

PALESTINIAN

TERRITORIES

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## The continuous erosion of democratic structures in the West Bank

**More than 70 percent of the Palestinians in the West Bank believe that the Palestinian Authority (PA) is undemocratic and illiberal.<sup>1</sup> A question arises: Is the West Bank still governed by democratic procedures or is the PA an authoritarian regime? The truth lies in the middle – and the causes for concern increase.**

The Palestinian presidential and parliamentary elections of 2005 and 2006 were classified as a model for free and fair elections in the Middle East. Since then, however, there were no more national elections. Even worse: Since the beginning of the year, journalists have been detained in the West Bank because of supposed defamation of high ranking officials and the police acted with brutal force against peaceful protesters in the centre of Ramallah. The American NGO *Freedom House* classifies the West Bank in their 2012 annual ranking as “not free”<sup>2</sup>. The 2011 Democracy Index of the *Economist* qualifies “Palestine” as a “hybrid regime” (partly democratic, partly authoritarian), a status “Palestine” shares with countries like Venezuela or Mozambique.<sup>3</sup>

This country report looks into the question of whether democratic standards exist in the West Bank or if the PA is an authoritarian regime. Criteria for the classification as a democracy are the guarantee of civil liberties like freedom of opinion, freedom of assembly and freedom of the press, the periodic conduct of free and fair elections, the existence of an organised political opposition as well as the legitimacy, efficiency and responsibility of political institutions.<sup>4</sup> An authoritarian regime is characterized by the execution of power through a leader or a small group within formally ill-defined but quite predictable limits, the existence of a limited political pluralism, the restriction of political mobilization and participation, and by a lack of responsibility of the government to the citizens.<sup>5</sup>

This paper analyses primarily the Palestinian institutions. The difficulties to establish a democracy under occupation will only be mentioned if the occupation complicates or prevents the implementation of democratic structures.<sup>6</sup>

<sup>1</sup> Cf. Palestinian Center for Policy and Survey Research (PSR), “Palestinian Public Opinion Poll No (44)”, 10.07.2012, <http://www.pcpsr.org/survey/polls/2012/p44efull.html> [27.08.2012].

<sup>2</sup> Cf. Freedom House, „2012 Freedom in the World. Territory ratings and status, FIW 1973-2012“, 2012, <http://www.freedomhouse.org/report-types/freedom-world> [27.08.2012].

<sup>3</sup> Cf. Economist Intelligence Unit: „The Democracy Index 2011: Democracy under stress“, 2011, [https://www.eiu.com/public/topical\\_report.aspx?campaignid=DemocracyIndex2011](https://www.eiu.com/public/topical_report.aspx?campaignid=DemocracyIndex2011) [27.08.2012].

<sup>4</sup> The Palestinian Basic Law recognizes civil liberties like the freedom of opinion (Article 19), freedom of assembly (Article 26, paragraph 5) as well as the freedom of the press (Article 27). The limits of these freedoms are fixed in laws. Cf. “2003 Amended Palestinian Basic Law”, The Palestinian Basic Law, 18.03.2003, <http://www.palestinianbasiclaw.org/basic-law/2003-amended-basic-law> [accessed 18 September 2012].

<sup>5</sup> The definition of authoritarian regimes is based on the work of Juan J. Linz. Cf. „Totalitäre und autoritäre Regime“, Berlin: Berliner Debatte Wissenschaftsverlag, Second revised and enlarged edition, 2003, pp. 129–142.

<sup>6</sup> About the relation between democracy and autonomy cf. Philippe C. Schmitter und Terry

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**FREEDOM OF ASSEMBLY PUT TO TEST**

Protests against the he PA are normally not allowed in the West Bank and if they take place, they are often dissolved with violence.<sup>7</sup> The latest examples are the youth protests in June 2012. Various youth organisations organized a protest against a planned meeting between Palestinian President Mahmoud Abbas and then-vice Prime Minister of Israel Shaul Mofaz.<sup>8</sup> The demonstration took place in the afternoon of June 30<sup>th</sup>. When the protesters approached the presidential palace, police units attacked the peaceful protesters with batons. Several people were injured or taken into custody. One day later, a solidarity demonstration took place at the same venue which was primarily directed against the practices of the police. Again, the security forces acted against the protesters. This time also journalists were injured and detained.<sup>9</sup>

An independent commission concluded that the police violence was not justified. Furthermore the use of plain-clothed security forces was condemned.<sup>10</sup>

**FREEDOM OF THE PRESS IN DANGER**

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Lynn Karl, „What Democracy Is . . . and Is Not“, *Journal of Democracy*, 1991, Nr. 3, S. 75-88,  
<http://myclass.peelschools.org/sec/12/27497/LESons/Political%20Theory/CPW%20U%20Article%20-%20What%20democracy%20is%20and%20is%20not.pdf> [27.08.2012].

<sup>7</sup> Cf. Freedom House, „Freedom in the World 2011. West Bank“, 2011,  
<http://www.freedomhouse.org/report/freedom-world/2011/west-bank> [27.08.2012].

<sup>8</sup> Cf. „PFLP: PA must be held accountable for attacking Ramallah protest against Mofaz“, *pflp.ps*, 01.07.2012,  
<http://pflp.ps/english/2012/07/pflp-pa-must-be-held-accountable-for-attacking-ramallah-protest-against-mofaz/> [27.08.2012].

<sup>9</sup> „PA police crush new Ramallah demo“, *Ma'an News*, 01 July 2012,  
<http://www.maannews.net/eng/ViewDetails.aspx?ID=500441> [accessed 18 September 2012].

<sup>10</sup> Cf. Reporters Without Borders, „Independent inquiry vindicates journalists over Ramallah violence“, 30. Juli 2012,  
[http://en.rsf.org/palestinian-terr-independent-inquiry-vindicates-30-07-2012\\_43124.html](http://en.rsf.org/palestinian-terr-independent-inquiry-vindicates-30-07-2012_43124.html) [27.08.2012].

According to *Freedom House*, the media environment in the West Bank is “not free”. Under the PA press law from 1995 journalists can be fined and jailed for publishing “secret information” about the Palestinian security forces or news that could harm national unity. Especially small media outlets are pressured to provide favorable coverage of the PA and Fatah. Journalists who dare to criticize the PA or Fatah face arbitrary arrests and physical abuse.<sup>11</sup>

The ranking of the NGO *Reporters Without Borders* also shows the enormous deficits. The Palestinian Territories rank 153<sup>rd</sup> and are therefore worse rated than Iraq or Pakistan.<sup>12</sup> This judgement is reinforced by the results of the public opinion polls from the Palestinian Center for Policy and Survey Research (PSR), a partner of the KAS Ramallah. More than 70 percent of the Palestinians believe that there is no or only a restricted freedom of the press in the West Bank.<sup>13</sup>

The arrest of Palestinian journalists since the beginning of the year shows that these verdicts are absolutely justified. Representatives of the PA claimed that these journalists were “creating disunity” and misused “the freedom of opinion in order to defame representatives of the PA.”<sup>14</sup> Two of the arrested journalists are Ismat Abdul-Khaleq and Yousef al-Shayyeb. Abdul-Khaleq is accused of calling Abbas a “traitor” on her Facebook page. Defaming the president and other high-level officials is a crime in the Palestinian Territories.<sup>15</sup> Al-Shayyeb was ar-

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<sup>11</sup> Cf. Freedom House, „Freedom in the World 2011. West Bank“, Fn. 7.

<sup>12</sup> Vgl. Reporters Without Borders, „Press Freedom Index 2011-2012“, 25.01.2012,  
[http://en.rsf.org/press-freedom-index-2011-2012\\_1043.html](http://en.rsf.org/press-freedom-index-2011-2012_1043.html) [27.08.2012].

<sup>13</sup> Cf. Palestinian Center for Policy and Survey Research (PSR), „Palestinian Public Opinion Poll No (44)“, Fn. 1.

<sup>14</sup> Jillian Kestler-D'Amours, „Dozens of journalists, activists arrested as PA cracks down on dissent“, *The Electronic Intifada*, 01 May 2012,  
<http://electronicintifada.net/content/dozens-journalists-activists-arrested-pa-cracks-down-dissent/11228> [accessed 18 September 2012].

<sup>15</sup> Cf. Mohammed Daraghme and Diaa Hadid, „Ismat Abdul-Khaleq, Palestinian Lecturer, Arrested For Alleged Facebook Insult“, *The*

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rested for defamation and creation of disunity after he published an investigative article in the Jordanian newspaper *al-Ghad* about alleged cases of corruption in the Palestinian foreign ministry and suggesting that officials had collaborated with Western intelligence agencies. He was released on bail. His court case is still ongoing.<sup>16</sup>

**FREEDOM OF OPINION THREATENED BY  
BAN OF CRITICAL MEDIA**

Under certain circumstances the blocking of websites can be a legal instrument to fight online crimes. In Germany, websites with pornographic or extremist right-wing contents were blocked. However, this becomes critical if it happens for political reasons.

An example for this is the temporary blocking of eight Palestinian websites. These news websites are at least partially close to Mohammed Dahlan and report again and again from a critical point of view about President Abbas.<sup>17</sup> Dahlan was deprived of his Fatah membership by the executive committee of Fatah in June 2011. Officially, he was accused of being corrupt and involved in several murders. According to other sources, he planned to overthrow President Abbas and founded his own militia in the West Bank.<sup>18</sup> The PA instructed several internet providers to block the eight websites for reasons of national security.

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*Huffington Post*, 02 April 2012,  
[http://www.huffingtonpost.com/2012/04/02/is-mat-abdul-khaleq-palestinian-held-facebook-insult\\_n\\_1396951.html](http://www.huffingtonpost.com/2012/04/02/is-mat-abdul-khaleq-palestinian-held-facebook-insult_n_1396951.html) [accessed 18 September 2012].

<sup>16</sup> Cf. Noah Browning, „Facebook posts lead to arrests of journalists in West Bank“, *msnbc.com*, 04 March 2012,  
[http://www.msnbc.msn.com/id/46940850/ns/technology\\_and\\_science-security/t/facebook-posts-lead-arrests-journalists-west-bank/](http://www.msnbc.msn.com/id/46940850/ns/technology_and_science-security/t/facebook-posts-lead-arrests-journalists-west-bank/) [accessed 18 September 2012].

<sup>17</sup> Cf. George Hale, „Palestinian media clamp-down spreads to the Web“, *Ma'an News*, 23 April 2012,  
<http://www.maannews.net/eng/ViewDetails.aspx?ID=478726> [accessed 18 September 2012].

<sup>18</sup> Khaled Amayreh, „Fatah expels Dahlan“, *Al-Ahram Weekly*, 16-22 June 2011,  
<http://weekly.ahram.org.eg/2011/1052/re9.htm> [accessed 18 September 2012].

**DETENTION AND TORTURE**

Currently there are hundreds of Palestinian prisoners in administrative detention. They are detained without trial and have fewer rights than other prisoners.<sup>19</sup> Moreover, the *Independent Commission for Human Rights* (ICHR) reports in its 2011 annual report that there were 755 complaints regarding arbitrary arrests in the West Bank. Additionally, there were 150 complaints because of torture and mistreatment.<sup>20</sup>

The latest wave of mass arrests is connected to recent developments in the northern West Bank. At the beginning of May 2012, unidentified persons fired at the house of the Governor of the District of Jenin, Qadoura Moussa. While chasing the attackers, he suffered two heart attacks which he did not survive.<sup>21</sup> On July 1<sup>st</sup>, Shami al-Shami, a Fatah member and representative of the Palestinian parliament, was shot and injured in his hometown Jenin.<sup>22</sup> After these incidents, more than 150 persons were detained in the northern West Bank. The arrested were suspected of possessing weapons without a license and being members of a criminal organisation but members of the security forces and a militia which is close to Fatah were also detained.<sup>23</sup> The detainees were not handed over to general prosecution investigators or military prosecutors but rather stayed in custody with the „Preventive Security Force“, an elite unit with in-

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<sup>19</sup> Cf. Freedom House, „Freedom in the World 2011. West Bank“, Fn. 7.

<sup>20</sup> Cf. The Independent Commission for Human Rights, „The Status of Human Rights in Palestine 2011. The Seventeenth Annual Report. Executive Summary“, 21.04.2012, S. 37,  
<http://www.ichr.ps/en/2/6/753/ICHR-17th-Annual-Report-ICHR-17th-Annual-Report.htm> [27.08.2012].

<sup>21</sup> Cf. Hans-Christian Rößler, „Polizisten gegen Polizisten“, *Frankfurter Allgemeine Zeitung*, 11 July 2012.

<sup>22</sup> Cf. „Shot lawmaker: Attacker wanted to kill me“, *Ma'an News*, 01 July 2012,  
<http://www.maannews.net/eng/ViewDetails.aspx?ID=500387> [accessed 18 September 2012].

<sup>23</sup> Cf. Jodi Rudoren, „Model West Bank City Loses a Crime Fighter“, *The New York Times*, 10 May 2012,  
<http://www.nytimes.com/2012/05/10/world/middleeast/jenin-loses-leader-as-west-bank-violence-returns.html?pagewanted=all> [accessed 18 September 2012].

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telligence tasks. The detainees were not allowed to receive visitors. According to a report of the ICHR, some of the detainees were mistreated and tortured.

Until now, the reasons for the arrests are not exactly clear. But there are different theories. Some of the detainees are thought to be close to Mohammed Dahlan and suspected of having received money and weapons from him. According to a Fatah member, an internal struggle for power in the Palestinian security forces is the reason. After having replaced the commander-in-chief of the military police, there was an apparent wave of dismissals in the unit. Some of the arrested are said to have been former members of the military police.<sup>24</sup>

**LACK OF AN ORGANISED POLITICAL OPPOSITION**

The Hamas government, elected in free and fair elections in 2006, was internationally isolated because of its refusal to recognize Israel and the existing Israeli-Palestinian treaties and to renounce violence. After the kidnapping of Israeli soldier Gilad Shalit in June 2006, Israel arrested dozens of Hamas representatives. Already at that time, the parliament was hardly functioning. The takeover of Gaza by Hamas in 2007 put an end to any parliamentary activity until today even though most of the Hamas representatives have been released.

A parliamentary opposition, which could pressure the two parties to reconcile, exists only marginally. Only 13 of 132 of the delegates of the Palestinian Legislative Council belong to other parties or are independent. The population cannot express its discontent in elections because both parties agree that there should be no national elections until reconciliation is achieved. An increasing number of young

<sup>24</sup> Cf. Amira Hass, „Palestinian Authority arrests more than 100 following death of Jenin governor“, *Haaretz.com*, 25 June 2012, <http://www.haaretz.com/news/middle-east/palestinian-authority-arrests-more-than-100-following-death-of-jenin-governor.premium-1.443630> [accessed 18 September 2012].

Palestinians views peaceful demonstrations as a possibility to address grievances openly.

This discontent is shown in the PSR polls. 71 percent of the Palestinians believe that there is corruption in the PA institutions in the West Bank. Only 29 percent think that they can criticise the PA in the West Bank openly without fear.<sup>25</sup> Until now, this did not lead to a broad non-parliamentary opposition.

**LEGITIMACY AND EFFICIENCY OF POLITICAL INSTITUTIONS**

Fatah and Hamas lost credibility because of the never implemented reconciliation agreements between the two movements. The agreement of May 2011, which was qualified as a breakthrough, was followed by another one in February 2012. The main points of the agreements like the creation of a technocratic government as well as the conduct of elections were never implemented. The lack of seriousness on both sides is reflected in the struggle about the registration of new voters for the local elections on October 20. Both parties accuse the other side of preventing a free registration although local, parliamentary and presidential elections are overdue for years.<sup>26</sup>

In conclusion, both, the Hamas government in Gaza but also the government of Salam Fayyad, are only partially democratically legitimated. The Fayyad government was appointed by President Abbas as an emergency government after the division of the Palestinian Territories in June 2007. This term does not appear in the Palestinian Basic Law. However, the president has the possibility to declare the state of emergency for 30 days. An exten-

<sup>25</sup> „Press Release: Palestinian Public Opinion Poll No (44)“, *Palestinian Center for Policy and Survey Research (PSR)*, 25 June 2012, <http://www.pcpsr.org/survey/polls/2012/p44epressrelease.html> [accessed 18 September 2012].

<sup>26</sup> Cf. Fares Akram und Isabel Kershner, „Hamas Suspends Voter Registration Process in Gaza“, *The New York Times*, 03 July 2012, <http://www.nytimes.com/2012/07/03/world/middleeast/hamas-suspends-voter-registration-in-gaza.html> [accessed 18 September 2012].

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sion is only possible with parliamentary approval.<sup>27</sup> This did not happen. Furthermore, the legitimacy of President Abbas, the dormant parliament as well as the local councils and the mayors are built on sand because elections have not been held.

In consequence, the population is not able to communicate its will to the political decision makers. As a result societal interests cannot be channelled by the parliament and conveyed to the government. Abbas rules by decrees which are worked out by legal advisers and forwarded to the president by the cabinet. He does not govern with laws adopted by the parliament as the legitimate representation of the people.<sup>28</sup> However, in 2011, Abbas used this instrument only nine times. When doing so, he refers to Article 43 of the Basic Law. According to this article the president has the right to enact decrees if the parliament is not in session and in cases of necessity that cannot be delayed. But it is questionable if this is also valid if the legislative period of the parliament has already expired. Furthermore, the Basic Law says that the parliament has to approve the decrees after it convenes again. Considering that a lot of these decrees are already implemented, this presents a grave violation of the parliamentary oversight function of the executive.

**DEMOCRACY OR AUTHORITARIAN REGIME?**

The latest events in combination with the division of the Palestinian Territories and the absence of elections show that the political system in the West Bank cannot be considered as democratic.<sup>29</sup> But it would

<sup>27</sup> Cf. Nathan J. Brown, „What Can Abu Mazin Do?“, *Carnegie Endowment for International Peace*, 15 June 2007, <http://carnegieendowment.org/files/AbuMazinUpdateJune1507.pdf> [accessed 18 September 2012].

<sup>28</sup> Cf. Michael Borgstede, „Parkuhren und Demokratie“, *Welt am Sonntag*, 11 December 2011, <http://www.welt.de/print/wams/vermischtes/article13761541/Parkuhren-und-Demokratie.html> [accessed 18 September 2012].

<sup>29</sup> The following part is based on the work of Wolfgang Merkel, Aurel Croissant and Peter Thiery. Cf. Aurel Croissant and Peter Thiery,

be too early to classify the system as an authoritarian one. Indeed, a parliamentary opposition hardly exists and the responsibility of the government towards its citizen is restricted. However, the founding of political parties and associations is possible. There is a societal and political organisation despite the described obstacles. The reasons why elections do not take place and Abbas is dependent on the issuing of decrees are not only to find in the shortcomings of the PA but also in the behaviour of Hamas

The PA is in a twilight area between a consolidated democracy and an authoritarian regime. The democratic deficits lie in several areas:

- The efficiency of democratic institutions, first of all the legislative branch of the PA, is restricted due to the absence of elections.
- Institutions which guarantee the civil liberties, e.g. the freedom of opinion, the freedom of the press, the freedom of information and the freedom of association, are only weakly developed.
- There is a lack of an organised political opposition in the West Bank.
- The judiciary is understaffed and lacks efficiency.
- Several institutions of the governmental system, including the judiciary, exercise only little control over the actions of political actors.
- Arbitrary detentions, torture and other illegitimate infringements are used by political institutions and are not fought if they are conducted by other actors (Palestinians, Israeli settlers, Israeli security forces).

„Von defekten und anderen Demokratien“, *WeltTrends*, 2000/2001, Winter edition, pp. 9-32, [http://www.uni-potsdam.de/db/wtcms/contento-4.4.5/cms/upload/pdf/lehre\\_kraemer2\\_croissant\\_thiery.pdf](http://www.uni-potsdam.de/db/wtcms/contento-4.4.5/cms/upload/pdf/lehre_kraemer2_croissant_thiery.pdf) [accessed 18 September 2012].

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- The relations between elected representatives and potential veto players like Israel, which has the complete control over most of the West Bank, is hardly regulated and is consequently exposed to incalculable volatility.

were arrested before the 1993 Oslo Accord with Israel. Even if serious negotiations take place, it would remain questionable which (necessary) concessions a democratically hardly legitimated and seemingly weak Palestinian president could make.

**IMPLICATIONS**

The nature of the Palestinian governmental system has a very real impact on the internal development of the West Bank and on the peace process. Reconciliation with Hamas becomes more and more unlikely.<sup>30</sup> As long as the discontent with the PA is increasing, Fatah has little interest in elections. Thereby the situation will aggravate. Arab donors are linking their financial support, which is crucial for survival of the PA, in part to a reunification of the West Bank and Gaza.

If basic democratic principles like the freedom of opinion, the freedom of assembly and the freedom of the press as well as the free elections are not fully implemented, the discontent among the Palestinians will increase further.

Furthermore, the cohesion between the political class and the population will further decrease. Populist measures which are used in other Arab countries to temper the popular anger are not feasible in the Palestinian Territories which are affected by a massive financial crisis. The call for peaceful demonstrations against the Israeli occupation is also not to be expected. On one hand, President Abbas fears that the demonstrations could be spiralling out of control and could be directed at the PA. On the other hand, it is expected that the international community will not tolerate these kinds of steps. Further restrictions of the financial aid would be probable.

President Abbas cannot afford conducting peace talks with Israel without having his preconditions fulfilled. However, it seems to be unlikely that the government of Benjamin Netanyahu will stop the building of settlements, recognize the „border of 1967“ as a basis for negotiation and release the 111 Palestinian detainees who



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<sup>30</sup> Cf. Michael Mertes and Jörg Knocha, „Hamas and the ‚Arab Spring‘“, *KAS Country Report*, July 2012, <http://www.kas.de/palaestinensische-gebiete/en/publications/31574/> [accessed 18 September 2012].