



## AMAN's Annual Conference 2022

### Political Integrity

# Legislative Policy in the Gaza Strip and the Extent to which it Serves Public Interest



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## Working Paper Presented to AMAN's Annual Conference 2022

### Introduction:

The Palestinian Basic Law and the internal by-laws of the Palestinian Legislative Council (PLC) formed the cornerstone for the preparation, approval and issuance of laws and regulations in the Palestinian legislative process. It outlined the path of the process that begins with the project proposal and passing through the multiple readings, approval, issuance and publication in the official newspaper. This mechanism was followed since the establishment of the PLC in 1996 and until 2007, the date of the internal division. Since 2007, the elected PLC, as a result of the political split, became paralyzed which subsequently led to an imbalance and change in the mechanism of legislations.

Also, due to the division, the head of the 10th government continued to carry out his tasks in the Gaza Strip (GS). In the meantime, a government was formed called the "Emergency Government" in the West Bank (WB), with Mahmoud Abbas as president who issued a wide range of laws by decisions or presidential decrees in accordance with Article 43 of the Basic Law. On the other hand, laws also continued to be passed by the Legislative Council in the GS, which was attended only by the Hamas bloc. All of the above constituted a legal defect based on the needs of both governments. Consequently, there are new laws that are applied only the GS and those that are applied in the WB only. In the WB, some laws were passed by presidential decrees (laws by decision). And although this is one of the exceptional methods for issuing legislation, it is controlled by conditions that have been violated. In this regard, it is important to note that AMAN, at the time, objected to this action and indicated that its repercussions would reinforce the division.

### Two Divided Palestinian Authorities: One in the West Bank and One in the Gaza Strip: More than 400 Laws by Decision were Issued in the WB; 86 Laws in the GS

In reference to the Palestinian Legal and Judicial System (Al-Muqqtafi) of Birzeit University, and Al-Maqam website of Al-Najah University, the number of Laws by Decisions issued by the PA President in the WB in regard to the GS are four, most of which are to weaken the existing authority there. These laws were associated with exemptions from fees and taxes, with a political aim to prevent the Gaza government from benefiting from the taxes and fees paid by the Gazans. However, it is well known that laws issued by the PA President, and are based on a de facto state of necessity, are not valid in the GS with the exception of laws that are directly applied by the PA as those related to the compulsory retirement. These laws included citizens in the GS who were referred to compulsory retirement as part of a political and financial settlement which was in the interest of the WB Authority and not necessarily in the interest of the public... least of all those living in the GS.

From 2007 and until the present time, issuance of legislations by the Gaza Legislative Council (Change and Reform Bloc) went through periods of ebb and flow in the GS. The process would freeze if the reconciliation dialogues were carried out and would return to active issuance when these dialogues stopped<sup>1</sup>.

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<sup>1</sup> Meeting on October 18, 2022 with Mr. Mustafa Ibrahim, writer and human rights activist.

## **Purpose of this paper:**

This research paper will attempt to read and understand the objectives of legislative policies in the GS and the extent by which these legislations serve public interest. In other words, were they issued to meet the needs of the community as a whole or to strengthen and empower the existing authority politically, administratively and or financially. Moreover, the paper will try to examine the impact of these policies in terms of strengthening democratic life or reinforcing an autocratic control over the GS. The paper also aims to provide recommendations to the relevant authorities to avoid using the power of legislation for purposes other than the public interest by measuring the impact of the issued laws through proper tools.

## **Legislative mechanism in the Gaza Strip post-2007:**

The legislative process in the GS goes through several stages. It starts at the beginning of each year with preparing an agenda of priorities or issues that have been considered through prior dialogue or feedback from government and civil parties. It passes through four stages, where during the first stage, potential legislations are examined and studied by members of the designated committee<sup>2</sup> in addition to consulting experts in the field. In the second stage, a study of the local environment is conducted and matched with one of the legislations, while in the third stage, workshops are held for CSOs representatives and experts in the field. As for the fourth stage, proposals are sent to the “Legislation Drafting Committee” to ensure proper wording and terms. This part of the process may be completed on time or delayed due to the scrutinization of the proposed law by experts from several ministries working to perfect the proposed law<sup>3</sup> before it is submitted to the chairman of the competent committee for approval. Once approved by the committee, it is presented and discussed in workshops followed by a justification memorandum measuring the legislative and financial impact as well as its bearing on the budget. Then it is presented for a public discussion and a voting session on the general determinants. Once completed, the law is promoted through on-line and social media means and radio interviews. Finally, after the first and second readings, it is approved and published in the Palestinian official newspaper printed in Gaza<sup>4</sup>.

The Legislative Council in Gaza is considered the umbrella that receives all law proposals in the GS, where the “Legislative Drafting Committee” is the reference body for members of the Committee. It consists of representatives of the Ministry of Finance (MoF) and the General Personnel Council (GPC), the judiciary represented by a Supreme Court judge, General Secretariat of the Council of Ministers, the Fatwa and Legislation Bureau and a representative of the Prosecution Office. This Committees’ task is to finalize discussions on any proposed laws before they it is submitted by any of the legislators or committees.

The Legislative Council conducts preventive studies post approval of any law in order to detect unforeseen risks. However, for a law to be re-discussed after approval, a whole year must pass on its implementation in order that adverse effects can be measured<sup>5</sup>.


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2 Meeting with Mr. Amjad Al-Agha, legal advisor at the legislative council, on October 11, 2022.

3 Parliamentary Work Guide in Palestine, the PLC, 2017.

4 Meeting with Mr. Amjad Agha; previous source.

5 Meeting with Mr. Amjad Agha; previous source.



As for the Fatwa and Legislation Bureau in the GS, it has become completely separate from the Bureau of Fatwa and Legislation in the WB and functions in accordance with Law (4) of 1995. According to this law, the competent authority prepares the proposed draft law and refers it to the Bureau to conduct the legal stages of the process. After studying and amending the draft, consultation is made with the project sponsor, after which it is resubmitted to the Council of Ministers for the final decision on amendments to be taken as required by law. All bills are implemented with an officially binding legislative policy memorandum that includes: the party of the proposal and the justification for issuing the law; the main contents of the project; results of measuring the financial impact and interest of the legislator; impact on legislation in force as well as comparative legal solutions; assurances of proper application in practice; all preparation procedures of the draft law; conclusions and results. According to the Bureau, the same items and forms are adopted for any proposal, whether it is Palestinian, Egyptian or Jordanian that are currently being implemented<sup>6</sup>.

The Bureau's role is mainly to review legislative drafts before referral for approval and ensure that the proper legal terminology, consistency within its provisions and that of the Basic Law are applied. It also considers other related international laws and covenants.

The Palestinian political situation and the internal division have affected the objectives of legislations as it relates to citizens' interests. In this regard, the Legislative Council in the GS tries to involve stakeholders in the discussion of draft laws and legislations. However, due to the internal division, it cannot claim that all legislations target the interest of all citizens. This is expressed by the large number of (CSO) and other related institutions who refrain from participating in discussions on laws nor attend any public sessions with the legislature or the government of Gaza. This disturbing situation reveals the effects of the impact of the authority's interest in the GS (Government and Legislative Council) on legislations. This is added to the legislative rift that has been exacerbated by this under the pretext of conducting business and managing life in the GS. Life in the GS is further complicated by the laws issued in the WB by the PA that also apply in the GS and must be abided by citizens in areas such as: education, health, social and civil affairs etc<sup>7</sup>. Therefore and contrary to the GS government's claim in this regard, the abovementioned confirms that some of the legislation in the GS has not necessarily been enacted for the benefit of citizens.

Moreover, the majority of those interviewed believe that most of the legislations passed or amended in the GS neither produced real change nor improved the situation. According to them, it was in the Gaza authority's power to freeze the issuance of laws or to leave them as is rather than establishing another political system in the GS and deepen the internal division between the West Bank and the Gaza Strip<sup>8</sup>.

furthermore, Mr. Amjad Al-Shawwa, head of the NGO Network in Gaza confirms that the continued issuance of political legislations will deepen the division between both authorities in the WB&GS in addition to being contrary to the principle of legislation that embodies the unity of the country<sup>9</sup>.

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<sup>6</sup> Meeting with Mr. Jamal Al-Khawaja, director of the legislation department at the Fatwa and Legislation Bureau in the GS, on October 17, 2022.

<sup>7</sup> Concentrated in the ratifications of the Ministry of Education, Health and Social Development and what is related to civil affairs and the needs of citizens for travel and external representation.

<sup>8</sup> Interview with Mr. Issam Younis, director of Al Mezan- Center for Human Rights, on October 18, 2022.

<sup>9</sup> Interview with Mr. Amjad Al-Shawwa, director of the NGO Network in the GS, on October 18, 2022.

It also represents an insurmountable task of any future unified legislature as well as places a huge burden on the next Palestinian generation who will have to face a legacy of legislations that may conflict with the interest of a wide segment of citizens, especially the vulnerable and marginalized groups. He also pointed out that CSOs were not part of the division nor the legislation rift, but has been terribly affected by the many of the laws.

On the role of civil society, Mr. Samir Zaqout from Al-Mezan<sup>10</sup> says that CSOs monitor, document and follow up on all decisions and laws announced and provides feedback and criticism at the time, especially in cases where peoples' interests, freedoms and human rights are concerned.

### **Using Legislations to strengthen power of the ruling authority in the Gaza Strip: 2007-2022**

Since 2007, 86 laws have been passed or amended in the GS that were distributed according to the objective classification of the Legislative Council in Gaza on topics of: politics and inalienable issues, education and social affairs, financial and economic, penal, security, justice, health, individual and civil affairs, services, temporary laws such as combating the Coronavirus, and administrative laws. After reviewing and examining the laws issued in the GS according to the Palestinian the Al-Waqaa' Al-Filisteenyia, they can be classified as follows:

#### **First: Legislations that serve the political discourse of the ruling party in the GS:**

The following laws represent mainly political positions and its content is not limited to the ruling authority in the GS:

- Law No. 1 of 2008 on the Right of Return for the Palestinian Refugees.
- Law No. 2 of 2008 prohibiting and criminalizing the renunciation of Jerusalem.
- Law No. (6) of 2012 of the National Fund for the Support of Jerusalem.
- Law No. 1 of 2018 on the Protection of Jerusalem, the Eternal Capital of Palestine.

These laws reflect some of the slogans of the political discourse of Hamas and symbolizes Jerusalem's importance at the national level. As for the issue of refugees, it is considered a national inalienable right especially since nearly two thirds (64%) of citizens in the GS are refugees. Therefore, given the importance of these legislations, one would hope that it is issued by a unified legislative council with a full quorum and preferably be approved by the Palestinian National Council, hence representing all Palestinians.

#### **Second: Legislations and laws to tighten control over the management of institutions:**

In its pursuit to instill its governance control policies, the existing authority in the GS issued a number of legislations, some of which:

- Government Administrative Committee Law No. 4 of 2016; Law No. 3 of 2017, amending the Government Administrative Committee Law No. (4) of 2016"; Government Work Follow-up Committee Law No. (4) of 2021. The abovementioned laws were customized to grant the governance system in the GS parallel power to those of the Council of Ministers in the WB and hence institutionalize it in the Strip<sup>11</sup>. In addition, these laws often aimed to grant ministers' powers to deputy ministers in the GS.

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<sup>10</sup> Interview with Mr. Sameer Zaqout, Al-Mizan Center for Human Rights, on October 18, 2022.

<sup>11</sup> Interview with Mr. Jameel Sirhan, Deputy Director General of the Independent Commission for Human Rights in the GS; on October 12, 2022.

- Law No. (3) of 2020 on remunerations and compensations for Heads of Local Government Units (LGU). Although allowances and remuneration of the head and members of boards of LGUs requires a regulation issued by the government and not a law issued by the Legislative Council, the above law was issued for this purpose. In this regard, article (6) of the Local Authorities Law No. (1) of 1997, mentions remuneration for the head and his/her deputy/vice if and when the latter succeeds the former. It specifically states that the reward shall be in accordance with the executive regulations issued by the Council of Ministers. Also, article (4) of the Law was deleted which states that "It shall be deposited in the LGU's fund any sums received by the head of LGU, due to his/her membership in boards of directors of institutions that he/she has acquired its membership in his/her capacity as the head of an LGU", without any limitation of the maximum amount that the president can obtain through his membership, as stated in Law no. 9 of 2021. As for Article (8) of the same law, which stipulates that: "The sums of money received from the heads of LGUs prior to the issuance of this law shall not be affected, and must be considered as an acquired financial right". As a result, it is questioned whether these funds were collected through illegal means (i.e., illicit gain) or an error has occurred.

- Assuming good faith-How can these funds be immunized from being returned and considered as acquired financial rights<sup>12</sup>.
- Law No. 8 of 2008 on the Palestinian Official Newspaper.
- Military Justice Law No. 4 of 2008.
- Law No. 2 of 2009 of the Higher Institute of the Palestinian Judiciary.
- Trade Unions Law No. (2) of 2013.

According to the amended Palestinian Basic Law of 2003, there is no constitutional basis for drafting such legislations. As a matter fact, it constitutes a violation of the provisions of article (69) of the Law. Hence, these legislations had one aim and that is to empower and strengthen the ruling authority in the GS in order to practice and supervise the general administration of government institutions despite its consequence of deepening the internal division. In addition, these legislations provided opportunities for the ruling elite to control decision-making positions to ensure that its policies and interests are served. It is worth noting that the authority in the GS is a partisan one led by Hamas through appointments to high positions in accordance with the ruling system. In addition, Hamas violated the Basic Law by using state-owned land and legitimizing its actions through legislations that enable it to pay employees' salaries and also grant them state-owned land. As mentioned, the purpose of these legislations is to strengthen the dominance of governance and grant special gains for specific groups that have power and influence on legislators and decision-makers in a way that affects legal status of ordinary citizens. Some of these legislations also contribute to silencing voices, restricting public freedoms, and the right to accountability and criticism<sup>13</sup>.

### **Third: Legislations to maximize financial collection to cover governance cost (Budget and Fees):**

- Law No. 6 of 2006 on the Draft Budget Law of the Palestinian National Authority of 2006.
- Law No. 1 of 2010 on the Draft budget law of the Palestinian National Authority for the year 2010.
- The Public Budget Law of the Palestinian National Authority No. (1) of 2011.
- The Public Budget Law of the Palestinian National Authority for the year 2011.
- The Public Budget Law of the Palestinian National Authority No. 2 of 2012.
- Annual Budget Law for the Fiscal Year 2021 Budget Committee.

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12 Interview with Mr. Sami Ghneim, researcher and legal advisor, on October 11, 2022.

13 Interview with Mr. Belal Al-Barghouthi, legal advisor at AMAN, on October 15, 2022.

Another example of such legislations is the Public Fees Law<sup>14</sup>, which aims to strengthen the power of governance through fee collection. In reference to this issue, we discovered that the first nine decisions out of the 19 decisions, on determining fee collection, taken by the Higher Committee for Public Fees, with the exception of decision No. (1), were taken during the second session of the Committee on January 4, 2016 (i.e., prior to being appointed) and even prior to the enactment of the law which is the legal basis for the Committee's establishment. Hence, it seems that the issuance of the law in its entirety aims to give legal cover to this committee, which exercised competencies and issued decisions without any legal basis. And therefore, it is not offensive to say that the session to approve the law was held on December 23, 2015 rendering the law to be invalid. Any law can be relied upon and be applied only after its publication in the Official Newspaper (Al-Waqaa' Al-Filisteenyia) and after the legal period of publication has passed in order to be enforced<sup>15</sup>.

Additionally, the committee violated its reference law that was issued for its purpose and granted it absolute powers with the exception of seeking ratification of the Legislative Council on certain cases provided for in Articles 5 and 7; a condition that must be fulfilled in order for the decision to be valid and produce its legal effect. It is worthy to note that ratification in this case is a legislative act carried out by the Council as the competent party and the one who delegated the establishment of the committee in the first place.

However, after scrutinizing issues of the official newspaper (Al-Waqaa') no ratification by the Legislative Council concerning any of the committee's decisions was found, although some of these decisions require ratification including registration fees for companies stated in Resolution No. (5) issued by the Committee on January 4, 2016 and published in issue 94 of the Waqaa'. Examples:

- Companies owned by individuals

Limited capital	(Jordanian Dinars (JD 450
Unlimited capital	(of the capital (0% 500+0.003

- Company transfer fees

Company owned by individuals to a company of a mixed nature	JD 500
A company of mixed nature to a shareholding company	JD 1000

Clearly, failure to obtain the approval of the Legislative Council on this decision is in violation of article (5) of the law, which requires obtaining verification if the fee exceeds the amount of 100 dinars or is determined by a percentage. This shows that the principle of having a legislative framework is not as worthy as the principle of fee collection needed to stabilize governance in the GS.

#### Fourth: Ideological legislations to serve the intellectual side of the ruling party, such as:

- Law No. 5 of 2011 amending some provisions of the Zakat Governing Law No. 9 of 2008.
- Law No. (1) of 2020 amending the Higher Education Law No. (11) of 1998.
- Law No. 1 of 2022 revising the Zakat Governing Law No. 9 of 2008, and its amendments.

14 See Article 7 of Law No. 1 of 2016 on Public Fees.

15 No.94 Al-Waqaa' Al-Filisteenyia, issued in the GS.

- A set of circulars and decisions concerning dress codes for women lawyers and female students, which indicates partisan orientations in legislation.

### **Al-Waqaa' Al-Filisteenyia Newspaper in the Gaza Strip**

- The last joint issue between the WB and Gaza of the Palestinian newspaper Al-Waqaa' Al-Filisteenyia was issued bearing the number (70). After the internal division, Al-Waqaa' Al-Filisteenyia in Gaza was published beginning with issue number (71) and continued to be published until the last issue, which bears the number (103). This means only 33 issues included legislations and resolutions related to the GS and are only applied there<sup>16</sup>. This alone means that a specific legislative system has been established in the GS that negatively affect citizens' interests there.

- the Acting Speaker of the Legislative Council in Gaza acts as President of the PA. This is, as interpreted by the legislature, an exceptional unplanned task. However, this is published in the Al-Waqaa' in Gaza, using the same heading as if it were for the Acting Speaker of the Legislative Council. It is used in that capacity in decisions, ratification of the appointment and promotion of judges, death sentences and the appointment and approval of senior positions such as the (Prosecution, Head of the State Audit and Administrative Control Bureau, Head of the Monitory Fund etc...). This reflects a duplicity that is contrary to the related law and to the Palestinian Basic Law.

- There is no consistency in publishing legislations where some are published within a specified time while others it is difficult to know when and if they would be published. Failure to disclose these repeals, merges, or knowledge of laws harms the citizens and the public interest, in the long term. In addition, it causes damage to and waste of the rights that citizens in the GS should enjoy. It also prohibits a democratic atmosphere that allows citizens to raise objections or request discussions, since these legislations are limited to the Legislative Council and the competent authorities who do not publish the discussions nor broadcast them to the citizens, but rather settle for airing a program on the government opinion agency called "Under the Dome of Parliament".

- The continued enactment of legislation according to the current mechanism in an atmosphere of division poses a threat to a united national identity, and reinforces the legislative gap and increases opportunities for a deeper legislative rift.

### **Recommendations:**

The legislative and institutional environment in the GS is characterized by uncertainty and the ability to adapt to political circumstances hence it can develop or regress quickly, depending on the circumstances. This environment is unique compared to stable systems or even when compared with the current system in the WB. There is no doubt that a legislative rift exists between the GS and the WB where laws issued by decisions in the WB are applied only in the WB, and those issued in the GS are only applied in the GS have reinforced this rift and compounded its ramifications at the political, economic and social levels. It also confirms that these legislations were issued in the interest of the governing systems with no regard to public interest.

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<sup>16</sup> Interview with Mr. Jamal Al-Khawaja, director of the legislation department at the Fatwa and Legislation Bureau in the GS, on October 17, 2022.



**In order to provide enhancers for political integrity in governance, it is required that:**

- General elections "legislative and presidential" be carried out immediately to allow a wide participation of citizens and to restore balance in the political system by implementing the principle of separation of powers, in accordance with the Palestinian Basic Law.
- Bring an end to the political division, its repercussions and its political, economic and social disadvantages and diligently work to create an anti-corruption environment.
- Halt the issuance of any new legislations in the GS and the WB that may reinforce the internal division, and work to unite the Palestinian institutions within one institutional framework that provides suitable grounds for reducing the legislative gap between both sides of the Palestinian nation. This feasible through the formation of a national unity government that takes it upon itself to end the internal division and unify state institutions.
- Promote participatory decision-making through adopting the principle of openness to citizens by officials, implement transparency principles and the right to access to public information, in addition to allowing citizens' participation in the management of public affairs.
- Hold accountable any official who does not abide by this principle; obligate those in senior political positions to commit to submitting financial disclosure statements, to avoid conflict of interest.
- Activate the role of the judiciary in preventing corruption, monitoring governance, integrity and matters related to criminalization and law enforcement. Also activate its role in enhancing the environment of integrity, transparency and accountability at work.
- Open a national dialogue with CSOs on the necessary and urgent needs of citizens with focus on examining public policy to ensure that it serves the public interest.
- Activate the work and role of the control departments and units in ministries and other government institutions; clarify oversight methods and mechanisms for citizens and institutions to engage them in the accountability process.
- Work to raise community awareness on combating corruption and reporting it, especially within government institutions.
- Activate popular control alongside official institutions at a larger scale.

**AMAN**  
Transparency Palestine



**AMAN was established in 2000 as a civil society organization that seeks to combat corruption and promote integrity, transparency and accountability in the 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.**

**AMAN is a Palestinian think tank and a specialized body providing knowledge on corruption at the local and regional level through producing specialized reports and studies. The periodic publications include: The annual Integrity and Anti-Corruption Report, the annual Palestinian Integrity Index and the National Integrity System studies and reports, in addition to the Coalition's continued contributions to produce reports and studies on the status of corruption in the Arab region.**

**As part of the global anti-corruption movement - and of international alliances and partnerships with relevant specialized coalitions and organizations - AMAN plays a key role in the transfer and contextualization of necessary international knowledge and tools to combat corruption in all sectors.**

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