



A constitution for a state in the making: the draft of the Palestinian interim Constitution

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Abstract: The draft Palestinian Interim Constitution reflects a unique constitutional process shaped less by internal mobilisation than by international recognition and reform pressures. While it provides important human rights guarantees, concerns remain on executive dominance, legitimacy of the drafting process, and institutional balance.

Since 2011, the MENA region has experienced a wave of constitutional reforms and processes. The outcomes of these processes have varied significantly depending on the context. In some countries, these processes led to the adoption of new or substantially amended constitutions, such as in [Morocco](#), [Tunisia](#), [Egypt](#), [Algeria](#), and [Jordan](#). In others, constitutional processes have blocked or failed due to a range of factors, including ongoing civil wars and conflicts, as seen in [Libya](#), [Yemen](#), and [Sudan](#). Yet, in all the 13 constitutional processes that the region has experienced, the processes themselves were initiated following internal pressures – revolution and protests. In this sense, the Palestinian case is different. Although the Palestinians have for [long advocated for a constitution](#), the current process appears to respond less to internal mobilisation and more to the [new](#)

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[international recognitions](#) of the state of Palestine and external calls for institutional reforms.

The Drafting Committee of the Palestinian Constitution has completed its work, and the draft interim constitution has been submitted for public consultation for a period of 60 days, ending on the 9th of April 2026. This draft is expected to be voted for by a public referendum. The draft [Palestinian Interim Constitution](#) raises a number of observations that may be addressed at three main levels.

The drafting process and the nature of the document

Unlike constitutions prepared through an [elected constituent assembly](#) or through a broad participatory process, the drafting of the Palestinian Interim Constitution appears to be closer to a model drafted by a committee of experts. This option remains understandable given the impossibility of holding legislative or constituent elections in a country that has tried to [hold such elections](#). In addition, the urgency and international pressure calling for essential institutional and governance reforms within the Palestinian political system appears to be a decisive factor, pushing toward a drafting process that prioritizes external legitimacy over broad-based participatory deliberation.

Nevertheless, even within expert-based drafting processes, a minimum level of representation—political, gender, and geographical—is generally expected especially in contexts of internal political divides. Such representation does not appear to have been sufficiently ensured in the composition of the [drafting committee](#), particularly the representation from the Gaza strip. In addition, one may ask about the possibility of organizing a public referendum in the Gaza strip in such dire circumstances. In a history characterised by a long fraction between the West bank and Gaza strip, this question is of [fundamental importance](#) in legitimising, or delegitimising, the drafting committee and resulting constitution. The second issue concerns the nature of the document itself, which falls within the category of temporary or transitional constitutions. Such instruments are seen as [mechanisms of deferral](#) as they do not usually aim to establish a final constitutional order but rather seek to regulate the exercise of power during a transitional and unstable political phase. This is reflected by the explicit emphasis on the temporary character of the text and the links to exceptional political circumstances in the title, preamble, and several provisions of the draft.

Within this model, the constitution is not primarily viewed as a foundational expression of a social contract—despite references made in the [preamble](#) of the draft or the [decree](#) establishing the drafting committee—but rather as an instrument for organizing authority within an incomplete political and legal context. From this perspective, the draft may primary objective is to ensure institutional continuity and avoid constitutional vacuum rather than to establish a balanced system limiting governmental power.

More importantly, the adopted drafting process, combined with the temporary nature of the document, has inevitably influenced the function of the constitution

itself, making it closer to an instrument for consolidating existing political balances rather than a framework for re-founding them. This helps explain the clear tendency toward strengthening executive authority within the political system, perceived as the actor most capable of managing the transitional phase, albeit at the expense of long-term institutional balance. Yet, in similar experiences in the MENA region, interim constitutions have [largely impacted](#) the architecture of the final constitutions.

The Palestinian political system

The draft interim constitution raises two main observations in this regard. The first one relates to the nature of the political system. It tends toward a presidential model in which the President enjoys immunity and extensive executive powers. In addition, the President appoints the government and remains politically accountable both to him and to the Legislative Council. This arrangement largely reflects the current [balance of power in crisis](#) rather than establishing a needed new framework for governance in Palestine. While this choice may be justified by the desire to ensure stability during the transitional phase, it simultaneously limits prospects for genuine institutional balance. It also opens the door to a concentration of power within the executive branch similar to what [Palestine has been experiencing](#) since 2005 presidential elections.

The second observation relates to the continued [overlapping of mandates](#) between the institutions of the (future) State of Palestine and those of the Palestine Liberation Organization (PLO). This reflects the particular nature of the Palestinian situation as an incomplete transition from a national liberation movement to a state possessing independent constitutional institutions. However, this overlap raises a central constitutional issue relating to the duality of sources of legitimacy. The State derives its legitimacy from citizenship, constitutional institutions, and electoral representation, while the PLO derives its legitimacy from its historical role as a national liberation movement and from international recognition predating state institutions.

Such parallelism could create a hybrid constitutional situation creating problems particularly in relation to accountability when decisions fall within the competences of both entities, as it becomes difficult to determine political responsibility where powers intersect between constitutional institutions and liberation movement structures, especially given that the latter are not subject to the same constitutional oversight mechanisms.

Rights, freedoms, and related institutions

A core element of the constitutional drafting process in any context is the [protection of rights and liberties](#). The Palestinian case is not an exception. The draft document appears to give special attention to human rights. Provisions relating to rights and freedoms are distributed throughout the different chapters of the draft document, while a dedicated chapter composed of 46 articles

provides a broad range of rights and freedoms formulated in detailed terms. This chapter may be considered one of the draft's main strengths, despite the inclusion of certain provisions that do not appear fully consistent with the chapter's title, such as Article 69(2) punishing crimes of treason, espionage, and conspiracy.

Article 71 setting conditions for limiting rights is of particular importance as it incorporates the principles of legality, necessity, and proportionality, while affirming the role of judicial bodies at different levels in protecting rights and freedoms. Such provision constitutes one of the most [significant constitutional safeguards](#) contained in the draft.

Some provisions also raise specific concerns. For example, Article 52 refers to the dissolution of institutions and non-governmental organizations to regulate by law, unlike other provisions requiring a judicial ruling for the dissolution of political parties. This distinction may raise questions regarding the level of constitutional protection for the different forms of civil society work.

The draft also recognises the role of the [Independent Commission for Human Rights](#) in the protection and promotion of human rights. However, Article 145 refers to the regulation of its mandate and competences to legislation. This will likely extend to the appointment procedures of the Commission's board, unlike other constitutional institutions for which appointment procedures are explicitly defined in the draft. Such an approach may open the door to future legislative intervention that could affect the Commission's independence, raising the question of whether appointment procedures should instead be explicitly entrenched in the constitution, in line with other constitutional bodies.

Looking head

One may ask whether a new constitution would change realities in Palestine, particularly when Palestinian institutions exercise only limited control over fragmented territories, and whether such a constitution would effectively guarantee human rights. Those are legitimate questions. A constitution is never a magical solution, but it represents an important step. If the drafting process is carried out in a sound and inclusive manner, it can contribute to the emergence of a new social contract among Palestinians—an essential in the current context.