

LOCAL COUNCILS' ELECTORAL REFORM IN PALESTINE

Challenges, Gaps and Scenarios



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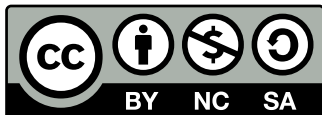
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EXECUTIVE SUMMARY

To be a democracy, it is not enough for a country to merely have a legal system in place for conducting elections. The fundamental objective of this process is to ensure that every citizen has the opportunity to elect their representatives and participate in politics on an equal footing. The state cannot be considered democratic when its people face obstacles that prevent them from achieving these principles.¹ Therefore, the country should comply with international standards that require the empowerment of all citizens to exercise their political rights while ensuring equality and non-discrimination in the electoral process.²

Further to the aforementioned factors, integrated and neutral legal frameworks, which are consistent with the relevant international standards and agreements endorsed by the State of Palestine, need to be in place to regulate the electoral process. This means that internal Palestinian legislation should align with best practices and standards, which require that such legislation should be interpreted into administrative and institutional arrangements. This report aims to analyse and assess the legal, institutional and operational framework of the local council elections in Palestine in previous years. The ultimate goal is to suggest legislative and regulatory solutions that can lead to the desired legal reforms. The report presents a set of recommendations at the policy, legislative and institutional levels, as well as at the partner level. These recommendations are summarized at the end of the report.

Internal Palestinian legislation should align with best practices and standards.

1 Maen Ideis, 'A review of the laws regulating the right to vote', in *Political Rights in Palestine: Between the Anvil of Internal Political Divide and Prospects of National Reconciliation* (Palestine: Birzeit University Institute of Law, 2014), p. 660.

2 Maen Ideis, 'A review of the laws regulating the right to vote', p. 660.

INTRODUCTION

The right to stand and vote in elections is a fundamental political right that defines the relationship between citizens and their state. To ensure political participation, a country typically includes specific regulations that outline the legal status, responsibilities and powers of local authorities. These authorities play a crucial role in the development and activation of political involvement within the legislation.³

Before the formation of the Palestinian National Authority in 1994, the role of local authorities was limited to service provision, which deprived them of their basic developmental role.⁴ With its establishment, the Palestinian National Authority sought to replace the local councils, most of which had been formed more than 20 years earlier, with new councils, to enable them to perform an appropriate role that is complementary to the role of the central government. This necessarily required legislation and mechanisms that enabled them to play such a role, most notably the mechanisms to form local councils,⁵ and it explains why Local Elections Law No. 5 of 1996 had been promulgated after the first Palestinian legislative elections in 1996. The Local Councils Law No. 1 of 1997 followed,

3 The occupation has played a fundamental role in sidelining the work of the Palestinian local authorities. Despite this, they, especially the municipalities, tried to play a political role by participating in local elections in 1976, where most winners were affiliated with the Palestine Liberation Organization (PLO). The occupation deliberately disrupted the municipalities' work, trying to use them to perpetuate the occupation rather than serving the citizens. The occupation even attempted to assassinate some local leaders including the mayors of Nablus, Hebron and Al-Amiran.

4 Ali Mansour, 'Palestinian Local Government Election of (2004/2005) and 2012: Results and Indications, A Comparative Study', Master Thesis, An-Najah National University (2015), p. 3.

5 Ali Mansour, 'Palestinian Local Government Election of (2004/2005) and 2012', p. 4.

stating that the local authority has a legal personality and is formed through elections.⁶

Local elections in the Palestinian territories are not held every four years, as stipulated in the Local Authorities Law. They have been held only four times in the 30-year life of the Palestinian Authority (PA). The first local elections were held in 2004/2005,⁷ the second in 2012/2013, and the third in 2017, with the complementary phase in 2022. This was due to complex political situations, such as the relationship with the occupation, the Palestinian division and the internal political situation.⁸

On 27 September 2021, the Palestinian Cabinet decided to hold local elections in two phases.⁹ The first was on 11 December 2022 for the municipalities classified as C and village councils and the second was on 26 March 2022 for local authorities classified as A and B. Officially, the reason for the electoral round was that the mandate of the previous local councils had ended, but the actual reason was due to political circumstances.¹⁰ This decision sparked a wave of opposition, as it came shortly after President Mahmoud Abbas announced that the legislative elections scheduled for 22 May 2021 would be postponed indefinitely.

Abbas based his decision on the fact that the occupation prevented the holding of legislative elections in Jerusalem, and accordingly the

6 Ali Mansour, 'Palestinian Local Government Election of (2004/2005) and 2012', p. 4.

7 Those 'first' local council elections were held in several phases in 2004 and 2005. Most Palestinian factions participated, including Hamas, which is not part of the PLO. The elections were highly competitive and characterized by pluralism, with active participation exceeding 80 per cent, and the elections' integrity attested to by observers. For more details, please refer to Kareem Qurt, 'Palestinian Local Elections: Contexts and Indications', <<http://yabous.info/?ID=47>>, accessed 5 March 2023.

8 Kareem Qurt, 'Palestinian Local Elections: Contexts and Indications'.

9 According to reports from the Central Elections Commission, the number of local authorities where elections should take place in both the West Bank and Gaza Strip was 443, comprising 157 municipal councils and 286 village councils. This included 16 classified as Type A, 39 as Type B, and 102 as Type C. Additionally, there were 28 associations, such as refugee camps, where elections were not held, as they were annexed to municipal elections in their respective areas. It is worth noting that Gaza's share of these authorities is 25 local authorities. For more information see <<https://www.elections.ps/Portals/0/dalel2023.pdf>>, accessed 5 December 2023. The Palestinian Government explained that the elections were held in two phases due to the Covid-19 pandemic. However, some argue that the Fatah Movement had other goals, such as using the first phase to test its popularity before heading to the elections of big highly competitive municipalities and trying to buy time to restore its popularity that eroded after the cancellation of the legislative elections.

10 Some argue that the PA decision to call for local elections was an attempt to ease tensions and bridge the gap between the Authority and the people, following the postponement of the elections and the subsequent human rights violations. The Authority also saw the local elections as an opportunity to shape the political landscape in its favour. For more details, see Qurt, 'Palestinian Local Elections: Contexts and Indications'.

president justified postponing Jerusalem's local elections for this reason, while local elections were held without Jerusalem. Some candidate lists for the postponed legislative elections also opposed holding local elections in phases according to specific categories, considering that holding them in this format and far from national consensus should not be an alternative to general elections. This deepened division and led some factions to boycott these elections.¹¹

Amid this climate and the demands of political parties to reform the legislative system for local council elections, it has become necessary to review the legislative frameworks in coordination with the electoral process stakeholders, including election officials, local and community institutions, and political parties.

This report aims to examine and assess the effectiveness of the legal and institutional organization of local council elections as well as the electoral process in Palestine in previous years by identifying gaps to develop proposals for the desired legal reform.

Using descriptive analytics, the report analyses and reviews the legislative framework regulating local council elections. It also reviews the institutional frameworks versus the actual situations. This is accomplished using several research sources and tools.

This report is divided into an introduction and four main chapters, along with a chapter for findings and recommendations.

- Chapter 1: Legal, institutional and regulatory frameworks of local council elections.
- Chapter 2: Legal, political and electoral context of local council elections.
- Chapter 3: Local council elections: Phases, interactions with partners, and orientations.
- Chapter 4: Scenarios and solutions for development: What legal system we need.
- Chapter 5: Conclusions and recommendations.

11 Islamic Jihad and Hamas announced their boycott of the local elections. Hamas, which leads the Gaza Government, set conditions to allow holding elections in the Strip. These conditions relate to the election law, the abolition of the Elections Court, and written guarantees that the elections will not be postponed. However, no agreement was concluded between the PA and Hamas on these conditions. Subsequently, the elections were held in the West Bank only. Refer to K. Qurt, 'Palestinian Local Elections: Contexts and Indications'.

Chapter 1

CONSTITUTIONAL, LEGAL AND REGULATORY FRAMEWORKS OF LOCAL COUNCILS' ELECTIONS

This chapter focuses on the constitutional, legal and regulatory frameworks that govern the work of the Central Election Commission (CEC) and its powers concerning the election of local councils.

1.1. THE CONSTITUTIONAL FRAMEWORK OF LOCAL COUNCILS' ELECTIONS

To address the legal frameworks for electing local councils, we must begin with the Palestinian amended Basic Law of 2003 and then refer to the relevant Palestinian legislation, following the hierarchical nature of legislation in the Palestinian legal system.

The Palestinian Basic Law of 2002 affirms the right to political participation, to vote, to stand for election and to assume public office, including periodic general presidential and legislative elections. The Law preamble refers to voting as a democratic right that the people exercise in choosing their representatives in the executive and legislative branches. In terms of organization, article 85 of the amended Basic Law of 2003 stipulates that:

The law shall organize the country into local administrative units, which shall enjoy juridical personality. Each unit shall have a council elected directly, as prescribed by law. The law shall specify the areas of responsibility of the local administrative units, their financial resources, their relations with the central authority, and their role in the preparation and implementation of development plans. The law shall specify the aspects of oversight over these units and their various

activities. Demographic, geographic, economic, and political parameters shall be taken into consideration to preserve the territorial unity of the homeland and the interests of the communities therein.¹²

This text established the decentralized organization of the administration and was followed by a special law regulating the work of local authorities and another regulating the local council elections. We will mention these laws with their amendments successively.¹³

1.2. LOCAL COUNCIL ELECTIONS AND LOCAL AUTHORITIES LAWS AND THEIR AMENDMENTS

A set of laws and regulations govern the electoral process and the CEC management of the local council elections. These form a CEC-specific legal framework and the most prominent of them are discussed below.

1.2.1. Local Council Elections Law 10 of 2005 and its amendments

Article 14 of Local Council Elections Law 10 of 2005 and its amendments, issued by the Legislative Council on 15 August 2005, regulates the local council's electoral process according to

12 For more, see Raed Moqbel, 'The Role of the Palestinian Local Authorities Elections in the Activation of Political Participation (2004–2009)', Master's Thesis, An-Najah National University (2010), p. 57.

13 The third draft of the Palestinian constitution explicitly stipulates the right to political participation, as article 21 thereof states that 'Every Palestinian who has reached the age of eighteen years shall have the right to vote in accordance with the provisions of the law. All those who bear Palestinian nationality shall have the right to enter presidential elections and/or House of Representatives membership and/or assume a ministerial or judicial position. The law regulates age and other prerequisites to accede to those posts.' While article 53 indicates: 'Based on constitutional rules and legal provisions, every citizen shall have the right to express his views in referenda and elections and run for election or nominate a person who meets electoral requirements'. Article 63 also affirms: 'National sovereignty belongs to the people, who are the source of the authorities. They exercise their duties directly through referenda and general elections or through representatives of the electorate, within its three general powers: legislative, executive and judicial and by its constitutional institutions. No individual or group may claim for itself the right to exercise such powers.' Subsequent articles also address the election of members of the House of Representatives, Consultative Council and the President of the State. As for local authorities, article 158 of the third draft of the Palestinian constitution stipulates: 'The relation between the government and the local units shall be regulated by law on the basis of administrative decentralization. Units of local administration shall enjoy a legal personality. Their councils shall be elected. The law shall stipulate the methods by which they are established, formed, elected, and their jurisdiction and competence.' For more, see the third draft of the Palestinian constitution, which includes all amendments up to 4 May 2003, noting that it has been amended subsequently. Available here: <<https://www.pcpsr.org/sites/default/files/nbrown.pdf>>, accessed 5 August 2023.

proportional representation with closed lists. The candidates' names on the list are arranged according to the priorities of each list,¹⁴ and their number may not be less than the majority of the local council seats. A number of council seats are allocated to each list that achieves or exceeds the electoral threshold of valid votes. These seats are distributed according to the sequence of names on the list of candidates following the Sainte-Laguë method for seat calculation. The number of local authority members is proportionate to the population of the respective administrative unit.¹⁵

The law establishes the right of voters to choose their representatives freely and fairly and guarantees the fair representation of all groups and local communities. An independent and neutral central election commission supervises the elections to ensure their correct and successful conduct.¹⁶ Two weeks after their approval under Law 12 of 2005, amendments were made to the Local Council Elections Law, especially articles related to women's representation, electoral threshold, Christian quota, and presidency and membership of local councils, among others. To ensure women's representation in local councils, a quota of 20 per cent was determined for electoral lists. Another quota was dedicated for Christians through Presidential Decree No. 5 of 2010 to ensure religious balance in local authorities where there is Christian population. These guarantees aim to achieve diversity and fair representation in local councils and ensure the participation and representation of various social and religious groups in local decision making.¹⁷

The second amendment came seven years later when Decree-Law No. 8 of 2012 amended some articles of the Local Elections Law, especially those related to the local council election mechanisms (chronologically) and the local council term. The division of local elections was legitimized, and the Cabinet was authorized to hold them in phases in line with the public interest, if holding them on one day every four years is not possible. This sparked debate among political parties, human rights organizations and legal professionals. The third amendment was made five years later when Decree-Law No. 2 of 2017 amended some articles, especially those related to the Elections Court.

14 AMAN-Transparency, 'Analyzing the Results of the Reports on Integrity Indicators in the Work of Local Authorities', Ramallah, Palestine (2022), p. 12.

15 Moayad Afanah, 'Critical Review of the Local Elections Law', 30 January 2022, <<https://www.wattan.net/ar/news/362497.html>>, accessed 5 August 2023.

16 AMAN-Transparency, 'Analyzing the Results of the Reports on Integrity Indicators in the Work of Local Authorities', p. 12.

17 AMAN-Transparency, 'Analyzing the Results of the Reports on Integrity Indicators in the Work of Local Authorities', p. 12.

1.2.2. Local Councils Law No. 1 of 1997 and its amendments

Local Councils Law No. 1 of 1997 and its amendments regulate the local authorities' work. It defines a local authority as the local government unit within a specific administrative geographic vicinity. Article 15 specifies the local authority's council tasks and functions within its respective territory. The councils may undertake those tasks and functions through their staff and employees or via external contractors. The law also entitles the councils to grant concessions to individuals or companies for up to three years, or even longer after the approval of the Minister of Local Government.¹⁸

The implementation of the Local Councils Law revealed weaknesses that undermine the councils' powers to exercise their mandate.

The implementation of the Local Councils Law revealed weaknesses that undermine the councils' powers to exercise their mandate, especially by assigning the Minister of Local Government (MoLG) a central role in managing their work. Various actions require the approval of the minister, such as approving and managing the annual budget of local authorities. In addition, the powers of the MoLG and local councils overlap concerning policymaking, financial management,¹⁹ supervising the councils' functions and competencies, organizing public projects and conducting technical and administrative work related to regional planning and organization in Palestine.²⁰

The Decree-Law No. 9 of 2008 amended the Local Councils Law, strengthening government centralization. It granted additional powers to the executive authority through the MoLG. It also granted the Cabinet broad powers, including the dissolution of the local council upon recommendation by the minister and at their discretion, if the council diverges from its powers or if its term has ended. The Cabinet may appoint a committee to perform the tasks of the dissolved council for up to one year, during which local council elections are held.²¹ The Decree-Law also entitles the minister to remove the head of the council and replace with a new one elected from among the council members, which violates the independence of local councils and increases centralization. Some consider that this decree-law grants absolute powers to the minister without granting the local councils any right to appeal their decisions.²²

18 AMAN-Transparency, 'Analyzing the Results of the Reports on Integrity Indicators in the Work of Local Authorities', p. 11.

19 Article 2 of the Law.

20 AMAN-Transparency, 'Analyzing the Results of the Reports on Integrity Indicators in the Work of Local Authorities', p. 11.

21 AMAN-Transparency, 'Analyzing the Results of the Reports on Integrity Indicators in the Work of Local Authorities', p. 11.

22 AMAN-Transparency, 'Analyzing the Results of the Reports on Integrity Indicators in the Work of Local Authorities', p. 11.

1.3. THE CEC INSTITUTIONAL AND ORGANIZATIONAL FRAMEWORK: MANDATE AND POWERS AND LEGAL FRAMEWORK THAT NEED TO BE AMENDED

Immediately after establishing the Palestinian National Authority in 1994, the first Central Election Commission in Palestine was formed under Presidential Decree No. 3 of 1995, dated 21 December 1995, and chaired by Mahmoud Abbas, the Secretary General of the Palestine Liberation Organization (PLO) Executive Committee.²³

The legislator explicitly entitled the CEC to manage the electoral process under the Local Council Elections Law²⁴ and the Decree-Law on General Elections.²⁵ The CEC sought to act transparently throughout its work, from financial policy including employment and procurement regulations to openly accrediting domestic and international missions, political parties and media to observe the elections. The CEC also published the results of the registration process and informed all stakeholders of any modification to its procedures.²⁶

The CEC managed the first presidential and legislative elections, held on 20 January 1996, under Election Law No. 13 of 1995, and was automatically dissolved after the completion of the first electoral process. Its assets were transferred to the Permanent Election Commission appointed by the PA President. On 10 October 2002, the then President Yasser Arafat issued a presidential decree appointing Dr Hanna Nasser as CEC Chairperson. The (permanent) CEC was thus created²⁷ and the remaining members were appointed according to that decree.²⁸ Since its reconstitution as a permanent commission in 2002, the CEC has conducted many electoral processes and activities, including the election of the PA President in January 2005 following the death of President Yasser Arafat, the election of members of the Legislative Council in January 2006, and the local council election in October 2012, May 2017, December 2021 and

23 Central Elections Commission—Palestine, *Report on 2021 Local Elections* (Ramallah, Palestine, 2022), p. 9, <https://www.elections.ps/Portals/0/2021LocalElections_finalReport.pdf>, accessed on 22 August 2023.

24 Article 3/1 of Law 10 of 2005.

25 Article 13 of Decree-Law No. 1 of 2007.

26 CEC, Palestine, <<https://www.elections.ps/tabid/627/language/ar-PS/Default.aspx>>, accessed 19 May 2023.

27 The CEC comprises a board of nine members or 'commissioners', including the chairperson and the secretary-general, who are appointed through a presidential decree by the PA President. The commissioners are selected from judges, senior academics and lawyers with outstanding experience for a renewable term of four years.

28 CEC—Palestine, *Report on 2021 Local Elections*, p. 9.

March 2022.²⁹ In addition, it prepares and updates the voter registry approximately every year.³⁰

The CEC is a legal entity with administrative and financial independence. A neutral professional body that deals equally and objectively with all political parties and forces, the CEC stands at the same distance from all stakeholders and views them as partners in the democratic process. It is responsible for applying the law and related regulations; preparing draft regulations in line with the law provisions; developing its own by-laws; and overseeing the organization and implementation of electoral processes. These tasks include but are not limited to: preparing the voter register, registering electoral lists, preparing and publishing the final list of candidates, adjudicating election appeals, and announcing the final election results.³¹

The CEC has organized elections professionally despite various obstacles that prevented the Palestinian people from choosing their representatives, including the occupation which disrupted the movement of CEC employees and prevented elections in Jerusalem and the Palestinian political division and the subsequent prevention of holding elections in Gaza and their irregularity in the West Bank and Gaza.

The commission enjoys credibility, objectivity, good reputation and impartiality during its management of the electoral process.

Although the commission enjoys credibility, objectivity, good reputation and impartiality during its management of the electoral process, this is mainly due to the staff and the leadership of the commission.

29 The CEC was assigned to organize local elections under Local Council Elections Law 10 of 2005.

30 The most prominent powers the CEC exercises include: (1) ratifying all necessary electoral procedures; (2) supervising and monitoring different phases of the electoral process to ensure implementation in accordance with the law; (3) ensuring all necessary measures are taken to hold the elections in a free, fair and transparent manner; (4) addressing all objections and enforcing court decisions on submitted appeals; and (5) ratifying and announcing the primary and final election results. For more information, see CEC—Palestine, Report on 2021 Local Elections, p. 9.

31 In addition to its organizational tasks, the CEC implements awareness programmes to educate citizens on electoral affairs to enable them to participate effectively in public affairs by freely choosing their representatives. The CEC also urges citizens to respect the opinions of others, which contributes to strengthening the values of democracy, community coexistence and respect of election results. The CEC constantly develops and trains its staff to ensure its continued readiness to implement any future electoral processes under the law. See CEC—Palestine, Report on 2021 Local Elections, p. 9.

The main dilemma was that the legislation and legal frameworks became outdated and did not comply with the goals for which they were created, due to the different amendments and the multiplication of the law regulating its work.

Chapter 2

CONTEXT AND PHASES OF LOCAL COUNCIL ELECTIONS: REVIEW OF THE POLITICAL, LEGAL AND ELECTORAL CIRCUMSTANCES

The Palestinian political division after 2007 is perhaps the most significant event.

To comprehend and examine the entire electoral process and its outcomes, it is crucial to understand, first, the context of the Palestinian elections. The CEC prepared for the elections in 2004/2005, 2012, 2016,³² and 2021/2022, under different circumstances that affected and continue to affect the election of local councils. The Palestinian political division after 2007 is perhaps the most significant event, as it led to profound issues regarding public acceptance of elections, the creation of legislative texts and increased tribal tendencies during the various electoral paths. These issues, in addition to the challenges posed by the unresolved status of occupied Jerusalem, have prevented the regular organization of elections.

The demand of every authority, regime or political party to hold or support elections is based on expected gains linked to public or private motives.³³ The public motives include maintaining elections as a democratic practice that enables citizens to choose their representatives freely and periodically. The private motives are to achieve political goals, from strengthening the power of the party or ruling regime, to achieving political or economic programmes for

32 During its session on 3 October 2016, the High Court of Justice in Palestine decided to proceed with holding elections in the West Bank and cancel them in Gaza. This was due to the absence of a legitimate judiciary that was formed according to the Basic Law and relevant laws. In a letter to President Mahmoud Abbas, the CEC recommended postponing the local elections for six months to put the Palestinian internal affairs in order. The CEC considered that the cabinet decision to postpone the local elections in all governorates to preserve national unity was consistent with its recommendations stating that proceeding with the elections in the West Bank only would have deepened the division between the two parts of the country and harmed the interest of the Palestinian people.

33 Ali Mansour, 'Palestinian Local Government Elections (2004/2005) and 2012', Chapter 3, pp. 82–83.

the individuals or groups concerned. Understanding these motives enables an in-depth view of the political landscape.³⁴

This chapter addresses the most important contexts of the local council elections in 2004/2005, 2012 and 2021, and the related legal, political, social, partisan or tribal influences and politics.

The first Palestinian local council elections were held 11 years after the PA was established in the West Bank and Gaza Strip following Law 5 of 1996, the first Palestinian Local Council Elections Law. The elections were conducted in four phases between 23 December 2004 and 15 December 2005, noting that the last elections held under the Israeli occupation were in 1976.³⁵

The main contextual factors that affected the elections are discussed in the following sections.³⁶

The first Palestinian local council elections were held 11 years after the PA was established in the West Bank and Gaza Strip.

2.1. OCCUPATION PRACTICES, POLITICAL IMPASSE AND INSTITUTIONAL INEFFICIENCY

The occupation affected the PA and its institutions, particularly after 2000. The peace settlement showed clear signs of failure, and corruption, chaos and insecurity became widespread. This contributed to creating a lack of interest in the electoral process, both for individual citizens and for interested groups,³⁷ in addition to its main direct effect on the CEC and its members which was preventing them from moving within the territory.

34 Ali Mansour, 'Palestinian Local Government Elections (2004/2005) and 2012', pp. 82–83.

35 Ali Mansour, 'Palestinian Local Government Elections (2004/2005) and 2012', p. 43.

36 For more on the political, legal and social context, see Ali Mansour, 'Palestinian Local Government Elections (2004/2005) and 2012', p. 44. Please refer to the reference study for this report available at the CEC.

37 Ali Mansour, 'Palestinian Local Government Elections (2004/2005) and 2012', p. 45.

The Palestinian political arena has about 10 factions with varying degrees of strength and influence. Despite this diversity, two dominant factions take the lead—Fatah and Hamas.

2.2. PALESTINIAN PARTIES AND FACTIONS AND THEIR APPROACHES TO LOCAL ELECTIONS BEFORE 2007

The Palestinian political arena has about 10 factions with varying degrees of strength and influence.³⁸ Despite this diversity, two dominant factions take the lead—Fatah and Hamas.

It is a fact that Fatah's position within the PLO gives it greater influence than other affiliated factions on the Palestinian political scene. However, it suffers from division among its leaders, which has led to fragmentation in its role and leadership and a decline in its popularity. Fatah could neither get rid of the Oslo Accords nor activate them. It equally failed to present a programme supported by the Palestinian masses.

Contrary to its position of boycotting the general elections, Hamas decided to participate in the local elections, considering that the local authorities provide services that meet the daily needs of citizens. The remaining Palestinian factions, except the Islamic Jihad, expressed their desire to participate in the local elections despite their limited political influence.

A state of intense political polarization prevailed among the various factions throughout these elections, which constituted a referendum on political programmes and trends rather than focusing solely on service provision. This explains the volume of mobilization and high levels of participation in the elections. The death of President Yasser Arafat in 2004 complicated the situation and had a profound impact on the history of the Palestinian national movement.

2.3. PALESTINIAN POLITICAL DIVISION AFTER 2007 AND ITS REPERCUSSIONS ON THE ELECTIONS

A flashback to 2006 is necessary to understand the political and partisan reality of the 2012 local council elections. Hamas won a majority in the second Palestinian legislative elections. This created a political challenge between the presidency and the government, and power was divided between them. This challenge later turned into a

³⁸ Ali Mansour, 'Palestinian Local Government Elections (2004/2005) and 2012', pp. 45–47.

political crisis that ended in June 2007 through a violent conflict,³⁹ leading to a geographical division between the West Bank and Gaza⁴⁰ and a duality of power that affected the electoral process and the legitimacy of institutions, which are still suffering from political division.

This division led to a decline in public freedoms in the West Bank and the Gaza Strip, including the citizens' right to choose their representatives in the executive and legislative authorities, as well as in local councils.

This division affected the political parties directly, causing a decline in their role in establishing a culture of participation and peaceful transfer of power. Rather, they strengthened a culture of interest, tribalism and narrow sectarianism.⁴¹ This also weakened people's trust in the effectiveness and feasibility of exercising their right to run for elections. This situation was obvious in the 2012 local elections, which witnessed a decline in voter participation and an unreasonable increase (over 60 per cent) in the number of local authorities that won by acclamation.⁴²

To hold local elections in the West Bank only and exclude Gaza, the Palestinian President promulgated in 2012 decree-laws amending the Local Council Elections Law. This violates international electoral standards that require states to enable all citizens to exercise their right to elect and be elected and human rights and freedoms, especially the right to equality and non-discrimination.⁴³

To hold local elections in the West Bank only and exclude Gaza, the Palestinian President promulgated in 2012 decree-laws amending the Local Council Elections Law.

39 After the Reform and Change Movement, led by Hamas, won the legislative elections held in 2006, Ismail Haniyeh was officially tasked with forming the government. The 10th government, led by Hamas, was formed. However, this government faced a blockade imposed by Israel and the international community and was unable to adequately manage affairs. Additionally, there was internal disagreement, especially from Fatah, which had previously held power. To avoid the blockade imposed on the authority due to Hamas's victory, it was agreed to form a National Unity government involving various Palestinian factions, the 11th government. However, escalating media attacks between Fatah and Hamas and the failure to agree on a joint mechanism for work eventually led to a wave of internal conflict on 14 June 2007, between Hamas and Fatah elements in the Gaza Strip, resulting in deaths on both sides. This ultimately led to Hamas's complete control over the Gaza Strip, creating a political divide and the existence of two governments operating simultaneously, a Hamas government in Gaza, established after the division, and a Fatah-led government, headed by Salam Fayyad in Ramallah, appointed as Prime Minister after the 2007 events. Each government operated independently without coordination. However, the Palestinian Authority's obligations towards the Gaza Strip remained in terms of financial aspects and salaries for its affiliated employees.

40 Ali Mansour, 'Palestinian Local Government Elections (2004/2005) and 2012', p. 85.

41 Ali Mansour, 'Palestinian Local Government Elections (2004/2005) and 2012', p. 86.

42 Maen Ideis, 'A review of the laws regulating the right to vote', p. 649.

43 Maen Ideis, 'A review of the laws regulating the right to vote', p. 649.

Since 2007, no elections have been held in Gaza. Despite calls for elections as a solution to the state of division, large circles doubt the ability to hold them successfully given that such division prevents national consensus which is key to completing the security, judicial and legal arrangements of the electoral process.

The legal framework was not stable, as Law 5 of 1996 was amended several times.

2.4. TRANSFERRING LEGISLATIVE POWERS TO THE EXECUTIVE POWER: UNSTABLE AND UNCLEAR LEGAL FRAMEWORK

The constitutional framework for elections is based on article 85 of the amended Basic Law of 2003. Meanwhile, the legal framework was not stable, as Law 5 of 1996 was amended several times. The first amendment was in 2004 by Law 5 of 2004 and allowed the electoral process to be conducted in phases after it had been limited to one phase for all West Bank and Gaza local authorities. On 13 August 2005, the Legislative Council approved another amendment by Law 10 of 2005 which repealed Law 5 of 1996 and Amended Law 5 of 2004. The amendment mainly included replacing the majority system with a proportional system⁴⁴ and allocating a women's quota in local councils. Another partial amendment was also made, according to which the CEC was authorized to supervise local elections instead of the Supreme Elections Committee.⁴⁵

After 2007, the legal situation became more complicated, as the enforcement of laws required a legislative body to promulgate them. The Legislative Council, the presidency and the government were the bodies authorized to promulgate legislation after the disruption of the Legislative Council. In 2018, the Constitutional Court issued the interpretive decision No. 10⁴⁶ to dissolve the Legislative Council which had been effectively suspended since the 2006 legislative elections. Then, the Palestinian political division occurred in 2007 and article 43 transferred the legislative authority to the President of the State under the pretext of necessity. Therefore, decree-laws affecting the Local Council Elections Law were issued. The Legislative Council

44 The electoral system amendments were based on partisan interests, as the majority system was adopted in the first phase of elections but was replaced by the proportional system during the second phase, which also witnessed the introduction of the women's quota.

45 Ali Mansour, 'Palestinian Local Government Elections (2004/2005) and 2012', p. 48.

46 Interpretive decision No. 10 of 2018 issued by the Constitutional Court on 12 December 2018 included two reasons the court relied on: (1) the Council has not exercised its jurisdiction since its inception; and (2) the Legislative Council elections were not held on their due date in 2010.

continued to function, but only with the members of the Reform and Change Bloc, and this was made possible through introducing new legal tools. A key tool was the power of attorney for prisoners. This led to the lack of harmony in the legislative text in both the West Bank and Gaza, and government and presidential decisions, including calling for local elections, were implemented only in the West Bank.

Contrary to the amended Basic Law of 2003, article 43 was used to transfer the powers of the Legislative Council to the executive authority. This allowed the latter to not hold elections on time and to tighten its grip on local councils, as it could remove the head of the local council. These laws were not presented to the Legislative Council for approval, and they are subject to appeal or even cancellation when the first session of an elected Legislative Council is held or because they violate the effective legal rules and procedures.

The lack of harmony in the legislative text in both the West Bank and Gaza, and government and presidential decisions, including calling for local elections, were implemented only in the West Bank.

Chapter 3

LOCAL COUNCIL ELECTIONS: PHASES, INTERACTIONS WITH PARTNERS AND ORIENTATIONS

This chapter focuses on the gaps in the various phases of the electoral process and the role of partners as key stakeholders in the electoral process.⁴⁷

3.1. ELECTORAL PROCESS PHASES AND LEGAL GAPS: PRELIMINARY NOTES

The local council elections process begins effectively after the Cabinet sets the date of these elections, followed by several phases, as explained below.

3.1.1. The phase preceding the call for local council elections

This preparatory phase is essential and related to the CEC work in both legal and institutional frameworks. Given its importance, this phase must be reviewed from a legislative perspective.

Consolidating the CEC legal framework

Problematically, the electoral process in Palestine is governed by two effective laws—one for local elections and the other for general elections. Both laws contain chapters regulating the same issues, including the CEC's powers. This causes confusion and a lack of unity in the legislative text. Therefore, consolidating the two laws would

The electoral process in Palestine is governed by two effective laws—one for local elections and the other for general elections. This causes confusion and a lack of unity in the legislative text.

⁴⁷ This chapter does not aim to examine the practical procedures and their problems, since many reports have already identified them. For more information on monitoring the phases, results and course of the electoral process, see CEC, *Report on 2021 Local Elections*, p. 21, <<https://www.elections.ps/tabid/1220/language/ar-PS/Default.aspx>>.

help overcome any unnecessary or unintended contradictions or conflicts between them.⁴⁸

Legal guarantees for CEC independence

The CEC's independence and integrity are important and highly sensitive, given the tense political situation and the country's extreme political polarization. While the CEC has demonstrated an acceptable level of integrity, impartiality and independence, its independence is not based on a solid legal ground but rather on the behaviours of the CEC's leadership and the domestic and international political support they have received. In this regard, it is recommended that:⁴⁹

The Legislative Council must approve the CEC members who are nominated through a presidential decree.

Candidacy requirements must be the same for the Executive Director and CEC members.

CEC members may not be affiliated with any political party.

The CEC should prepare its annual budget, which must be part of the public budget.

The CEC may impose fines on the violators of the elections law.

CEC decisions and minutes of meetings must be shared with the public.

Determining the nature of the electoral system

A good electoral system allows for geographical, ideological, partisan or political, and social representation of different genders, age groups, socio-economic levels, religions and ethnicities.⁵⁰ However, the good functioning of an electoral system (majority-based or proportional) depends on its context, and it can achieve its goals only if based on agreement between political forces and parties. This is also a critical factor in the credibility of any election.

Electoral systems necessarily reflect the comprehensive economic, social and political contexts of society, which individuals are inherently intertwined with. Electoral systems achieve their goals and objectives as delineated by political and societal actors, effectively reflecting the level of agreement or conflict among the involved parties and their willingness to recognize each other's legitimacy to coexist within the framework of bargaining, exchange and mutual interests. This is what is stipulated and mandated in a social contract, which is still absent in the Palestinian reality. Without this

The CEC's independence and integrity are important and highly sensitive, given the tense political situation and the country's extreme political polarization.

48 Basem Al-Zubaidi, 'A Political Reading of the General Elections Law in the West Bank and the Gaza Strip', January 2013.

49 Basem Al-Zubaidi, 'A Political Reading of the General Elections Law in the West Bank and the Gaza Strip'.

50 Basem Al-Zubaidi, 'A Political Reading of the General Elections Law in the West Bank and the Gaza Strip'.

social contract, each party (Fatah and Hamas) will continue to adhere to its own vision regarding electoral systems, considering them as a legal means to control the other party, negotiate its legitimacy and distort the vision and discourse it represents. Instead, we should view electoral systems as legal formulations aimed at empowering citizens to differentiate between different programmes and methodologies in shaping public policies.⁵¹

Creating a balanced and fair electoral system requires a balance between various different factors and their alignment with the local, cultural and political context of the society.

Good electoral systems take into account a set of specific criteria related to the issue of representation and are capable of organizing free and fair elections that allow people to express their opinions. Therefore, creating a balanced and fair electoral system requires a balance between various different factors and their alignment with the local, cultural and political context of the society. This includes providing fair geographical representation for different regions, demographic representation that reflects the diversity of society, political representation that encompasses a spectrum of different opinions and ideas, and intellectual and moral representation that respects diversity and differences. Practically, there is no perfect electoral system that suits all circumstances and communities. Therefore, the development of electoral systems requires a balance between multiple considerations and listening to the opinions and feedback of citizens, and making amendments and reforms aimed at enhancing democratic representation and achieving a better life for everyone.⁵²

3.1.2. The phase of calling for local council elections and related preparatory phases

According to article 2 of Decree-Law No. 8 of 2012 amending the Local Council Elections Law No. 10 of 2005 amended by [Law 12 of 2005](#), the Cabinet shall call for local council elections. This formal aspect is usually respected, albeit irregularly. However, the major problem lies in some conceptual and practical issues.

Irregularity, postponement and fragmentation of elections: A legal or political practice?

The irregularity of local elections is a legal and political problem. The Local Council Elections Law No. 10 of 2005 and its amendments did not set specific dates for holding or calling for these elections.

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51 Basem Al-Zubaidi, 'A Political Reading of the General Elections Law in the West Bank and the Gaza Strip'.

52 Basem Al-Zubaidi, 'A Political Reading of the General Elections Law in the West Bank and the Gaza Strip'.

Article 5 of this Law⁵³ allows postponement for no longer than four weeks.⁵⁴ However, Decree-Law No. 8 of 2012 amending this Law brought dramatic changes when it repealed article 4 of the original law and allowed holding elections in phases.⁵⁵ Indeed, the government used this 'exception' as a 'rule' numerous times under various pretexts, especially since the text allows this if required for the 'public interest', which is interpreted according to the whims of the ruling authority.

Since the local elections were divided, it has become a tradition to hold them in phases. The first phase includes the 387 local councils⁵⁶ classified as 'C', where lists win mostly by acclamation, compared to the 58 councils classified 'A' and 'B' in large cities and towns, where real elections⁵⁷ are usually held. Some analysts believe that political parties use the first phase⁵⁸ to probe their chances of winning⁵⁹ before proceeding to the second phase⁶⁰ which was the actual reason behind dividing the elections.

The inclusion of article 4 of Law 8 of 2012, which allowed the division of elections into two phases, was not reasonable. The Cabinet decision did not specify any reasons in this regard and therefore it violated the formal and procedural requirements for organizing the elections in two phases, especially given that the CEC, the legally authorized entity in this regard, never stated that holding the elections

53 The Local Council Elections Law No. 10 of 2005 included explicit texts that emphasize this issue, especially article 4, which stipulates that 'Elections shall be held in all local councils on the same day, once every four years upon a decision issued by the Cabinet.'

54 It states: 'The CEC may request the postponement of the elections in one or more local councils for a period not exceeding four weeks for technical needs and elections integrity purposes. The postponement decision shall be issued by the Cabinet.'

55 Article 2 of the aforementioned Decree-Law stipulated: '(1) Elections shall be held in all local councils on the same day, once every four years upon a decision issued by the Cabinet. (2) In case it was not possible to conduct the elections to local councils in accordance to paragraph 1, the Cabinet may issue a decision to conduct the elections in phases as deemed necessary for public interest.'

56 Their number is bigger as evidenced by CEC statistics.

57 AMAN-Transparency, 'Analyzing the Results of the Reports on Integrity Indicators in the Work of Local Authorities', p. 12.

58 Some believe that the option of dividing the elections and starting in small regions is in the interest of the ruling party, especially given the Hamas boycott. Choosing to hold elections in the (C) councils was because most of their lists usually win by acclamation (mostly a single list formed in alliance between Fatah and the tribes and families). Obstacles caused by the Israeli occupation, its fragmentation of West Bank cities, and the checkpoints across the PA territories were also used as an excuse. Yet, the justifications for holding elections in phases are not sufficient, and there are no clear and specific criteria for advancing certain local authorities at the expense of others.

59 Ali Mansour, 'Palestinian Local Government Elections (2004/2005) and 2012', p. 55.

60 Hani Al-Masri, 'Participating in the Municipal Elections in the West Bank and Holding them in the Gaza Strip is a Duty', *Palestinian Center for Policy Research and Strategic Studies* (Masarat, October 2021).

in one phase was impossible.⁶¹ As such, it is important to reconsider the legal amendment and to set specific controls if the text is maintained.

3.1.3. The phase of registration, publication and objection

This stage does not present any legal issues. However, some logistical challenges need to be addressed. For instance, the registers do not use an alphabetical order for the names of voters, which makes it difficult for the CEC staff to identify the voters' names when they come to vote. This is a violation of article 19 of the voting and counting procedures that were issued by the CEC under the Local Councils Law.⁶²

In the first phases of local council elections in 2004/05, the civil registry and the electoral registry were used despite the availability of an updated voter registry.

In the first phases of local council elections in 2004/2005, the civil registry and the electoral registry were used despite the availability of an updated voter registry. Some polling stations used the civil registry,⁶³ while others used the voter registry, which led to discrepancy in procedures that affected the integrity of the electoral process. This was addressed in the third and fourth phases, where only the voter registry was used.⁶⁴

3.1.4. Nomination phase: Review of procedures, texts and controls

The organization and management of the nomination process are based on Local Council Elections Law No. 10 of 2005 and its amendments, and on the CEC's procedures.⁶⁵ The following are key gaps in the nomination regulations.

Proportional representation and winning by acclamation

The political landscape in Palestine is intricate and plagued by multiple crises and conflicts, which impact citizens' perspectives on elections. Winning by acclamation became a growing phenomenon as a result. Citizens lacked confidence in the democratic process because of the occupation and Palestinian division, and each of the two Palestinian parties sought to impose its own vision on the Palestinian society, which resulted in increased cases of

The political landscape in Palestine is intricate and plagued by multiple crises and conflicts, which impact citizens' perspectives on elections. Winning by acclamation became a growing phenomenon as a result.

61 Al-Haq Organization, 'Al-Haq Organization's Oversight Report on Local Council Elections, First Phase', 2021, p. 9.

62 Al-Haq Organization, 'Al-Haq Organization's Oversight Report on Local Council Elections, First Phase', p. 19.

63 Despite its numerous gaps, since it was not duly updated and was not matched with the voter registry at that time.

64 Ali Mansour, 'Palestinian Local Government Elections (2004/2005) and 2012', p. 57.

65 See article 15(1) of Law 10 of 2005: 'Intake of nomination applications for local councils' elections shall start forty-four days prior to the designated elections date, and continue for ten days. Nomination applications shall not be accepted after that period.'

winning by acclamation, as seen in the elections of local councils, federations, syndicates, student councils and sports clubs. Clear evidence includes the citizens' unwillingness to run for, or vote in, the 2012 local elections, leading to a negative impact on the role and performance of local authorities.⁶⁶

The local elections witnessed a noticeable increase in the number of local authorities⁶⁷ with a single list, or the so-called consensus on a unified list, that won by acclamation.⁶⁸ In the 2021 elections that were held only in the West Bank, single lists won by acclamation in 162 out of 316 local authorities.⁶⁹

In May 2017, electoral lists in 181 municipalities out of 326 won by acclamation because no other electoral list was presented in the local body. Notably, Jenin governorate has witnessed one of the highest acclamation levels in its municipal and local council elections. According to the CEC, 34 out of 57 local authorities in Jenin won by acclamation.⁷⁰

This phenomenon has a negative impact on the democratic process and the principles of elections. It violated the citizens' right to vote and enabled families, some forces, and parties to play a major role in supporting the formation of consensual electoral lists in some rural local authorities and the formation of some individual lists in some villages, where they could not form consensual electoral lists.⁷¹ One of the local authorities even chose its council internally through consensus between families and local parties without coordination with the CEC. They simply submitted one agreed-upon list without holding any elections. This issue should be addressed legally.

The independent and consensual list system narrows citizens' choices and prevents them from participating in the electoral process

66 Omar Rahhal, 'Acclamation and Electoral Consensus in the Context of the Palestinian Experience: Limiting Acclamation "Consensus," and the Lack of Parties' Effectiveness' (January 2021), p. 5.

67 This applied, for example, to 215 local authorities out of 354 in the West Bank, or approximately 61 per cent of the local authorities in the second local elections in 2013. That percentage decreased to 60 per cent in 2017, according to CEC data.

68 Acclamation technically means to induct a candidate or electoral list into a position without the need to vote on ballot papers. See Omar Rahhal, 'Acclamation and Electoral Consensus in the Context of the Palestinian Experience', p. 4.

69 AMAN-Transparency, 'Analyzing the Results of the Reports on Integrity Indicators in the Work of Local Authorities', p. 12.

70 Maysaa Abu Zahidah, 'Acclamation in the Elections: A Democratic Method or Political Bankruptcy?', *Al-Najah News*, 16 December 2018, <<https://nn.najah.edu/news/Artical/2018/12/09/178316>>, accessed 14 July 2023.

71 AMAN-Transparency, 'Analyzing the Results of the Reports on Integrity Indicators in the Work of Local Authorities', p. 12.

freely as it relies on quotas between factions, parties or families without giving individuals their right to vote and fully engage in the electoral process. This system hinders the formation of councils that include competent professionals, especially independent ones.⁷² Most of the major cities that held local council elections had multiple competing lists, which enhanced the democratic life and electoral education in those cities.

To avoid the above problems, acclamation and consensus need to be prohibited because they deprive citizens of their vote and their free choice of candidates away from tribal and partisan considerations.⁷³ Some recommend combining the majoritarian and proportional systems in the general elections and this approach can be used in local council elections.⁷⁴

Not nominating electoral lists

The local council elections witnessed other phenomena, such as the absence of any nominations within the local authorities. Seventy-eight local authorities had no lists in the first and second phases of the 2021 elections. This requires a review of the local council election law. Figure 3.1 illustrates this.⁷⁵

Violating governance principles

The law does not prevent first-degree relatives from running on the same electoral list, which contradicts the principles of integrity and 'conflicts of interest' prevention. Electoral lists sometimes include members of the same family or first-degree relatives, which contradicts the principle of diversity and prevention of power concentration.⁷⁶

Youth representation

The law requires candidates in local elections to be 25 years of age or older,⁷⁷ which deprives citizens who are 18 to 24 years old of the right to run for local council elections. Youth, by definition, includes people who are 18 to 29 years old.⁷⁸ According to data from the Palestinian Central Bureau of Statistics, 694,060 young men and women in

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72 AMAN-Transparency, 'Analyzing the Results of the Reports on Integrity Indicators in the Work of Local Authorities', p. 12.

73 Al-Haq Organization, 'Al-Haq Organization's Oversight Report on Local Council Election, First Phase', 2021, p. 14.

74 Raed Moqbel, 'The Role of the Palestinian Local Authorities Elections in the Activation of Political Participation (2004–2009)', pp. 95, 125.

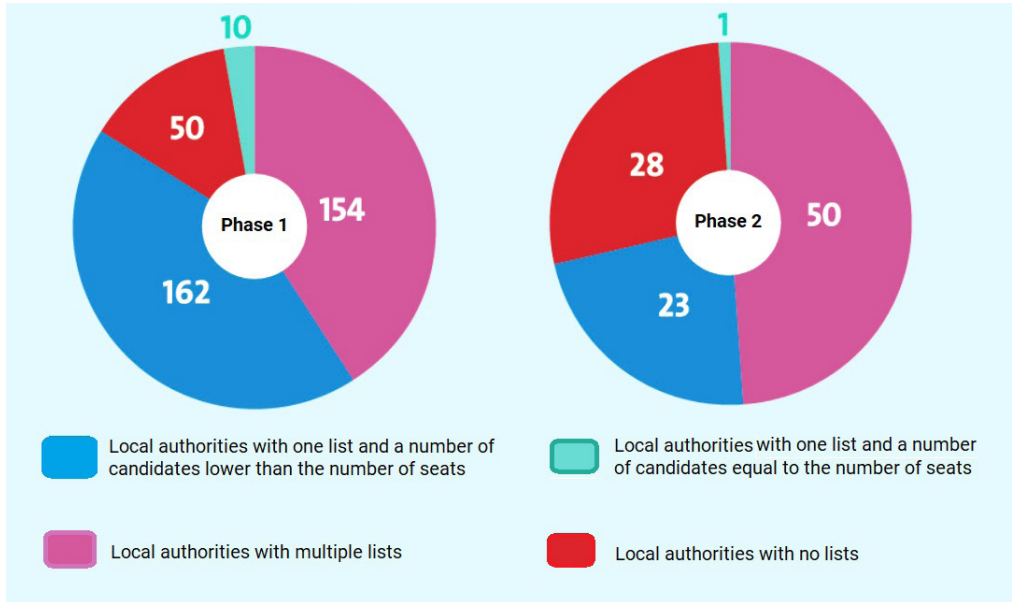
75 CEC, 'Report of 2021 Local Elections', p. 21.

76 Moayad Afanah, 'Critical Review of the Local Elections Law'.

77 Many countries use the age of 21 years to run for elections and some of them use the age of 18 years to run for election.

78 Moayad Afanah, 'Critical Review of the Local Elections Law'.

Figure 3.1. Nomination of lists within local councils in the first and second phases of 2021



Source: CEC, Palestine, 'Report of 2021 Local Elections', p. 21.

Palestine are deprived of this right (24.1 per cent of eligible voters and approximately 60 per cent of Palestinian youth). This affected the percentage of youth who won the local elections and explains the low youth participation in the first phase of 2021 elections.⁷⁹

Women's representation

The Local Council Elections Law stipulates that women's representation must not be less than 20 per cent.⁸⁰ On the contrary, the amended law stipulates that women must have no less than 2 seats in local councils with 13 seats or fewer; one woman should be among the first five candidates on any list and one woman among the next five candidates. A third seat is allocated for women in councils with more than 13 seats. Therefore, the maximum women's representation will be 22 per cent in the small local authorities (9

⁷⁹ Moayad Afanah, 'Critical Review of the Local Elections Law'.

⁸⁰ While the general 'legislative' elections law was amended positively in favour of women in 2021, the Local Council Elections Law still grants women only a percentage of approximately 20 per cent. This contradicts the decisions of the National and Central Councils and is not in line with the percentage of women in society.

seats), 20 per cent in large authorities (15 seats), and only 18 per cent or less in medium-sized authorities (11 or 13 seats).⁸¹

These amendments may reduce women's chances to assume leadership positions in local authorities.

These amendments may reduce women's chances to assume leadership positions in local authorities.⁸² In the first phase of the 2021 local elections, 21.8 per cent of total winners (by acclamation and voting) were women compared to only 20.5 per cent of winners by the ballot.⁸³ Some women candidates also had difficulty completing their roles and chose to resign. Twenty-five resignations were recorded in 2005 and 16 in 2012.⁸⁴

Elections and political prisoners

The CEC has paid great attention to including Palestinian political prisoners in Israeli prisons in the electoral processes and has enabled them to register and run by proxy. Given that the election law requires personal attendance in voting, the CEC has demanded that its staff be allowed to place ballot boxes in Israeli detention centres or that these arrangements be conducted in cooperation with the Red Cross. However, the Israeli authorities have refused such arrangements, and Palestinian prisoners have not participated in voting.⁸⁵

3.1.5. Electoral campaigning stage⁸⁶

All electoral lists, candidates and agents, as well as their audio-visual and printed media, must comply with a number of controls that need to be reviewed, especially the ones discussed below.

Campaigning via online channels

There are no explicit provisions for campaigning via online channels or social media platforms; the Law only addresses traditional methods of electoral campaigning. Article 27 of the Law on Local

There are no explicit provisions for campaigning via online channels or social media platforms.

⁸¹ Moayad Afanah, 'Critical Review of the Local Elections Law'.

⁸² Moayad Afanah, 'Critical Review of the Local Elections Law'.

⁸³ The percentage of women who won in previous local elections did not exceed 10 per cent. Thanks to the quota, this percentage rose to 21.8 per cent. The percentage of winning women was lower in the second phase, reaching 18.8 per cent because of the low quota percentage in local authorities classified as A or B.

⁸⁴ The Palestinian Working Woman Society for Development, Analytical Fact Sheet—Effectiveness of Female Elected Members of Local Councils, <<https://pwwsd.org/single-library/94/ar>>, accessed 16 May 2023.

⁸⁵ CEC, 'Palestine Elections under Occupation Participation of Prisoners in Elections', <<https://www.elections.ps/tabid/710/language/ar-PS/Default.aspx>>, accessed 5 August 2023.

⁸⁶ Electoral campaigning is defined as: 'All electoral activities and events performed by the candidates to explain their electoral programme to their constituency, including invitations asking the voters to vote for them in line with the effective laws and regulations. Electoral lists or candidates may organize these activities in the manner they see fit to explain their electoral programmes to voters, in line with the effective laws and regulations, especially the provisions of Chapter Seven of the 2005 Local Council Elections Law and its amendments under articles 25–32.'

Council Elections stipulates that election campaigning begins two weeks before the designated polling day and ceases 24 hours before the polling time. All festivals, gatherings, processions, television and radio advertisements, newspaper advertisements and any other forms of campaigning shall cease during this period.

Given the importance of the information environment globally and in Palestine, and its impact on elections, it is crucial to review the electoral law to address this gap, especially in regulating electoral campaigns. Considering the challenges, it is also essential that this law is supported by an institutional strategy to prevent and contain practices aimed at influencing or misinforming voters.

Advertising through official channels and clearly defining standards for using the media

The rules and conditions of electoral campaigning through the media should be reviewed to set clear standards for both official and unofficial live broadcasting platforms. Airing advertisements for any candidates in the official media, whether paid or unpaid, should be prohibited.⁸⁷ The rules should also regulate electoral campaigning in the private media, including ensuring equal treatment for all candidates and lists in terms of advertising costs and contractual terms.⁸⁸

Employee participation in the electoral process

Official election employees must remain neutral throughout the electoral process, and not participate in electoral propaganda. The CEC should be entitled to refer any employee who violates neutrality to their employer institutions to take necessary disciplinary measures against them.⁸⁹

Sources and monitoring of financing electoral lists and campaigns

The Local Council Elections Law⁹⁰ and its amendments contain vague provisions that do not address the issue of funding sources. The Law does not set limits for electoral campaign financing, or require the CEC to disclose the campaign costs, sources of funding and ways of expenditure, which contradicts the transparency principle. Meanwhile,

The Local Council Elections Law and its amendments contain vague provisions that do not address the issue of funding sources.

87 Moayad Afanah, 'Critical Review of the Local Elections Law'.

88 Moayad Afanah, 'Critical Review of the Local Elections Law'.

89 Moayad Afanah, 'Critical Review of the Local Elections Law'.

90 Article 32 of the Local Council Elections Law No. 10 of 2005 as amended stipulates that: '1. Each list participating in the elections shall submit, within one month from the date of announcing final results, a detailed financial statement stating the costs of the election campaign, funding sources of the campaign, and ways of expenditure. 2. The Central Election Commission may request that the financial statements referred to in paragraph 1 of this article be audited by a certified public auditor'.

article 2(1) of the same law states that the CEC 'shall have the powers stipulated by the General Elections Law, without prejudice to the provisions of this Law'.⁹¹ Therefore, electoral lists must disclose their sources of campaign funding in accordance with the financing regulations that prohibit candidates from receiving campaign funds from foreign sources or from non-Palestinian external sources. This means that they can directly or indirectly receive funding from Palestinian external sources. Moreover, each list must, after announcing final results, submit a financial statement showing the funding sources of the campaign, and ways of expenditure.⁹² Each candidate or list may also receive donations exclusively from Palestinian natural or legal persons residing at home or abroad.⁹³

The biggest challenge to holding fair elections is the ability to fight politicized money, which is the responsibility of all parties to the electoral process, including voters, candidates and the CEC,⁹⁴ with the judiciary having the final say in voter influencing and vote buying crimes.⁹⁵ On how effective the legal texts are, we can say that the legislator requires the candidates to submit clear and detailed statements on the sources of funding for their electoral campaigns and the money spent therein. The CEC may audit these statements and, if an election crime has been evidenced, it may take action in accordance with article 68 of Decree-Law No. 1 of 2007, as mentioned above. Finally, it is necessary to establish a monitoring mechanism for electoral campaign financing and to enable the CEC to develop detailed regulations and internal instructions in this regard, including setting limits for electoral lists spending.⁹⁶

91 <<http://muqtafi.birzeit.edu/Legislation/getLeg.aspx?pid=44839&Ed=1>>.

92 Article 68 of Law 1 of 2007 stipulates: '1. Electoral lists and their candidates are legally forbidden from acquiring campaign funding from a foreign or external non-Palestinian source directly or indirectly. 2. Every Electoral List and candidate that participated in the elections must submit to the CEC a detailed financial report of all sources of their funding, and the amounts of money spent during their electoral campaigns, no later than one month from the announcement of the final elections results. 3. The CEC may request that the aforementioned financial statements be audited by a legal auditor.'

93 See article 68 of Law 1 of 2007, in note 92.

94 Article 58 of Law 10 of 2005: 'Electoral process monitoring: Observers and electoral lists' agents have the right to observe all stages of the electoral process, in accordance with the law and rules, regulations, and instructions issued according to it.'

95 Article 62 of Law 10 of 2005 on bribery and vote buying: 'An individual shall be considered as having committed a crime and shall be sentenced with imprisonment for no longer than three years or with a fine not exceeding 3,000 Jordanian Dinars or their equivalent in local currency or to both penalties if: 1. He/she directly or indirectly gives or lends money or promises a benefit to any elector so as to dictate his/her vote or to prevent him/her from voting. 2. He/she directly or indirectly asks for money, loan, benefit or any other return whether to him/herself or to somebody else in the intention to vote in a specific manner or refrain from voting or to influence others to vote or refrain from voting.'

96 Moayad Afanah, 'Critical Review of the Local Elections Law'.

3.1.6. Polling and vote counting stage⁹⁷

Some areas of this stage that need legislative review include the following.

Voting of illiterates and people with disabilities

The law allows illiterates and persons with disabilities to ask relatives, up to the second degree, to help them fill the ballot form, which violates the 'secrecy of the ballot' principle and allows others to influence the voting process, as there are no official documents proving that the assisting person is a second-degree relative, and that the voter is illiterate. It is worth noting that the number of illiterate voters is disproportionate to the 2.2 per cent illiteracy rate in Palestine.⁹⁸ To address this issue, it is recommended to use symbols that will enable the 'real illiterates' to vote independently. The CEC also uses the Braille format for voters with visual impairment.⁹⁹

Jerusalem and local elections

On 13 September 1993, Yasser Arafat, the then President of Palestine, and Israeli Prime Minister Yitzhak Rabin at that time signed the Oslo Accords at the White House in Washington, DC. The agreement divided the Palestinian areas occupied in 1967 administratively and militarily into 'A', 'B' and 'C' zones. However, Jerusalem, due to its symbolic and unique status, was not part of the agreement. The accord postponed addressing Jerusalem, as well as border issues, refugees and settlements, to final status negotiations. Postponing the Jerusalem issue led to significant disputes, notably evident in the electoral process. East Jerusalem is the capital and an integral part of the State of Palestine, alongside its religious and spiritual significance.

Therefore, it should be included in all elections, whether legislative, presidential, for the National Council or for local bodies. However, the elections held in Palestine were based on the electoral protocol outlined in the Oslo II Accords, which paved the way for transitional phase elections coordinated with the Israeli side. Presidential and legislative elections have been held twice so far, with voters from Jerusalem participating in those elections under special arrangements. The first legislative and presidential elections took place in 1996, followed by the second round in 2005 for the presidential election and 2006 for the legislative election.

⁹⁷ For more information see International IDEA, 'Money in Politics', <<https://www.idea.int/theme/money-politics>>, accessed 28 February 2024.

⁹⁸ The illiteracy rate in Palestine reached 2.2 per cent in the year 2022.

⁹⁹ International IDEA, 'Money in Politics', <<https://www.idea.int/theme/money-politics>>, accessed 28 February 2024.

Recently, Presidential Decree No. 1 of 2021 was issued, in which the Palestinian President called for legislative and presidential elections in Palestine. However, these elections were opposed by the Israeli side, which prohibited participation from Jerusalem. President Mahmoud Abbas postponed these elections until the Jerusalem equation in the elections was resolved after obtaining approval from the Israeli side. The main reason for delaying these elections was that the previous elections were for a temporary transitional phase and occurred nearly 15 years ago. The elections called for by the Palestinian President aimed at electing representatives for an independent state, which prompted Israel to oppose them despite significant pressures and interventions from the European and international sides.¹⁰⁰ As a result, they were postponed.

In the recent elections held in 2021, the first phase of the 2021 local elections included voting for 27 local councils in the Jerusalem governorate on 11 December 2021. Additionally, two local councils were included in the second phase of elections scheduled for 26 March 2022.¹⁰¹

East Jerusalem was excluded from the local elections, including the municipal elections of 2004–2005, 2012 and 2017, because it is directly subject to the so-called 'unified Jerusalem' municipality under the occupation, and because the PA does not have a municipal council¹⁰² providing services to citizens.¹⁰³

Gaza and local elections

The last local elections in the Gaza Strip were in 2005. Hamas argues that elections will only be held after reconciliation and renewal of general elections. Despite the other factions and people's call to hold

100 Walid Salem, 'Jerusalem and the 2021 State of Palestine Elections: Political Paper', Al-Quds University—Centre for Jerusalem Studies, pp. 148–49.

101 The Palestinian Cabinet issued decision No. 18/126 for 2021 in 27 September 2021, calling to hold the second phase of the local council elections in 26 March 2022, in 66 localities, 55 of which are in classified A and B localities in the West bank and Gaza, in addition to the 11 localities classified as C in Gaza, which were previously included in the first phase. The CEC received the Minister of Local Government's decision to include 66 first phase localities, where no electoral lists were nominated, in the second phase of the local elections which were scheduled for 26 March 2022. These 66 localities consist of 55 classified as A and B localities in the West Bank and Gaza Strip, as well as 11 classified as C localities in the Gaza Strip, which were previously included in the first phase of the elections, <<https://www.elections.ps/tabid/1203/language/en-US/Default.aspx>>.

102 Jerusalem was excluded to avoid a possible conflict between the PA and the Israeli occupation, which will completely prevent such elections given the political situations in Jerusalem and the absence of PA representatives because the occupation forces control all service facilities and infrastructures in Jerusalem.

103 Central Elections Commission, <<https://www.elections.ps/tabid/711/language/ar-PS/Default.aspx>>, accessed 5 August 2023.

elections to improve infrastructure, Gaza did not participate in the elections.

3.1.7. Electoral complaints and appeals

Complaints and appeals may be made throughout the electoral process. The law allows challenging the register, the candidates and the results. Complaints may also be submitted against the conduct of the electoral process.

The CEC shares this role with the Elections Court, but the key areas requiring legislative review are the following.

Complaint process and management

Empower the CEC and introduce a mechanism for a timely and transparent complaint management process and publish a report on the complaints and their related decisions.¹⁰⁴

Provision on electoral crimes

Develop detailed provisions on electoral crimes and submitted complaints on the election days.

Appeals and the local Elections Court

Before 2017, the Palestinian legislator had not dedicated a special court to local election challenges. The Courts of First Instance assumed this role in the areas under their jurisdiction. In 2017,¹⁰⁵ a court for local election cases was created.¹⁰⁶ The court headquarters is in Jerusalem, and it is currently establishing two branches,

104 Basem Al-Zubaidi, 'A Political Reading of the General Elections Law in the West Bank and the Gaza Strip'.

105 Decree-Law No. 2 of 2017 amended the Local Council Elections Law No. 10 of 2005 and its amendments. It states that the court will be formed through a presidential decree upon recommendation by the High Judicial Council. The court will consist of a president who is a Supreme Court judge, and 14 members who are judges in the Court of Appeal and Courts of First Instance. The court has four tripartite bodies, distributed to locations by the court president.

106 The Local Elections Court was formed twice based on Decree-Law No. 2 of 2017: (1) through Decree-Law No. 23 of 2017 creating a court for local authority election cases, based on a recommendation of the High Judicial Council dated 21 February 2017 and published in Issue 130 of the Palestinian Gazette, and (2) through Decree No. 21 of 2021 creating a court for local authority election cases, based on a recommendation by the High Judicial Council dated 22 September 2021 and published in Issue 184 of the Palestinian Gazette. For more information, see Coalition for Accountability and Integrity, 'A Report on the Experience of the Palestinian Elections Court and the Relationship to the Integrity of Governance', p. 13. AMAN was established in 2000 as a civil society organization that seeks to combat corruption and promote integrity, transparency and accountability in Palestinian society. The Coalition was first formed by an initiative from a number of civil society organizations working in the field of democracy, human rights and good governance. In 2006, the Coalition was accredited as a national chapter for Transparency International, <<https://www.aman-palestine.org/en>>.

in Ramallah and Gaza. The court sessions may be held in other locations at the discretion of its president.¹⁰⁷

The Local Elections Court considers appeals of the CEC decisions, challenges against the election results and electoral crimes. The Decree-Law has assigned the regulation of its jurisdiction to Law 10 of 2005. The Supreme Constitutional Court decided that assigning the Elections Court with the jurisdiction of electoral crimes is unconstitutional.¹⁰⁸ This means that this jurisdiction remains with the criminal court.¹⁰⁹ The separation of the two jurisdictions may cause problems when a case has two simultaneous appeals (one criminal and the other electoral). The litigants would not respect the Elections Court deadlines, given the short duration of appeals before it, compared to the long periods for appeals in electoral crimes, which can take a long time.¹¹⁰

At the regulatory level, and given the special nature of electoral appeals, dedicating a court for such appeals is a positive addition from practical and realistic perspectives; however, it requires significant financial and human resources and technical support to function properly. The appointment of its members by the executive power also raises much criticism.

3.2. ELECTORAL PROCESS PARTNERS, AND THEIR INTERACTIONS AND ORIENTATIONS

This section reviews the key roles and orientations of the main electoral process actors.¹¹¹

107 Coalition for Accountability and Integrity, 'A Report on the Experience of the Palestinian Elections Court and the Relationship to the Integrity of Governance', p. 13.

108 Coalition for Accountability and Integrity, 'A Report on the Experience of the Palestinian Elections Court and the Relationship to the Integrity of Governance', p. 14. For more information, see Constitutional Appeal No. 19 of 2019, Case No. 17 of Year (4) Judicial, the Supreme Constitutional Court, published in the Palestinian Gazette, Issue 161, dated 28 November 2019, p. 77.

109 Coalition for Accountability and Integrity, 'A Report on the Experience of the Palestinian Elections Court and the Relationship to the Integrity of Governance', p. 15.

110 Coalition for Accountability and Integrity, 'A Report on the Experience of the Palestinian Elections Court and the Relationship to the Integrity of Governance', p. 15.

111 The report has addressed the role of the media briefly elsewhere but will not discuss it here as an electoral process partner because discussing the media landscape's relationship with the election requires more detail than we have space for and many reports have already addressed this issue.

3.2.1. The Minister of Local Government

The MoLG¹¹² is the supervisory authority over local authorities (municipalities, village councils), and has broad regulatory and legislative powers¹¹³ regarding the operation of local authorities.¹¹⁴ In addition, the Cabinet may dissolve local councils¹¹⁵ (it did in 2021)¹¹⁶ and may form a committee for administrative division.¹¹⁷ This enables the executive power to interfere in local councils, compromise their independence and violate the constitutional right for voters to choose their representatives.

3.2.2. Political parties

The political landscape¹¹⁸ was shaped and characterized by the Palestinian context and it gained legitimacy through its struggle and revolutionary activities.¹¹⁹ Dozens of parties and movements joined the umbrella of the Palestine Liberation Organization, while others remained outside, and kept calling for its reform. At the regulatory

112 Palestine State, Ministry of Local Government, <<https://www.molg.pna.ps/ar/articles/15807/%D9%86%D8%A8%D8%B0%D8%A9>>, accessed 12 May 2023.

113 Law 1 of 1997 regulating the local authorities, Law 10 of 2005 regulating the election of local councils, and the subsequent amendments in line with social development and change. The last of this legislation was Law 46 of 2022 regulating local authorities' courts.

114 It also exercises, by law, a number of powers, including to:

supervise and follow up the organization and management of the Ministry policy and monitor the implementation of its action plan; develop draft laws, regulations and instructions to enhance and improve public services; provide local authorities with all information necessary for their work; approve local authority budgets and use them to achieve the desired progress and development; monitor the performance of local authorities and ensure their compliance with applicable regulations, instructions and laws; assist local authorities in developing project designs and specifications and supervise proper implementation; review the administrative performance and work to enhance the productivity and efficiency of administrative staff at the Ministry and local authority levels; help find funding sources for vital projects that local authorities need but cannot afford the budget; and develop the local government system in Palestine to advance local authorities.

115 Article 3 of Decree-Law No. 9 of 2008 amending the provisions of the Local Authorities Law No. 1 of 1997, states: 'a) The Cabinet may, upon recommendation by the Minister, dissolve the Local Authority Council in the following cases: 1. If the Council exceeds or violates its powers stipulated in the Law. 2. The Council term has ended; b) The Minister nominates a committee, to be approved by the Cabinet, to run the tasks of the dissolved council for a maximum period of one year, and the local council elections are held during this period; and c) The Minister may discharge the president of the Council from the presidency of the local authority, and the Cabinet approves this act, then the members elect a new president of the Council from among themselves.

116 The Cabinet dissolved all municipal councils and turned them into councils to run the work until the elections date. The Cabinet also formed a committee to handle the administrative division issues across the country.

117 Palestine State, Council of Ministers, <<http://www.palestinecabinet.gov.ps/portal/news/details/51774>>, accessed 15 May 2023.

118 Hisham Abdulrahman, 'Political Parties in Palestine', *Civilized Dialogue*, 6408 (14 October 2019), <<https://www.ahewar.org/debat/show.art.asp?aid=655654>>, accessed 13 May 2023.

119 Moeen Barghouthi, 'Political Parties and Movements in Palestine: Legal Organisation or Self-regulation?'; Law Center, 'Political Rights in Palestine, Between the Hammer of Division and the Anvil of Legislation', p. 395.

Parties remained without a legal framework despite the numerous proposals to draft a party law in Palestine.

level, the amended Basic Law of 2003 states that 'Palestinians shall have the right to participate in political life, both individually and in groups. They shall have the following rights in particular: 1. To form, establish and join political parties in accordance with the law'.¹²⁰ Nevertheless, parties remained without a legal framework despite the numerous proposals to draft a party law in Palestine, the controversy over the need for such a law under the occupation and given the fact that a large number of Palestinians are in the diaspora and that most factions have presence outside Palestine. Due to this legislative vacuum, the political movements mainly refer to their own internal by-laws that differ from one faction to another, in addition to the PLO frameworks (since 1964) or the elected representative frameworks (after 1994 and 2006). However, some movements have remained outside these established frameworks in Palestine, including Islamic movements and groups that failed in the parliamentary elections.¹²¹

Defining a clear and specific legal framework for the functioning of political parties has become a critical issue, at least from an electoral perspective.

The Local Council Elections Law defines the 'electoral list' as 'the political parties, movements, coalitions or groups that are formed by citizens who are entitled to nomination to run for local council elections'.¹²² The elections law does not specify the terms for registering parties or their lists of candidates.

Based on the above, defining a clear and specific legal framework for the functioning of political parties has become a critical issue, at least from an electoral perspective. The law of both general and local elections should include mechanisms to monitor the participation of political parties and ensure full equality and equal opportunity, especially for opposition parties and candidates.

3.2.3. Civil society organizations

Given the extraordinary circumstances of the Palestinian institutions, there has been controversy about the viability of civil society organizations (CSOs) under occupation and the lack of an independent state. CSOs,¹²³ nevertheless, have emerged and grown with the core goal of protecting the Palestinian identity, defending

¹²⁰ See article 26 of the Amended Basic Law of 2003 and its amendments.

¹²¹ Moeen Barghouthi, 'Political Parties and Movements in Palestine', p. 395.

¹²² Article 1 of the Local Council Elections Law No. 10 of 2005.

¹²³ There are many definitions of civil society organizations, but most of them agree that CSOs are secondary institutions independent of the government and aimed at protecting the right of individuals to freely exercise their rights without any government interference. Examples of CSOs include federations and labour unions, businesses, chambers of commerce and industry, charities, civil associations, volunteer organizations, human rights organizations, women's groups and consumer groups, among others. See 'Palestinian Civil Society from the Revolution to the Founding of the State', <https://info.wafa.ps/ar_page.aspx?id=3827>, accessed 13 May 2023.

the Palestinian culture and thought, and protecting the rights of individuals, which makes them an integral part of politics.¹²⁴

During elections, CSOs focus on raising awareness of the electoral process (how to run it, basic rules, and lobbying and advocacy campaigns on the political participation rights of people with disabilities, women and others), in addition to monitoring the CEC's work and funding sources, and providing feedback to improve the electoral process in the upcoming elections.¹²⁵

In terms of legal organization, the law talks only about charities rather than CSOs in general. It also uses open mechanisms requiring registration only and not licensing. The executive power has enforced the law sometimes rigorously and sometimes loosely, depending on the internal Palestinian political situations and tensions.

3.2.4. Local authorities

The Palestinian Local Councils Law 1 of 1997 defines local authorities as: 'The local government unit within a specific geographical and administrative area'.¹²⁶ The Local Council Elections Law defines them as: 'The local government unit within a specific administrative geographic vicinity, the borders of which are based upon structural maps accredited as appropriate. In the absence of such maps, the borders shall be determined by the Central Elections Commission'.¹²⁷

There are multiple methods for selecting the local council's members and heads, including elections, appointment or a hybrid system of both.¹²⁸ In Palestine, the legislator adopted the elections method. Local council elections were enshrined in the Local Council Elections Law 10 of 2005 and its amendments.¹²⁹

The role of local authorities has been limited to service provision; they do not have an effective role in enhancing political participation or in development in general. The powers of local authorities in Palestine are mainly in regulating infrastructure, public markets, transportation and some public facilities. They do not have actual powers in other

124 'Palestinian Civil Society from the Revolution to the Founding of the State'.

125 Hidaya Cham'oun, 'The Role of Palestinian CSOs in the Electoral Process', Working Paper, June 2021.

126 See article 1 of the Local Councils Law 1 of 1997.

127 See article 1 of the Local Council Elections Law No. 10 of 2005.

128 Ahmed Ali Khaled, 'The Legal Evolution of Local Authorities in Palestine', 2015, Faculty of Law and Public Administration, Birzeit University, pp. 16–19, <<https://koha.birzeit.edu/cgi-bin/koha/opac-detail.pl?biblionumber=62927>>, accessed 5 August 2023.

129 See article 2 of the Local Council Elections Law No. 10 of 2005.

areas such as education, social affairs and healthcare. In certain jurisdictions, they coordinate with the MoLG, and also have some jurisdictional overlap with different ministry directorates at the governorate level. As a result, the local authorities have very limited powers to levy taxes and fees, in both big and small municipalities.

Enhancing the role of local authorities in Palestine requires strengthening their administrative powers and providing the resources required to effectively deliver their tasks.

Enhancing the role of local authorities in Palestine requires strengthening their administrative powers and providing the resources required to effectively deliver their tasks, in addition to expanding their jurisdiction to areas such as education, social affairs and healthcare. The legal and regulatory system is being reformed to enable local authorities to exercise their powers more effectively and flexibly. They should have appropriate financial powers including the collection and management of local revenues. They should participate in local decision making and contribute to developing public policies that satisfy community needs.

3.2.5. Security services

The security services are responsible for maintaining order in the electoral process by protecting ballot boxes and preventing any election crime or interference with the CEC's work or voters. They also help candidate lists have an appropriate share in electoral campaigning, regardless of partisan affiliation, and enable voters to access the polling centres.¹³⁰ However, according to some human rights organizations, the security agencies may have deliberately interfered in the electoral process by arbitrarily arresting some individuals before the 2012 elections, to interrogate them about their political orientation and the party they planned to vote for, which constitutes an electoral crime according to the 2005 Local Council Elections Law.¹³¹ The legal texts and procedures related to the role of security services during the elections need to be clarified.

3.2.6. Tribal and family relations

Previous elections have been governed by political, factional and tribal factors as a result of the current situations in Palestine, including partisan divisions and the lack of independence under the occupation.¹³²

130 Dr Essam Abdeen, Watan News Agency, 23 March 2022, <<https://www.wattan.net/ar/video/367550.html>>, accessed 15 May 2023.

131 Dr Essam Abdeen, Al-Haq Institution, 24 September 2014 <<https://www.alhaq.org/ar/advocacy/2535.html>>, accessed 14 May 2023.

132 Al-Haq Institution, p. 85, <<https://www.alhaq.org/ar/advocacy/2535.html>>, accessed 14 May 2023.

Before 2005, the previous system enabled influential tribal or family individuals to run for elections and encouraged people to vote on a tribal basis. Despite the legislative amendments made to improve the electoral process and break the tribal pattern, the state of political division, the weakness of partisan competition, and Hamas's boycott of the elections allowed the tribes to exploit this gap.¹³³ Thus, despite the introduction of the proportional representation system in 2005, electoral lists were based on family consensus and alliances. In addition, political parties contributed to this by organizing their electoral lists on a tribal basis.¹³⁴ The phenomenon of building consensus on a single list to ensure victory by acclamation has also grown,¹³⁵ and this has had a negative impact on the democratic process and the principle of elections,¹³⁶ and has been used to serve private interests.¹³⁷

Despite the legislative amendments made to improve the electoral process and break the tribal pattern, the state of political division, the weakness of partisan competition, and Hamas's boycott of the elections allowed the tribes to exploit this gap.

133 Ali Mansour, 'Palestinian Local Government Elections (2004/2005) and 2012', Chapter 3, p. 84.

134 Ahmed Hneiti, 'Reading of Palestinian Local and Syndicate Elections', (Institute for Palestine Studies, 2022), <<https://www.palestine-studies.org/ar/node/1652911>>, accessed 1 June 2023.

135 Ali Mansour, 'Palestinian Local Government Elections (2004/2005) and 2012', p. 84.

136 Coalition for Accountability and Integrity (AMAN), 'Analysis of the Findings of the Reports on Integrity Indicators in the Work of Local Councils', Ramallah, Palestine (2022), p. 6.

137 Ali Mansour, 'Palestinian Local Government Elections (2004/2005) and 2012', p. 6.

Chapter 4

OPTIONS FOR DEVELOPMENT: WHAT CHANGES TO THE LEGAL SYSTEM DO WE NEED?

Building on the previous chapters, the following scenarios are some possible options for desired interventions to upgrade the legal system for local authorities.

4.1. INACTION: SUSTAIN THE CURRENT SITUATION

This option is to preserve the Local Council Elections Law and its amendments, without any significant changes. This option is undesirable, because it does not serve the attempts of the CEC and electoral process stakeholders to introduce necessary legislative reforms to this law and its components and actors.

4.2. MAKE LIMITED AMENDMENTS TO THE CURRENT LEGAL FRAMEWORK

This option envisions making limited amendments only to the Local Council Elections Law after consultations with the various actors by the CEC. This option may not be desirable, because it might not change enough articles in this Law to create positive change.

4.3. INTRODUCE A NEW LAW FOR GENERAL AND LOCAL ELECTIONS (HARMONIZATION OF THE LEGAL FRAMEWORK)

This option envisions a comprehensive reform of the elections regulations, led by the CEC in cooperation and coordination with partners and actors, through an inclusive social dialogue among all stakeholders (parties, factions, civil society, academia, research and rights institutions, unions and other official and unofficial entities) to reach consensus on harmonizing the legal framework of both the general and local elections. It would also include a review of the CEC legal framework. This option may be more reasonable as it enables the development of a clear-cut legislative policy.

Chapter 5

CONCLUSIONS AND RECOMMENDATIONS

Building on the above, the report came out with the following conclusions and recommendations.

5.1. CONCLUSIONS

The key findings are:

1. The occupation has been the biggest obstacle to holding Palestinian elections, through numerous limitations on the freedom of movement and mobility.
2. The division in the Palestinian political landscape constituted a dangerous turning point that prevented the Palestinian people from choosing their representatives through free and fair elections.
3. Failure to hold regular elections deprives the Palestinian people of choosing their representatives.
4. The legal framework for the local council elections reflects a lack of clear policies and confusing amendments are based mostly on partisan and factional interests.
5. The legal framework for elections includes more than one legislation, which leads to fragmented elections.
6. The CEC institutional and organizational framework needs a comprehensive review, especially to enhance its independence, budgets and working mechanisms and procedures, despite the CEC's good reputation, credibility and impartiality.
7. The fragmentation, poor timing and irregularity of the elections has been a major barrier to transition of power, as stipulated in the Basic Law and relevant legislation.

8. The introduction of proportional representation in the local council elections has enabled the tribal lists to win by acclamation or understandings, which has negatively affected the democratic process and election principles.
9. The Local Authorities Law was amended through decree-laws during the political division period, which gave the executive authority enormous powers to dissolve and control local authorities.
10. The legal framework for monitoring the funding of electoral campaigns is ineffective; it does not enable the CEC to impose deterrent penalties on violators.
11. The law has loopholes that allowed assisted voting for a disproportionately high number of illiterate persons to vote without clear and relevant controls.
12. The Local Council Elections Law as amended has not been feasible in representing youth in the elections. It stipulates unjustified age restrictions for candidates, which affects the participation of youth. Moreover, it is not effective enough in addressing the women's quota, especially after the recent amendments.
13. The occupation authorities are subjecting Palestinian prisoners to oppressive measures, which restricts their participation in the democratic and electoral process.
14. Issuing decree-laws to amend the working mechanism and formation of the Elections Court, and allowing the executive power to control its formation and budget under the pretext of urgency, is not acceptable to many.
15. A number of institutional issues (both regulatory and operational) need to be addressed, including independence of the CEC and judiciary, harmonization of legal frameworks, complaints management and others.
16. The general context of local council elections has been marred by several legal, political, economic and geographic influences and limitations, which has directly affected the election processes.

5.2. RECOMMENDATIONS

The key recommendations, in light of the above findings, are the following.

5.2.1. At the policy level

1. End the Israeli occupation, which constitutes the biggest obstacle to development, political participation, and regularity and inclusiveness of the electoral process.
2. End the Palestinian political division and set a date for presidential and legislative elections.
3. Enhance the political will to hold timely elections and not use them as a tool in political disputes or to eliminate political opponents.
4. Develop a policy document for the coming period, including a strategic plan, in order to develop possible interventions.
5. Determine policy directions for electoral regulatory and legal reforms in order to formulate the related legislative policies.
6. Lobby and urge decision makers to reactivate the Legislative Council role, hold elections to institutionalize the decree-laws issued by the president and delegate powers to avoid assigning too many powers to a single party.
7. Maintain regular local elections as a legal obligation that must not be violated or used to manipulate the elections or link them to political or internal situations, as local elections constitute an important means of political participation.

5.2.2. At the legislative level

1. Harmonize the electoral legislative frameworks, for both general and local council elections, into a unified law that clearly defines the CEC's powers.
2. Review the Palestinian electoral regulations in accordance with international standards, best practices and agreements ratified by the State of Palestine.
3. Review the legal framework for political parties and allow the discussion of a draft law of parties, pending its enactment, despite the numerous viewpoints and orientations in this regard.
4. Repeal the legislative amendment that entitles the MoLG to dissolve local authorities and discharge their presidents, in order to preserve the independence of local authorities and avoid them being used to eliminate political opponents.
5. Establish clear controls to keep the fragmentation of local elections to a minimum.
6. Assess the implications of the proposed legislative interventions and identify their potential impact before proceeding with amendments.
7. Review the existing (proportional) system of the local council elections and evaluate its success in achieving equality and

neutrality, while ensuring the effectiveness of the electoral process.¹³⁸

8. The CEC must greatly focus on addressing the issue of a single electoral list winning 'by acclamation', through reviewing the related legal procedures and conducting the necessary legislative review in this regard.
9. Make amendments to ensure the participation of marginalized social groups in local elections, including a more active role for people with disabilities in candidacy and voting and better representation of youth, women and other groups.
10. The minimum for a list should be lowered to three candidates instead of half plus one, including at least one woman. There should be at least one woman for every three candidates on any list.
11. To expand and increase youth participation and keep pace with developments, the age of candidacy should be lowered and be the same as the voting age so that voters can choose who they deem most appropriate to represent them in the local council.
12. Amend the method of selecting the president, who should be elected directly by the voters using a separate polling form (e.g. Local Council President Election Form) and must receive 50 per cent plus one of the votes, to fulfil the democratic principles and the community right to choose their president.
13. Determine the elections date and obligate the Cabinet to announce it three months before the end of the elected council term. Stipulate the force majeure cases where elections can be delayed and the authority entitled to determine the delay period and set strict rules to prevent misusing these cases.
14. Amend the voter register by detailing the text of article 11 (for example, amending to 'the CEC shall renew the voter lists in the month of ...'). A clear timeframe should be determined for submitting and addressing objections (for example, voter objections must be addressed within one week from the end of the objection period) and clear and specific procedures should be provided in this regard.
15. Consider the possibility of requiring a specific educational level for candidates running for local elections.
16. Review the legal texts regulating the oversight on election financing and electoral campaigns and assign the CEC with effective and clear powers in this regard.

¹³⁸ Electoral Knowledge Network, <<https://aceproject.org/ace-ar/topics/es/627644646638640645-1>>, accessed 14 July 2023.

17. Review the illiterate voter procedures, and establish rules that ensure neutrality, transparency and effective monitoring.
18. Introduce voter registration procedures for prisoners, displaced persons and the diaspora, and grant these groups the right to vote as integral parts of the Palestinian people.
19. Address the conflict-of-interest issue and prevent the nomination of first-degree relatives on the same list, to enhance local council governance.

5.2.3. At the institutional level

1. Revisit the CEC structure and enhance its independence by requiring parliament approval on its members.
2. Conduct a comprehensive review of the CEC institutional and organizational framework, especially to enhance its independence, budgets and work mechanisms and procedures, despite the CEC's good reputation, credibility and impartiality.
3. Keep all CEC decisions, decrees and minutes of meetings open to public scrutiny, to enhance integrity, transparency and information sharing.
4. Review the legal texts regulating the Elections Court formation and transfer the power to determine its membership from the executive power to the High Judicial Council.
5. Conduct training courses for local authorities and MoLG employees, to raise their awareness of their respective jobs and tasks.
6. Conduct awareness and education campaigns covering all local elections topics in order to enhance citizen awareness and participation in local government processes.

5.2.4. At the partner level

1. Review the role of civil society organizations in developing and monitoring the electoral process and adopting a unified vision on local elections.
2. Review the role of the security services and provide them with adequate training to maintain the electoral process.
3. Design awareness and training programmes for tribespeople to raise their awareness of the electoral process and how important it is for the local community rather than for specific tribes or families.
4. Design training programmes for local authority candidates including the president. This includes training in the local authority work areas and general policy including decision making, organization of the authority meetings and related minutes

of meeting, communication skills and the relationship among members.

5. Encourage local councils away from political bias between factions and parties.
6. Each party should achieve diversity in their candidate list to ensure representation of different community groups, while assuring their awareness of the local government responsibilities.
7. Avoid political, family or factional conflicts; ensure that election campaigns are factual, and that they focus on promoting electoral programmes; and evaluate previous local elections experiences.
8. Create a legal and procedural structure that ensures the participation of persons with disabilities.

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- Council of the Faculty of Law and Public Administration, 2012–2018.
- Board of the Institute of Law, Birzeit University.
- National Committee responsible for legal aid in the Palestinian legal system.

- The official legal committee responsible for reviewing Palestinian legislation after the Palestinian political division in 2007, the national committee established by a decision of the General Secretariat of the Council of Ministers.
- Founding member and coordinator of the establishment of the Professional Diploma in Parliamentary Affairs and Legislative Policy.
- The national committee responsible for preparing the public consultation guide and reviewing the legislative drafting guide in cooperation with the Ministry of Justice.
- The Supreme National Committee for the Government's Legislative Plan from 2007 to 2013, and a member of the National Committee in charge of reviewing the Palestinian judiciary file after the Palestinian division in the 2007 National Committee.
- Founding member of the Legislation Harmonization Committee in cooperation with the Ministry of Justice.
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The endeavour to develop the legal framework governing electoral processes is necessary for electoral operations to meet the aspirations of the concerned parties, most notably the voters. To achieve this, the reform process must be guided by key objectives, including enhancing the electoral rights of citizens and institutionalizing guiding principles such as neutrality, inclusivity, transparency, integrity, accuracy and making the electoral process smoother and more efficient. However, in practice, the reform process may turn into opportunistic changes—which decision makers may utilize to strengthen their chances of accessing power, thereby leading to unintended consequences. Therefore, to mitigate these risks, it is advisable for neutral parties to propose electoral reforms based on objective and technical assessments aimed at achieving the aforementioned goals.

In the context of promoting this type of approach, International IDEA has supported several electoral reform initiatives, the most important of which was an initiative led by the Central Electoral Commission-Palestine (CEC-Palestine). This initiative involved assessing the regulatory framework for local council elections, which entailed a comprehensive analysis of all aspects related to local elections and offering proposals for electoral reform. This report was presented in early August 2023 to various stakeholders involved in the electoral process in Palestine, with the hope of continuing the discussion on electoral issues requiring reform. However, this process came to a halt after 7 October 2023.

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