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Interview by Reuters of Dr. Anis Al-Qasem, Secretary-General of EAFORD,  
Discussing Palestinian Basic Law

16:24 08Jul07 RTRS-TEXT-Opinion of lawyer who drafted Palestinian law July 8 (Reuters) - Anis al-Qasem, who led the drafting of the Palestinian interim constitution, disputed President Mahmoud Abbas's legal authority to install a government last month that removed Hamas from power without parliamentary approval. Below is the text of his reply to questions from Reuters:

"It is clear from (Basic Law) Article 45 that the president has the power to dismiss the prime minister. However, under Article 78(3), the dismissed government continues to run the affairs of government temporarily as a caretaker government until the formation of the new government in the manner provided by Basic Law.

"Under Article 79(4) of Chapter 5 (on executive authority), neither the prime minister nor any minister shall assume his office except after a vote of confidence from the Legislative Council (parliament)...

"Conclusion: The president has the power to dismiss the prime minister and to start the process of the formation of a new government. The basic ingredients of this process that give legitimacy to the new government are a vote of confidence by the Legislative Council and the oath of office.

"Until the formation of the new government in accordance with the procedure laid down in Chapter 5 of the Basic Law, the dismissed government continues to act as a caretaker government. The Basic Law contains no special provisions for what is sometimes called 'emergency government'."

"As to the powers of the president in a state of emergency, the only power specifically given to him is to declare the state of emergency in the manner provided in Article 110. He cannot issue decrees suspending any provisions of the Basic Law.

"The Legislative Council continues to function (Article 113), and none of the other provisions of the Basic Law may be touched except as provided in Article 111, which deals only with restrictions that may be imposed on basic rights and freedoms, and even these may only be affected to the extent necessary to fulfill the objective of the emergency as stated in the emergency decree.

"It is worth remembering that the whole Basic Law has been amended to reduce, rather than increase, the powers of the president as a result of the power struggle between Mr. Abbas when he was Prime Minister and the late President Arafat.

"Of course we anticipated that, in a system where both the president and the legislature come to power through popular elections, there is the likelihood that the president may belong to one political party while the majority in the legislature may belong to another, with the possibility of divergence of policies, as it has happened frequently in democracies like the United States and France.

"In a situation like this, compromises through dialogue are struck and neither the president nor the legislature would attempt to thwart the will of the people. If a deadlock is reached, the president may exercise the power given to him by Basic Law and dismiss the government and appoint a new government

that would, ultimately, receive the approval of the Legislative Council. Through this requirement of approval the elected representatives will determine the propriety or otherwise of the action of the president and the will of the electorate will not be thwarted. That was the expectation."

"What we had not anticipated is the reaction of 'democratic' governments to the free exercise of the Palestinian people of their democratic right to change the government, a government whose corruption and lawlessness, which Palestinians considered a stain on their culture and reputation, have been the talk of the international community...

"No constitutional draftsman would anticipate such a situation when his aim is to provide a basic law anchored in democratic principles and the rule of law."

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16:16 08Jul07 RTRS-EXCLUSIVE-Framers of Palestinian constitution challenge Abbas

By Adam Entous

NABLUS, West Bank, July 8 (Reuters) - The senior lawyers who wrote the interim Palestinian constitution say President Mahmoud Abbas exceeded his powers in appointing an emergency government to replace a Hamas-led cabinet without parliamentary approval. The Palestinian constitutional lawyer who led the framing of the Basic Law accused some political leaders of "destroying" its foundation and expressed dismay at how Western powers responded to the free election of a Hamas government headed by Prime Minister Ismail Haniyeh by imposing a crippling boycott.

Abbas's office had no immediate comment. A spokesman for his Fatah party said at the weekend, however, that the president's word was law as long as Hamas's "mutiny" paralysed parliament.

Washington, which imposed the boycott when Haniyeh took office in March 2006, embraced as "legitimate" the cabinet Abbas appointed after Hamas routed his Fatah forces in the Gaza Strip on June 14. The European Union also "emphatically" backed Abbas's actions as "in keeping with the Palestinian Basic Law".

In their first public comments since Abbas formed a new government, Anis al-Qasem, who oversaw the writing of the Basic Law, and fellow independent Palestinian constitutional lawyer Eugene Cotran said the document whose drafting they began more than a decade ago gave Abbas the power to dismiss Haniyeh. But, they said, it did not grant him the power to appoint a new government without legislative approval nor the right to suspend articles of the Basic Law, as he did last month to spare new premier Salam Fayyad the need to win a vote in parliament. Appointed by Yasser Arafat, al-Qasem said the president's powers were "intentionally and explicitly very restricted".

#### PRESIDENT'S DEFENCE

However, Azmi Shuaibi, who sat on a parliamentary committee on the Basic Law, defended Abbas's power to suspend articles. He said Article 113, which stipulates that the legislature "shall not be dissolved or suspended during the emergency situation, nor shall the provisions of this chapter be suspended," meant he "can suspend articles in other chapters".

Al-Qasem disagreed, cautioning against making "such wild implication ... particularly where the implication could easily lead to dictatorship -- the system that the Basic Law was intended, in all its

provisions, to guard against".

"They are obviously looking for the slimmest argument to build a mountain on and dry the ocean. They are destroying the foundation on which the Basic Law is laid," he told Reuters.

Al-Qasem and Cotran said the Basic Law further prescribes that Haniyeh's dismissed unity cabinet, which included Abbas's secular Fatah faction, remain the caretaker administration until Abbas secured parliamentary approval for a new government.

"What is clear is that ... the Haniyeh government, doesn't fall during the period of an emergency," Cotran told Reuters.

Al-Qasem said that under Article 78 "the dismissed government would continue to run the affairs of government temporarily as a caretaker government until the formation of the new government in the manner provided by the Basic Law."

He noted Article 79 stipulates "neither the prime minister nor any minister shall assume his office except after a vote of confidence" from the legislature. The Basic Law has no specific provisions for an "emergency" government, he added.

The law says a presidential emergency decree lasts 30 days, extendable with parliamentary approval. But Cotran said: "That doesn't mean that he can form a new government. ... Ruling by decree doesn't mean he can suspend or change the constitution."

Al-Qasem and Cotran made the comments in a series of telephone and email exchanges over the past week. Al-Qasem was in Spain; Cotran in Britain.

Fatah spokesman Jamal Nazzal was quoted on Palestine Radio saying the Basic Law does not limit how often the president can declare a state of emergency, so it can be extended "as long as the mutiny which brought that situation about continues."

## PARLIAMENT

It is unclear what role, if any, the legislature can play -- over the past year, Israel has arrested nearly half of Hamas's parliamentary majority bloc, making it virtually impossible for the body to reach a quorum to hold a vote.

Despite the problems forming a quorum, Cotran said Abbas still needs parliamentary approval.

Ultimately, he said, the Palestinian constitutional court would have to decide. That, however, appears unlikely any time soon as the constitutional court is also not functioning.

Law professor Ahmad Elkhaldi, who worked on drafts of the Basic Law, said he was concerned Palestinian democracy, long touted as a goal by Washington, was "in retreat".

A political independent who angered some in Fatah by serving as justice minister in Haniyeh's first cabinet, Elkhaldi was briefly abducted by masked gunmen loyal to Fatah last month. "They wanted to send me a message that 'you have to stop speaking about who is right and who is wrong'," Elkhaldi told Reuters, with a much-thumbed copy of the Basic Law lying beside him on his desk at Nablus's al-Najah University. "We have to work inside the restrictions of the Basic Law, not put the Basic Law aside and do whatever we want."

In Washington, Nathan Brown, a professor who has advised the Palestinians and the Iraqis on new constitutions, said: "These are absolutely and clearly black and white violations. He has no authority whatsoever to appoint an emergency government."

For al-Qasem, the lawyers' work has been thwarted by the politics of punishing Hamas for refusing to give up violence:

"The Palestinians were immediately rewarded by the 'democracies' of the world with an unprecedented crippling siege as a punishment for the exercise of their democratic right. ... No constitutional draftsman would anticipate such a situation."