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## **What Can Abu Mazin Do?**

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When Hamas won a majority of seats in the Palestinian Legislative Council in the January 2006 elections, many observers asked whether President Mahmud Abbas (Abu Mazin), the popularly elected president from the rival Fatah movement, could prevent Hamas from assuming authority. Once Hamas formed a government, many asked whether Abu Mazin could dismiss or replace it.

These questions are natural. From the United States to Korea to Poland, the first election resulting in an alternation of power provoked questions and debates about the precise meaning of various constitutional clauses and phrases. The Palestinian “Basic Law”—the constitutional document for the Palestinian Authority—is unusually clear on most matters. It is untested, however, and its contents are not widely known. For this reason, there has been considerable confusion about its provisions, aggravated by the tendency of Abu Mazin’s advisors to pressure Hamas by hinting that the president might use constitutional powers that he simply does not have. Existing arrangements give Abu Mazin very few tools to act unilaterally. Almost any change would require either Hamas’s consent or a violation of the Basic Law.

### **1. Can Abu Mazin dismiss Prime Minister Ismail Haniyya (of Hamas)?**

Yes. Article 45 states clearly that the President may “remove or accept the resignation” of the prime minister.

### **2. How would a new government be formed?**

Only with the support of Hamas.

Any new government would have to receive the support of an absolute majority of deputies (not just a majority of those voting) according to Article 67.

Under current circumstances, this would make it impossible to form a government without Hamas’s support. It would also be impossible right now for Hamas to form a government without the support of other parties. One-third of Hamas deputies cannot vote because they are imprisoned by Israel.

Any new government would thus have to receive support from both Hamas and Fatah to obtain the necessary majority.

### **3. Who would govern if Abu Mazin dismissed Haniyya and no cabinet obtained a majority?**

Under Article 78, Haniyya's cabinet would continue to serve in a caretaker capacity.

Under Article 79, ministers are expressly forbidden from exercising any authority before they have received the support of the Legislative Council.

### **4. Can a technocratic government be formed?**

Only if Hamas agreed.

A technocratic government composed of experts (perhaps including some with party affiliations but probably excluding party leaders) has been proposed occasionally as an alternative to a Hamas-led government. Such a cabinet—which might be able to meet Quartet conditions for the resumption of aid to (and engagement with) the Palestinian Authority—could indeed be formed. Yet it could take office only if Hamas deputies in the Legislative Council voted for it. In other words, it might be a way for Hamas and Fatah to compromise, but a technocratic government could not be imposed on Hamas.

### **5. Can Abu Mazin order early elections?**

No. His aides constantly hold out this threat, but the president has no authority to end the term of the Legislative Council early. Article 47 (as amended in 2005) clearly states that “the term of the Legislative Council is four years from the date of its election.” Elections at any other time would require that the constitution be amended—which only the Hamas-dominated Legislative Council could do.

### **6. Can Abu Mazin declare a state of emergency?**

Yes. Under Article 110, the President may declare a state of emergency for up to thirty days. After that, it may be renewed after that only with the consent of two-thirds the Legislative Council.

### **7. What would Abu Mazin be allowed to do under a state of emergency?**

Very little without the consent of the Legislative Council.

The Basic Law is far clearer on what he cannot do than what he can. Common practice would allow him to order detentions and issue presidential decrees that have the force of law. Under Article 112, detentions would be reviewed by the Attorney General or a competent court. Under Article 111, he could not restrict basic rights and freedoms beyond what the emergency required.

Most significantly, the Legislative Council would have the authority to review the measures he had taken.

And if Abu Mazin tried to use a state of emergency to appoint a new cabinet, Article 79 still dictates that the new cabinet would need a vote of confidence from the Legislative Council before it took any action.

In short, his emergency powers would operate under Hamas oversight. Given the inability of many Hamas deputies to vote (because of their incarceration by Israel), it is not clear how well this oversight would operate.

## **8. Can Abu Mazin use a state of emergency to dismiss the Legislative Council?**

Absolutely not. Article 113 is clear: “Dissolving the Legislative Council or suspending it during the period of a state of emergency is not permitted.”

In order to prevent Abu Mazin from suspending this article (as the amir of Kuwait did with a similar article in the Kuwaiti constitution), Article 113 specifically states that the article itself cannot be suspended.

## **9. Can Abu Mazin call a referendum?**

No. He did so once anyway but then cancelled the call.

When leading imprisoned figures from Fatah and Hamas negotiated a common political understanding, Abu Mazin asked that Hamas endorse the “prisoners’ document.” When Hamas hesitated, Abu Mazin issued a decree ordering a referendum on the subject. There was no legal basis for the decree. Its proponents argued that the Basic Law’s silence on the matters of referenda allowed the president to do as he pleased.

This remarkably expansive view of presidential authority—that the president may do anything not explicitly prohibited—seems unsupported by the Basic Law, which insists (Article 38) that the president only exercise authority in accordance with its provisions. Further, the referendum depended not simply on the presidency’s authority but also on the cooperation of bodies that did not answer to the president. The decree simply ordered the independent Central Elections Commission to administer the voting. And a sound election would have required the cooperation of bodies that answered to the Hamas-led government, like the ministry of interior (responsible for security) or the ministry of education (because most polling places are located in schools).

When Hamas and Fatah agreed to a modified version of the “prisoners’ document,” the referendum became superfluous and a constitutional crisis was avoided.

## **10. Why was the Basic Law written this way?**

Most of the provisions that tie Abu Mazin’s hands were specifically and consciously inserted into the Basic Law to fill legal gaps exploited by Yasser Arafat. Arafat resisted the Basic Law but finally succumbed to intense domestic and international pressure to sign it in 2002. One year later, the same coalition imposed on him a series of amendments that closed more loopholes, created the position of prime minister, and strengthened the parliament and the cabinet at the president’s expense.

## **11. Can Abu Mazin disband the Palestinian Authority?**

It depends on one’s perspective.

From one point of view, the Palestinian Authority was created by the Oslo Accords, a series of agreements between Israel and the Palestinian Liberation Organization (PLO). Thus the Palestinian Authority could only be dissolved by an Israeli-PLO agreement.

Most Palestinians insist that the Palestinian Authority derives its legitimacy not from Israeli consent but solely from the PLO, whose Executive Committee deputized the Authority to govern in the West Bank and Gaza. According to this view, Abu Mazin—who doubles as PLO chair—could dissolve the Palestinian Authority with the consent of the PLO’s Executive Committee (a body dominated by Fatah). Some Fatah leaders have indeed floated the idea.

Hamas does not accept the authority of the Oslo Accords or the PLO (as presently constituted). It viewed the Palestinian Authority quite warily until it won the elections. But Hamas would still likely resist the dissolution of the Authority and regard the move as a trick to remove the party from power.

Were it integrated into a reconstituted PLO, Hamas's attitude might change. While Hamas and Fatah have agreed to the principle of bringing Hamas into the PLO, it seems unlikely that they will agree to terms any time soon.

## **12. Does the Basic Law matter—couldn't Abu Mazin simply ignore it?**

Yes, but he is unlikely to do so both because of his style of leadership and because the costs could be high.

To date, Abu Mazin has led more by coaxing than commanding. There are certainly senior Fatah leaders who do not see the Basic Law as a serious obstacle. Abu Mazin has occasionally echoed their views but has not acted on them consistently.

Since the Basic Law places so many cards in the hands of Hamas, Hamas would probably regard the abrogating the Basic Law (or any fundamental violation of its provisions) as tantamount to a coup or even a declaration of war against the movement.

Thus, while Palestinian governance has rarely shown an inclination to observe all legal niceties, violating the Basic Law would deeply aggravate political conflict between Hamas and Fatah, raising the specter of civil war.

Hamas might retreat in the face of such a challenge—its leaders recognize that they are in a state of political crisis, heading a government that cannot pay salaries to its workers. It has prided itself on refraining from violent confrontation with other Palestinian groups (its record on this count is more ambiguous than its rhetoric, but it has indeed shown genuine self-restraint on many occasions).

Abu Mazin cannot be sure that Hamas would surrender the reins of power it won in an election, and his record of caution suggests he is unlikely to gamble that Hamas would acquiesce in the cancellation of their electoral victory.