

Commentary on Draft Constitution for the State of Palestine

Panel of international experts

30 March 2026

In March 2026 an international panel of experts met to review the draft interim constitution for the state of Palestine. Convened by the Folke Bernadotte Academy, the Carter Center and Adam Smith International, the panel sought to draw on international and comparative experiences to help inform Palestinian debate and place domestic discussion in a broader context. The aim was not to intervene in internal Palestinian debates, judge Palestinian aspirations, or offer a detailed evaluation. Instead, we sought to illuminate the implications of the choices made in the text and to offer an external perspective on the options now under consideration. We began by listening to a series of Palestinian public figures to collect diverse perspectives and by surveying the public debate in Palestine. We then met in person to review these discussions and examine the draft in detail.

The draft interim constitution is designed, in the words of its preamble, to guide Palestine “to a democratic state rooted in human dignity and committed to a democratic path and practice through the ballot box.” The president’s decree establishing the drafting committee charged it with laying the constitutional basis for a democratic system based on the rule of law, separation of powers, protection of rights, and peaceful rotation of power. And the draft articulates these same principles (especially in Article 2). This follows from a long history of authoritative Palestinian statements from the 1988 Declaration of Independence to the Basic Law of the Palestinian National Authority calling for democratic and representative forms of government.

The drafters of the interim constitution for the state of Palestine have sought to lay the basis for a political system that meets these challenges in the most difficult circumstances imaginable. Any constitutional text may define and clarify institutional roles, render authority accountable, and express aspirations, but it cannot by itself overcome the deeper problems of denial of rights, fragmentation, and constrained self-government that are external to the political system.

The drafters have worked under these circumstances to propose an interim document that covers rights, institutions, elections, and constitutional language covering a full range of subjects. To reiterate: we write not to make choices for Palestinians on such subjects; they are to be made by Palestinians only. Our primary audience in offering our observations is the Palestinian public, and we write in the hope that Palestinians participating in deliberations about their constitutional future may find that our observations may shed light on the implications of the choices they are making.

Because the draft is wide-ranging, we focus on issues that seem to us especially significant or in need of clarification; we are therefore focused and selective rather than comprehensive in our remarks. In addition to this focused report, the attached annexes contain the contributions of individual experts focusing on their specific areas of expertise.

We also write with full awareness that this draft is being considered under conditions far removed from those in which constitutions are normally debated and adopted. It is not uncommon—in fact it is closer to the norm—to write constitutions at times when a political system is in crisis. But Palestine is in more than a passing crisis. War, prolonged occupation, territorial fragmentation, institutional division, and mass displacement place severe limits on both the participatory quality of any constitutional process and the practical effect of constitutional text. Most obstacles to full Palestinian national self-determination lie far outside what a constitution can affect. This report therefore does not assume that constitutional design can be the sole source of political legitimacy, national representation, or effective institutions. And indeed, as we note below, this draft would not be able to operate effectively without effective operation of several key institutions.

But even if this draft is not immediately adopted and implemented, the discussion it has generated may remain part of a public record that later Palestinian constitutional efforts revisit and it is important to consider it fully in that light.

The views and recommendations expressed in this report are the sole responsibility of the independent experts on the panel, and do not reflect the official policies or institutional positions of the convening organizations or their funding partners.

Presidency

We note that one of the most striking features of the draft is the strong presidency. There is a clear need to preserve strong national institutions at a time of unparalleled challenge and a reaction against past divisions and disputes in Palestinian politics and the draft focuses on the presidency in that regard.

While acknowledging the need to enable institutions, our review suggested that the draft does so in ways that may weaken checks and balances and the rule of law in the short term and may also be difficult to dislodge or scale back later when the temporary constitution is replaced with a permanent one. In particular:

- The relationship among the president, cabinet, and parliament may do little to constrain presidential authority. In particular, the president has an only loosely restricted authority to dissolve the parliament (Article 84); wide latitude in selecting a prime minister (limited ultimately by the need to assemble a cabinet receiving majority parliamentary support); and an unusual degree of potential presidential oversight over the cabinet even for a semi-presidential system (Article 87). The risk here is that these prerogatives may make the cabinet responsible to the president and more of an administrative than a policy-making body and that the parliament will not be able to exercise an oversight function. Moreover, the position of an appointed Vice-President besides the couple President-Prime Minister seems blurring in terms of coherence of the executive power.
- The president has a wide range of authority to make critical senior appointments: ambassadors, high ranking military officers, judicial figures, and key personnel in state bodies. This includes, for example, appointments involving the Constitutional Court and senior judicial offices (Articles 87, 123, and 134). Generally, this authority is shared with the parliament and other bodies -- some of which we consider in more detail below. And that is a

salutary step. But we note for now the danger that such extensive authority, combined with a strong role in administration, risks institutionalizing an autocratic order: much depends here on the way implementing legislation is written and on the performance of the parliament and other constitutional bodies.

- States of emergency have been the Achilles heel of democracy in many Arab systems. While the constitution is written for an entity that is struggling to be born in the most difficult settings imaginable, we note there are ways to ensure that the president's emergency authority, if exercised, does not eviscerate the democratic process by allowing a president to suspend that process while still claiming constitutional cover. Emergency powers could be tightened. A shorter initial period, stricter requirements for extensions, requirements that measures (and the declaration itself) be countersigned by the prime minister or relevant minister, judicial review of the declaration itself, specification of non-derogable rights (along the lines of the Siracusa Principles), a clearer definition of "public order"--a formulation that sets the threshold quite low--and closer attention to the opening created by Article 86 for measures having the force of law when parliament is not in session (and no clear time limit for parliamentary ratification if it is in session) would make abuse of emergency power more difficult.

Judiciary

Provisions for the judiciary are mostly general, deferring matters to legislation.

The constitutional court's general mandate may be clear, but the interim constitution leaves most details to legislation that are absolutely critical to rendering constitutional guarantees real: those far from technical details include the standing to bring challenges to law; time frame for decisions; and authority to ask for interpretation. For instance, if individuals cannot resort directly to the Court (as the current law states) does the Human Rights Commission have the ability to resort directly?

The Supreme Judicial Council and judicial affairs, especially as addressed in Articles 122-124, has its existence stipulated in the constitution but similarly defers to law on many critical issues. The draft constitutionalizes the body to manage the affairs of the judiciary and safeguard its independence, effectiveness, and accessibility, but it leaves the Council's composition and powers almost entirely to legislation, making the implementing law decisive. Some pluralism in appointments and clearer rules on tenure, discipline, and removal would be especially important.

While judicial councils are now common in the region (and globally), the dilemma is how to construct such a body so that it is neither controlled by the executive (through appointments of key personnel or through transferring jurisdiction over personnel and budgets away from the council) nor hermetically sealed from society. Participation of key civic groups, professional associations, younger judges, and parliament are common ways of seeking to avoid complete presidential domination.

Other State Bodies

The interim constitution envisages a number of bodies that are critical to state functioning, seeking to give them a firm legal basis and the necessary authority and autonomy to accomplish their missions. In many cases their operation is left to “laws complementing the constitution” (Article 109), which require a supermajority. That may encourage broad consensus, but it may also leave existing legislation in place—and obstruct the creation of bodies anticipated by the constitution—because the threshold for such laws is fairly high.

In general, the draft defines the bodies carefully and grants them the legal basis they need. In many cases, those clauses are still fairly general, leaving details to legislation. And the bodies are not merely technical in nature; some fulfill a critical constitutional function, such as the election commission or the audit bureau, whose composition should not be subject to the desires of a momentary majority. More generally, there is some inconsistency in what guarantees such bodies are given. Encouraging autonomous and professional state bodies might require:

- Pluralism in appointing authority. In some cases, the draft grants the parliament a role but not in all; this role might be extended to all such bodies. But even that may allow a simple majority (especially if the president and the parliament are dominated by the same body) to dominate the process. Supermajorities or representation by relevant sectors of society are other ways to enact true pluralism.
- Fiscal and administrative transparency. Those bodies given fiscal autonomy might be required in return to share with the public full details about their operation, finances, and hiring.
- Reporting transparency. The work (for instance of the Audit Bureau) might be required to make reports public immediately rather than referring them only to select state bodies.
- Regulatory authority. Bodies might be given have the authority to carry out their missions by issuing implementing regulations without reverting back to political authorities to have them issued.
- Guarantees of tenure or of clear procedures for discipline and removal.

On military and security bodies, we note:

- The presidential prerogatives as commander in chief of the armed forces (Article 83) are undefined and might be spelled out in more detail so as not to place them under his/her unfettered personal command.
- As with other state bodies (such as those identified in Chapter IX), distributing some mechanisms of oversight among constitutional structures is an important way to forestall autocratic control.
- The specification of the jurisdiction of military courts would seem to give them the ability to try civilians, especially with the “scope of military work” (Article 131) undefined.

More generally, the United Nations Economics and Social Committee has developed “International Standards Principles Governing the Administration of Justice Through Military Tribunals” that offers guidance on such questions.

Rights

The draft constitution has a very extensive chapter on rights—one that is impressive not merely for its length but also for its strict language restricting limitations on rights (Article 71), its elevation of international human rights law (Article 28 and especially Article 82), its recognition that most rights cover all persons (with some exceptions noted below), and its inclusion of a full range of civil, political, social, and economic guarantees.

The language on rights is extensive—it extends, for instance, even to the rights of the dead (Article 29). But it does seem to have some omissions. For instance, article 24 is powerful in addressing the rights of victims but the more general matter of transitional justice is not covered. An ambitious article on gender stops short of a constitutional quota that some systems have adopted (it speaks of equitable representation). Rule of law provisions do not include extensive details on procedural rights during court proceedings.

Within this very positive framework, we do note some other gaps or confusing areas. First, some rights are restricted to citizens or Palestinians. This is the case for (such as work, education, and even equality (Article 27)). Restriction of some rights to citizens and nationality can be justified but this draft does not follow a clear pattern and seems to rely on concepts of nationality that are not clearly defined (and may be better deferred until full statehood). The International Covenant on Civil and Political Rights and the International Convention on Economic, Social, and Cultural Rights offer guidance on which rights are more sensibly restricted to citizens or nationals, and which apply more broadly.

Second, the limitations clause, while an admirable insertion, could be more specific in its implementation (proportionality test) and make clear that it binds all state bodies. The draft also relies in places on internal limitations, allowing some rights to be narrowed by ordinary law. More generally, Chapter II could be clearer on which rights are nonderogable, on enforcement and justiciability, and on the entitlement of victims of international crimes not only to prosecution of perpetrators but also to redress and reparation. The draft's attention to the rights of the dead is also noteworthy.

Finally, we note that rights sections are often ones that draw most public engagement and attention; the very length of this section may make it less accessible unless its provisions are arranged in clear sections.

Foreign Relations and Palestine Liberation Organization

The interim constitution gives the president a central role in concluding international agreements (Article 82), but many categories of treaties appear to require parliamentary ratification, and some must be approved by referendum. The logic for excluding some treaties from any parliamentary role is unclear, especially since that exclusion extends to critical matters of sovereignty. The drafting could be clearer on the respective roles of the president, parliament, referendum, and the constitutional court, as well as on the domestic legal status of treaties.

The relationship of the constitution to the Palestine Liberation Organization (PLO) is also a matter of some ambiguity. The pressures are clear: the PLO is recognized by some states and some United Nations structures; it is a primary link between the diaspora and the homeland; it possesses historical legitimacy for the Palestinian people. But it is also an organization that is not designed for administration, and its current leadership overlaps with other bodies (the Palestinian National Authority, the State of Palestine, and leading factions) in a manner that can be confusing and undermine mechanisms of accountability.

The draft constitution addresses this confusion but only briefly: in the preamble by recognizing the continuing role of the PLO in the struggle for sovereignty; and in the text (Article 11) when the PLO is declared the sole legitimate representative of the Palestinian people. These provisions may raise some confusion if they are seen as placing the State of Palestine as subordinate to the PLO and placing PLO leaders beyond constitutional mechanisms of accountability. Such concerns are part of the impetus behind the calls for some Palestinians for reforming the PLO.

The constitution defers most issues regarding the status of the PLO, the conduct of foreign relations, and the place of the diaspora. That may simply be the most sensible path at this time. We simply note for now that a PLO that exists in its present form is likely to be, at best, an incomplete substitute for full popular institutions and processes.

Procedural Issues, Ratification, and Relationship with Permanent Constitution

This document was not written as part of a full consensual, public, and participatory process but it does not pretend otherwise: Interim constitutions by their nature are written in circumstances in which there is a constitutional vacuum or crisis, but a full process is not possible.

We note that the document is still far more than a skeletal text designed to allow basic state institutions to operate but covers almost all issues that a full constitution would cover. Indeed, it even provides for its own amendment and places clear substantive guidelines on what may and may not be amended.

In procedural terms, there may still be ways to ensure broader involvement in consideration of this document and over the longer term. For this document, some kind of caucuses, public hearings and fora are possible. And it might also include fuller articulation of principles to guide a permanent constitution in terms of inclusivity, transparency, and elections of constituent bodies.

The mechanism for ratification included in this document—a referendum—illustrates a kind of chicken-and-egg paradox: the constitution presumes procedures that current conditions would make very difficult to carry out. We gather there have been some discussions on alternative means of adoption; we note here simply how difficult that problem is. That may make public consultation even more critical in the period before ratification and promulgation. These procedural difficulties are not merely technical; they reflect the fact that constitutional adoption is being contemplated in the absence of many of the institutional and political conditions on which such a process would ordinarily depend.

And the difficulty of viable elections is an even more profound challenge for the implementation of this document: the operation of the constitution requires a viable set of institutions (especially elected bodies) that do not exist at present and that would be difficult to create. Without such institutions (for instance, an elected parliamentary body), key parts of the constitution would not be operational.

We do note that there have been lively Palestinian discussions about the need to revive national institutions (including the PLO most prominently).

And thus, we conclude with the fundamental problem for any document: A constitution derives its legitimacy from the way it is drafted and ratified, but also from the way it operates in practice. A text that cannot sustain the protection of rights, representative legislation, accountability, and effective oversight will struggle to command lasting authority.

Nathan J. Brown, Chair
Professor of Political Science and International Affairs, George Washington University

Zaid al-Ali
Senior Programme Manager, International IDEA
Visiting Fellow, Princeton University

Markus Böckenförde
Associate Prof. at Central European University

Cecilia Bylesjö
Senior Adviser and Country Manager - Somalia, Folke Bernadotte Academy

David Carroll
Senior Advisor, Democracy Program at The Carter Center

Christina Murray
Prof. Emeritus, University of Cape Town

Xavier Philippe
Professor of Public Law, Paris 1 Panthéon-Sorbonne

Vladimir Pran
Senior Governance Adviser, Adam Smith International

Adrienne Stone
Melbourne Laureate Professor, Melbourne Law School

Salma Waheedi
Executive Director, Program on Law and Society in the Muslim World, Harvard Law School