinary session of the Council and deliver an opening address.” This is because after the election of a new PLC and before its convention, it has no speaker to convene a session, therefore requiring the PA president (the head of state) to do so, which is applicable in the various systems. The Council convenes for the first time under the chairmanship of the oldest member. The Council elect, at this first meeting, a speaker (chairman), two Vice-Chairmen and a Secretary of the Chamber. Article 50 of the Basic Law provides that “In its first meeting, the Council shall elect a Speaker, two Deputies to the Speaker, and a Secretary-General. Together, they shall make up the Office of the Legislative Council.”

Violations of the Basic Law in the PLC Standing Orders

Article 16 of the PLC standing order violates the Basic Law, as it stipulated that “The Council shall convene, at the invitation of the President of the National Authority, its regular annual session over two periods of four months each. The first begins in the first week of March and the second in the first week of September, or in an extraordinary session if convened by the Speaker based on a request of the Council of Ministers or a quarter of the members of the PLC. If the Speaker does not convene this session, the session shall be deemed convened in the place and time specified in the request of its members or the Council of Ministers.”

Article 16 of the standing order contradicts Articles 51 and 52 of the Basic Law:

1. Article 51 requires the PLC internal rules of procedure not to contradict the provisions of the Palestinian Basic Law or general constitutional principles. However, Article 16 of the standing order of the PLC removes competencies belonging to the Speaker and grants them to the PA President in violation of the Basic Law. It reduces the powers of the Speaker to convening extraordinary sessions of the Council, and only provided that the Council of Ministers or a quarter of the PLC members request an extraordinary session.

2. The standing order of the PLC, further reducing the powers of the Speaker, included a provision related to calling an extraordinary session of the PLC as follows: “The session shall be convened by default if the Speaker does not summon the Council to convene on the date specified in the request of the Council of Ministers or a quarter of the PLC members.” If Article 16 had included such a provision in relation

to the annual ordinary sessions of the PLC (March and September), the PA president would not have been able to suspend the PLC for over a decade for purely political reasons.

3. Article 16 also violated Article 52 of the Basic Law, which restricted the rights of the PA president to opening the first ordinary session of the PLC exclusively. Instead, Article 16 of the internal rules of procedures of the PLC made convening the PLC conditional upon the PA president's request. Stating, "The Council shall convene, at the invitation of the President of the National Authority, its regular annual session over two periods of four months each. The first begins in the first week of March and the second in the first week of September."

4. Article 16 went further than violating the text of Article 52 of the Basic Law, in relation to the right of the PA president to open the first ordinary session of the PLC following the election of the new council. It added a new provision that violates the Basic Law by giving the PA president a new power not included in the Basic Law that sets out the powers of the president under Article 32 stating, "The President of the National Authority shall exercise his executive duties as specified in this law." However, the standing orders amended the Basic Law, giving the PA president alone the power to convene the PLC annual and ordinary sessions in March and September.

There is a difference between the first ordinary session that follows the election of a new PLC, and the annual ordinary session, which regulates how the PLC is convened in its ordinary sessions throughout its term.

In various democracies, constitutions stipulate that calling the legislature to convene (Legislative councils, parliaments, assemblies and other names given to elected lawmaking councils) for the first ordinary session is the purview of the head of state, while convening ordinary annual sessions is up to the speaker who determines the time and place. We cite as example the Egyptian constitution (Article 101), Jordanian constitution (Article 78), Algerian constitution (Article 118), Tunisian constitution (Chapter 2), and Mauritanian constitution (Article 53) regarding this principle, which was adopted by the Palestinian draft constitution (Articles 142 and 145).

5. Article 115 of the PLC standing orders also violate Article 118 of the Basic Law, as follows:

Article 115 of the PLC standing orders states, "...These rules supplant any legislations or regulations in this regard in place in Palestine before their promulgation." This provision violates Article 118 of the Basic Law, which states, "Laws, regulations and decisions in force in Palestine before the implementation of this law shall remain in force to the extent that they do not contradict the provisions of this Basic Law, until they are amended or repealed, in accordance with the law."

While no problem results from the standing orders amending internal laws, regulations, or decisions, the standing orders cannot constitutionally supersede a law that have a higher legislative precedence.

Thus, the PLC standing orders violated the Basic Law, by adding provisions to the Basic Law in violation of Article 120 of the Basic Law which states, “The provisions of this Amended Basic Law may not be amended except by a majority vote of at least two-thirds of the members of the Palestinian Legislative Council.”

As we have demonstrated, the standing orders by violating the Basic Law have made it a condition for the PLC to convene that the PA president summons it. However, the president, due to political reasons led by his different political orientation based on truce with the occupation, rejecting armed resistance and non-peaceful struggle, and belief in the peace process as the only way to restore limited rights for the Palestinian people, due to all this, the president did not convene the PLC for nearly 11 years since 2007. As a result, the legislative branch has been paralyzed. The solution has been in the hands of the president, who could summon the PLC to convene, but instead he opted to resort to unconstitutional legal tricks to dissolve an elected council that is a fundamental part of the Palestinian political system.

Consequently, the Palestinian political system has become more extreme and far from the principles of democracy led by the separation of powers, and closer to authoritarian regimes and even less democratic than monarchical regimes. For example, Article 78 of the Jordanian constitution (Paragraph 2) states: “If the National Assembly is not summoned in accordance with the preceding paragraph (which stipulated that the king shall summon the National Assembly to an ordinary session on the first day of October of each year), it shall meet of its own motion as if it was so summoned.”

The president failed to summon the PLC to convene, even though the PLC standing orders now gave him the power to do so. Instead, there were calls in the ranks of Fatah to dissolve the PLC with a view to use the issue as a chip in the struggle over power. The Fatah Revolutionary Council directly urged the Palestinian National Council (PNC) and the PA president to dissolve the PLC, although most legal experts stressed the PLC cannot be dissolved in accordance with the Palestinian Basic Law.

The view that the PLC cannot be dissolved is backed by the fact that corresponding constitutional provisions in other countries support this position, pursuant to the following two grounds:

First: Some constitutional systems allow dissolving legislatures (parliaments) by returning to the people to elect a new assembly, e.g. Article 73 of the Jordanian constitution.

Second: Other constitutional systems do not allow dissolving parliaments such as the US constitution. Holding elections is the only way to renew the legislature.

The Basic Law in ordinary circumstances does not include texts allowing the dissolution of the PLC. The provisions are laid out in Article 47 bis of the Basic Law (2005), stating “The term of the current Legislative Council shall terminate when the members of the new elected Council take the constitutional oath.” Even in exceptional circumstances, Article 113 of the Basic Law states, “The Palestinian Legislative Council may not be dissolved or its work hindered during a state of emergency, nor shall the provisions of this title be suspended.”

These provisions may not be amended except in accordance with Article 120, which stipulates, “The provisions of this Amended Basic Law may not be amended except by a majority vote of at least two-thirds of the members of the Palestinian Legislative Council.”

It is for this reason that the PA in Ramallah resorted to using the Constitutional Court to dissolve the PLC, implicating the court in the struggle over power by forcing it to rule on an issue **that** is not part of its jurisdictions defined by Article 103 of the Basic Law, as follows:

1. A High Constitutional Court shall be established by law to consider: (a) The constitutionality of laws, regulations, and other enacted rules. (b) The interpretation of the Basic Law and legislation. (c) Settlement of jurisdictional disputes which might arise between judicial entities and administrative entities having judicial jurisdiction.

2. The law shall specify the manner in which the High Constitutional Court is formed and structured, the operating procedures it will follow and the effects resulting from its rulings.

Law No 3 on the High Constitutional Court of the PA dated 2006 violated Article 103 of the Basic Law, as it added and supplanted provisions in violation of the Basic Law. A decree by the PA president No 19 of 2017 repeated the violation of the Basic Law, where Article 12 of the decree amended a provision in Article 103 of the Basic Law. The decree of the PA president amended the law of the Constitutional Court adding the following provision:

Paragraph 2 of the decree amends Article 24 of the Basic Law to assume the following:

- a. The interpretation of the texts of the Basic Law.
- b. The interpretation of legislations if there is a dispute over implementing them, and it is necessary to interpret them.
- c. Arbitration in the event of conflict over jurisdiction between the powers.

The decree of the PA president violated the Basic Law again in articles 13 and 14, but despite all these violations, the Constitutional Court still does not have the authority to dissolve the PLC. Indeed, the Law of the Constitutional Court, the decree of the PA president amending the competencies of the Constitutional Court, and adding new ones that include interpreting the Basic Law and other legislations, do not give the court the jurisdiction to interpret clear texts such as Article 47 bis of Basic Law (2005), which is unequivocal:

“The term of the current Legislative Council shall terminate when the members of the new elected Council take the constitutional oath.”

Therefore, the verdict of the Constitutional Court to dissolve the PLC is unconstitutional, unlawful, and illegitimate. The court does not have the right to terminate the term of the PLC, which the Basic Law stipulated extends until a new council is elected and its members take the constitutional oath. Furthermore, the Constitutional Court overstepped its jurisdictions by giving itself the right to set the date for the next elections. In truth, the verdict comes in the context of radical changes in the PA nature, influenced by events in the region and the world.

The Repercussions of Dissolving the PLC

It is certain that the dissolution of the PLC will have serious repercussions, such as:

- Invalidating the legal basis of the PA as a whole.
- Setting back the Palestinian democratic experiment by nipping it in the bud.
- Returning to monopoly by one individual or faction over the decision related to determining the size of rights in the Palestinian national project.
- Turning the schism into a separation between WB and GS.
- Loss of the possibility of unifying the Palestinian people in a Palestinian national project to achieve liberation and the restoration of Palestinian national rights.

The dissolution of the PLC, in violation of the provisions of the Basic Law and without Palestinian consensus to hold legislative and presidential elections and agree on a national program in the struggle against the occupation to restore national rights, will lead to the abolition of the legal bases that justify the legitimacy of the PA. Indeed, the repetitive violations of the Basic Law render it worthless and practically void, which marks a setback for the Palestinian polity and its nascent democratic experiment, which has not yet taken root in the organs of power and among the Palestinian people.

Moreover, the PLC dissolution according to what has been done so far, without consensus between the influential forces representing the Palestinian people, will lead to the PLO losing an important arm for action inside Palestine, especially if the occupation refuses to allow the holding of legislative and presidential elections, for fear of the results of the elections, which could bring about a Palestinian national project unacceptable to the occupation.

The PLC dissolution and holding elections in WB only, will lead to the post-election PA and PLO losing their legitimate representation of all the Palestinians in the homeland and the Diaspora.

The PLC dissolution and the transfer of its powers to the PNC, which in turn has delegated its powers to the Palestinian Central Council (PCC) of the PLO its powers at the last PNC meeting in Ramallah, will transform the PLO into an authority under occupation, especially since the international recognition of the State of Palestine under occupation is not guaranteed in light of Palestinian division and international bias in favor of the Israeli occupation.

The PLC dissolution results in the invalidation of the PCC, since legally and politically, this dissolution means that PLC members who are in that capacity also PNC members, will lose their PNC and PCC membership.

In conclusion, the PLC dissolution is illegitimate constitutionally and nationally and a leap into the unknown, especially if there is no consensus between the forces of the Palestinian people regarding holding new legislative and presidential elections, and given the de-facto invalidation of the Palestinian Basic Law, and the legal provisions it contains that organize the democratic and peaceful rotation of power that prevents the chaotic collapse of the PA. This will result in the reduction of the PCC and its absorption into the PA, and the reduction of the representation of the PLO of the Palestinian people, as it would now at most represent Palestinians in WB under Israeli occupation. Moreover, the division between WB and GS would become a total separation. In brief, this move will deprive the Palestinians of many instruments of action to achieve liberation, return, and self-determination. Meanwhile, the negotiations process throughout more than two decades has proven that the occupation will not give back any of the fundamental rights of the Palestinian people, including the right of return and the right to self-determination.

رأي استشاري في حلّ المجلس التشريعي اللسطيني

الخبير الدستوري الأستاذ
الدكتور أحمد مبارك الخالدي

