

Arab Thought Forum

Main Remarks on The Amended Palestinian Elections Law No. 13 for the year 1995

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Introduction

Elections are considered one of the cornerstones of the democratic regime; through it a citizen may practice his right in decision making through choosing whoever he/she deems fit to express his/her own different issues and to fulfill all what the Palestinian citizen demands in order to carry out reform and change. Therefore, it would influence the different political, social, cultural, legal, and educational elements of his/her life.

The first Palestinian elections were held in 1996 when the Palestinian people inside the then occupied Palestinian territories elected the first Legislative Council who took the responsibility of implementing two basic tasks: Legislation and Monitoring.

In light of the different views that accompanied the past experience and together with the desire of the different folds of the Palestinian society to lay the grounds for a democratic régime based on pluralism, observance of human rights and rule of the law, there was a need within the framework of the society to amend the elections law in order to guarantee a large scale participation of all the sectors of the society and its political forces.

In light of the on going discussion, the Legislative Council approved on 18/06/2005 a Amended law of the Presidential and Legislative elections by which the number of the Legislative Council members was increased from 88 to 132; moreover, the mixed system which integrates the system of proportional representation and the majority system of fifty fifty was approved; In addition a woman quota was approved and this constitutes a basic platform for a wider participation of all the forces, institutions, bodies and individuals in the Palestinian society.

This guide includes a kind of emphasis on the new concepts included in the Amended Palestinian Elections Law so that the Palestinian citizen will have a clear idea about the political system that is crystallizing along the implementation of the elections in which all political factions will take part.

Significance of Elections

Elections are the basic means which the accumulated political experience has acquired through the generations in order to determine the legitimacy or the illegitimacy of the present authority; it aims at the following:

- Establishing an approved framework to take charge of the government, to put forward legislatures and to approve financial policies; this would lead to giving a character of legitimacy to the present system.
- Providing a real opportunity to the citizen to help achieve a peaceful change away from violence, coups or others.
- Providing a real opportunity to the citizen to express his attitudes and opinions towards bringing about the transformations he/she wishes to take place.

- Providing an opportunity to hold officials and decision makers accountable and withdraw the citizens' support to them if they do not carry out their duties in a manner that makes them more responsive to follow up the concerns and the needs of the citizens.

Rotational Elections:

In order to fulfill the objectives of the elections they have to be rotational i.e. it should be held every four years in accordance with the law and not to fulfill the wishes of certain groups; such a thing grants the citizen an opportunity to have a real participation in drawing up policies.

- In accordance with the Palestinian law, the presidential and legislative elections are held once every four years on a rotational basis.
- Elections are a right to each and every citizen.
- A Member of the Legislative Council is the one who serves the interests and not brings about injustices on the citizens.
- Your participation in the elections means that you have participated in decision making.
- Elections are a form of accountability.

Amendment of the General Elections Law

Elections take place in Palestine in pursuance with the Palestinian Elections Law; this law was amended on 18/06/2005(the amended law becomes effective three months following its publication in the Palestinian gazette) The amended Law adopted a new system which allows the participation of the different sectors of the society; it has given the citizen and the different political parties an opportunity to take part in the democratic process.

- How is the Amended Law different from the former Law?
- What does the mixed system mean?
- How are electoral lists formed?
- What is meant by the decisive (cut-off) rate and what does it signify?
- What are electoral constituencies?
- What is the mechanism of elections?
- How does the Law guarantee their integrity?

The Amended LawHow is it different from the former Law?

No.	Item	Old Law	New Law
1	Approval of the General Elections Law for the year 1995	General Elections Law for the year 1996 approved by the National Authority	The present Amended Law of the Coming Elections approved by the Legislative Council and ratified by the President.
2	Electoral System	Adoption of the Individual Electoral system based on Elections within the partition of Palestine into 16 Constituencies (Majority System)	Adoption of the Mixed Electoral System divided into two equal sides: the Majority System (Individual) or (Multiple Constituencies) and Proportional Representation (Lists System counting the whole

			of Palestine as one constituency)
3	Seats of the Legislative Council	88 seats distributed over the different constituencies	132 seats distributed equally: 66 seats for the different Palestinian constituencies, and 66 seats for electoral lists counting Palestine as one constituency.
4	Candidacy age to membership of the Legislative Council	Completed 30 years or more on Elections Day	Completed 28 years or more on Elections Day
5	Women representation at the Legislative Council (Women Quota)	Did not approve a women quota	Approved a women quota but limited to 66 seats allocated for election on the basis of lists (proportional)
6	Victory percentage	Winning a majority of votes in a constituency	Winning a majority of votes in a constituency regarding electing the 66 seats allocated for constituencies. A 2% cut-off regarding electing the 66 seats allocated for electoral lists
7	Distribution of the Constituencies	88 seats distributed according to the number of population in each constituency	66 seats distributed according to the number of population in each constituency; this has reduced the number of representation of members on the basis of electoral elections
8	Registry	Adoption of the Civil Registry and Electoral Registry	Adoption of the Electoral registry only (excluding Jerusalem)
9	Ballot for the membership of the Legislative Council	One Ballot card	Two ballot papers one for constituencies and the other for electoral lists
10	Sectarian Quota	Allocation of seats in some constituencies for Christian and Samaritans already determined by law	Limiting the number of seats allocated to Christians to six members only and are determined by a presidential decree on the constituencies elections.

Palestinian electoral System:

What does an electoral system mean?

The electoral system determines the mechanism by which members of Parliament, people's Council , Legislative Council or any different titles are elected by voters within certain rules and regulations set up by the Elections Law in accordance with the type of followed electoral system

Main Contemporary Electoral Systems:

- Majority System
- The oldest electoral system characterized by its simplicity in which a candidate who receives the majority of votes is elected regardless of the numbers of these votes as long as they constitute a majority to those of the other candidates.

- Advantages:

Some of the advantages of the Majority System are;

- It fulfills stability in the government since it leads to the formation of a strong parliamentary majority.
- It is a clear, easy, and applicable system.
- It strengthens the relationship between the member and his/her supporters; the voters vote for a certain person who represents a special political party or he she may be independent.

- Disadvantages:

The reinforcement of tribalism in the society at the expense of the larger political representation does not allow for the representation of the different components of the society; this makes most citizens have no representation within the framework of the Parliament. This would lead to an increase in wasted votes since the candidate who receives the second or third rank would lose all of his votes even if the difference between him and the winning candidate was so little. The percentage of wasted votes might reach more than 60%; moreover, this might lead to a drop in the possibility to elect women, ethnic and sectarian minorities.

Proportional System

The elections take place in accordance with a law based on electoral lists which represents the different forces and parties and independents who may constitute their own electoral lists which would allow them to take part in the elections.

- Advantages:
- Justice is the first characteristic of this system; When the number of seats won by the political forces is proportional with their electoral presence, it is considered a fair representation since it does not allow any party or any section of the public opinion to monopolize full representation. This means that a chance is given to all to participate in the political life.
- It reduces the problem of wasted votes since its percentage will be less than 10% and it will lead to creating a real strong parliamentary opposition with a wider participation of the women and minorities.
- Disadvantages:

This system leads to multi party and pluralism and this might threaten the occurrence of legislative problems regarding voting on different issues since coalitions influence the structure of the legislative and executive authorities and this would lead to a hindrance in the issuing of laws and formation of the government which would lead to parliamentary instability characterized by difficulty and complexity when it is applied.

- Mixed System:

In order to benefit from the advantages of both systems and to lessen their weak points, several countries favored a joining of the two systems and this is called a "Mixed System"

According to this system parliamentary seats are distributed on basis set by each state to match their political and social reality - population count, demographic distribution, population density under the umbrella of public interest rather than party or personal interests.

What did the Palestinian Legislator Choose?

The system of Palestinian Elections is based on the Mixed Electoral System one half is for the proportional majority(multi constituencies) and (Lists System) counting the Palestinian Territories as one constituency.

This means that the members of the Legislative Council are split into two halves. Since the number of the Palestinian Legislative Council is 132, 66 members are elected on the basis of proportional majority(multi constituencies) and the other 66 are elected on the basis of proportional representation (Lists) counting the Palestinian Territories as one constituency.

Constituencies:

In accordance with the law, the Palestinian Territories were divided into 16 constituencies distributed as follows: Jerusalem, Jericho, Hebron, Bethlehem, Jenin, Deir Balah, Rafah, Salfit, North of Gaza, Toubas, Tulkarem, Qalqilia, Ramallah and Al Bireh, Gaza City and Nablus.

The 66 seats will be distributed on each constituency and shall be proportional to the number of their inhabitants, subject to a minimum of one for each constituency.

Since the number of seats allocated for constituencies has fell behind that of the former electoral system, it means that a division of the number of parliamentary seats allocated for each constituency will be recalculated in which the Central Elections Commissions in consultation with the Higher Organizational Council would put forward a system that outlines the limits of each constituency and their population; this system will be issued by the cabinet.

In the constituencies system, six seats were allocated for Christians and these seats were distributed by a presidential decree.

Electoral Lists:

The Electoral List consists of:

1. a party
2. parties' coalition
3. a group of persons whose number is not less than 7 and not more than 66 candidates

The law has determined the provisions for the nomination of electoral lists as follows:

1. It guarantees the participation of woman (woman Quota)
2. Each list submits a nomination form showing the names and signature of three thousand legible voters. Lists and parties approved according to regulations are excluded.
3. A copy of the electoral platform of the electoral list.
4. A deposit of six thousand dollars.

Women Quota:

In order to guarantee the participation of women in the Palestinian political life, the Palestinian law has passed legislation to guarantee her right to be represented in the Legislative Council through committing each electoral list to include a minimum representation of women as follows:

1. At least a name of one woman to be included in the first three names on the list. This in no way means that the woman carries number three on the list for she might be number 1 or 2 on the list.
2. At least a name of one woman to be included in every four names that follow.
3. At least a name of a second woman to be included in every five names that follow.

This is not intended to mean that nomination of woman is confined to this principle only. It is possible to have more than one woman in the first three or four names; even a full list may consist of only women.

The Palestinian woman takes part in the elections and has the right to vote and nominate.

Cut-Off (Decisive Rate)

What is meant by cut-off rate?

It is the number of right legible votes which each electoral list or a nominated party receives in order to have access to the calculation formula to win a legislative council seat.

The Cut-Off (Decisive Rate) is 2% according to law.

Who Has the Right to Vote;

Voting is a right to any Palestinian living in the West Bank and Gaza strip including Jerusalem and he/she should have completed 18 years or more on the Elections Day.

In order for a Palestinian citizen to vote, he or she should:

1. his/her name is registered in his/her constituency
2. his/her name is registered in the final electoral registry
3. he/she must not be serving a duration of a judicial sentence issued against him/her.
4. he/she was declared incapable by judicial ruling
5. he/she was imprisoned by sentence for a common crime, as long as he or she is not re-established to his or her previous status according to the law

A voter is not allowed to register in more than one constituency nor is he/she allowed to vote in a constituency other than his/hers.

Registration by proxy and delegation is allowed but not for voting.

(The citizen may appoint one of his / her relatives to register him/her in the electoral registry but he / she may not be allowed to delegate any person on his/her behalf to cast his/ her vote)

Who may nominate himself/ herself?

Any Palestinian living permanently in the Palestinian Territories, and completed 18 years or more on the Elections Day and registered his / her name in the Final Electoral Registry has the right to nominate himself/ herself independently or in a list.

Nomination may only take place through a list or individually; a person may not be nominated in both at the same time, so he/ she has to make a choice.

Remarks:

The law has specified some government officials who must resign if they intend to nominate themselves. They are: ministers, personnel of the government and public institutions and / or those who receive a monthly salary from the public treasury, personnel of international institutions, members of municipal councils, directors, heads and personnel of non governmental institutions, magistrates, security, military, and police officers and governors.

Why?

In order not to have any conflict of interests, exploitation of influences, post and desire of the legislature in having the member totally dedicated to his parliamentary work in the event of winning.

Judges and members of the security, military, police officers and governors who are not elected may not resume their offices.

Why?

This due to the sensitivity of these offices and since the one who occupies them possesses specific important authorities, so it is intended to prevent the misuse of these authorities as a result of failing in the elections. Moreover, this is not subject to a process of employment by who comes first.

In fact there is a law in some countries that prevents military leaders and officers from joining the political life unless after the elapse of more than six months following their termination of their work or resignation.

- Anyone who wishes to nominate for the constituencies should enclose with the application a list of the names and signatures of five hundred legible voters; those who were members in the last Legislative Council before the elections are excluded.
- Anyone who wishes to nominate himself / herself on the basis of list, should submit a request to the Elections Committee enclosed with acknowledgement of the nominees of accepting nomination within a list in a list of names and signatures of three thousand citizens who have the right to vote excluding lists and parties which are approved according to regulations.
- The number of nominees in a list should not exceed 66 and should not be less than seven.

Mechanism of Election according to the Mixed System

On the polling day, the registered Palestinian citizen will see three kinds of ballot papers:

1. Balloting card for the election of the President
2. Balloting card for the election of Council Members in the constituency individually.
3. Balloting card for the election of the Lists.

Note:

Since the presidential elections were held on 9/1/2005, the coming elections will only be for the Palestinian Legislative Council, so citizens will have two balloting papers to be filled out.

Who supervises the Elections and Guarantees their Integrity

An independent commission runs and supervises the elections in pursuance with a presidential decree; it is called "Central Elections Commission" and it consists of nine members chosen for a group of Palestinian magistrates, senior academicians, and lawyers. Its mandate is to prepare and organize the elections, take all necessary procedures to insure the freedom and integrity of elections; it has two branches:

1. Central Elections Office
2. Constituencies Offices

The Commission in general supervises all the stages of the elections process since the start of registration until the end including declaration of final results. In order to have free, honest and integral elections, the law has guaranteed the independence of the Central Elections Commission administratively and financially. It enjoys its own character and the law specified its authorities, role and the mechanism of objecting to its decisions to specialized legal departments.

It is forbidden to interfere into the work of the Central Elections Commission by any party whatsoever governmental, non governmental or party since any interference might influence the integrity of the elections process and raise doubts about its results.

Election Appeals Court:

It is formed in accordance with the law and consists of a president and eight magistrates by recommendation of the Supreme Magistrate Council; the court is held in the presence of the President and at least two other magistrates.

It is specialized in studying elections cases submitted either to cancel or to amend the decisions of the Central Elections Commission or objections to the published results of the elections. The court in general has to make a decision and reach a ruling during five days following submittal and has to report its ruling to the Central Elections Commission to act accordingly.

Crimes and Penalties of Elections:

1. The person is considered criminal and is punished by an imprisonment not less than six months and / or a fine which does not exceed one thousand dollars or its equivalent if:
 - a- Using the impersonation for the purpose of voting in election.
 - b- Voting more once.
 - c- Taking the card of another voter just to prevent him from voting either by hiding or damaging it.
 - d- Every person pretends the illiteracy.
 - e- Every person holds a gun and constitutes a threat on the security and public safety
 - f- Every person tries to sabotage the polling materials.
 - g- Using force to make a voter reveal the content of what he/she voted for.
2. The person is imprisoned for a period not exceeding three years and/or pays a fine not exceeding three thousands dollars. or its equivalent if he/she gives a voter directly or indirectly, lends , pledges to give money or benefit or any thing in return in order to make the voter cast his/her vote in a special way or to abstain from voting.

3. The person is imprisoned for a period not exceeding one year and/or pays a fine not exceeding one thousand dollars or its equivalent if he/she transferred, destroyed, hid or helped in transferring, destroying or hiding any of the elections materials stated in the law without being authorized to do so by the Elections Commission or any person who prepared or made any official elections materials without a written permission from the Elections Commission.
4. The person is imprisoned for a period not exceeding one year and/or pays a fine not exceeding one thousand dollars or its equivalent if he/she forfeited or provided false data in the electoral books and voters lists or brought in or allowed the bringing in of ballot papers in any polling box to persons who did not vote or to any illusionary persons or provided any false statement and being fully aware of that regarding nomination form, its publication, date of submittal or registration or concealed, distorted and objected to a list ,and objected to the request of any one , concealed, damaged or distorted any nomination form submitted by a nominee or a list.

Jerusalem:

In light of the special condition of Jerusalem city since it is under the full control of the Israelis and the obstruction measures that accompanied the registration process by the Israeli occupation, the law has decided to adopt the Palestinians voters' lists in Jerusalem in accordance with the Elections Law; the Elections Commission has the right to follow any other means it deems necessary to ensure that Jerusalem voters practice the right in voting.

Any nominee for the Jerusalem constituency should have a permanent address within the district of Jerusalem.

Monitoring of Elections:

In order to guarantee the integrity of the election process and in order for all the stages of the elections process to take place with all transparency and clarity, the law has granted local, international, party observers, representatives and agents of independent candidates and mass media the authorization to monitor the elections to guarantee its effectiveness in cooperation with the Central Elections Commission which issued accredited papers to those who executed the role of monitors and observers.

Besides international monitors which give them complete monitoring rights of the elections, the Palestinian national societies have been active through the National Local Observers by monitoring all the stages of the elections and issuing reports, data to guarantee elections that are carried out freely and with integrity.