

this rule would pass constitutional muster, given that in most legal systems rules of the legislative body, adopted by vote of the Council and not requiring signature of the executive, can only regulate matters internal to that body. In addition, the Council revised the Standing Orders to provide that the Council will confirm Cabinet officials individually, rather than as a group, a provision that arguably impinges on constitutional separation of powers standards. Standing Orders, Art. 8. (See Appendix C, English Translation of Standing Orders adopted by Council on March 21, 1996; see also Section X(B)(2), below, on Executive-Legislative Relations, Approval of Cabinet; and Section V(D)(1), below, on Constraints on the Council, Immunity.)

V. CONSTRAINTS ON THE COUNCIL AND ITS MEMBERS

The PLC confronts political, diplomatic and logistical obstacles that are unique in the experience of newly democratic or democratizing legislatures. These constraints both impede the day to day operation of the nascent legislative body and retard the development of a democratic culture in the West Bank and Gaza.

A. Council Members' Views of Oslo Limitations

Most Council members are aware that the Council is a legislative body of limited jurisdiction. However, several members have voiced concern that some of their colleagues were not fully aware of the limitations. Although portions of the Agreement were published in the newspapers, some members reportedly have not read the full text. It was suggested that the Council should, in one of its early sessions, present the Agreement to the members and discuss the Council's jurisdiction. To date, this has not occurred, although it may be taken up in the context of the Council's review of the draft Basic Law.

The impression that at least some Council members may not be aware of the jurisdictional limitations may have been drawn by other members (and the public) from the positions taken and promises made by candidates in the pre-election period. The campaigns were filled with pledges about issues such as the future of Jerusalem, settlements, refugees, etc., that are clearly outside the Council's jurisdiction as framed in the Agreement. On the other hand, it is possible that candidates, knowing full well of the limitations on the Council, were taking these positions to respond to voters' concerns. As noted above, (Section II(A)(1), Political Context; Peace Process; PLC's Role), Council members may attempt to influence negotiations on these issues through political, if not legislative, means.

B. Democratic Development Impact on Council of Oslo Limitations

The Agreement and the limited powers of the PLC (and the PA) have an impact on the Council members' ability to fully represent their constituents. This is simply because the public has needs and expectations that the Council (and to a lesser extent, the Authority) cannot meet.

In their meetings with NDI, Council members frequently cited the Agreement's provision for Israeli control over imports and exports, water, electricity, travel, etc., as limitations on their ability to improve the economic situation and thereby address constituents' needs. For example, MC Fakhri Shaqurah (Fateh, Gaza City) told NDI:

We have no state, we don't hold the whole issue in our hands. There are international factors . . . We just don't have jobs; we need to work in Israel. We're completely linked to Israel and we need Israeli permission not only to work there but to build in Gaza, to export goods, etc.

This view is shared by First Deputy Speaker Nahid Al-Rayiss (Fateh, Gaza City), who emphasized Palestinian dependency on Israel and the negative impact it has on investors. Rayiss believes that the "work of the Council will be very difficult because no one has the power to order or implement an improvement [in people's lives]" On the other hand, MC Sa'eb Erekat (Fateh, Jericho) is optimistic that the Council can do a lot in the realm of projects such as roads, schools, hospitals, etc., to upgrade the people's standard of living. While the PA would, of course, implement such projects, Erekat's suggestion is that the Council, like other legislatures, can develop policies and plans and provide funding for such ventures.

The Council's limited formal jurisdiction is only one way in which its activities are circumscribed, as discussed above. (See Section IV(A)(2), above; Formal Powers of the PLC; Oslo II Agreement; Powers of the PA and PLC). Other aspects of the Agreement -- which allow for Israeli intervention in matters that have a significant impact on the daily lives of Palestinians -- risk having a serious effect on the Council's credibility with the Palestinian public.

C. Democratic Development Impact of Restrictions on Travel of Council Members

In the first two months of the PLC's existence, Council members have not been able to travel freely within or between the Palestinian territories. Like other Palestinians, Council members need to have Israeli-issued passes to travel from the West Bank to Gaza and *vice versa*. In addition, for most of March when the towns within the West Bank were "closed," members were not permitted to travel within the West Bank. (See Section II, above, the Political Context.)

These restrictions have clearly impeded their ability to work. For example, the temporary Legal Committee charged with revising the Standing Orders, composed of both Gaza and West Bank members, could not convene until two days before it was to present the amended Orders to the Council. While the five Gaza members could and did meet, the seven West Bank members were unable to leave their towns and meet with each other or with their colleagues in Gaza. While they may have joked with NDI about "this new democracy by fax," the committee members were in fact quite desperate to meet, upset that they were prevented from doing so, and wary, in the words of one Gaza member, of "this bad start."

The travel restrictions have also had a significant and adverse effect on the Council members' morale and on the public's perception of their representatives. The travel restrictions were on dramatic display at the Council's inaugural meeting, which was convened by a decree of the Palestinian Authority and took place on March 7, 1996 in Gaza City.

It took West Bank Council members more than 12 hours to make the 90-minute trip to Gaza City; four hours were spent at the Erez checkpoint waiting for an Israeli convoy to accompany them into Gaza:¹⁹ All of the West Bank MCs with whom NDI met complained of the lengthy and humiliating journey to their first Council session.²⁰ Nablus Council member Dalal Salameh (Fateh) told NDI that her journey to the meeting in Gaza took twelve hours and the return trip took from 10:00 pm to 3:30 am. She said it was very difficult, but clarified that this was "not because we were so tired but because of the significance of it." Hebron Council member Sharif Ali Hussein Mash'al ("Abbas Zaki," Fateh) protested to NDI: "We were led into our first meeting as if we were prisoners of war." Abbas Zaki told NDI that after being kept waiting for hours *en route*, he returned to his home. Only after Arafat called him and insisted that he attend, did he undertake a second long journey to Gaza. Palestinians who are not Council members, including reporters and NGO leaders, also voiced their indignation at the humiliating manner in which their representatives were treated.

Despite the relative easing of the closure in April, Council members continue to travel only with Israeli permission, which to date is granted only for specific dates and times. One Jerusalem member told NDI on April 9, 1996 that the restrictions on PLC member travel continued and that he had to "sneak into Jerusalem like a terrorist" in order to meet his constituents and work in his office. The problem continued throughout April. Travel permits for three Gaza members to attend the April 10-11 Ramallah session had not arrived by the evening of April 9. Six Gaza Council members (traveling in one car) with permits that allowed them to travel and sleep in Israel through April 12 were stopped in Latrun, Israel on April 11 by Israeli border police who threatened to handcuff them, take them to a police station and arrest them. Finally, although all the Council committees were scheduled to convene in Gaza the morning of April 16, by mid-day many West Bank members had not received their passes and so the first day of committee meetings was disrupted. (See Section D below regarding VIP passes.)

¹⁹The Erez checkpoint is the Israeli checkpoint for persons wishing to enter or leave Gaza from Israel.

²⁰All Council Members attended the meeting, for which the Israeli authorities provided limited 10-hour passes. However, because of the limitation on their travel passes, Council members had to leave immediately after the Council meeting or stay in Gaza indefinitely. NDI and other international NGOs and local and international press representatives were unable to attend the session because Israel would not issue permits for them to enter Gaza.

D. PLC Members: Immunity from Prosecution and Related Privileges

1. Immunity

Members of the Palestinian Legislative Council believe that as elected officials they should be immune from civil and criminal prosecution. Immunity provisions are found in the draft Basic Law and the Council's Standing Orders. At the Council's April 10 session a lively debate took place between Arafat and some Council members regarding the extent of their immunity. At the same session, Council members also raised their concerns about travel restrictions and the need for salaries.

a. The Basic Law

The draft Basic Law sets forth the members' immunity in two separate provisions. The first article grants them a form of immunity similar to that protecting American legislators:

Members of the Council shall not be held civilly or criminally liable for anything said or opinions expressed by them in the Council or for voting in the Council, whether the meeting is public or in meetings closed to the public, or in Committees of the Council.

Art. 56. Like the U.S. Constitution's grant of immunity, Art.I, Sec. 6, this provision protects the members' freedom of speech beyond the protection afforded other citizens. American courts have interpreted the "speech and debate" clause of the Constitution to include virtually everything a member does in carrying out his or her legislative duties. It is of course not yet clear how the West Bank and Gaza courts will interpret the immunity provisions of the Basic Law that is enacted.

The second provision of the draft Basic Law affords PLC members broad protection from criminal prosecution unless the member is caught during the commission of a crime or the Council votes to lift a member's immunity. This provision, while much broader than the protection afforded members of the House and Senate, is similar to the immunity provided by many Western states, including Israel, Italy, France, Portugal and Spain:

Members of the Council shall enjoy legal immunity during the life of the Council and save for arrestable [sic] crimes discovered during their commission, no criminal proceeding may be instituted against a Member except with the permission of the Council, and when the Council is not in session, the Speaker's permission, who shall inform the Council at its next session [of] the action he took.

Art. 57.²¹

²¹In consultations on this issue, NDI delegate Ross Reid, a former Canadian Member of Parliament ("MP"), noted that while the immunity of Canadian MPs was limited in scope and similar to the U.S. model, he had found that in

b. The Standing Orders

In addition to the provision of the draft Basic Law, the final version of the PLC's Standing Orders includes a substantial section on immunity. The extensive immunity provisions were added to the Standing Orders by the temporary Legal Committee and sustained by the Council's March 21 vote to adopt the Orders. (The first draft of the Standing Orders simply protected members against any civil or criminal proceedings "resulting from his or her statements or votes during the proceedings of the Council or of any Committee of the Council." Draft Standing Orders, Art. 101.)

The Standing Orders as adopted expand the protection of MCs' statements to include not only statements and votes during Council proceedings, but also "any action taken outside the Council in the course of his or her function as a member of the Council." Standing Orders, Art. 89(a). The revised Standing Orders also encompass immunity from all criminal charges (except for members "apprehended in *flagrante delicto*") and protect members and their possessions and homes from being searched. Art. 89(b),(f). The Orders thus include language tracking, and expanding on, the draft Basic Law provision that provides protection against most criminal proceedings, whether or not they are related to a Council member's activities within the Council. (See discussion regarding adoption of Standing Orders, Section III, above and Sections VII and IX, below.)

The Orders also set forth the procedures for Council consideration of a request to deprive a member of immunity. Requests to deprive a member of immunity must be submitted in writing to the Speaker by the President of the Supreme Court, accompanied by a document with the details of the crime and "the requisite proof for criminal proceedings to be entered." The Speaker, in turn, is to inform the Council and refer the matter to the Legal Committee. The Committee is required to submit a report to the Council and the Council needs a vote of two-thirds of its members to deprive an MC of his or her immunity. Art. 90. This provision is curious in that it does not indicate how the Supreme Court president would be moved to request a deprivation of immunity, *e.g.*, whether he would do so automatically at the request of the Attorney General, the Ra'ees or other Council members. In most European states, requests to lift immunity are made by the public prosecutor's office, through the Ministry of Justice, to the parliament, where they are often referred to a special parliamentary committee for consideration. In some countries, such as France, Spain and Portugal, the courts play a role in requesting the waiver of parliamentary immunity.

c. PA Challenges Council Members' Immunity

In the April 10 Council session the legislators' immunity was at the center of a heated confrontation between Arafat and several Council members. Arafat was enraged with four

the former Soviet Union the broader immunity provisions were necessary to protect MPs from renegade security services. He was persuaded by Council members and others who argued that such broad immunity was appropriate in the context of Palestinian politics.

Council members who had issued a statement denouncing the PA for violating the human rights of Hamas prisoners. The Ra'ees told the Council that he had wanted to arrest the Council members but instead instructed the Attorney General to send a letter to the Council. The Attorney General's letter asserted that Council members had "defamed the PA without any basis" and that "their immunity is only inside the Council."²² Several Council members voiced their strenuous objections to the Attorney General's letter and the Council voted to send it back to the Ministry.

It is not clear whether the Attorney General's letter proposed that the Council lift the immunity of the four members or amend the immunity provisions of the Standing Orders. It appears that rather than voting on the substance of the proposal, the Council vote rejecting the letter was taken on procedural grounds. In a press conference after the session, Council Speaker Ahmad Qrie'h stated:

This memo [written by the Attorney General] is considered the first one from the Palestinian Authority and it discussed a very essential issue; but is it right for the prosecutor to address the PLC or not? We discussed the issue with Yasser Arafat and the Council decided to return the memo and not to deal with it; the prosecutor [Attorney General] will be informed about this. We want the Council to work properly and not to clash with every problem it faces.

"Abu Al Ala Talks about the Council's Sessions in Ramallah," *Al-Ayyam*, April 12, 1996. (See Section X (B)(3), below, Executive-Legislative Relations, Council Meetings to Date, April 10 meeting.)

d. Legal Status of Council Members' Immunity

As discussed above, the Council was in the unusual position of adopting its Standing Orders in the absence of a Basic Law. As a result, when it adopted the Standing Orders, the Council addressed issues that are meant to be resolved in a constitution. Some members of the temporary Legal Committee appeared unsure about the legal status and scope of Standing Orders. In fact, as NDI discussed with Council members, Standing Orders can only regulate the activities of the chamber that adopts them. They differ from laws in that they do not require the signature of the executive. For the same reason, internal rules of a legislative body cannot regulate the activities of other branches of the government. Similarly, they cannot establish rights or immunities, as such matters require the executive's concurrence. It would therefore appear that in most, if not all, democratic legal systems, the Standing Order provisions purporting to establish

²²But for their immunity, the Council members apparently could have been charged with defamation of the government. If defamation laws currently in effect in the West Bank and/or Gaza allow the government to file claim against Palestinians, including Council members, who criticize government policies, such laws significantly impinge on the freedom of speech necessary to democratic governance and may well be subject to constitutional challenge and/or Council amendment after the Basic Law (which includes substantial freedom of speech protections) is adopted.

Council members' immunity would be considered as without any legal basis, *i.e.*, null and void. (See Section IV(B)(1), above, Formal Powers of the Palestinian Legislative Council, Council Consideration of the draft Basic Law.)

The legal basis of parliamentary immunity is usually constitutional; in the absence of a constitution, immunity can be established by statute. Thus, it would appear that the immunity of Council members must be established in the basic law and/or by a statute. In Britain and Israel, for example, the immunity protection for parliamentarians is set forth in statutes. At the same time, most parliamentary rules of procedure do contain references to the procedures for waiving immunity. It is far from clear how this issue will be resolved by the PLC.

2. Other Privileges, Rights and Restrictions of Council Members

a. Salaries, Outside Employment, Conflicts of Interest

The Council has not yet determined whether its members are free to be otherwise employed, and if so how such employment will be restricted or regulated to ensure that public offices are not used for personal gain. This subject was discussed at the Council's April 4 session, at which time members raised questions about whether they needed to leave their companies and businesses. One Council member noted that while Ministers are not permitted to engage in private business, the overwhelming majority of them do so nonetheless. Another MC stated that three-quarters of the Council members do not have private concerns and need to have salaries on which they can live. Some favored a law prohibiting other sources of income; others opposed such a proposition.

At the same time, the Council members voted to approve salaries for themselves of (U.S.) \$2,000 monthly. This number was arrived at after some debate, including a proposal for a slightly lower salary and additional funds for expenses. Members wanted to know how legislators are paid in other countries and whether in those countries, legislators' pay is equal to that of ministers. The Speaker was asked what he was being paid and reported that he received 5,000 N.I.S. (New Israeli Shekels) a month (equivalent of U.S. \$1,700), a reduction of 1,000 N.I.S. from his salary when he was a PA Minister.

The Speaker concluded the discussion by stating that the Office of Council would study the issues -- of salaries, conflict of interest, etc. -- and make recommendations to the Legal Committee, which in turn would make recommendations to the Council. No dates have been publicly announced for this process to be completed.

b. Freedom of Movement

A major concern of all Council members is their freedom of movement. As discussed above, Section V(C), travel restrictions imposed between Gaza and the West Bank have hampered Council members' ability to function effectively and risk undermining their credibility with the electorate. The Speaker stated that the Council members would have VIP identification cards that

will ensure their complete freedom of movement, and that he was following up on the matter with the Israeli government. Members also complained that they needed to have special license plates for their cars, like those held by PA ministers, and the Speaker informed them that discussions about those plates were underway with the Transportation Ministry. Finally, members raised their need for diplomatic passports and the Speaker responded that the Office of the Council was also working on obtaining such passports for members. NDI concurs with Council members that these are urgent needs and that their ability to travel freely will be necessary if the legislature is to be an effective and serious institution.

VI. ORGANIZATION OF THE COUNCIL

The Council is attempting to organize itself at the same time that it is attempting to become operational. Given the press of events leading up to the election of the Council and the six weeks between the elections and the first Council meeting, there has hardly been sufficient time to establishing the administrative infrastructure of a legislature. The organization of the Council is further complicated by the political decision that it meet in both Gaza and the West Bank. The Council facilities in both venues are inadequate and at present the Council has very few full-time permanent staff persons.

A. Physical Infrastructure, Equipment and Furniture

The Palestinian Legislative Council will meet in both the West Bank (Ramallah) and in Gaza (Gaza City). It thus needs facilities in both venues. The Council held its first and second meetings in the Gaza City building, which is a building used by the Gaza Council under Egyptian administration in the 1950s and 1960s.

The Gaza hall is barely large enough for the 89 Council members to sit in a university lecture-style arrangement. During the two meetings, the Council leadership and Ra'ees Arafat sat on the top dais, facing the members; the lower level dais held several Authority ministers and a representative of the PLO Executive Committee. Council members sat in rows facing the dais, behind rows of desks with microphones. In the back of the hall there is a second floor balcony overlooking the "floor" that can hold approximately a dozen chairs, presumably for guests and media. During the second session, a third of the balcony was being used for the sound system and recording equipment and by the two staff people to managed the equipment.

In addition to the meeting hall the Council building has six medium-sized rooms.²³ The Gaza building does not have sufficient space in which the Council's eleven large committees can meet, let alone office space for Council members. Currently, one room is reserved for the Speaker's office and the other five rooms are available for *ad hoc* usage. It is possible that Council staff will be housed in those rooms, particularly if two rooms are not allocated for the

²³The Council building has an additional three rooms at one end of the building that house the offices of the Palestinian National Council. The President of the PNC, Saleen Za'anon, has a large office and the two additional rooms are allocated for his staff.

Deputy Speakers. One room is intended for use of the Council members as a meeting room where coffee will be available. An attempt was made to locate office space in nearby buildings, but to date no such space has been identified.

A major component of a European Union ("EU") plan to provide assistance to the PLC is the renovation of facilities for the Council in Ramallah, and potentially for the renovation of the Gaza building as well.

In its meetings during the first two weeks of April, the Council convened in the Ministry of Education building in Ramallah. The meeting room was set up in a fashion similar to the Gaza facility, in that there were two daises in the front of the room facing the members (on which the leadership sat) and the Council members sat behind desks with microphones in rows, facing the dais. The difference in the set-up was that there were three rows of chairs (approximately 30 altogether) for visitors and media. In addition, the sound system (which worked rather poorly, making members' comments difficult to understand) was set up in an adjacent room, which also had a closed circuit television (provided by the Palestinian Broadcast Company) and was used by the media. This facility will apparently be used until a more appropriate space is made available.

The Gaza hall has 119 (uncomfortable) chairs and 102 microphones; the six office rooms have desks and chairs. In March 1996, as part of the first tranche of its multi-phased assistance program to the PLC, the EU provided four computers (three for Gaza and one for Ramallah) including laser printers and software, two high capacity copying machines and fax machines and a switchboard system with telephones.

B. Staffing

1. Recruitment and Training

In the first week of April 1996 the Speaker and Secretary General hired a Director General who will report directly to the Secretary General and will be the administrative director of the Council, responsible for managing Council staff and ensuring the smooth operation of the Council. Mr. Bassem Al-Masri, the Director General, has a Masters Degree in Public Administration from the University of London and was the chief research assistant to a member of the British House of Commons. In addition, Al-Masri, a British citizen, has held a variety of positions, including representing the Palestinian Red Cross, the PLO mission and the Commission of Palestinian NGOs in the U.K. More recently, Al-Masri was the director of the Negotiations Department in the PA. At present, in addition to the Speaker's secretary, he is the only permanent Council employee. It is the intention of the Speaker to hire additional staff, although in restricted numbers because of space limitations and the need to train and integrate new staff.

Professional recruitment and training of qualified staff is an important issue for the Council and one on which the EU has focused its initial assistance. Several Council members expressed concern that the Council not replicate the employment practices of the Palestinian Authority, which is often accused of employing less than qualified staff based on family, friendships and

political connections. One Ramallah-based Council Member and former PA minister, told NDI that the PA's lack of standards or processes for hiring staff was a serious problem, which he had unsuccessfully attempted to rectify. Palestinians who are not Council members and not employed by the Authority are skeptical, if not cynical, about the likelihood that the Council will hire on the basis of merit and will find qualified staff.

In the context of this PA precedent, MC Haydar Abdul Shafi noted with pleasure that the Arabic-language newspapers carried advertisements for Council jobs. On the date NDI met with him, the newspaper advertised the post of general manager with ten years of administrative experience, expertise in computers, fluency in Arabic and English. The advertisement, which ran a full one-third of a page, also posted positions for legal advisor (with similar, mid-career experience, *e.g.*, university degree at masters level), financial manager, press aide, protocol staff, secretaries and simultaneous translators (English, French, Hebrew). The announcement asked that letters of interest be directed to the PLC before March 23, 1996; similar advertisements ran in the newspapers in April.

This recruitment method was the result of assistance provided by the EU consultants.²⁴ The EU's program has included meeting with the Speaker and the Secretary General and assisting them in formulating position descriptions, drafting advertisements for staff positions and interviewing candidates. The EU has also been involved in developing a staffing plan for the PLC.

2. Administrative and Staffing Plan

The staffing plan, as it currently stands, is to establish a number of offices under the control of the Director General. These offices include: Administration, Council and Committee Services, Legal, Finance, Press and Information, Protocol, Library and Council Security. A core staff of approximately twenty will be hired by the end of August, 1996. (The Council may, or may not, include a broadcasting office, depending on whether the Council will employ the Palestinian Broadcast Company to record and broadcast its plenary sessions or independently provides that function.) In addition, there will be a separate Office of the Speaker with secretaries who will serve the Speaker, Deputy Speakers and the Secretary General.

²⁴The EU, through the consulting firm of GJW Government Relations Ltd., has developed a technical assistance program to provide legal and technical support to the Office of the Council (*i.e.*, the Speaker, Deputy Speakers, Secretary General and staff). The first phase of the program, already implemented, includes the provision of basic equipment and furniture, assistance with the design of an administrative structure, assistance with recruitment and training of staff, and training and assistance on parliamentary rules of procedure for the Office of the Council. The next phase of the EU plan also includes the development of a Council library and research capacity, a parliamentary record, and potentially a radio broadcasting system. Some of the activities included in the European Union plan will be implemented through the Australian Embassy and the British Consulate, which have agreed to work in coordination with the EU and follow the EU's lead.

The responsibilities of the different departments are as follows: The Administrative office will include the general administrative support for the Council, including a switchboard and reception, technical services such as equipment and vehicle maintenance, mail and courier services and the distribution of information within the Council. The Press and Information Office will provide information about the Council to the media and the general public. The Protocol Office will include a translation and interpretation department. All of these offices, as well as the Council Security, will have branches in both Gaza and Ramallah.

There will be one Finance Office and one Legal Office (at least at the present time) which will be located in Gaza. In addition, the EU plans to assist in the development of one central library in Gaza and a satellite, specialized library in Ramallah. The library will include a research section, which will have the capacity to conduct on-line searches and gather and analyze information for Council committees and individual members.

The Council and Committee Services will be directed by a Chief Clerk, who will oversee eleven committee clerks, one for each of the Council committees. Approximately half of those clerks will be housed in Ramallah and the other half in Gaza City. The EU program of technical assistance to the staff will train the committee clerks to work with the committee chairs, assemble the necessary papers for the committee meetings, take minutes at the meetings and provide other services to committee members. The Office of Council and Committee Services will also be responsible for Council minutes (the record of debates, votes, etc.) and draft bills.

C. PLC Budget

While the EU plan includes funding for the start-up costs of recruiting and training staff, building renovation and the provision of equipment, it does not include funds for the ongoing costs of Council administration. Thus, in addition to members' salaries (see Section IV(D) above, Immunity and Privileges of Council Members), the PA budget will need to provide for the administration of the PLC, including staff salaries, maintenance and upkeep of the facilities, publication of documents, etc. In addition, the draft administrative structure does not provide staff or offices for individual Council members, nor is there a budget for committee expenses (other than staff).

The Speaker told NDI that the minimum budget the Council would need would be five to six million U.S. dollars yearly. He also said that he had written to the Acting Minister of Finance about the budget and hopes to discuss the Council's budget at an upcoming Council session in May. Many Council members have emphasized the need for an independent budget, to be administered by the Council itself. Thus, during a Council session, the Speaker instructed Council members that when they incur expenses or have budgetary questions, they should not raise them with the PA ministries but instead with the Council's own finance and budget office.

D. Democratic Development Implications of Council Organization and Budget

The ongoing expenses of the Council, including funds for even a modest cadre of PLC employees, will necessarily compete with other priorities of the Palestinian Authority. The experience of other newly democratic legislatures around the world suggest that it will be politically difficult for the legislature to defend its claim to the requisite portion of the overall budget. It is clear that unless the Council is able to obtain sufficient funding from the PA, its overall ability to function effectively will be severely compromised. Finally, the degree of success the PLC has in defending its own budget will provide some indication of its ability to influence other parts of the PA budget.

VII. COUNCIL MEETINGS: CALENDAR AND SCHEDULE, TRANSPARENCY

A. Calendar and Schedule

The calendar and scheduling provisions of the Standing Orders, as modified and adopted, lay the foundation for an independent and professional legislature. A key amendment to the Standing Orders ensures that the Council will meet regularly and for a significant period of time. The provision for two four-month sessions, beginning the first week of February and the first week of September, replaces the original draft, which simply called for Council meetings "at least four times per month" and one annual general meeting per year. Standing Orders, Art. 12.

For Haydar Abdul Shafi, a fixed schedule was a prerequisite if the PLC was going to be "a working Council, not convened on special occasions like the PNC, which is almost nonexistent now because it never meets." He told NDI on March 18 (prior to the Council's adoption of the Standing Orders) that he had made a recommendation to the temporary Legal Committee that the Council schedule be amended so that it would convene for two long sessions, one from February to June and one from September to December.²⁵

The Council meets on Wednesday and Thursday of each week, "unless it decides otherwise." Art. 13. The meeting commences when a quorum, composed of a majority of Council members, is present. Art. 14. The Speaker (with Council approval) is responsible for announcing the date and time of the next meeting and may call the Council to meet before the agreed date in the case of emergency or responsive to a request of the Council of Ministers [or "the Cabinet"]. Art. 17.

The first Council meetings of each four month session are called by the President of the Palestinian National Authority (Ra'ees Arafat). Art. 12. The Speaker may also call the Council

²⁵The fourth draft Basic Law provides that the Council will have two ordinary sessions every year, each to last for no longer than three months, commencing on October 1 and April 1. It also allows the Council to extend its sessions if business is not concluded and prohibits it from adjourning without approving the budget. Fourth draft Basic Law, Art. 49.

to convene in extraordinary session upon the request of the Council of Ministers or a quarter of the Council members. Art 12.

B. Transparency of Council Meetings

One indication of the democratic nature of a legislative body is the extent to which the public has access to its meetings. Legislative transparency can be measured by whether the public has access to plenary sessions and minutes of those sessions, as well as access to committee meetings.²⁶

1. The Standing Orders

The Interim Agreement requires that Council meetings (and committees) be open to the public. Agreement, Art. VII(1). Similarly, the Standing Orders require that Council plenary session be open to the public and that minutes of each meeting of the Council "be recorded . . . including all discussions held, issues debated and decisions made by the Council." Arts. 13, 18. The Secretary General is charged with distributing the decisions and minutes of the Council to Council members 24 hours prior to the following meeting and those decisions and minutes will be considered as approved unless a member raises an objection to them. Art. 15.

Council minutes will be kept in the Council files and "published in a special publication of the Council." This rule is the result of an amendment offered by Hanan Ashrawi that the Council publish its own journal with this information; the original draft had said that the Council minutes would be published as a special annex to the PA's Official Gazette. Copies of this publication will reportedly be made available to the Council members, staff and the press; it is not yet clear whether it will be available to the general public for a fee or free of charge. As of May 1, however, although the Council has approved minutes of its previous sessions, minutes of Council sessions have not been published in a journal and made available to the public.

In "exceptional cases" the Council may meet in secret if the Ra'ees of the Palestinian National Authority, the Speaker or one-third of the members request that the meeting be secret. Art. 20. There is no definition of, or guidance to interpret, what would constitute the "exceptional cases" for purposes of this rule. According to the rules, the decision to convene a secret session is to be made following a debate in which a maximum of two members speak in favor and against the proposal for a secret session. Art. 20. When the Council meets in secret session, Council staff cannot attend except by permission of the Speaker and other outsiders cannot attend except with permission of the Council (by majority vote). Art. 21. Minutes for secret sessions are also kept and are only provided to Council members unless the Council decides to publish them. Art. 23.

²⁶See e.g., *In the Public Eye: Parliamentary Transparency in Europe and North America* (International Human Rights Law Group: Washington, D.C., 1995).

2. Council Practice to Date

To date, the Council has held open meetings, secret meetings, "open" meetings to which the public has not been admitted and "open" meetings at which the closed-circuit television cameras were turned off.

Given the strict closure in place at the March 7 inaugural meeting, non-Gaza residents were unable to enter Gaza and thus to attend the meeting. It was, however, reportedly broadcast live in its entirety by the Palestinian Broadcast Corporation.

The subsequent meeting in Gaza at which the Standing Orders were adopted was "open" to the extent that the NDI team and the EU consultants were able to watch the entire session from the visitors' gallery. (Both organizations had obtained permission from the Speaker's office in advance of the meeting.) While the Palestinian Broadcasting Company ("PBC") was taping the session, no closed-circuit television was available to media and the PA security only allowed reporters into the gallery for a ten-minute "photo opportunity" and then insisted that they leave. The security personnel also attempted to force NDI and the EU to leave the gallery, but the NGOs insisted on staying. When NDI asked the Speaker if the March 21 session had been "open," he replied: "Yes, it was an open session, they just didn't let anyone in." The Speaker indicated at that time that after a Director General were hired, he would be in charge of these administrative matters. The leadership also intends to have the Council policed solely by its own Council Security and has been working with the EU to include police in its staffing plans.

While at the March 21 Gaza session there was no interested public -- other than the press -- seeking entrance, on March 28 when the Council convened for the first time in the West Bank, there were more than a hundred people hoping to attend the meeting. It appeared that everyone who wanted to enter was given passes at the front gate and, after being searched, was admitted to the Ministry grounds. It was an entirely different matter, however, to actually enter the Ministry building because security guards blocked most people from entering, and then a virtual impossibility to gain entrance to the meeting room itself, which has seats for only approximately thirty visitors and was strictly policed.

Very few outsiders attended the Council's second meeting in Ramallah, and thus on April 4 access was not problematic. For the first time, a closed-circuit television had been set up in an adjoining room, where many reporters stationed themselves and followed the proceedings.

The issue of legislative transparency turned into a full-scale drama at the Council's April 10 Ramallah meeting. As Arafat became embroiled in a heated confrontation with Council members, he ordered a cameraman from Palestinian television to stop filming. According to press reports, when Arafat ordered the TV crew to stop filming, MC Abdul Jawad Saleh said: "Why? Let them hear us." Arafat shouted back: "I decide who will hear me," and the cameras were turned off. ("Legislators Criticize Arafat," AP, April 10, 1996.) A later foreign press report stated that Arafat's security men punched and shoved reporters trying to cover the Council's session. The police chief in charge reportedly ordered press with valid accreditation to leave.

(AP, April 11, 1996.) After this incident, the Speaker reportedly promised that he would assign special security guards to the parliament buildings to insure press access.

C. The Media and the Council

A critical problem facing the Council is that media coverage is inadequate to inform Palestinians of what the Council is doing. A number of factors contribute to the poor press coverage. First, the Palestinian Authority controls the Palestinian Broadcast Corporation radio and television, and the broadcast media has not focused on the new, and potentially independent, Council. Second, after a series of arrests and by PA security forces, Palestinian journalists are reluctant to cover challenges to Arafat's authority. Third, journalists are unfamiliar with legislative procedures and may therefore have difficulty reporting on Council developments.

1. PA Harassment of the Press

As the April 10 confrontation between Palestinian reporters and PA security at the Council meeting (described above) indicates, in addition to the simple fact that the Council sessions have repeatedly been closed to the public and the press, the security forces exercise no restraint in expelling reporters. The PA harassment and intimidation of the Palestinian media predate the Council's inauguration, as was documented by NDI, the Carter Center and others in the pre-electoral period.²⁷

Reporters and others with whom NDI met described this as a critical, ongoing problem. The director of a human rights organization stated that in his view, "of the human right issues, freedom of speech is the most basic right . . . and it has been hard hit under the PA." In December 1995, security forces arrested *Al-Quds* editor Maher Alami; significantly, other newspapers did not report the arrest. In July 1995, Palestinian Authority security forces closed *An-Nahar*, a prominent Palestinian daily, for several days. And on several occasions, security forces also blocked distribution of *Al-Quds*, the largest circulation Arabic-language newspaper in the territories.

2. The Press Law

One reason journalists are intimidated is that the Press Law of 1995 includes broadly drafted prohibitions with stringent penalties. (Press Law, 1995, issued in Gaza City, June 25, 1995.) The law "strictly prohibits" the publishing of: any secret information about police and security forces; materials harmful to religion "and doctrines guaranteed by law;" and articles "which may cause harm to national unity or incite for committing crimes or planting seeds of hatred, dissension, and disunity, or instigate hostilities and sectarianism among the members of

²⁷See Tab F, NDI and Carter Center pre-election statements of December 16, 1995 and December 31, 1995 for discussion of press harassment.

society." Press Law, Art. 37.²⁸ Its broad prohibitions include: "News, reports, letters, editorials and pictures inconsistent with morals." In addition, the law prohibits publishing the "minutes of the secret sessions of the Palestinian National Council and the Council of Ministers of the Palestinian National Authority." Art. 37(4). The penalties for violating Article 37 include seizure and confiscation of all printed copies, temporary suspension of the perpetrator's media "for a specified period not exceeding three months." Art. 47. In addition, the law imposes a fine not exceeding 1000 Jordanian dinars (equivalent to U.S. \$1,357) or one month jail sentence or both. Art. 48.²⁹

Several Palestinian journalists with whom NDI met said that the overly-restrictive Press Law urgently needed to be repealed. One such journalist told NDI that the absence of press coverage of the March 21, 1996 Council meeting may have resulted from the Press Law's prohibition on reporting about closed meetings. Although the law was issued before the PLC came into existence and appears to refer only to secret sessions of the PNC and the PA Ministry, it is not surprising that its chilling effect may extend more broadly than its literal terms. It is a generally-held view that Gaza journalists are even more intimidated than West Bank journalists and would thus be unlikely even to risk inquiring whether the Council session in fact had been a secret meeting.

3. Lack of Training, Experience and Professionalism

In early March, a Palestinian journalist stated that in his view, Palestinian journalists are ill-prepared to cover the legislature and predicted that media coverage of the Council would lack depth. A review of Palestinian coverage of the Council to date sadly fulfills that journalist's prediction. The Palestinian press is timid and unimaginative in its reporting about the Council. For example, there were virtually no articles reporting on the extraordinary March 21 Council session in Gaza.³⁰ On March 24, *Al-Ayyam* did publish an interview with the First Deputy of the PLC about the Council meeting.

²⁸NDI is quoting from the official translation of the law, issued by the Translation Department, Directorate of External Media and Relations, Ministry of Information.

²⁹The Press Law is replete with sweeping prohibitions -- a veritable civil libertarian's nightmare. It includes a prohibition on the publication of material that

may contradict with the principle of freedom, national responsibilities, human rights, and respect of truth. It must also consider the right of thinking, opinion, and expression.

Art. 7(A). It also affirmatively obliges journalists to present material in "an objective, integrated, and balanced form."
Art. 8(B).

³⁰NDI receives the Jerusalem Media and Communication Centre's "Daily Press Summary." In addition, NDI's Palestinian staff review the daily editions of *Al-Quds*, *Al-Ayyam* and *An-Nahar* and translates articles pertaining to the PLC.

The open Council meeting of April 4 provided additional evidence of the disappointing quality of Palestinian press coverage of the Palestinian Legislative Council. That session, held in Ramallah, included heated debate on several important and controversial subjects. (See Section VIII, C(2) below, regarding Council discussion of committee formation.) The Council attempted to elect its committees, and the Speaker's efforts to control the proceedings were challenged by several Council members. First, several MCs stated that in establishing large Council committees the Speaker was violating the Standing Order provision that set a maximum of nine members per committee. Second, the Speaker was challenged for favoritism in the composition of the committees. Third, he was accused of cutting off debate, not listening to suggestions from the floor and not allowing votes on those suggestions. In short, a story could have been written about the Speaker's role in the PLC. Another story could have been written about the apparent violation of Standing Orders. Finally, there was a lengthy discussion about salaries and perquisites for members, an issue that would make front page news in most democratic countries.

Palestinian (and foreign) journalists attended the session; they had the choice of sitting in the room where the meeting took place (there was ample room and no restrictions on admission) or sitting in the next room, where tables were set up around a closed-circuit television. The press was there, but the news coverage that resulted appears to have been based exclusively on the Speaker's press conference after the session.³¹ The JMCC's Daily Report summary of the *Al-Quds* article tracks the Speaker's press release, in which he said that the Council issued four decisions regarding the political situation. The article could have been written by anyone who attended the press conference; indeed, it is difficult to believe that the story was written by a journalist who presumably sat through an interesting and lively Council meeting. (See Appendix D, JMCC Daily Press Summary, April 5, 1996.) This report stands in sharp contrast to the international wire service stories, which captured the drama and import of the day's proceedings. (See Appendix E, April 10 AFP and AP articles, and April 11 AP article reporting on the Council session.)

On the other hand, the Palestinian press did more vividly report on the explosive April 10 Council session. For example, the *Al-Quds* article reported MC Abdul Jawad Saleh's comment that the Attorney General's letter -- proposing that the Council members' immunity should not protect four members who gave a press conference charging the PA with violating human rights -- was "an insult to the Council." (See Appendix F, April 11, 1996, JMCC Daily Press Summary quoting AFP/*Al-Quds*; see also Section X(B) below, Council Meetings to Date.)

4. Other Obstacles

While the media may not know how to follow the Council's proceedings and/or to interview MCs, it is far from clear that the PA or the PLC have a defined notion of press relations. As regards the Council, while the members presumably do not have press strategies

³¹NDI (both American and Palestinian staff) attended a portion of the lengthy press conference at which the Speaker read from prepared materials and the journalists took notes.

and definitely do not have press aides (or aides of any type), they do not appear to be timid about talking to reporters.

Palestinian journalists also complain that the restrictions on their movements resulting from the Israeli closure seriously compromise their ability to report the news. Even West Bank resident Palestinians who are accredited foreign journalists could not leave their towns during the first weeks of the closure and thus were prevented from covering the news and/or going to their Jerusalem offices. Journalists with foreign accreditation also protested that reporters had difficulty obtaining passes to travel to Gaza and that in general, the Israeli closure hampered the press' ability to do its job. Finally, one Palestinian journalist noted that the Palestinian newspapers themselves are a key explanation for the weak coverage of the PA and the PLC in that they are not truly independent themselves. He suggested to NDI that there is a need for a truly independent media and that the development of a sophisticated and professional newspaper would be possible, but for the lack of financial support. (See Section XI(E), below, Role of Palestinian and International NGOs.)

D. Democratic Development Implications: PLC Calendar, Transparency and the Media

As discussed above, Palestinian media coverage of the Council is hampered by PA harassment, an onerous Press Law and a lack of training and professional independence. While the PLC Standing Orders generally require a degree of transparency consistent with democratic norms, the Council's practice regarding access to plenary sessions has not been entirely in conformity with its rules, in good measure because Council facilities are not conducive to public attendance. However, the Speaker indicated that once the Director General and Council Security are hired, he will be in a better position to ensure that Council sessions are in fact open to the public. Furthermore, given the paucity of space for visitors in the Council meeting rooms, the question of whether Council sessions will be broadcast on radio or television -- as yet unknown -- is all the more important and will have a significant impact on the public's access to PLC proceedings. Given that the press coverage of Council meetings has been limited, the Council meeting rooms do not accommodate many visitors, and that the sessions to date have not been broadcast, the absence of published Council minutes has become increasingly significant. In addition, the extent to which the Council committees will -- in the future -- open their meetings to the public remains to be seen. Thus, despite the inclusion in the Standing Orders of rules that provide for transparency in the legislative process, and the Speaker's stated commitment to openness, the Council has not yet established fully transparent procedures. In combination with the limited press coverage, the result to date has been that the Palestinian public has only limited access to information about the Council's activities.

As regards the Council's calendar, however, the two four-month sessions annually established by the Standing Orders provides a schedule that is both adequate and necessary for the PLC to operate as an independent and professional legislative body.

VIII. COUNCIL STRUCTURE: LEADERSHIP AND COMMITTEES

In its first week the PLC elected its leadership, consisting of a Speaker, two Deputy Speakers and a Secretary General. The Council subsequently established 11 permanent subject matter committees, ranging in size from 10 to 33 members.

A. Leadership: Provisions of Agreement and Basic Law

The Interim Agreement provides that:

Immediately upon its inauguration, the Council will elect from among its members a Speaker. The Speaker will preside over the meetings of the Council, administer the Council and its committees, decide on the agenda of each meeting, and lay before the Council proposals for voting and declare their results.

Agreement, Article III (5).

The Council is directed by a Speaker, two Deputy Speakers and a Secretary General elected by secret ballot and collectively known as the "Office of the Council." Their term of office is for one four-month session of the Council. Standing Orders, Art. 4.

The Speaker is responsible for representing the Council, opening its meetings and presiding over, directing, controlling and closing Council meetings. The Speaker is charged with determining the Council agenda and calling on members to speak during meetings. The Speaker may only participate in discussions if he vacates the chair. Art. 5. If the Speaker is absent from the chair for any reason (including because he is participating in Council debate), the first Deputy Speaker takes the chair; if both are absent, the Second Deputy will chair the meeting. Art. 6. The Office of the Council members are to be elected by secret paper ballot; in the absence of a majority, a second round of voting will take place. Art. 9 & 10.

B. Leadership of the First Palestinian Legislative Council

The leaders of the PLC were elected at its first session, on March 7, prior to the adoption of the Standing Orders. Nonetheless, the procedures by which they were elected were similar to those described in the Orders, at least to the extent that the Speaker, Deputy Speakers and Secretary General were elected by secret paper ballot.

1. The Speaker

The Council elected Ahmad Qrie'h ("Abu 'Ala") Speaker, over Haydar Abdul Shafi, by a vote of 57 to 31. Ahmad Qrie'h was elected to the Council on the Fateh list with the most votes in Jerusalem. He is trained as an economist and is a member of the Fateh Central Committee. He was the PA Minister of Economic Affairs and the head of the Palestinian delegation at Oslo.

Abu Ala told NDI that he has worked with Arafat since 1968. (See Section III(D)(1), above, Role of Political Parties, Intra-Fateh Democracy, for discussion of Fateh caucus regarding election of candidate for Speaker.)

Although a majority of the Council obviously favor Abu 'Ala, MCs voiced a range of opinions about their Speaker at meetings with NDI. One Council member who voted against the Speaker nonetheless said that he is an independent person whose independent tendency will be strengthened by his new position. Sa'eb Erekat nominated Abu 'Ala for Speaker because he thinks he is the right person for the job; he knows the peace process, understands the Israelis and is well-connected locally, nationally and internationally. Sharif Ali Hussein Mash'al thinks he is the ideal choice for speaker, is qualified by his training as an economist and is "a man of peace."

2. First Deputy Speaker

Nahid Al-Rayiss was elected First Deputy Speaker. A lawyer and member of the temporary Legal Committee, the First Deputy Speaker has a long history with Fateh dating from 1959, and was President of the High Palestinian Court. In a lengthy March 15 meeting with NDI, he stated that the key issues for the Council were to establish a uniform set of laws and oversee the executive. Rayiss commented that the Council's mandate derives from the fact that its members are elected and "feel related to those who voted for them, and because we represent all the territories, we feel and see more than the Ra'ees." At the same time, referring to Palestinian dependence on Israel and the impact of the closure, the First Deputy Speaker stated that the Council's work "will be very difficult because no one has the power to order or implement an improvement."

3. Second Deputy Speaker

The Council elected Mitri Abu Aitta (Independent, Bethlehem) Second Deputy Speaker by a 64-22 vote. (Suliman El-Roumi, an Independent Islamist from Rafah, received the 22 votes.) Mitri Abu Aitta, a lawyer who was formerly head of the West Bank Lawyers Committee, was also a member of the temporary Legal Committee. At a March 12 meeting with NDI, he focused on the importance of the draft Standing Orders and of establishing a uniform legal system for the West Bank and Gaza.

The Standing Orders do not delineate special tasks for the two Deputy Speakers and to date, neither appear to have any particular role to play during Council meetings. While the First Deputy did take the chair for a short period during the March 21 meeting, the Deputy Speakers do not generally take an active part in the proceedings. In addition, none of the Council members with whom NDI met spoke of these two individuals (or their positions), a silence that may indicate that their colleagues do not view them and/or their positions as important.

4. Secretary General

Finally, Rawhi Fatouh (Fateh, Rafah) was elected Secretary General of the Council. Fatouh has a B.A. in English literature and attended military college in Iraq. He joined Fateh in 1967, fought with the PLO and was President of the Arab Student Union in Syria and a PNC member. The Secretary, a refugee, is a member of the Fateh Revolutionary Council. The Secretary General spoke out at the April 4 Council meeting in Ramallah during the debate on committee formation, reprimanding the members that they should respect the person in charge, *i.e.*, the Speaker.

C. Committees

1. Role of Committees

In discussions with the NDI delegation in early March, many Council members emphasized that the Council urgently needed to establish committees and that they would be important to the Council's ability to function independently and effectively. In two significant respects, however, the draft Standing Orders distributed to members at the inaugural March 7 meeting would have handicapped the committees' ability to function.

First, the draft Standing Orders did not mandate committee review of draft government bills prior to plenary consideration. In contrast to the requirement that the Speaker refer member-introduced bills to committees prior to Council consideration, the draft Standing Orders gave the Speaker discretion regarding government-introduced bills. This rule had the potential to handicap the Council, as Council members would be ill-equipped to review government bills without the benefit of a prior review by the relevant Council committee. In the final version of the Standing Orders adopted by the Council on March 21, the rule was revised to require the Speaker to refer all bills to committee prior to plenary consideration.

Second, the initial draft of the Standing Orders required that committee meetings be held in secret; committees could only hold public meetings upon a majority vote of the full Council. While not all democratic legislatures have open committee meetings, there are strong arguments to be made in favor of public meetings, particularly as a vehicle for informing the public about, and including the public in, the legislative and policy-making process. This rule was also amended; the Standing Orders adopted by the Council include a provision allowing each committee, rather than the Council as a whole, to determine if its meetings will be open or closed.

2. Formation of Committees

a. The Standing Orders

The Council's March 21 session included a lengthy debate over a number of committee-related issues, including the appropriate number of committees, number of members per committee and jurisdiction of each committee. Establishing committee membership was a

daunting task that took up a good portion of two Council meetings (April 4 and 10). This task was particularly difficult because the Standing Orders provide that the Speaker formulate the committees based on members' requests; the rule leaves the Speaker with great discretion and little guidance. Not surprisingly, not all Council members were pleased with his proposed committee lists.

The Standing Orders limit the number of members per committee to no less than five and no more than nine, and prohibit each MC from sitting on more than three committees. Orders, Art. 44, 46. In addition to establishing eleven standing committees, the Council is authorized to form any other *ad hoc* committees for a specified period. Art. 44.³² The Standing Orders (both draft and final versions) provide that a Minister may not sit on any committee, nor be a member of the Office of Council. Art. 47. The PLC is likely to benefit from this rule (which is often, but not always, found in newly established legislatures) because in ensuring that the legislature's committees are not directed by officers of the government, it affords the committees a degree of independence that can benefit the institution as a whole.

In most legislatures, committee composition reflects the proportional strength of the parties represented in the body. In the PLC, where party formation is at a nascent stage and one party dominates, the rule for committee formation does not make reference to party affiliation. Instead, the Speaker is to formulate committee lists based on members' requests and his consultations with them. Article 45 of the Standing Orders sets forth that procedure:

The Office of Council shall coordinate and consult with all members, following which the Speaker shall submit the recommended list of appointments to committees to the Council for approval.

The rule makes no provision for amendments to the Speaker's proposed committee lists, and when the Council convened to elect committees, the Speaker presented his committee lists for an "up or down" vote.

b. The PLC Forms its Committees

The formation of the committees led to the Council's first significant departure from the Standing Order provisions. At the Council's April 4 session the Speaker announced that he had received members' requests for committee assignments and that some of the committees had been selected by only two or three members, whereas others had been chosen by dozens of members. He then proceeded to announce the names of the eleven members of the Legal Committee. One or two MCs, including temporary Legal Committee member Ziyad Abu Zayad ("Fateh Independent," Jerusalem), protested that it was a violation of the Standing Orders to have more than nine members on a committee. The Speaker responded that the Council had debated the question of how many members should sit on each committee during its April 3 session and, upon

³²The initial draft Standing Orders included ten committees with a maximum membership of eight members per committee.

his request, the Council had authorized the Speaker to exceed the nine-person per committee limit in formulating the committees.³³

Influential Council member Hanan Ashrawi, who had been a member of the temporary Legal Committee, defended the Council's decision. She told NDI the following day that it made little sense to change the rules so shortly after their adoption, particularly as it was not yet clear what formulation would be satisfactory in the long run. In her view, it was a practical solution, because "without this exception, we wouldn't have been able to finish [the discussion of committee membership]. Who would have taken the decision on who is removed?"

The Council had an extended debate about the popular and important Political Committee, with jurisdiction over negotiations and Arab and international relations. The Speaker defended his list by stating that he had tried to select members to represent all different points of view, but complained that the committee had too many members to function effectively and asked for volunteers to remove their names from the committee.³⁴

Debate over committee membership was heated and disjointed. At several points during the discussion the Speaker attempted to end debate and insist that the Council proceed to vote on the proposed committees. One member objected that the Speaker was not listening to people and not letting their suggestions be considered for a vote. Salah Ta'mari accused the Speaker of favoritism: "You favor some members over others and that is why they are on some committees and others are not." The Speaker responded to these complaints by stating that it was up to him to present committee lists and up to the Council members to vote to approve or disapprove those lists.

By the conclusion of the April 4 meeting, the Council appeared to have approved all eleven permanent committees proposed by the Speaker. However, the issue was revisited at the April 10 Council meeting at which time the Speaker asked members who had (mistakenly) been put on four committees to take their names off of one and discussed reducing the number of members on

³³When NDI asked two members (in separate conversations) about the Speaker's statement at the April 4 session (that the Council had given him leeway to compose committees with more than nine members) they both said that the issue had been summarily and casually dealt with at the April 3 meeting. Two other Council members reported the events somewhat differently: they said that there had been a two-thirds vote in favor of making an exception to the rule. According to these reports, the Council had decided not to amend the rule *per se*. (A two-thirds vote is necessary to amend the Standing Orders; other Council decisions generally require only a simple majority.) As minutes for the session are not available, NDI is unable to confirm what actually took place.

³⁴One difficulty the Office of Council faced in composing committees was the rule that bars ministers from committee membership. As Ra'ees Arafat had not yet named his new Cabinet and those who had had portfolios were required to relinquish them to run for Council seats, the status of "former" Cabinet members, who appear to be continuing as "acting" Cabinet members after their election to the Council, was unclear. In fact, in regards to the composition of one committee, the Speaker said that he had taken three members off the list because he thought they were ministers. During the Council meeting, they -- Sa'eb Erekat (Local Government), Azmi El-Shuai'bi (Youth and Sport) and Intisar Al-Wazir (Social Affairs) -- informed him that they were not ministers, so he added their names to the committee lists.

some specific committees. The final list of committees, approved by the Council on April 10, included the Education and Social Affairs Committee, with 33 members, which was the largest and the Budget Committee, with 10 members, the smallest. The average committee size was 17 members.

3. Committee Procedures

The Standing Orders are silent on some issues of committee organization, which are presumably left to each committee to determine. For example, the rules make no mention of subcommittees, but the Council members apparently believe that the committees can and will form subcommittees. There are also no rules for organizing public hearings, although some committee chairs intend to hold such hearings. For the most part, the Standing Orders set forth noncontroversial and workable committee rules.

At the April 10 Council meeting, the Council adjourned so that the committees could meet and elect their chairs and rapporteurs. (See Orders, Art. 49: "Each committee elects a chairman and rapporteur [or deputy] from among its members.") The rules charge the committee chair with calling committee meetings and require that committee members be given 24 hours' notice, accompanied by an agenda. Art. 50. The Speaker may also consult the chairs about calling a committee meeting, and a committee can be convened at the request of a majority of Council members. Art. 50.

The quorum for a committee is a majority of its members and decisions are made by simple majority, with the chair casting a vote in the event of a tie. Art. 51. This rule implies that the chair normally does not cast a vote. It is silent on whether proxy voting is allowed in committee, a practice that is not uncommon in legislative committees.

As mentioned above, on the important issue of the transparency of committee meetings, Article 51 states: "Committees shall meet in secret . . . [and] Committees may decide to hold public meetings." The original draft Orders had only allowed for committee meetings to be open to the public if the *Council* -- not the *committees* -- so decided. The rules also require that committee meeting minutes be taken that include names of members in attendance and a summary of discussions and decisions. Art. 52. However, there is no explicit provision regarding the public or confidential nature of committee minutes.

The Speaker is required to refer documents to committees with relevant jurisdiction. Art. 53. During the April 4 Council meeting, the Speaker announced that the Council had received many written communications from citizens -- principally letters complaining about a range of issues (pertaining to agricultural issues, social problems, etc.) -- and that he would henceforth refer them to the appropriate committees.³⁵ MC Ashrawi told NDI that she had urged the Speaker

³⁵A specific section of the Standing Orders sets forth requirements and procedures for the submission and consideration of citizen complaints and specifically mandates that the Speaker refer complaints to the appropriate committee(s).

to forward everything to committees, including such complaints, and she was pleased that he had done so.

The Standing Orders allow Ministers to attend committee meetings; Members of the Office of Council may attend and participate in committee debates. Art. 55,56(a). Other Council members may attend meetings of committees on which they do not sit, but may only participate in debate if given permission to do so and do not have the right to vote. Art. 56(b).

When the committees issue reports, they must be submitted within the time determined by the Council. Art. 57. Although the rules are not explicit, it appears that these reports are to accompany draft bills that the committees have reviewed and are presenting to the Council. Committee reports are to be submitted to the Speaker for inclusion in the Council agenda and distributed to members 24 hours before the Council meeting. Art. 58. They must include the committee's opinion, as well as minority opinions, and an explanation of the committee recommendations. Art. 59. The committee chairs are charged with presenting committee reports to the Council. Art. 60.

The Standing Orders do not address the scheduling of committee meetings and to date there is no set schedule. However, it appears that the Council schedules committee meetings on Mondays and Tuesdays, although not weekly. The scheduling of the individual committee meetings will undoubtedly have to be staggered to accommodate the fact that most Council members belong to three committees. The Council committees convened for the first time (after electing their leadership) on April 16, 17 and 18 in Gaza City.

IX. THE LEGISLATIVE PROCESS

A. Legislation: Procedures to Draft, Review and Adopt Legislation

In April 1996 it is too early to predict how well the Council's legislative process will function, either as a matter of procedural efficiency or substantive capacity. The Standing Orders present a system that appears functional, but much will depend on whether members -- and particularly committee chairs and the members of the Office of Council -- become acquainted with, and adept at utilizing, plenary and committee procedures. The Council's substantive capacity to review, amend and draft legislation is also as yet unknown, and will depend on a range of factors, including individual members' current knowledge, their ability to learn about the issues and to avail themselves of expertise, as well as the staff and facilities that will be made available to them.

"Every Palestinian citizen has the right to submit a complaint concerning public affairs to the Council." Art. 92. Articles 94 specifically requires the Speaker to "refer any complaint to the Legal Affairs Committee or any other such Committee within whose remit the complaint falls." The committee is then required to discuss the complaint, refer it to the Council of Ministers or to another relevant committee. Art. 95. The Council may ask the relevant Minister(s) to respond to a complaint that has been referred. Art. 95. Finally, the Speaker is required to communicate the response to the complaint to the petitioner. Art. 96.