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Notes on the new Elections Law

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Below are brief notes on the new Elections Law, issued by Presidential Decree on September 2, 2007. These notes do not discuss the legality of the law or the authority of the President to issue a law by decree. For a fuller review of the legislative framework for Palestinian elections, including weaknesses in the previous Elections Law of 2005, the most of which are not addressed by the new law, please see IFES report *Palestinian Electoral Reform and the Regulation of Political Parties*.

Systems of Representation

For legislative elections, the new law introduces a proportional system of representation in a single nation-wide constituency as the sole mechanism for electing all 132 PLC members. Accredited factions will register 'closed' lists (the name of the list but not the names of candidates appear on the ballot) with candidates in a fixed order on each list (Art. 6). Seats will be allocated according to the Saint-Lague method (Art. 4).

For presidential elections, the law introduces an absolute majority requirement for the winning candidate.¹ If no candidate wins an absolute majority (at least 50% plus one vote) in the first round, the top two vote-getters compete in a second round, or run-off. The law is unclear as to whether the run-off take place *within* 15 days (Art. 3) or 15 days *after* (Art. 100) the first round.

Registration of Candidates

Presidential and PLC candidates are required to "uphold the PLO as the only and legitimate representative of the Palestinian people and the Declaration of the Independence Document in addition to the provisions of the Basic Law". Thus candidates are implicitly required to express their support for a two-state solution, as the Declaration of Independence refers to UN GA181 and other UN resolutions). Although there are no details in the law on these requirements, it is expected that each candidate will simply have to sign an affidavit (Art. 35-6, 45-6). The law is not clear as to whether candidates could campaign on a platform of reform to the Basic Law.

The new law allows any voter to challenge the registration of both presidential and PLC candidates, with minimal resources ("a written objection to the Commission"). (Art. 40, 55)

Provisions for deposits in PLC elections are excessive and contradictory, effectively requiring that both lists and candidates make deposits. The language of the law refers to independent candidates, although there is no distinction in the law between lists of accredited² factions and independent list of candidates, and no mechanism for the registration of individual candidates. The minimum number of candidates required in a list is sixteen. (Art. 49)

In the case of a candidate withdrawing from a list, all of the candidates on that list must approve new order of the list (Art. 52-3-4). This requirement is strict and could be reviewed to allow for the list coordinators to submit changes.

¹ Experts have recommended a majority system for Palestinian presidential elections, as the plurality system previously used allows a candidate to win without gaining the support of an absolute majority – more than half – of voters. A president elected with only a plurality has the potential to undermine the democratic legitimacy of the president to function in the role envisaged by the Basic Law as a check against the power of the Palestinian Legislative Council (PLC). See IFES Report *Palestinian Electoral Reform and the Regulation of Political Parties*.

² Political factions are required to be registered by the Ministry of Interior to be accredited at the CEC

Restrictions on submission of the list logo are also somewhat strict. Rather than simply disqualifying a list whose symbol or logo is not compliant with regulations, a list could simply be allowed to amend or change their symbol. (Art. 53-4)

The law is unclear regarding the replacement of PLC members. It does not define procedures for when a list whose candidate must be replaced has no further candidates. (Art 107-3)

An additional restriction on candidacy is that PLC members cannot run for presidency unless they resign from the parliament (article 46).

There is no restriction for electoral lists to nominate only one candidate for the President. (Art 39 – Law #9 Art 43-3)

Election Administration

The most important change in the new law related to the election administration is introduction of possibility for President to replace the Commissioners at this will. (Art 9-2). Implications of this provision are serious and endanger the independence of the CEC.

In addition, restrictions on CEC members are severe – they cannot be even members of a charity (Art 10-7). The provision in the event of the CEC Chairperson's resignation is unclear (Art 11). The mandate for authority over the design of voter registration system is also unclear (Art 13).

On positive side, Article 118, which corresponds to Article 115 in the 2005 law, has dropped the second clause of 118 which is related to cabinet approval of CEC regulations.

Representatives of Candidates

The Law defines two types of representatives – “Representatives of the Lists (or Candidates)” and “Lists (or Candidates) Agents” with same roles and authorities. The respective roles of both are unclear (Art 43, 44, 59, 60).

Election Districts/Areas

Although the system of representation is based on the Palestinian Territory as a single constituency, the law maintains ambiguous definition of 16 “areas” in a number of articles. The reason for the preservation of these areas is not clear. If for election administration purposes, this could be dealt with in a different manner. (The language related to districts, as with much of the language in the new law, reflects the fact that it has largely been “cut & pasted” from the previous 2005 Elections Law).

Christian Quota

The new law gives authority to the President to determine the number of seats reserved for Christians. This is unusual. The number of reserved seats is a significant feature of the electoral system and should be defined in legislation. The previous Elections Law provisioned six reserved seats for Christians with the President allocating these seats to districts by decree).

In addition, the new law does not determine how the Christian seats would be allocated with the Saint Lague system, nor it refers this issue to a by-law or to regulations.

Threshold

The threshold is lowered to 1.5%. Such a low threshold is comparatively very unusual and defies the purpose of the threshold. It is worth noting that the lower threshold would not have benefited any of the parties in the 2006 PLC elections.

Time lines

In a number of places, the law specifies a number of days (campaigns, appeals, etc). In the 2005 law, some of these were defined as calendar days (like campaigns) while others as business days (like appeals). This should be clarified in the new law.

The new law specifies when the call for elections must come, but not when the elections themselves must be scheduled. For instance, could they be called 3 months before the end of term but scheduled for 3 months after?

Some periods previously set by law, like the length of nominations, are not specified.

Registration of voters

The new law does not provide a legal basis for the continuous registration of voters recommended by all observation missions and experts. Nor does it cancel the unclear role of the Civil Status Department and Central Statistic Bureau (Art 31)

The law states clearly that the CEC can make new registration during the exhibition and challenges period. It does not, however, specify how the CEC shall make the names of the new registered public and subject to challenges.

Voting of security forces

The new law institutionalizes early voting for security forces (Art 78-4)

Presidential terms

There is no provision for the term of a by-elected president.

Article 105 is not clear about the term of the temporary president. On one hand he/she shall assume presidency for no more than sixty days but Article 100 says that the elected president shall be inaugurated after a month of the declaration of the final results. Therefore if the elections take place after sixty days of the vacancy of the president office, there will be a period of at least a month (plus the period between the election day and the final results) in which the temporary president would be working beyond the sixty-day period.

Referenda

New law does not provide any legal regulation of the referenda, beyond assigning implementation of the referenda to the CEC

Campaigning

New restrictions on campaigning are introduced (Art 66). These include that mosque's speakers shall not explicitly or secretly call in their speeches or classes for boycotting the elections or call on others to vote or not to vote for certain candidates/lists. A 'secret call in a speech' could prove difficult to prosecute.

The new law places extensive regulatory demands on the CEC pertaining to campaigning. For example, the electoral authority must prepare a list not only of the public places to be used for campaigning, but also of public sites for displaying campaign materials.

Law regulates "official" media but not private media (Art 61).

There are no requirements for financial reporting in non-election years (Art 12).

Polling

There are two additional requirements on polling staff (1) never been convicted of a felony and (2) have professional standards and requirements set by the CEC.

In election system without Election Day registration and supplementary voters lists, 20% of extra ballots delivered to the polling station is excessive (Art. 72-1)

Article 83 (2005 79) polling procedures has changed slightly. Voting ink is mentioned (83.5).

Article 86/4 does not seem like a good way to deal with the problem of illiterate voting. For example, there are no restrictions on the number of voters one person can help. Assistance to illiterate voters was significant problem in local elections, as the factions used this possibility for “coaching of voters”.

Delivery of the ballots is restricted to 24 hours before voting. This timeframe should be determined by the CEC.

As in the Law # 9, lawmaker failed to correct restrictive interpretation of the time limit for voters in the queue (2 hours) (Art78-3)

Other points

The new law provides for the death or resignation of the president, but not for the dissolution of parliament³. The new law does not include any language pertaining to a vice-president.

Article 99 should require publication of results down to PS level.

The law allows the CEC to require a deposit of no less than 10,000 USD to insure their compliance with the campaign provisions. Also the law states clearly that mosque preachers shall not implicitly or explicitly call for the boycott of the elections nor shall they support or oppose any candidate

³ It has been reported that the President’s Office is preparing revision to the Basic Law that would provide for the dissolution of Parliament and would create a position of the vice-president.