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Constitution Under the Ashes: A Reading of the Draft Interim Consti- tution of the State of Palestine 2026

Between Quality of Texts, the Dilemma of Legitimacy,
and the Context of Occupation





In a national context of grave danger, where genocide continues in the Gaza Strip, and while settlements continue to devour the sinews of the West Bank; where military checkpoints sever what remains of the homeland's geography, and the annexation and expansion wall besieges cities and villages; where Palestinian land is divided into isolated cantons consumed daily by settlement activity; and in light of the persistence of the occupation as a governing reality for all aspects of political and legal life, the absence of sovereignty, and before the blood of thousands of martyrs has even dried the "Draft Interim Constitution of the State of Palestine" is presented to us. This raises a fundamental question regarding the feasibility and impact of drafting an interim constitution at this timing, the limits of its legitimacy, and its consequences for rights, freedoms, and the political system.

Accordingly, **Lawyers for Justice** presents this paper within the framework of its professional and legal responsibility, placing before you an objective legal reading of the Palestinian Draft Interim Constitution. The group commends the qualitative development in the drafting of certain rights, while simultaneously exposing the dilemmas that threaten to neutralize these gains foremost of which is the imbalance of power in favor of the Head of State, the retreat from certain judicial guarantees for rights and freedoms established by the Amended Basic Law of 2003, and the disregard for the reality of the Israeli occupation, which precludes the actual exercise of sovereignty.



Constituent Legitimacy: A Constitution Without a Popular Mandate

Constitutional jurisprudence dictates that constitutions represent the social contract expressing the will of the people and cannot be legitimately born from unilateral decisions or appointed committees. However, the Palestinian case is different; Decree No. (4) of 2025 was issued to form the Constitution Drafting Committee by a unilateral presidential decision without a popular mandate, amidst the absence of the elected Legislative Council since 2007, the persistence of political and geographical division, and the committee's lack of true and comprehensive representation of the various components of the Palestinian people and their political and factional forces.

The legitimacy dilemma is exacerbated by the timing of the draft alongside exclusionary decisions, most notably the announcement of amendments to election laws that prohibit any party, political force, or individual from running for office unless they commit to the political program and international obligations of the Palestine Liberation Organization (PLO). This constitutes the “constitutionalization” of political exclusion and the sidelining of entire national liberation factions and movements, contradicting the principle of political pluralism declared in Article (2) of the draft itself.

In this context, Lawyers for Justice has filed a constitutional challenge regarding the formation of the Constitution Drafting Committee, based on the premise that the flaw is not limited to the content of certain articles but affects the very foundation of the constitutional process, which lacks a popular mandate and a sound constitutional basis. The group emphasizes that this challenge reflects a principled position: that any substantive discussion of the texts cannot be separated from the integrity of the process that produced them.

The Bill of Rights and Freedoms: Between Theoretical Development and Practical Guarantees

Although the draft included advanced theoretical texts reflecting the evolution of Palestinian human rights discourse and its alignment with modern developments in international human rights law most notably: digital rights (Article 36), the non-applicability of statutory limitations to war crimes and crimes against humanity (Article 69), the right to a healthy environment (Article 66), the right to mental health (Article 65), and the right to water (Article 67) these theoretical gains face realistic challenges that threaten to turn them into mere formal texts.

These dilemmas consist, firstly, of the adoption of broad restrictive phrases such as “in accordance with the law,” “without prejudice to public order or public morals,” or “for security reasons,” without defining clear and precise criteria for these exceptions, and without specifying or clarifying them. This grants the executive branch broad discretionary power to interpret and restrict rights at will, thereby emptying the right of its substance and transforming it into a formal text devoid of legal effect, entailing no actual protection or possibility for real exercise.

Secondly: Repeated Reference to Ordinary Law

The draft repeats the phrase “regulated by law” or “according to the law” in many sensitive articles (Articles 37, 39, 43, 44, etc.). This means the fate of fundamental rights is left to the authority of the ordinary legislator namely, the executive branch in the absence of the legislative branch. Although Article (71) imposes a restriction preventing any law from undermining the “essence of the right,” comparative constitutional experiences indicate that repeated referral often leads to the restriction of rights under security or administrative pretexts.



Personal Liberty and Political Detention: A Retreat from Constitutional Guarantees

Thirdly: Freedom to Establish Political Parties (Article 49)

The draft prohibits parties of a “military, para-military, or secret nature.” Despite being common in comparative constitutions, this text carries danger in the Palestinian context under occupation, as it could be broadly interpreted to include any faction practicing resistance. This would lead to the constitutionalization of their dissolution and criminalization, stripping the people of their right to resist occupation by all legitimate means in accordance with international law, and fundamentally contradicting the right to self-determination enshrined in international laws and charters.

The group highlights Article (30/2) of the draft, which constitutes a primary pillar of the legal challenges submitted by the group. The article states: “Personal liberty may not be restricted, nor may anyone be arrested, searched, or imprisoned, or prevented from movement, except by an order from the competent authorities in accordance with the law.”

This phrasing represents a dangerous retreat from the judicial guarantee established by the Amended Basic Law of 2003 in Article (11), which stipulated: “It is unlawful to arrest, search, imprison, restrict the liberty, or prevent the movement of any person, except by a judicial order.”

The difference between the two formulations is fundamental: requiring a “judicial order” means that the judge alone, as the protector of freedoms and overseer of the integrity of procedures, is authorized to restrict an individual’s liberty. Replacing this with “competent authorities” opens the door for investigative bodies and security agencies to issue arrest and search orders and restrict freedoms without prior judicial oversight. From a human rights perspective, this text poses a direct threat to the right to personal liberty and effectively “constitutionalizes” what is known as administrative detention or detention pending investigation for long periods. It also creates a constitutional ground for the continuation of detention based on political opinion or partisan affiliation—a practice from which thousands of Palestinians have suffered in Authority prisons over past years.



Furthermore, the draft lacks any explicit text prohibiting detention on the basis of political opinion or factional affiliation. On the contrary, granting the executive branch, through “competent authorities,” the power of arrest provides it with constitutional cover to practice this type of detention under the pretexts of “public security” or “public order,” thereby entrenching a security-oriented tendency.

The group also notes that Article (23) of the draft referred the matter of the statute of limitations for lawsuits arising from violations of rights and freedoms to ordinary law, in a retreat from Article (32) of the 2003 Basic Law, which explicitly stated that such lawsuits do not lapse by prescription. This change threatens to immunize past and future violations from legal accountability and deprives victims of violations of their right to litigate after a certain period.

Imbalance of Power: Concentration of Authorities in the Hands of the Head of State

The group observes with grave concern the articles related to the powers of the Head of State, which render the “representative democratic republican” system (Article 2) a mere slogan. The draft reproduces a pattern of individual rule and bolsters the powers of the Head of State at the expense of the legislative and executive branches, retreating from the principle of separation of powers that the 2003 Basic Law sought to establish. Examples of these powers include:

- **Appointment of a Vice President (Article 79/1):** The draft grants the Head of State the power to appoint a vice president, assign them tasks as deemed appropriate, and dismiss them at will. This means a sovereign position is transformed into a presidential gift or favor, entrenching the logic of personal dependency and opening the door to constitutional and political dilemmas regarding the transition of power.
- **Dissolution of the House of Representatives (Article 84/1):** The draft gives the Head of State the power to dissolve the House of Representatives “after consultation with the Prime Minister and the Speaker of the House of Representatives.” The phrasing is clear that consultation is non-binding, meaning the President can dissolve the elected parliament whenever and for whatever reason they wish, in the absence of objective constraints or judicial oversight over the dissolution decision.
- **Issuance of Decrees-by-Law (Article 86):** The draft expands the Head of State’s power to issue decrees with the force of law. Instead of limiting them to “cases of necessity that cannot be delayed,” as was the case in Article (43) of the Basic Law, it now includes “legislative fields” outside the sessions of the House of Representatives. This transforms the Head of State into a parallel legislator with near-absolute powers, contributing seriously to the breach of the separation of powers principle established by the Palestinian Basic Law. It prevents the legislative authority from exercising its designated role outside its sessions, based on the Palestinian experience over the past two decades, during which Palestinians suffered from a flood of decrees-by-law that undermined the supremacy of the Basic Law.



The Constitutional Court: Between Executive Branch Footholds and Deficiency of Oversight

- **Signing and Ratifying International Treaties (Article 82):** The draft grants the Head of State the power to sign and ratify international treaties, bypassing the parliament's supervisory and legislative role in ratification. This concentrates the authority over international obligations in the hands of the President alone and weakens the parliament's role in foreign policy, effectively excluding the parliament as the representative of the people from any influence regarding these agreements and treaties, whether positive or negative.
- **Appointment of Senior Officials (Article 87/9):** The draft constitutionalizes the Head of State's power to appoint senior civil and military officials' powers that were a subject of long legal controversy under the Basic Law, now becoming a codified constitutional practice.

This accumulation of powers makes the proposed political system closer to an absolute presidential system than to the consensual democratic republican system declared in the preamble.

Articles (138, 139, 142) of the draft entrench a deep dilemma at the heart of the constitutional system through:

Appointment of Constitutional Court Members (Article 138): The draft distributes the appointment of the nine members between the Head of State (3 members), the House of Representatives (3 members), and the High Judicial Council (3 members). Then, Article (139) stipulates that "the Head of State shall choose the President of the Constitutional Court from among the members."

This arrangement grants the executive branch a dangerous foothold within the "guardian of the constitution." The Constitutional Court is supposed to be a neutral arbiter between branches and is authorized to resolve disputes between them and the President. When the President appoints one-third of its members and selects its president, its neutrality becomes questionable, and it transforms from a guardian of legitimacy into a potential tool for legitimizing executive branch decisions. At the moment the country needs an independent constitutional judiciary to resolve a dispute between the President and the Parliament, the President of the Court will be indebted to the one who appointed them.

Deficiency of Constitutional Oversight (Article 142): The article defines the jurisdictions of the Constitutional Court, limiting them to the review of laws, resolving disputes between branches, and interpreting texts. However, it neglects the comprehensiveness of oversight over regulations and bylaws issued by the executive branch, which form the lower legislative pyramid. Many violations of rights occur through executive regulations that are not subject to the Constitutional Court's oversight, creating a wide gap in the protection of rights.



The Illusion of a State Under Occupation: Diminished Sovereignty and Response to External Pressures

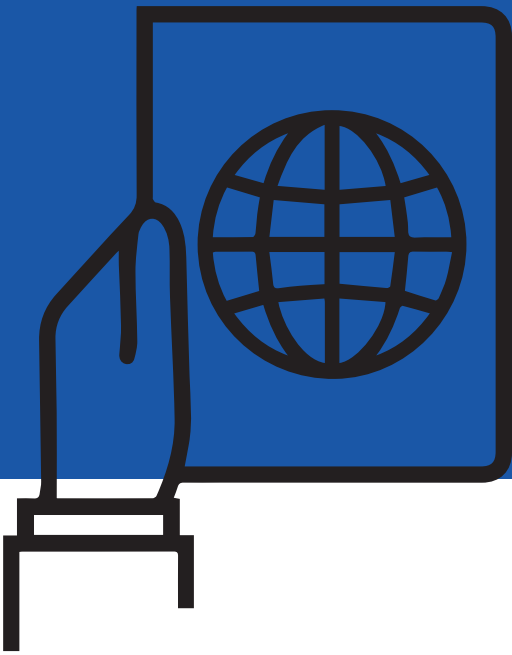
Furthermore, the draft did not enable individuals to directly plead unconstitutionality before the Court, sufficing with the referral of cases through ordinary courts, which prolongs litigation and prevents the average citizen from reaching constitutional justice.

State of Emergency: A Loophole Threatening Rights

Article (88) of the draft addresses the state of emergency but lacks the precise details that ensure this state is not exploited to suspend fundamental rights. The text lacks a definition of the maximum duration for an emergency, lacks subsequent judicial oversight over exceptional measures taken during this state, and fails to specify rights that may not be restricted even during a state of emergency foremost of which are the right to life, the right not to be tortured, and the right to a fair trial. In all comparative constitutions, a state of emergency is subject to strict controls, including the approval of parliament by a qualified majority and immediate judicial oversight, but the draft leaves this loophole open, posing a danger to rights and freedoms in any future exceptional circumstance.

The draft treats Palestine as a state with full sovereignty, ignoring the reality of the occupation that controls the land, resources, and borders, and undermines institutions daily. It also lacks a definition of the state's borders and omits the Palestinian historical narrative, the right of return, and an explicit text on the right to resist occupation, making the constitutional rights contained therein appear as if they pertain to an independent state, not a people subject to a settler-colonial occupation.

The introduction of the draft comes in the context of international and regional pressures to carry out political "reforms," raising serious questions about the independence of the national will in its drafting. There is a fear that it will turn into a tool for re-engineering the political scene to align with external priorities rather than the aspirations and sacrifices of the Palestinian people.



Conclusion and Recommendations

Lawyers for Justice concludes that the 2026 Draft Interim Constitution involves a fundamental paradox; it combines relatively advanced human rights texts with a flawed constitutional framework that entrenches excessive power for the Head of State, retreats from essential judicial guarantees, constitutionalizes political exclusion, grants the executive branch dangerous influence within the Constitutional Court, dissociates from the reality of the occupation and its national context, and comes amidst external pressures that raise doubts about the independence of the constitutional will.

Accordingly, the group believes that proceeding with the adoption of the draft in its current form constitutes a deviation from national priorities. It emphasizes that the priority today does not lie in drafting a new constitution while a still-valid Basic Law exists, but rather in stopping the war of genocide in Gaza, confronting settlement and annexation in the occupied West Bank, and ending political division considering that true constitutions are written by the will and sacrifices of the people, not by unilateral decisions or external pressures.

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