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# TOWARD A MORE OPEN AND INCLUSIVE POLITICAL SYSTEM: A RETURN TO A PRESIDENTIAL SYSTEM IS A RETURN TO INSTABILITY

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THE PALESTINIAN CENTER FOR POLICY AND  
SURVEY RESEARCH



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**Executive Summary**

*This paper has been originally produced in Arabic as part of PSR's WKOP project*

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## **Toward a More Open and Inclusive Political System: Return to a Presidential System is a Return to Instability**

October 2005

PSR's WKOP Policy Paper

**Khalil Shikaki and Jihad Harb**, *Principal Authors*

### **Executive Summary**

#### **Background**

In 25 September 2005, Palestinian President Mahmud Abbas issued a decree reestablishing the National Security Council (NSC). The NSC was first established by Yasir Arafat in September 2003 in an attempt to undermine the powers of the Prime Minister Ahmad Quari. The Abbas decree insures presidential control over all aspect of security including law and order. Earlier, in a speech to the Palestinian Legislative Council (PLC), Abbas asked the parliament to approve a constitutional amendment that would allow the creation of a vice president position. Abbas wanted the authority to appoint the first vice president. Currently, in case the president dies, the speaker of the PLC becomes a president for sixty days during which elections for a new president would have to take place. Back in July 2005, during the PLC debate over the amendment of the election law and the subsequent debate to amend the Basic Law to incorporate the changes made in the election law, the PLC's Legal Committee proposed far reaching amendments to the Basic Law, the PA's temporary constitution. These proposed amendments gave the president extensive powers in the areas of legislation, security, and public administration. One such amendment allowed the president to dissolve the parliament with the support of only a minority of PLC members. Taking advantage of the debate on amending the Basic Law, President Abbas submitted his own identical request to the parliament demanding amendments that would have essentially transformed the Palestinian political system from a mostly-parliamentarian one to a mostly-presidential one.

The debate on amending the Basic Law comes at a time when Palestinians are trying to find an exit strategy out of the violence of the last five years. In the post-Arafat period, focus has been on opening the political system turning it into a more inclusive one. In order to allow for the integration of all armed and opposition groups into the political system, the local electoral system was changed from majority to proportional representation and the national electoral system was changed to a mixed majority-proportional representation one. Based on these changes, virtually all factions, armed and unarmed, agreed to take part in the upcoming January 2006 elections.

### **Amendments would reduce the incentive of opposition forces to seek integration into the political system**

The requests to empower the president while weakening the Prime Minister, the Cabinet, and the PLC are in direct contradiction with the overwhelming demand expressed by the parliament and most of the Palestinian political forces back in March 2003. At that time, the demand to amend the system by creating the position of prime minister was articulated with support from the international community. The parliament voted in favor of the amendment and transferred virtually all security, financial, and administrative responsibilities from the president to the cabinet and the prime minister. Abbas then received the vote of confidence from the PLC as the first PA prime minister. Abbas, now a president, is seeking to reverse that decision. The timing of the request by Abbas and some Fateh parliamentarians, just before the parliamentary elections, raises serious concerns that Fateh and the president, fearing a strong Hamas showing in the January 2006 elections, are trying to weaken the legislature and strengthen the president in a desperate attempt to maintain Fateh's dominance over the political system. If successful, Hamas and other opposition groups may see no point in taking part in the parliamentary elections. Attempts to integrate these forces into the political system and thereby to put an end the current state of anarchy and violence could fail. It is inconceivable that a DDR effort would have any chance of success without the enthusiastic participation of armed opposition groups into the political system as its first step.

### **Amendments would reduce accountability in the political system**

In 19 March 2003, the PLC approved with an overwhelming majority a significant change in the Palestinian political system by separating the cabinet from the office of the president and creating the position of prime minister. Almost all executive powers were then transferred from the president to the cabinet and the prime minister. The rationale for this change was simple: since the Basic Law allowed no means of bringing the president to PLC accountability, it was important to transfer his powers to those who are accountable to the legislature. Presidential powers were restricted to specific tasks with all remaining executive authorities clearly assigned to the cabinet. Reversing the 2003 decision would dramatically reduce the ability of the legislature to fulfill its oversight functions, going back to the appalling days of 1996-2003 when authoritarianism was the

main characteristic of the political system leading up to the total marginalization of the PLC.

### **The succession process was smooth; it should not be tampered with**

The passing of Yasir Arafat in November 2004 was followed by a smooth transition. This precedent should be protected rather than endangered. The creation of the position of vice president would insure that at least for the next four years, Fateh would remain in control of the presidency no matter what happens to Abbas who in the past had suffered serious heart problems. Fateh's fear of going to new presidential elections that might be won by opposition groups, particularly Hamas, lies behind the desire to change the system. If passed, such an amendment would further dampen the enthusiasm of all opposition groups to take part in the upcoming elections in January 2006.

### **The National Security Council is unconstitutional, ineffective, and should be dissolved**

The decree issued by the president on 25 September 2005 establishing the NSC sought to bypass normal legislative process while dramatically changing the system of government. The decree gives the president control over NSC and thereby all aspects of security. However, the Basic Law clearly stipulates that law and order and internal security are the responsibilities of the cabinet. The recent welcomed activism exhibited by the PLC in the security realm has been encouraged by the fact that the cabinet acted in accordance with the Basic Law and was therefore accountable to the PLC. Now, with the decree enacted, the Interior Minister may find himself no longer accountable to the PLC. Indeed, this is what he told one of the authors of this paper. During the period between September 2003 when the first NSC was established by President Yasir Arafat, and November 2004 when the council ceased to function, the NSC proved totally impotent despite the fact that it held more than a dozen meetings. Given its record and its lack of constitutional basis, the NSC should be dissolved. The Cabinet should assert its full responsibility over security matters.

### **Recommendations**

- In order to facilitate the integration of all opposition factions into the political system, the PLC should resist all attempts to reduce the power of the parliament. The PLC should not look into the proposed amendments to the Basic Law. Instead, it should defer this matter to the next parliament. Moreover, the PLC should reverse the presidential decree establishing the NSC and reassert its legislative authority. If the president persists in his position, the PLC should withdraw the confidence in all ministers taking part in the NSC meetings.
- In a mostly-parliamentarian system like the one in Palestine, no need exists to appoint a vice president. Parliament should reject the president's request to appoint a vice president.

- Conflict within the executive branch should be resolved with the president refraining from interfering in the affairs of the cabinet. If the president finds cabinet policies unacceptable, he has the constitutional power to appoint a new prime minister. As long as the president is unaccountable to the parliament, his executive powers should remain limited. This applies to the security realm as it applies to all aspect of public policy.
- Control over security services should remain in the hands of the interior minister. If a NSC is indeed needed, its power should be limited to providing advice to the interior minister. All decisions of the NSC should be approved by the cabinet.
- In order to avoid any future conflict over powers and responsibility between the president on the one hand and the PLC and cabinet on the other, the next parliament should review all legislation enacted before the 2003 amendment of the Basic Law with the objective of insuring its compliance with the amended Basic Law.