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# Palestine

*Osayd Awawda*

## 1 General Introduction

In 2007 the Palestinian Authority held its second parliamentary elections. The result was in favour of the Hamas party, winning 74 seats out of 132. For the first time, the former opposition party had won a majority in the Palestinian Parliament. The Fatah party, itself the inheritor of the Palestinian Liberation Organization (“PLO”), not only relinquished political authority in losing the elections, but also sustained wider political losses. As such, Fatah refused to deal with the new government formed by Hamas. The situation escalated into a form of civil war between the two factions leading Mahmoud Abbas, the President of the Palestinian Authority and Fatah leader, to apply Article 110(1) of the Palestinian Basic Law, which allows the President to declare a state of emergency for thirty days in all territories controlled by the Palestinian Authority on the grounds of there being ‘a threat to national security caused by ... armed insurrection’.

Four significant presidential decrees followed the President’s declaration, which most importantly, resulted in suspending the Parliament, discharging the Hamas government, establishing a new ‘Emergency Government’ selected single-handedly by the President, and extending the jurisdiction of military courts to cover violations of public safety. These decrees have created unprecedented dislocation in the Palestinian legal system.

Following negotiations between delegations from Fatah and Hamas in Cairo on 27 April 2011, Fatah and Hamas jointly concluded an ‘Agreement between Fatah and Hamas’, in Cairo on 3 May 2011, under the auspices of Egypt, to effectively end the political division and work towards achieving national unity. The preamble to the Agreement stated, in part that “Both political parties mutually agreed that the basis of understanding made during the meeting are committing to both parties in the implementation of the Palestinian National Reconciliation Agreement”.<sup>1</sup>

Since then, President Mahmoud Abbas became, and remains at the time of writing, the sole possessor of legislative competencies under Article 43 of the Palestinian Basic Law of 2013. What amounts to an effective “Presidential

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1 Preamble to the Agreement between Fatah and Hamas, made in Cairo, Egypt on 3 May 2011.

coup”, allows President Mahmoud Abbas, in cases of emergency, to issue decrees-by-law that have the same effect as those ordinary laws passed by the Palestinian Parliament. For this reason, all legislative instruments in the West Bank since the effective “Presidential coup”, are comprised solely of decrees-by-law.

## 2 Constitutional Law

In April 2019, a decree-by-law was issued to amend the Law of the Supreme Constitutional Court No. 3 of 2006. The amendment stipulates that the Chief Justice and other Court Justices are appointed for a non-renewable period of six years, and that the bench must be comprised of the Chief Justice, his or her deputy, and at least seven other judges. Also, three new judges were to be appointed to the bench every two years starting from 1 June 2017.

In April 2019, a decree-by-law was issued granting constitutional confidence for the government Dr. Mohammad Shtayyeh.

## 3 Administrative Law, Judiciary and Legal Profession

In January 2019, a decree-by-law was issued to amend the Civil Service Law No. 4 of 1998. The amendment allows spouses of civil servants to request unpaid leave if the civil servant is travelling for a period of between six months to four years.

In December 2019, a decree-by-law was issued allowing civil servants who transfer to military and security personnel to have their years of service counted for the purposes of salary calculation and seniority.

In July 2019, a decree-by-law was issued to amend the criteria that candidates nominated to become high court or first appeal court judges must meet. This amendment now requires candidates to have 15 years of experience as either judges or lawyers.

In July 2019, a decree-by-law was issued to establish the Interim Judicial Council, authorizing it to nominate ‘reforms’ of judiciary laws and to provide consultations to promote or demote certain judges. The Council is functioning to date, and no specified date is provided for the end of its mandate.

In October 2018, a decree-by-law was issued to establish Local Council Courts in the jurisdiction of each local council, conferring to them the jurisdiction to hear cases related to violations of local council laws.

In January 2018, a decree-by-law was issued to amend the military judiciary framework. The amendment contains several articles that recompose the military judicial council, regulate new prosecution procedures, set new penalties for various violations committed by military personnel, and other related matters.

In March 2018, a decree-by-law was issued to reestablish the Association of Current and Freed Prisoners. The decree cancels previous legislation related to similar institutions that preceded this Association.

#### 4 Civil Law

– *There are no significant updates in this field.*

#### 5 Commercial Law

In April 2019, a decree-by-law was issued to ratify the Interim Political, Trade and Partnership Agreement between UK and PLO for the benefit of the Palestinian Authority.

In October 2018, a decree-by-law was issued to ratify a bilateral investment treaty between Palestine and Turkey signed on 5 September 2018. The treaty aims to encourage and protect investments conducted between both states.

In July 2018, a decree-by-law was issued to amend the Consumer Protection Law No. 21 of 2005. The amendment increases the punishments of violations of that law.

#### 6 Employment and Labour Law

In December 2018, a decree-by-law was issued to amend certain articles of the Insurance Law No. 20 of 2015. The amendment places the Palestinian Fund for Compensating Road Accidents Victims under a new Board of Directors: the deputy-minister of finance and planning as the chairman, a senior official from the Ministry of Economy, the General-Manager of Insurance Department in the Palestinian Capital Market Authority, an insurance expert, and the Secretary-General of the Palestinian Federation of Insurance Companies.

In January 2019, a decree-by-law was issued to suspend the application of the Social Insurance Law No. 16 of 2016, due to public protests and industrial

lobbies pressure against it. The author in conversation with a number of local legal experts understands, that this suspension was unwise, since the law protects private sector employees and other non-governmental officials by guaranteeing them a comprehensive pension-like social security system. It is claimed that employers of those targeted by the suspended law have misinformed their employees about its provisions, forcing them to protest in order to avoid the financial burdens that it places on those employers.

In July 2018, a decree-by-law was issued to regulate the main aspects of the construction and contracting profession establishing a special council, that sets procedures for registering contractors, and defines its ethics and professional procedures.

## 7 Property Law

In April 2018, a decree-by-law was issued to regulate the protection of material, cultural heritage, as opposed to intellectual, cultural heritage. It establishes a special council for protecting such heritage, sets rules for registering newly found items, and defines avenues of collaboration between this new council and other ministerial departments.

## 8 Tax and Estates

Between July and November 2018, five decrees-by-law were issued to ratify tax treaties between the State of Palestine and five states: Venezuela, Ethiopia, Sri Lanka, United Arab Emirates, Sudan, and Turkey. All treaties aim to avoid double taxation and prevent tax evasion between Palestine and those states.

In November 2018, a decree-by-law was issued to ratify Palestine's accession to the Arab Tax Cooperation Treaty.

In July 2018, a decree-by-law was issued to place an aggravating factor on those who trespass on lands registered as property of the State Treasury. The punishment may, at a minimum, be one year of imprisonment or a maximum of three years.

In July 2018, a decree-by-law was issued to amend the Customs Law of 1929 and that of 1962. The amendment increases the punishments for violations of these laws.



## 9 Family and Succession Law

In April 2019, a decree-by-law was issued to allow Christian families to adopt children of unknown parentage if there are sufficient reasons to believe that the child was born to a Christian parent.

In November 2019, a decree-by-law was issued to amend the minimum age for legitimate marriage, rendering 18 years of age the permitted age of marriage. Exceptions are only allowed following official approval by the Chief Justice of Religious Courts.

## 10 Criminal Law and Procedure

In November 2018, a decree-by-law was issued to amend the Anti-Corruption Law No. 1 of 2005. The amendment relates to various aspects of the law including definition of crimes, personal jurisdiction, procedure of trials, and cooperation with other states in holding those offenders accountable before the specialized court.

In May 2018, a decree-by-law was issued to amend the Criminal Procedure Law No. 3 of 2001. The amendment stipulates that it is now obligatory upon public prosecution officials to attend hearings of misdemeanors, whereas it was optional before.

In March 2018, a decree-by-law was issued to amend the Penal Law No. 16 of 1960. The amendment prevents those guilty of offences against women and children from benefitting from the mitigating factors mentioned in Article 99 of the Penal Law. Moreover, the amendment eliminates the defence of signing a marriage contract between the offender and the female-victim as a reason for suspending the trials of those offenders.

In February 2019, a decree-by-law was issued to ratify Palestine's accession to the Arab Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances.

In April 2018, a decree-by-law was issued to regulate cybercrimes. It includes definitions and punishments of various crimes including lawful tapping, unlawful decoding of private information, producing false digital certificates, and forging official digital documents.

In July 2019, a decree-by-law was issued to eliminate the Major Crimes Court Decree-by-Law of 2018, which had established a special court to hear major crimes such homicide and rape. It is claimed that human rights centers have

protested against the establishment of this court due to ‘unfair’ competencies given to the public prosecution official before this court.

In July 2018, a decree-by-law was issued to amend the Decree-by-Law No. 18 of 2015 concerning Combating Narcotic Drugs and Psychotropic Substances. The amendment increases the punishments for violations of that Decree.

## **11 Intellectual Property, Media and Communications Law**

In August 2018, a decree-by-law was issued to establish the Ministry of Media. The purpose of this issuance is unclear, since there has been a Ministry of Media since 1994. It is possible that the Ministry was merged with another ministry and this very decree-by-law has been promulgated in order to espouse an independent entity, as had previously been the case.

## **12 Public International Law**

The single most important update in this field was with respect to Palestine lodging a declaration under Article 12(3) of the Rome Statute accepting the jurisdiction of the International Criminal Court over crimes which are alleged to have been committed by Israeli officials “in the occupied Palestinian territory, including East Jerusalem, since June 13, 2014”.<sup>2</sup>

## **13 Private International Law**

*No new legislative developments over the reporting period.*

<sup>2</sup> See: <https://www.icc-cpi.int/palestine>.