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Suspension of the Palestinian Legislative Council's Activities: A Legal and Constitutional Analysis

ABDELMALIK REMAWI*

ABSTRACT

This study examines the complex constitutional crisis resulting from the suspension of the Palestinian Legislative Council's activities, which began in the summer of 2007 and culminated in the Constitutional Court's 2018 ruling to dissolve it. It uses a descriptive, analytical, and comparative approach to analyze the causes of this structural paralysis and assess the constitutionality of the dissolution decision in light of the provisions of the Basic Law that protect the legislature. The study concluded that this suspension led to an encroachment of presidential power and the emergence of a dual legislative fragmentation between the West Bank and Gaza, thereby weakening democratic legitimacy. The study recommends that comprehensive general elections be held as soon as possible and that a legal committee be formed to unify the conflicting legal systems.

Keywords: *Dissolution of Parliament, constitutional legitimacy, separation of powers, decrees having the force of law, Supreme Constitutional Court*

I. INTRODUCTION

Parliament (the legislative branch) represents one of the structural pillars of the contemporary constitutional system, as it is the body inherently entrusted with legislative authority and the power to oversee the actions of the executive branch, in accordance with Article 47(2) of the Amended Basic Law of 2003.[1] Nevertheless, constitutional life in Palestine faced a legal impasse in the form of the de facto suspension of the legislative body's activities, which subsequently culminated in a court ruling dissolving it. This raised highly complex legal issues concerning the very essence of the principle of separation of powers, the limits of legitimacy in cases of necessity, and the legality of managing the legislative vacuum. This study aims to establish the legal status and constitutional immunity of the Legislative Council under the Amended Basic Law, to evaluate the legality and constitutionality of the 2018 judicial dissolution ruling, and to formulate recommendations for rebuilding legitimacy through comprehensive elections and unifying the fragmented legal system.

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[1] The Amended Basic Law of 2003, art. 47(2) (Palestine).

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II. The constitutional framework of the Legislative Council and the institutionalization of de facto paralysis

In modern democratic systems, parliament constitutes the cornerstone of democratic legitimacy, the guardian of the principle of separation of powers, and the heart of the political balance, as the supreme embodiment of the will of the people and the authority to legislate and exercise oversight. However, contemporary constitutional experience often clashes with a reality in which textual loopholes intersect with political crises, thereby undermining the role of the constitutional texts that establish institutions as tools for ensuring the smooth functioning of government.[2] In the Palestinian context, the Amended Basic Law of 2003 outlined a semi-presidential system based on balance and cooperation among the branches of government and a president elected by the people, thereby safeguarding the Legislative Council from dissolution or paralysis outside the strict legal frameworks defined by the Basic Law. The constitutional principle is the continuity of the Legislative Council's work throughout its term, and the impermissibility of paralyzing or exceeding its powers except within narrow and temporary frameworks dictated by constitutional necessity. This topic will be addressed through the constitutional immunity of the Council's term and the legal interpretation of parliamentary paralysis, followed by joint and cumulative liability for parliamentary paralysis.

A. Constitutional immunity of the Legislative Council's term and the jurisprudential framework for suspension

The Palestinian constitutional system is fundamentally based on ensuring the continuity of the legislative institution as the primary safeguard for maintaining democratic balance and upholding the principle of separation of powers. To this end, the constitutional legislator has surrounded the Legislative Council's mandate with strict legal immunity that prevents encroachment by any other authority and ensures its continued representation of the will of the people even under the most complex and exceptional circumstances. Nevertheless, the wide gap between the protection afforded by theoretical constitutional provisions and the reality of the complete paralysis that has afflicted the work of the parliament since 2007[3] necessitates, on the one hand, an examination of the nature of this immunity and, on the other hand, an attempt to find a sound legal interpretation for this extraordinary situation. The research challenge here

[2] Ahmed M. A. Hamad et al., *Separation of Powers in the Palestinian Law: Does it Reflect the Democratic System? (A Comparative Approach with Indonesia)*, 6 Lex Scientia L. Rev. 265, 265-66 (2022), https://doi.org/10.15294/lesrev.v6i2.58038.

[3] Palestinian Centre for Human Rights, *Position Paper: Constitutional Court's Decision to Dissolve PLC Is Political and Illegal* (Mar. 21, 2019), https://pchrgaza.org/position-paper-constitutional-courts-decision-to-dissolve-plc-is-political-and-illegal/.

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lies in defining the boundaries between the temporary functional paralysis of the legislative institution and the cessation of its legal existence.

This section is divided into two subsections: the first examines the mandatory rules governing the continuity of parliamentary authority, while the second explores the legal framework for addressing the parliamentary crisis through a precise scholarly and constitutional distinction between the cases of actual suspension and legal dissolution.

i. Mandatory provisions governing the continuity of the legislative authority

The Palestinian Basic Law contains a set of clear and explicit constitutional provisions that prohibit the dissolution of the Legislative Council or the termination of its work. The Palestinian constitutional framework is founded on a fundamental principle: the preservation of the continuity and permanence of the legislative authority's work as the authentic expression of popular sovereignty and the source of legitimacy for all state authorities. The constitutional legislator did not leave the survival of this institution subject to political fluctuations or partisan disputes; rather, it surrounded its mandate with mandatory rules that may not be violated or rendered ineffective by agreement. These written constitutional guarantees are intended to prevent any other authority from doing so.

This is exemplified by Article 47 bis, added to the Amended Basic Law of 2003 by the Basic Law of 2005, which states: "The term of the current Legislative Council shall terminate when the members of the new elected Council take the constitutional oath."[4] This article, the first of these mandatory rules, established the principle of the continuity of the parliamentary term as a constitutional mechanism aimed primarily at preventing any legislative vacuum or interruption in the continuity of the state. It explicitly stipulates that the term of the incumbent Legislative Council does not legally end until the members of the newly elected Legislative Council have taken the constitutional oath. From the perspective of constitutional jurisprudence, this provision constitutes a mandatory rule designed to prevent a vacuum, as it links the cessation of the current Council's representative capacity to the emergence of a new, elected parliamentary legitimacy, thereby precluding the possibility of a vacuum in legislative authority under the pretext of expired terms or the inability to organize elections on schedule.[5]

[4] The Basic Law of 2005 Concerning the Amendment of Some of the Provisions of the Amended Basic Law of 2003, art. 2 (Aug. 13, 2005) (Palestine).

[5] Ahmed Mubarak al-Khalidi, *An Advisory Opinion on the Dissolution of the Palestinian Legislative Council: Assessing Constitutionality of the Constitutional Court Verdict to Dissolve the Palestinian Legislative Council and the Repercussions for Democracy and National Interests*, at 6-7 (AL-ZAYTOUNA CENTRE FOR STUDIES & CONSULTATIONS, Jan. 2019), https://www.alzaytouna.net/english/AcademicArticles/Advisory_Opinion_Dissolution-PLC_Ahmad-Mubarak-AlKhalidi_1-19.pdf.

In the same context, Article 113 of the Basic Law provides: "The Palestinian Legislative Council may not be dissolved or its work hindered during a state of emergency, nor shall the provisions of this title be suspended."[6] This serves as a safeguard against the encroachment of presidential authority during a state of emergency, when the likelihood of abuse of power increases. The article explicitly stipulates that the Legislative Council may not be dissolved or its work hindered during a state of emergency, and prohibits the suspension of the provisions of the title on the state of emergency in which it appears. The philosophy behind this provision is based on the assumption that periods of national crisis and unrest (a state of emergency) are precisely the times when the state most needs a functioning parliament to oversee the government's exceptional measures in order to prevent authoritarianism. Consequently, the prohibition on dissolution or suspension under these specific circumstances acquires a binding and absolute constitutional value that admits of no interpretation or exception.[7]

This protective framework is complemented by the firm anchoring of the aforementioned rules in Article 120 of the Basic Law, which requires the approval of two-thirds of the members of the Legislative Council to amend any provision of the Basic Law.[8] This stringent constitutional requirement (the qualified majority) prevents any attempt or any temporary coalition from undermining the rules that guarantee the permanence of the Legislative Council.

The Palestinian constitutional legislator adopted a strict protective philosophy that grants the parliamentary mandate comprehensive structural immunity, as it has made the Council's continued existence and its legal capacity to exercise legislative and oversight powers a constitutional reality that does not end with the mere passage of time, but is passed on only through the ballot box and the swearing-in of a newly elected parliament.

ii. Distinguishing between the actual suspension and the legal absence of parliament

Distinguishing between these two situations requires a careful examination of constitutional jurisprudence, given the legal implications of each that affect the legitimacy of the authorities and the structure of the political system as a whole. This distinction is the cornerstone of understanding contemporary parliamentary crises, particularly the Palestinian case, where politics has intertwined with law to create a unique model of constitutional conflict.

[6] Amended Basic Law, *supra* note 1, art. 113.
[7] Anis F. Kassim, *The Legality of the Presidential Decree to Dissolve the Palestinian Legislative Council*, at 8-9 (AL-ZAYTOUNA CENTRE FOR STUDIES & CONSULTATIONS, Jan. 2019), https://www.alzaytouna.net/english/AcademicArticles/Legality_Presidential_Dissolve-PLC_Anis-Kassim_1-19.pdf.
[8] Amended Basic Law, *supra* note 1, art. 120.

In constitutional jurisprudence, the de facto suspension of parliamentary proceedings is defined as the exceptional situation in which the legislative body loses its actual and practical ability to exercise its original functions of legislation and oversight of the executive branch, despite remaining legally and constitutionally in existence. De facto paralysis amounts to a functional crisis affecting parliament as a result of coercive or political factors (political disputes or internal divisions), the loss of a quorum, or external interventions such as an occupation blockade and the arrest of legislators, without any constitutional provision or valid legal decision having been issued to terminate the existence of this institution. In such a situation, members of parliament retain their representative status and legal immunities, and the institution remains in existence as a constitutional entity, albeit with its actual operations suspended.[9,10]

Legal dissolution refers to the official and lawful termination of the term of the entire legislative body, such that its legal existence ceases to be part of the state's constitutional structure. This dissolution typically occurs through recognized and predetermined constitutional channels, such as the issuance of a valid resolution to dissolve Parliament by the constitutionally authorized body, the expiration of the council's statutory term without a provision mandating its automatic extension, or a constitutional amendment abolishing the legislative chamber. In the event of legal absence, members lose their representative status and their immunities are immediately revoked, and the state enters a clear transitional phase mandated by the constitution to rebuild the legislative authority through elections.[11]

The fundamental difference between the two concepts lies in the legal consequences of each and the manner in which the resulting vacuum is managed. In the case of de facto paralysis, the executive branch often falls into the trap of encroachment and overreach, exploiting parliamentary paralysis to expand its legislative authority (such as through decrees with the force of law) without any real oversight, thereby transforming a temporary measure into a semi-permanent reality that threatens the principle of separation of powers. In the case of a legal vacancy, however, constitutional provisions typically establish a strict, time-bound roadmap for holding new elections to reconstitute the legislature, thereby reducing the opportunities for legislative autocracy by the executive branch.[12]

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[9] Nouara Tria & Abdellatif Ouali, *Disrupting the Work of the Constitution Between the Dialectic of Necessity and Choice in Comparative Constitutional Systems*, 11 J. LEGAL & POL. SCI. No. 3, 442 (2020), https://asjp.cerist.dz/en/article/145487.

[10] Hiba Nama Mansour, *The Actual Suspension of the Constitution of the Republic of Iraq for the Year (2005) and Its Relationship to the Principle of Legality*, 38 J. LEGAL SCI. No. 1, 674, 677 (2023), https://jols.uobaghdad.edu.iq/index.php/jols/article/download/624/512/1067.

[11] al-Khalidi, *supra* note 5, at 5-6.

[12] DAVID M. OLSON, DEMOCRATIC LEGISLATIVE INSTITUTIONS: A COMPARATIVE VIEW (Routledge 2015) (1994), https://www.routledge.com/products/9781315705200.

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Applying this jurisprudential distinction to the Palestinian situation during the period from 2007 to 2018, it becomes clear that the Legislative Council was effectively suspended rather than legally dissolved.[13] Although the Council ceased to convene and was unable to function as a result of political division and coercive Israeli measures, no constitutional provision was issued to dissolve it. On the contrary, the Basic Law explicitly protected the Council through Article 47 bis, which extends its term until the new Council takes the constitutional oath,[14] and Article 113, which prohibits its dissolution under emergency conditions. Consequently, stripping the Council of its legitimacy and dissolving it judicially in 2018 constituted a departure from this legal distinction and transformed the de facto suspension (of its functions) into a legal absence (termination of its institutional existence) outside the framework established by the Basic Law.[15]

B. Joint and cumulative responsibility for parliamentary paralysis

This study of joint and cumulative responsibility for parliamentary paralysis stems from a constitutional and jurisprudential conviction that the legislative body's descent into a state of complete ineffectiveness was not the result of a sudden decision or the isolated action of any single party, but rather the result of the interplay of complex and cumulative factors that have converged over time to make this paralysis a persistent reality. To analyze these shared responsibilities and identify the actors involved, this section is divided into two subsections. The first focuses on structural and institutional factors to examine internal parliamentary failures and geographic fragmentation, while the second reviews external factors and executive measures to clarify the impact of occupation practices and the arrests of members of the Legislative Council.

i. Structural and institutional factors

The state of parliamentary paralysis that has afflicted the Palestinian Legislative Council cannot be understood as a sudden event or the result of a single action by a specific political faction, but rather as the cumulative result of the interplay of structural and institutional factors that converged in the years following the 2006 elections, turning the paralysis into an institutionalized reality that transcends the boundaries of a temporary measure to become a permanent constitutional crisis. The danger lies in the fact that these factors have not only undermined the functioning of the parliamentary institution but have also reproduced an

[13] Mohammed R. M. Elshobake, *The Role of the Legislative Council During the Period of the Palestinian Political Division*, 6 AL-HIKMAH INT'L J. ISLAMIC STUD. & HUM. SCI. No. 3, 191 (2023), https://irep.iium.edu.my/106797/.
[14] al-Khalidi, *supra* note 5, at 2.
[15] Kassim, *supra* note 7, at 5-7.

exceptional legitimacy for the authority and stripped constitutional provisions of their protective substance, thereby making a return to the natural balance of powers contingent on political rather than legal solutions.

The geographical and administrative division between the southern and northern governorates is at the forefront of these structural factors, as it has transformed the Legislative Council from a unifying national body into disparate blocs unable to achieve the quorum required to convene. It has also led to the loss of the geographical unity necessary for collective legislative work; as a result, the Council has ceased holding regular sessions, and its headquarters in Ramallah has become a symbol of paralysis rather than a space for national consensus.[16] Although this division has a political background, responsibility for it does not lie with a single party; rather, it is a shared responsibility for managing the dispute in a manner that has held the constitutional institution hostage to partisan conflict and turned the suspension of parliament into a means of pressure, rather than viewing it as a national failure that requires a solution.

At the internal institutional level, the Legislative Council itself, through its blocs and members, bears a significant share of the responsibility for the deadlock, as it failed to insulate its constitutional function from political wrangling and did not succeed in forging procedural agreements that would ensure the continuation of a minimum level of oversight or legislative work, such as forming ad hoc committees or convening special sessions to address what could be addressed. Rather, the conflict over legitimacy and representation proved stronger than institutional will, making the Council a partner in creating its own functional vacuum before it became a victim of external factors.[17] This internal incapacity, while understandable in the context of sharp division, represents a failure to fulfill the supreme constitutional obligation to represent the will of the people and protect the democratic system from gradual collapse.[18]

While the presidency did not initiate the deadlock, it played an active role in deepening and perpetuating the crisis through the steady expansion of decrees issued with the force of law pursuant to Article 43 of the Basic Law.[19] In the absence of parliamentary oversight and without a specific timeframe or a clear plan to end the state of necessity, this transformed a temporary

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[16] Adnan Ibrahim Al-Hajjar, *Mechanism of Legislation in Palestine and the Effect of Palestinian Partition on It*, 13 AL-AZHAR U. GAZA J. HUM. SCI. No. 1(A), 131, 154 (2011), https://www.alazhar.edu.ps/journal/attachedFile.asp?seqq1=2026.

[17] PALESTINIAN CENTRE FOR HUMAN RIGHTS, *supra* note 3.

[18] Othman Yahya Abu Musamih & Imran Yahya Abu Musamih, *Legal Paper: Questions on the Constitutional and Legal Problems After the Third Palestinian Legislative Council Elections* (AL-ZAYTOUNA CENTRE FOR STUDIES & CONSULTATIONS, Feb. 5, 2021) (Arabic text), https://www.alzaytouna.net/2021/02/05/%D9%88%D8%B1%D9%82%D8%A9-%D9%82%D8%A7%D9%86%D9%88%D9%86%D9%8A%D8%A9-%D8%AA%D8%B3%D8%A7%D8%A4%D9%84%D8%A7%D8%AA-%D8%AD%D9%88%D9%84-%D8%A7%D9%84%D8%A5%D8%B4%D9%83%D8%A7%D9%84%D9%8A%D8%A7%D8%AA-%D8%A7/.

[19] Amended Basic Law, *supra* note 1, art. 43.

necessity into a quasi-permanent practice that weakened the principle of separation of powers and lent legitimacy to the concentration of power in the hands of the president. Furthermore, the absence of any effective initiative to reactivate the Council or even to submit decrees with the force of law to it for ratification has turned the legislative vacuum into a sustainable tool of governance, rather than a constitutional problem requiring a solution.

ii. External factors and executive measures

The paralysis of the Palestinian parliament cannot be understood in isolation from the external factors that have compounded the internal crisis, foremost among which are the coercive policies of the Israeli occupation, alongside executive measures that have exploited constitutional loopholes to entrench the reality of encroachment rather than address it. While structural factors may have sown the seeds of paralysis, it is these external factors and subsequent measures that have transformed it into a persistent condition, stripping democratic practice of its substance and reducing the legislative institution to a mere empty legal title with no actual capacity to exert influence.

The Israeli occupation stands at the forefront of the external factors that have profoundly contributed to undermining the work of the Legislative Council. Kassim describes measures, beginning immediately after the 2006 election results, by which a large number of Council members were imprisoned, deported and blocked in their movements, denying the Council its quorum.[20] Al-Hajjar likewise records that the arrest of most Council members in the West Bank left the Council without the quorum required to meet.[21] These measures were not limited to arrests but also included severe restrictions on movement and military checkpoints, making it nearly impossible for representatives from different governorates (the West Bank, Gaza, and Jerusalem) to meet. This undermined the condition of geographical unity necessary for holding sessions, and the occupation contributed to the continuing legislative vacuum.[22]

If we examine the dual interaction between the external factor (the Israeli occupation) and the executive measure (Article 43), we find that the occupation has provided the factual justification for the continued paralysis, while the presidency has provided the legal cover to manage this paralysis in a way that serves to expand its powers, as if the two actions converge on a single outcome: stripping the legislative institution of any real role in the political equation. Although the occupation is a factor beyond the national will, the continued acceptance by the Palestinian

[20] Kassim, *supra* note 7, at 8.
[21] Al-Hajjar, *supra* note 16, at 154.
[22] Hani Rafiq Awad, *Capturing and Detaining Holders of Immunity of the State of Palestine Officials and Statesmen from a Legal and Sharia Perspective*, 36 EMIR ABDELKADER U. J. ISLAMIC SCI. No. 2, 329 (2022), https://www.asjp.cerist.dz/en/article/202993.

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parties of this situation as a fait accompli, and their failure to present any serious initiatives to reactivate the Council, mean that joint responsibility for this prolonged paralysis lies with both parties, even if the degree of legal and political culpability differs for each: the former acts through military occupation, the latter through the assumption of the legislative function under the plea of a state of necessity.

III. The judicial turning point of 2018 and its constitutional implications

The 2018 judicial turning point represents a radical shift in the Palestinian constitutional crisis, as it moved from a state of prolonged de facto paralysis to a judicial decision to dissolve the Legislative Council, raising major legal questions regarding the legitimacy of the Constitutional Court's intervention in terminating a parliamentary term protected by mandatory provisions of the Basic Law. Debate has oscillated between supporting the decision based on the theory of necessity and the higher public interest, and opposing it based on the principle of strict legality and the absence of any provision granting the authority to dissolve the Council.[23] Meanwhile, the repercussions of this decision have deepened the legislative fragmentation between the West Bank and Gaza and entrenched the President's overreach in issuing decrees with the force of law, which calls for an in-depth analysis of its legal issues, namely the 2018 decision to dissolve the Council and the issue of judicial legitimacy, and an examination of the constitutional implications of suspending the Legislative Council.

A. The 2018 decision to dissolve the Council and the question of judicial legitimacy

The Supreme Constitutional Court's decision of 12 December 2018 declaring the Legislative Council dissolved represents an unprecedented judicial turning point in Palestinian constitutional history, as it transformed the crisis from a prolonged state of de facto paralysis into an official judicial annulment of the Legislative Council's institutional existence.[24] It thereby raised fundamental legal questions regarding the legitimacy of judicial intervention in terminating a term of office protected by mandatory provisions of the Basic Law, and the sufficiency of the concept of the "supreme interest" and the expiration of the term as grounds for dissolution in the absence of an explicit provision granting the Court this authority. This has created a sharp jurisprudential divide between supporters who relied on the theory of necessity

[23] Al-Haq, *Position Paper by Palestinian Civil Society Organisations and the Independent Commission for Human Rights on the Decision by the Supreme Constitutional Court to Dissolve the Palestinian Legislative Council and to Call for Legislative Elections* (Dec. 27, 2018), https://www.alhaq.org/advocacy/6120.html.

[24] *Interpretation Request No. 10 of Judicial Year 3*, Supreme Constitutional Court (Palestine), Dec. 12, 2018 (Arabic text), https://ecfr.eu/archive/page/-/Constitutional_Court_decree_12Dec2018.pdf.

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and the loss of legitimacy through inaction, and opponents who emphasized the principle of strict legality and the absence of a legal basis for such a resolution in the Basic Law. To analyze this decision and its implications, the first subsection addresses the judicial basis and the reasoning behind the resolution, while the second examines the jurisprudential divide regarding the constitutionality of the decision.

i. Legal basis and rationale for the decision

In its Interpretive Decision No. (10) of Judicial Year (3), the Supreme Constitutional Court based its ruling on a legal argument to the effect that the Legislative Council had entered a state of paralysis and complete inactivity since the outbreak of the political and geographical division, which prevented it from exercising its constitutional functions of legislation and oversight. The Court held that the legitimacy of the Council lies in exercising those functions, and that its failure to convene since 2007 had cost it its status as a legislative authority. Consequently, the continuation of this situation without elections violated the Basic Law and the general elections law, harmed the public interest and infringed the rights of citizens to political participation, necessitating judicial intervention to end it.[25]

The Court further relied on the expiration of the Council's term of office, holding that its electoral term, which began on January 25, 2006, had legally ended on January 25, 2010, four years after the date of its election, in accordance with the duration of the parliamentary term stipulated in Article 47(3) of the Basic Law.[26] However, this conclusion ran up against a major constitutional issue, namely the existence of Article 47 bis of the Basic Law, which explicitly stipulates that the Council's term does not end until the members of the newly elected Council have taken the constitutional oath, a mandatory provision intended to prevent a legislative vacuum and ensure the continuity of the institution's work even if elections cannot be held on their scheduled date. Consequently, the mere expiration of the term is insufficient to end the Council's mandate as long as a new Council has not been elected and sworn in.

To overcome this constitutional impasse, the Court read Article 47 bis as presupposing periodic elections every four years, so that it could apply only where two councils exist, one whose term has expired and one newly elected.[27] It then resorted to a broad concept undefined in the text, namely the "supreme interest of the Palestinian people and homeland,"[28] holding that the Council's continued state of complete paralysis, together with the expiration of its original term,

[25] *Id.*
[26] Basic Law of 2005, *supra* note 4, art. 1.
[27] Kassim, *supra* note 7, at 4.
[28] *Id.* at 7.

required its dissolution. The Court also reasoned that the Council's continued existence had harmed the Palestinian people and their political and legal system, and that its members continued to draw allowances without performing their duties. It therefore declared the Council dissolved from the date of the decision and called on the President to announce legislative elections within six months of the decision's publication in the Official Gazette, as a mechanism for returning to the people.[29]

However, this judicial ruling raised numerous legal issues, most notably that the Court had exceeded the limits of its constitutional jurisdiction, as neither the Basic Law nor any other legislation granted it the authority to dissolve the Legislative Council; indeed, Article 113 prohibits its dissolution or the hindering of its work even in states of emergency. This makes the Court's decision, in essence, a creative ruling not based on an explicit legal provision but on discretionary judicial interpretation that can be challenged on grounds of legality.[30] Furthermore, the call for elections that accompanied the decision remained a dead letter, as those elections were not held within the specified timeframe, which reduced the decision to a mere formality that replaced the actual suspension without offering a fundamental solution. Rather, it entrenched the legislative vacuum and provided it with judicial cover, thereby further complicating the constitutional crisis instead of resolving it, and left legislative authority with the President, who has been expanding his issuance of decrees with the force of law.

ii. The jurisprudential divide over the constitutionality of the decision

The Supreme Constitutional Court's 2018 decision to dissolve the Legislative Council sparked a sharp jurisprudential divide within Palestinian and Arab legal circles, transcending the bounds of traditional interpretive disagreement to pose a fundamental challenge to the very legitimacy of the constitutional judiciary itself in overriding the mandatory provisions of the Basic Law. The two opposing positions on the constitutionality of the decision were formed on the basis of divergent methodological approaches: one was grounded in the philosophy of an expansive, teleological interpretation of the Basic Law, while the other adhered to the principle of strict formal legality, which does not permit a judge to deviate from the explicit text. This made the case a true test of the capacity of Palestinian constitutional jurisprudence to address exceptional crises that fall outside the scope of the founding constitutional provisions.[31]

Those who support the dissolution decision have sought to justify it by invoking necessity and the "supreme interest," arguing that the Council's continued state of complete paralysis since

[29] *Interpretation Request No. 10*, *supra* note 24; AL-HAQ, *supra* note 23.
[30] Kassim, *supra* note 7, at 7-9.
[31] PALESTINIAN CENTRE FOR HUMAN RIGHTS, *supra* note 3.

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2007 had rendered it incapable of fulfilling its constitutional purpose, namely representing the people and exercising legislative and oversight functions, and that maintaining a parliamentary body that had been inactive for more than a decade posed a threat to the stability of the political system as a whole. On this view, the Council lost its functional legitimacy when it effectively refrained from performing its constitutional duties, making its continued existence a mere formality devoid of substance and a distortion of the voters' will, and the Court did not dissolve the Council on its own initiative but declared the fact that its term had already ended. The Public Prosecution argued before the Court that Article 47 bis is merely procedural, governing the transfer of the mandate from the sitting Council to the elected one, and that the mandate is limited in time in keeping with the democratic principle of periodic renewal.[32] The purposive reading of the Basic Law on which this position rests requires the judge to choose the solution that fulfills the objectives of the Basic Law in ensuring the continuity of governance, even if this requires exceptional judicial discretion beyond the literal text.[33]

In contrast, those opposed to the dissolution decision upheld the principle of strict legality, a fundamental pillar of constitutional states, emphasizing that the relevant provisions of the Basic Law constitute a comprehensive system of safeguards that prevents any entity from terminating the Legislative Council's existence outside the prescribed constitutional framework: Article 47 bis, which extends the Council's term until the new Council is sworn in; Article 113, which prohibits its dissolution or the hindering of its work during states of emergency; and Article 120, which requires a two-thirds majority of members to amend the Basic Law. They argued that the Court had exceeded the limits of its judicial jurisdiction, as neither the Basic Law nor any prior legislation had granted it the authority to dissolve the Legislative Council, and that its reliance on broad concepts such as the "supreme interest" and "necessity" amounts to an absolute discretion that threatens the principle of the supremacy of the Basic Law and the stability of its provisions. They also considered that the expiration of the term was not a sufficient legal basis for deviating from Article 47 bis, which conditioned the end of the term on the objective requirement that the new Council take the oath of office, a condition that had not been met. Consequently, in their view, the Council remains legally in existence even if it is effectively suspended.[34]

It appears that the essence of this jurisprudential divide is not limited to differences in the interpretation of texts, but rather reflects a deeper crisis in the philosophy of the Palestinian

[32] *Interpretation Request No. 10*, *supra* note 24.
[33] PALESTINIAN CENTRE FOR HUMAN RIGHTS, *supra* note 3.
[34] al-Khalidi, *supra* note 5, at 6-7.

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constitutional system itself, which was drafted under the assumption of political stability that never materialized. Its provisions are so rigid and protective that they leave no room for resolving extraordinary crises through clear constitutional means, forcing the judiciary to fill the void in ways that may conflict with the spirit of constitutional legitimacy. While supporters have emphasized the practical outcomes, namely ending the legislative deadlock and paving the way for new elections, opponents have warned of the structural risks of a decision that opens the door for the judiciary to override the will of the elected people, thereby setting a dangerous precedent[35] that could entrench judicial authoritarianism or justify future authoritarian interventions in the name of necessity. Consequently, it is impossible to adjudicate the constitutionality of this decision in isolation from an assessment of the long-term impact it will have on the concept of constitutional legitimacy in Palestine, whether in terms of preserving the sovereignty of the text or the need to adapt to national exceptions that rigid texts cannot accommodate.

B. The constitutional implications of the suspension of the Legislative Council

The suspension of the Palestinian Legislative Council's work has resulted in a serious fragmentation of the legal system between the West Bank and the Gaza Strip, threatening legislative unity and opening the door to legal duality that has confused citizens' legal statuses and undermined the rule of law. The gravity of these consequences is evident in the fact that they are no longer temporary exceptions but have become sustained constitutional realities that perpetuate the crisis itself, necessitating a careful analysis of these two intertwined trajectories. The first subsection addresses the imbalance of powers and the encroachment of the executive branch, tracing the executive's expansion in issuing decrees with the force of law and the absence of oversight; the second examines the fragmentation of the legal system and the issue of legislative unity, monitoring the effects of legislative division on the unity of the Palestinian legal system and the human rights guarantees for citizens.

i. Imbalance of powers and the encroachment of the executive branch

The suspension of the Legislative Council since 2007 has created an institutional vacuum that the executive branch has exploited to reshape the structure of the Palestinian constitutional system in its favor, shifting from its role as the authority responsible for enforcing laws to that of the sole source of both legislation and oversight. This encroachment was evident in the transformation of Article 43 of the Basic Law, which allows the President to issue decrees having the force of law "in cases of necessity that cannot be delayed, and when the Legislative

[35] AL-HAQ, *supra* note 23.

Council is not in session,"[36] from a limited exceptional tool into a permanent mechanism for governing. The presidency relied on the ambiguity of the phrase "when the Legislative Council is not in session" to expand the scope of this authority beyond its temporal and substantive limits. Thus, urgent necessity is no longer the justification; rather, the mere absence of Parliament has become a sufficient constitutional pretext for issuing hundreds of decrees with the force of law.[37]

The imbalance was not limited to the legislative branch but extended to the entire system of government, as the president began to exercise the powers to appoint the government and security agency leaders without any parliamentary oversight.[38,39] This culminated in the issuance of what the International Commission to Support Palestinian Rights (ICSPR) described as unilateral constitutional declarations establishing new mechanisms for presidential succession that conflict with Article 37 of the Basic Law, which explicitly stipulates that the Speaker of the Legislative Council shall temporarily assume the powers of the presidency in the event of a vacancy.[40] The ICSPR considered the latest declaration "a serious violation of the Palestinian Basic Law" and, in the title of its statement, one that "entrenches one-man rule and undermines the legal foundations of the Palestinian political system,"[41] reflecting a qualitative shift in the nature of the crisis from a parliamentary deadlock to a structural crisis within the authority itself.

This executive overreach has had serious consequences for the principle of separation of powers upon which the Palestinian constitutional system is based, as, according to the Palestinian Bar Association and civil society organizations, the judiciary has also become subject to executive dominance: Decree-Law No. 40 of 2020 authorizes the President to appoint the chair of the High Court, and judicial policy is directed through decrees with the force of law issued by the executive branch itself, thereby depriving the checks and balances guaranteed by the provisions of the Basic Law of their practical substance.[42] The repercussions were not limited to the institutional level but extended to constitutional legitimacy as a whole, since decrees with the

[36] Amended Basic Law, *supra* note 1, art. 43.
[37] INTERNATIONAL COMMISSION TO SUPPORT PALESTINIAN RIGHTS, *ICSPR: The Latest Constitutional Declaration Entrenches One-Man Rule and Undermines the Legal Foundations of the Palestinian Political System* (Nov. 11, 2025), https://en.icspr.ps/icspr-the-latest-constitutional-declaration-entrenches-one-man-rule-and-undermines-the-legal-foundations-of-the-palestinian-political-system/6594/.
[38] Al-Hajjar, *supra* note 16, at 153.
[39] Hamad et al., *supra* note 2, at 285-86; COALITION FOR ACCOUNTABILITY AND INTEGRITY (AMAN), *Tenth Annual Report: Integrity and Combating Corruption, Palestine 2017*, at 14, 33 (2018), https://www.aman-palestine.org/cached_uploads/download/migrated-files/itemfiles/902b911598cf1e87515378f025379b30.pdf.
[40] Amended Basic Law, *supra* note 1, art. 37(2).
[41] INTERNATIONAL COMMISSION TO SUPPORT PALESTINIAN RIGHTS, *supra* note 37.
[42] PALESTINIAN BAR ASSOCIATION, *Public Statement Issued by the Palestinian Bar Association and Civil Society Organisations* (Feb. 1, 2021), https://www.alhaq.org/palestinian-human-rights-organizations-council/17849.html.

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force of law issued in the absence of a parliament lack the democratic legitimacy that can only be provided by an elected legislative authority. This has caused Palestinian legislation to suffer from a dual crisis of legitimacy: a crisis of origin (the absence of direct popular will) and a crisis of oversight (the absence of any constitutional body capable of reviewing and overturning these decrees).[43]

The imbalance of powers within the Palestinian constitutional system was not merely a secondary consequence of the absence of a parliament; rather, it evolved into a policy that redefined constitutional relations as a whole, with the executive branch, in the critics' account, becoming simultaneously the legislator, the executive, and the judiciary, and "de facto legitimacy" replacing "constitutional legitimacy" in the administration of government affairs. Although this encroachment was justified under the guise of necessity and exceptional circumstances, its persistence for nearly two decades has cemented a new constitutional reality from which it is nearly impossible to reverse course through ordinary legal channels, making the restoration of the balance of powers contingent upon comprehensive political solutions that rebuild the legislative institution on democratic foundations and establish clear and definitive limits on the executive branch's powers in cases of necessity, so that exceptions do not become the rule, and so that necessity remains limited to its specific time and subject matter, rather than being open to interpretations that serve the concentration of power at the expense of democracy and the rule of law.[44]

ii. The fragmentation of the legal system and the problem of legislative unity

The repercussions of the suspension of the Legislative Council's work have gone beyond disrupting the balance of powers to dismantling the unity of the Palestinian legal system itself. Since 2007, the political and geographical division has evolved into a dual legislative reality, manifested in the emergence of two parallel and conflicting legal systems, each operating in isolation from the other. In the West Bank, the President's issuance of decrees with the force of law has expanded under Article 43 of the Basic Law, while in the Gaza Strip, the Change and Reform parliamentary bloc, convening without the necessary quorum, has issued legislation applicable only in the Strip.[45,46] This has created institutional and legislative duplication affecting various spheres of public life, reflecting a shift toward the production of legislation outside the unified constitutional framework.

[43] Hamad et al., *supra* note 2, at 265-66.
[44] PALESTINIAN CENTRE FOR HUMAN RIGHTS, *supra* note 3.
[45] *Id.*
[46] Al-Hajjar, *supra* note 16, at 131.

This fragmentation was not limited to the multiplicity of legislative sources; it extended to discrepancies in the content of the laws themselves, plunging citizens into a veritable legal maze, where the determination of the legality of any act, contract, or transaction depended on where it took place. There are laws in effect in the West Bank that do not apply in Gaza, and vice versa, which undermined the principle of equality before the law and created significant gaps in the legal protection of fundamental rights and freedoms. This problem has been exacerbated by the absence of any constitutional body capable of unifying these conflicting laws or resolving their contradictions, as courts in each part now operate under different legal systems, thereby undermining the principle of judicial unity and creating confusion regarding the legal status of both individuals and institutions.[47]

As for the unity of legislation, a fundamental pillar of any state governed by the rule of law, this fragmentation has created a deep rift in the structure of the Palestinian legal system. It has become impossible to speak of a unified Palestinian law; rather, the reality is one defined by the laws of the West Bank and the laws of Gaza,[48] and neither citizens nor judges can readily predict which legal ruling will apply to a given case. It has also eroded citizens' trust in state institutions and in their ability to protect citizens' rights equally. More dangerously, this fragmentation has extended to sensitive areas such as criminal, civil, and commercial law, making it impossible to achieve any economic or social integration between the two parts of the homeland, and has hindered any serious attempt to rebuild national institutions on sound constitutional foundations.

IV. CONCLUSION

The study concluded that the suspension of the Palestinian Legislative Council's work was not merely a passing political crisis, but rather constituted a profound constitutional crisis that disrupted the balance of powers and undermined democratic legitimacy and the rule of law. It also demonstrated that the continued absence of the legislative branch has produced far-reaching legal and institutional consequences, which necessitate a comprehensive constitutional solution that restores the standing of constitutional institutions and lays the foundation for the stability of the Palestinian political system.

[47] Omar Hamza Al-Turkmani, *The Supervisory Jurisdiction of the Palestinian Constitutional Court over Legislative Abstention: A Comparative Analytical Study*, 36 J. SHARIA & L. No. 91, 301 (2022).
[48] Al-Hajjar, *supra* note 16, at 131.

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A. Results

1. The study demonstrated that the suspension of the Legislative Council's work since 2007 has led to a fundamental breach of the principle of separation of powers, due to the absence of parliamentary oversight and the expansion of the executive branch's exercise of exceptional legislative powers.
2. The study showed that the 2018 decision to dissolve the Legislative Council sparked widespread constitutional controversy due to the absence of an explicit provision in the Basic Law granting the Constitutional Court the authority to dissolve the Council, leading to an ongoing legal debate over the constitutionality of the decision.
3. The research showed that the continued suspension of the Council contributed to the emergence of legislative fragmentation between the West Bank and the Gaza Strip, which weakened the unity of the legal system and created duplication in legislation and legal statuses.
4. The study concluded that restoring constitutional legitimacy requires reactivating the elected legislative authority, as it is the fundamental safeguard for achieving institutional balance and protecting democratic legitimacy.

B. Recommendations

1. Expedite the holding of general and comprehensive legislative and presidential elections to reconstitute the Legislative Council and restore its constitutional role in legislation and oversight, thereby addressing the imbalance of powers.
2. Review the constitutional framework governing the Constitutional Court's jurisdiction and explicitly define its powers, thereby preventing conflicting interpretations in the future and strengthening constitutional certainty.
3. Form a specialized national legal committee to review and harmonize legislation enacted in the West Bank and the Gaza Strip, in preparation for its adoption by an elected legislative authority.
4. Establish more specific constitutional safeguards for the use of decrees with the force of law in cases of necessity, subjecting them to review by the Legislative Council as soon as it convenes, thereby upholding the principle of separation of powers and the rule of law.

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