

Joint Report

on the 1996 Palestinian Elections

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This report is dedicated to Sha'wan Jabarin, paralegal and former acting fieldwork coordinator for al-Haq. Sha'wan has been held under administrative detention by the Israeli authorities since 5 February 1996 without being charged or brought to trial. All three organizations involved in the publication of this report condemn his detention as a most egregious violation of fundamental human rights. Sha'wan served as the coordinator of al-Haq's election team. His detention obstructed the production of this report.

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GLOSSARY

the Agreement	Israeli-Palestinian Interim Agreement on the West Bank and the Gaza Strip
the Protocol	The Protocol Concerning Elections Israeli-Palestinian Interim Agreement on the West Bank and the Gaza Strip
CEC	Central Elections Commission
DEC	District Elections Commission
DFLP	Democratic Front for the Liberation of Palestine
DOP	The Declaration of Principles on Interim Self-Government Arrangements for Palestinians
EAC	Election Appeals Court
ICCPR	International Covenant on Civil and Political Rights
IDF	Israel Defense Forces
NIS	New Israeli Shekels
OPT	Occupied Palestinian Territories
PBC	Palestinian Broadcasting Corporation
PFLP	Popular Front for the Liberation of Palestine
PLO	Palestine Liberation Organisation
PNA	Palestinian National Authority
PSC	Polling Station Commission
UDHR	Universal Declaration of Human Rights

1. INTRODUCTION

1.1 Overview

Elections are one of the most important mechanisms by which citizens can express their political opinions and participate in the democratic governance of their society. Free and fair elections are necessary, if not sufficient, for the formation of a democratic government: regular and periodic elections are necessary to hold that government accountable. In a transitional democracy, it is particularly important that the first election is - and is seen to be - free and fair if the newly elected government is to have credibility and legitimate authority.

This report reviews the conduct of the first elections for the Palestinian Council and President of the Palestinian National Authority (hereinafter "PNA"), which took place on 20 January 1996 in the Occupied Palestinian Territories. The report is based on monitoring by a team of human rights and election experts from AL-HAQ, ARTICLE 19, and the INTERNATIONAL COMMISSION OF JURISTS. These three leading human rights organizations were brought together in this project by their belief that respect for a range of fundamental human rights is essential for ensuring free and fair elections and the establishment of a legitimate and democratic ruling authority.

The report pays particular attention to the right to freedom of opinion and expression, as one of the most fundamental rights necessary to ensure genuine democratic elections. The report examines the legal framework in which the elections were held and details violations of law and practice occurring during the three phases of the election process: the pre-election campaign period, election day, and the post-election phase of counting and declaring results and hearing election appeals.

The report aims not only to assess areas in which the elections were or were not free and fair by international standards, but also to identify the types of violations which occurred and to make recommendations as to how these might be avoided in future elections, not least of all in the Palestinian municipal elections scheduled to take place in early summer.

Having in mind that the fundamental rights necessary to the holding of a free and fair election - rights such as freedom of expression and information, freedom of association and assembly, and freedom of movement - are equally necessary to ensure a functioning democracy in the periods between elections, this report also makes recommendations on how to avoid on future occasions the types of violations which occurred during this electoral process.

1.2 The Palestinian Context

1.2.1 The Israeli-Palestinian Agreements

The intention to hold Palestinian elections was first expressed in the Declaration of Principles on Interim Self-Government Arrangements for Palestinians, signed between Israel and the PLO on 13 September 1993 (DOP). The DOP provides for limited Palestinian self-government in the OPT, excluding East Jerusalem, accompanied by redeployment of Israeli military forces, during a "transitional period".

Article III(1) of the DOP states in relation to elections:

In order that the Palestinian people in the West Bank and Gaza Strip may govern themselves according to democratic principles, direct, free and general political elections will be held for the Council under agreed supervision and international observation, while the Palestinian police will ensure public order.

According to article I of the DOP, the transitional period will extend for a term not exceeding five years from the date of Israel's "withdrawal" from the Gaza Strip and the Jericho area, until the implementation of a permanent settlement of the Israeli-Palestinian conflict, based on UN Security Council Resolutions 242 and 338.

The first phase of this process towards self-rule came in May 1994 when the unelected PNA was given limited control in the Gaza Strip and in the Jericho area in the West Bank. Civil powers in the fields of education and culture, health, social welfare, direct taxation, and tourism were later transferred by Israel to the PNA in the rest of the West Bank. Negotiations towards the next phase in the interim period, particularly redeployment and the holding of Palestinian elections, were at a stalemate and seemed to be in crisis in the first half of 1995. However, on 28 September 1995, after many months of bargaining, Israel and the PLO finally signed the Interim Agreement on the West Bank and the Gaza Strip (the Agreement) which provided for redeployment in the rest of the West Bank (excluding Jerusalem), the transfer of certain security powers to the PNA, and elections for the President and the Council.

It should be noted, however, that arrangements for these elections went ahead in spite of the fact that the Israeli Knesset (parliament) did not incorporate the Agreement until just before the elections. It was only on 16 January 1996 that the

Knesset passed the bill approving the elections, just four days before the elections, an additional source of uncertainty in which the election campaign was conducted.

The exceptional circumstances in which these Palestinian elections were held should be kept in mind. In contrast to elections in many transitional democracies -- countries moving away from a period of undemocratic government, occupation, or colonization -- elections in the OPT were for a body which will exercise limited autonomy and which does not enjoy sovereignty. Further, the elections were held in territory which remains under occupation by Israel. Moreover, a significant number of Palestinians inside and outside the OPT do not agree with the manner in which negotiations between Israel and the PLO are being conducted, with the agreements concluded thus far, and/or with the holding of elections at this point in time.

As a result of these factors, many of the elements which would normally be seen as necessary for the holding of free and fair elections do not exist or exist only partially in the OPT. For example, the legal framework is complex and unclear, and the Palestinian judiciary has been weakened by nearly 29 years of occupation. The Palestinian electronic media, which was only established in 1994, is underdeveloped. The printed media, which has suffered from years of military censorship, is often self-censoring and deferential.

Most seriously, there exist widespread constraints in the OPT on civil and political rights, resulting both from by-now well established Israeli law and practice and from the evolving laws and practices of the PNA. Rights not fully enjoyed during this election included freedom of movement, freedom of association and assembly, and freedom of opinion and expression.

The region scheduled for hand-over to the Palestinians according to the Agreement is structured in a complex way. In the Gaza Strip, the PNA has control over towns and villages, and the Israeli authorities retain control over settlements and the so-called "Military Installations Area." The West Bank (excluding East Jerusalem) is divided into three areas, designated A, B, and C. Area A is essentially the six principal towns of the West Bank and part of Hebron; Area B consists of approximately 450 towns and villages; and Area C comprises uninhabited regions, areas which Israel regards as being of strategic importance to it, and Jewish settlements. East Jerusalem is excluded from the purview of the Agreement since it is one of the subjects of the final status negotiations. Israel illegally annexed East Jerusalem in 1967. More than 300,000 Israeli settlers still live in the OPT, in areas which remain for the time being under Israeli jurisdiction.

To put things in perspective, although Areas A and B encompass the regions where the majority of the Palestinian population of the West Bank lives, Area A comprises

just three percent of the land area and Area B another 27 percent, giving the PNA jurisdiction over less than a third of the of the West Bank.¹ Thirty-five to forty percent of the Gaza Strip remains completely outside the territorial jurisdiction of the council.² Furthermore, the Israeli government retains control in the entire area over certain crucial matters, such as use of land and water.

Security arrangements in the region are equally complex. Following the redeployment of Israeli security forces from Area A in the latter part of 1995, the PNA controls security in Area A. In Area B the PNA enjoys civil responsibilities and has authority to maintain public order, but overriding authority over security matters remains in Israel's hands. In Area C, Israel enjoys absolute and exclusive control over security matters. Control of Area C is effectively control over the whole region as it is possible to seal off towns or villages on the pretext of security and by so doing to disrupt the lives of ordinary Palestinians by severely restricting their freedom of movement: such disruption is a relatively frequent occurrence, with the Israelis implementing temporary closures of towns or villages on the pretext of security considerations.

In addition to these limitations, the types of identity document held by Palestinians determine the limits on their freedom of movement. Holders of Jerusalem identity cards are in the best position, as they can travel inside Israel and the West Bank without a permit. Persons holding West Bank or Gaza Strip identity cards are prohibited from entering Israel or Jerusalem unless they have permits, which are not easy to obtain. From time to time, Israel implements a total closure of Israel and Jerusalem from the rest of the West Bank and the Gaza Strip, thereby denying even Palestinians who have obtained permits the right to enter Israel and Jerusalem.

1.2.2 Limited Participation for Palestinians in the Elections

It should be noted that the majority of Palestinians were excluded from participating in these elections. In fact, it is estimated that more than four million Palestinians live outside the OPT, many of them in refugee camps in Lebanon, Syria, and Jordan. This compares with an estimated 2.2 million living inside the OPT.³ Palestinians resident outside the OPT were not permitted under the terms of the DOP to participate in these elections either as candidates or voters. Their only form of representation remains through the Palestine National Council (PNC) of the PLO,

¹ David Makovsky, "Inside Look at What Oslo 2 Says," *The Jerusalem Post*, 8 October 1995, p. 3.

² Jon Immanuel, "Israeli, PLO security officials meet in Gaza," *The Jerusalem Post*, 6 May 1994, p. 1.

³ This statistic was provided by the Palestinian Central Bureau of Statistics in a letter to AL-HAQ dated 5 May 1996.

and it remains to be seen how power and influence will be balanced between the PLO and the newly-elected Council.

1.2.3 The Legal Framework and Human Rights

The legal framework which applies in the West Bank and the Gaza Strip is based on the system which existed prior to Israeli occupation. The legal systems of the West Bank and the Gaza Strip differ substantially from each other, although both still reflect to a certain extent their Ottoman and British origins. The West Bank legal system is based on Jordanian law which combines common law and civil law elements. The Gaza Strip's legal system is founded on the common law system introduced by the British Mandate authority. Both systems have been subjected to substantial amendment by Israeli military orders.⁴

The outdated nature of many of the applicable laws, a significant number of which were adopted before the development of human rights norms and instruments after 1945, has had negative implications for respect for human rights. Certain types of human rights violations have been based on these laws. One example is the order, issued by the Director-General of Police for the Gaza Strip in September 1994, prohibiting the holding of political meetings in the Gaza Strip without a permit. Therefore political parties could not meet to explore their views with regard to the elections without the PNA's prior approval. The order was based upon the British Mandate Police Ordinance of 1929.⁵ The Israeli authorities have reintroduced the British Defence (Emergency) Regulations of 1945 in order to carry out deportations and house demolitions and sealings.

The independence and status of the Palestinian judiciary have been undermined during the past 29 years of occupation by a number of actions of the Israeli military government.⁶ For example, the jurisdiction of the civilian courts has been undermined by the creation of Israeli military courts and tribunals; the Israeli military courts assumed concurrent jurisdiction over criminal matters, and Military Objections Committees were given exclusive jurisdiction over appeals on issues relating to land, company registrations and taxation. Judicial independence has been

⁴ ICJ and the Center for the Independence of Judges and Lawyers, *The Civilian Judicial System in the West Bank and Gaza: Present and Future* (Geneva: ICJ and the Center for the Independence of Judges and Lawyers, 1994) pp. 11-15.

⁵ See Mustafa Mar'i, *The Right to Freedom of Assembly: a Survey of the Position of the Palestinian Authority* (Ramallah: AL-HAQ, 1995) (Arabic).

⁶ See International Commission of Jurists, *Inquiry into the Israeli Military Court System in the Occupied West Bank and Gaza* (Geneva: International Commission of Jurists, 1989).

compromised by the mode of appointment established by the Israeli military government. Judges for the Palestinian civilian courts are appointed by a committee, the members of which are designated by the Military Commander. A majority, if not all, of the members of this committee are officers of the Israel Defense Forces (IDF).

In the past 29 years of occupation, the Israeli military government in the OPT has perpetrated widespread human rights violations, such as extra-judicial killings, systematic torture of Palestinian detainees, detention without trial, and deportation.⁷ Israel has persistently refused to recognize the *de jure* applicability of the Fourth Geneva Convention concerning Protection of Civilian Persons in Time of War, 1949, to the OPT. The pattern of Israeli human rights violations has continued following IDF redeployment in the OPT. Although the reduction of direct IDF control over a substantial amount of the Palestinian population has inevitably been reflected in a reduction in the scale of certain types of human rights violations, there has not been any fundamental change in the pattern or types of abuses perpetrated. Since the signing of the DOP in September 1993, Israel has increasingly targeted persons associated with groups opposed to the Israeli-Palestinian agreements for arrest and detention. At the time of the Palestinian elections, over 200 persons were under administrative detention, *i.e.* were being detained without trial. Nearly all of these persons were alleged by Israel to be associated with opposition groups. As discussed in Sub-sections 3.2.2.1 and 3.2.2.2, Israel detained large numbers of opposition activists in late 1995 and early 1996, during the IDF's redeployment in the West Bank.

The PNA has also failed to respect fundamental human rights since its assumption of power in May 1994. There have been reports of torture and ill-treatment against detainees in PNA-run prisons and detention centers. On 7 February 1995, the PNA established, by decree, a State Security Court comprising three senior military officers. The Court operates with scant regard for the right to fair trial, carrying out hearings without prior warning, often at night, and denying adequate legal assistance to defendants. Long sentences ranging up to life imprisonment have been handed down for such nebulous charges as "instigation against state security."

Members of groups opposed to the current peace process between Israel and the PLO have also been targeted by the Palestinian security forces. Under pressure from Israel to act against persons carrying out bomb attacks, PNA forces have on occasions conducted mass arrests of persons allegedly linked to the opposition, particularly Hamas and Islamic Jihad. Almost all persons arrested in these sweeps were eventually released without being charged. These arbitrary actions of the PNA against those critical of the peace process have resulted in a climate in which the

⁷ See AL-HAQ, *A Nation under Siege* (Ramallah: AL-HAQ, 1990).

rights to freedom of opinion and freedom of association are limited for those who disagree with the manner in which the peace process is proceeding.

1.2.4 The Palestinian Media

The fourth pillar of civil society, namely the media, is also woefully inadequate in the Palestinian-controlled areas. The Palestinian Broadcasting Corporation (PBC) has been established. Its radio station *Soot Falastiin* (Voice of Palestine) operates from Jericho and its television channel from Ramallah in the West Bank and in Gaza city. *Soot Falastiin* covers the whole region, but the television station does not, with the north of the West Bank outside the footprint of PBC television broadcasts; a number of local independent television stations capitalize on this lack of a state broadcaster in the area. There is a nominally free and pluralistic printed press, but it still operates with high levels of self-censorship inspired by prior censorship from the Israeli military government and fear of post-publication reprisals from the PNA.

The implications for the elections of this impoverished media environment included reduced opportunities for voter education, candidate access, and informed discussion through all media, especially through the most powerful medium - television. Even on the radio, election coverage was limited for technical and organizational reasons.⁸

In conclusion, it should be noted that while none of the contextual factors described above excuses any violations of human rights or the Election Law identified in this report, they do at least explain some of the technical problems and complications encountered during the electoral process. It is nevertheless hoped that, learning the lessons of these first Palestinian elections, the relevant authorities - both Palestinian and Israeli - will endeavor to ensure that these problems are avoided in forthcoming elections, particularly the upcoming municipal elections.

1.3 Methodology

The Election Monitoring Team comprised seven al-Haq staff members, one human rights consultant from ARTICLE 19 and two lawyers expert in elections from the INTERNATIONAL COMMISSION OF JURISTS. This team worked in close coordination with al-Haq's five fieldworkers, who between them cover the West Bank and Gaza Strip, and with other al-Haq staff members.

Three phases of the electoral process were examined:

⁸ See Sub-section 3.2.4.

1. the campaign - to assess whether all parties and candidates had a fair and reasonably equitable opportunity to convey their platforms to the people without intimidation by the authorities, other candidates, or voters, and whether groups and individuals opposed to the elections had a similar opportunity to put forward their point of view;
2. the vote - to identify any pattern of irregularities, intimidation, or fraud; and
3. the count - to identify any pattern of irregularities or fraud; with monitoring of complaints, recounts, or re-elections; through to announcement of final results.

When irregularities or violations were reported, field or in-house research staff followed up on the reports, ensuring that full documentation was available, if possible with eyewitness accounts and sworn affidavits from those involved.

Interim statements and letters of concern issued during the campaign in response to major violations called on the electoral authorities and the international and domestic monitors both to take necessary action and to take these violations into consideration in their assessment of the elections. Copies of these interventions are appended in appendices I and II.

On the day of polling itself, the full-election monitoring team comprised 26 people, including 20 field monitors. These election monitors visited a total of 238 polling stations in 11 constituencies in the Gaza Strip and West Bank, including East Jerusalem. Our monitors attempted to visit a sample of polling stations in villages, towns, and refugee camps in each constituency where they were active. Monitors also attended the count in a number of districts, and the team has continued to follow developments in the post-electoral phase.

This report is based on the observations and documentation of our election monitors. Further details about particular aspects of the election campaign and the concerns raised in this report are available from AL-HAQ in Ramallah, ARTICLE 19 in London, or the INTERNATIONAL COMMISSION OF JURISTS in Geneva.

AL-HAQ

ARTICLE 19

The INTERNATIONAL COMMISSION OF JURISTS

Ramallah, West Bank

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2. THE LEGAL FRAMEWORK FOR THE PALESTINIAN ELECTIONS

The following section discusses significant provisions of the Election Law and the Interim Agreement on West Bank and the Gaza Strip (hereinafter "the Agreement") which together constituted the legal framework for the Palestinian elections.⁹ This section seeks to assess the law and the Agreement using international human rights standards and to highlight some of the shortcomings which the law and the Agreement contain. It is our belief that some of these inadequacies had an impact on the election process and may possibly have led to some of the violations and complications that arose. This section will not discuss issues related to the authority and jurisdiction of the Palestinian Council or the President as defined by the Agreement. It also does not analyze violations of the law and Agreement that occurred during the election process. These matters are covered in other sections of this report.

2.1 The Legal Basis of the Elections

The elections for the Palestinian Council and President of the PNA were based on the DOP, the Agreement, its Protocol Concerning Elections (hereinafter "the Protocol"), and the Palestinian Election Law.¹⁰ The Agreement generally regulates the transfer of powers and responsibilities from the Israeli military government and its Civil Administration to the Palestinian Authority, and ultimately to the elected Council.¹¹ It considers that the elections will "constitute a significant interim preparatory step towards the realization of the legitimate rights of the Palestinian people and their just requirements and will provide a democratic basis for the establishment of Palestinian institutions."¹²

In general, it should be noted that the Agreement does not provide any list of fundamental rights deemed necessary to the holding of elections. The right to vote is

⁹ Palestinian Election Law No. 5 of 1995, issued in Gaza by the Palestinian National Authority on 7 December 1995. Interim Agreement on the West Bank and the Gaza Strip, signed in Washington, DC, on 28 September 1995. All references to the Election Law in this publication are to the original Arabic version. It should be noted that the official English translation of the Election Law published by the CEC contains a number of inaccuracies.

¹⁰ Article III concerning Elections and Annex I (Protocol on the Mode and Conditions of Elections) of the DOP.

¹¹ See also article 3(1) of the Election Law.

¹² Article II(1) of the Agreement.

granted in the Protocol's article II(1)(a) which states that the right to vote "will be universal, regardless of sex, race, religion, opinion, social origin, education, or property status."¹³ Additionally, neither Israel nor the PNA has explicitly committed itself to free and fair elections. Instead, according to the Agreement, they have committed themselves to "direct, free, general and political" elections.¹⁴ It is not clear what is meant by the standard. While we note the particular wording adopted in the Agreement, it is our position that the Palestinian elections need to be measured against the international standard of freeness and fairness.

Article XIX of the Agreement continues the language of earlier agreements and incorporates international human rights law. It states that "Israel and the Council shall exercise their powers and responsibilities pursuant to this Agreement with due regard to internationally-accepted norms and principles of human rights and the rule of law." As has been pointed out in a previous publication by al-Haq, this provision is vague and weak and does not sufficiently make clear the obligation of Israel, as well as the PNA, to respect and protect international human rights (which form part of international customary law and which are part of human rights treaties ratified by Israel).¹⁵ Nonetheless, on the basis of this, the Palestinian and Israeli authorities are under the obligation to ensure respect for "internationally-accepted norms and principles of human rights and the rule of law" during the election process.

¹³ However, there are some further important steps taken in the Election Law, which provides a legal framework for the Interim Period. In part, article 3 provides that:

(2) Once elected, the Palestinian Council shall assume as its first task the establishing of a constitutional system of government for the interim period.

(3) The constitutional regime shall be based on the principle of popular sovereignty, on democratic principles, the separation of powers, the independence of the judiciary, the equality among citizens and the respect of fundamental rights of citizens.

¹⁴ The commitment to a standard for the electoral process lower than free and fair is also evidenced in the South African domestic electoral legislation. The Independent Electoral Commission needs to certify whether or not the National Assembly -- and provincial legislature -- elections were "substantially free and fair." The Independent Electoral Commission Act, No. 150 of 1993, s. 18.

¹⁵ See Linda Bevis, *The Applicability of Human Rights Norms to Occupied Territories: The Case of the Occupied Palestinian Territories* (Ramallah: AL-HAQ, 1994).

2.2 The Applicable International Standards

The main standards on elections and political participation are embodied in article 25 of the International Covenant on Civil and Political Rights (hereinafter "the ICCPR"), the wording of which borrows heavily from the wording of article 21 of the Universal Declaration of Human Rights (hereinafter "the UDHR"). Article 25 of the ICCPR provides that:

Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in article 2 and without unreasonable restrictions:

- (a) To take part in the conduct of public affairs, directly or through free chosen representatives; [and]
- (b) To vote and to be elected at genuine periodic elections which shall be by universal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors.

Article 21 of the UDHR emphasizes that the will of the people shall be the basis of authority of government and that this shall be expressed in periodic and genuine elections.

In 1996 the UN Human Rights Committee, which is responsible for overseeing implementation of the ICCPR, adopted a General Comment which discusses Article 25.¹⁶ The General Comment emphasizes that states are required to take effective measures to ensure that all persons entitled to vote can actually exercise this right. Voter registration must therefore be facilitated and any interference with registration or voting must be prohibited by penal laws; such laws must be strictly enforced. Voter education and registration campaigns must also be initiated to ensure effective exercise of the right to vote. Positive measures must be taken to overcome specific barriers to voting, such as illiteracy, language difficulties, poverty, or impediments to freedom of movement.

The Human Rights Committee observes that

persons entitled to vote must be free to vote for any candidate for election ... without undue influence or coercion of any kind which may distort or inhibit the free expression of the elector's will.

¹⁶ Human Rights Committee, "General Comment 25 (57)". UN Doc. CCPR/C/21/Rev. 1/Add. 7 (1996).

Voters should be able to form opinions independently, free of violence or threat of violence, compulsion, inducement or manipulative interference of any kind.¹⁷

According to the committee, elections must be supervised by an independent electoral authority in order to ensure that the elections are conducted fairly, impartially and in accordance with the law. Measures should be taken to ensure the secrecy of the ballot, and consequently voters should be protected from any form of coercion intended to pressure them to disclose how they intend to vote. Assistance provided to the illiterate or persons with disabilities should be independent. The security of ballot boxes must be guaranteed and votes must be counted in the presence of candidates or their agents. There should be independent scrutiny of the voting and counting process, as well as access to judicial review, to ensure voter confidence in the security of the ballot and the counting of votes.

The General Comment also notes that the rights to freedom of expression, assembly and association are essential pre-conditions for the enjoyment of the rights contained in Article 25. The committee states:

In order to ensure the full enjoyment of rights protected by article 25, the free communication of information and ideas about public and political issues between citizens, candidates and elected representatives is essential. This implies a free press and other media able to comment on public issues without censorship or restraint and to inform public opinion. It requires the full enjoyment and respect for the rights guaranteed in articles 19, 21 and 22 of the Covenant, including freedom to engage in political activity individually or through political parties and other organizations, freedom to debate public affairs, to hold peaceful demonstrations and meetings, to criticize and oppose, to publish political material, to campaign for election and to advertise political ideas.¹⁸

In addition to the UDHR and the ICCPR, the UN General Assembly Resolution 46/137 on "Enhancing the effectiveness of the principle of genuine and periodic elections" declares that "determining the will of the people requires an electoral

¹⁷ *Ibid.*, para. 19

¹⁸ *Ibid.*, para. 26.

process that provides an equal opportunity for all citizens to become candidates and put forward their political views, individually and in co-operation with others, as provided in national laws and constitutions."¹⁹

The content of the right to political participation has also been based on the practice of the UN election-monitoring missions and other instances of UN practice.²⁰ First, UN election monitoring missions have uniformly regarded party pluralism as essential to the conduct of free and fair elections. Second, UN election observers have consistently required that access to the media not be restricted. The focus here has been on the substance of access rather than the formal equality. The direct applicability of this requirement is upon government media.²¹ While some of the force of this element undoubtedly derives from other human rights to free expression and association, the requirement of free access to the media is of particular importance in relation to an election campaign.²² Third, the consistent practice of UN observing missions has been to have the election supervised by an independent body. If there is no international body, then the national body must be impartial and independent of any party and the government of the day.²³

One might thus restate the international law standards for free and fair elections to include at a minimum that:

- 1- there must be universal and equal suffrage;
- 2- there must be voting by secret ballot;
- 3- elections must be held at reasonable, periodic intervals;
- 4- there must not be discrimination against voters or candidates;
- 5- citizens must have the opportunity to organize and join political parties, and such parties must be given equal access to the ballot;

¹⁹ General Assembly resolution 46/37 of 17 December 1991.

²⁰ See United Nations Centre for Human Rights, *Human Rights and Elections*, Professional Training Series No. 2, (Geneva: United Nations Centre for Human Rights, 1994). The practice of non-governmental organizations also contributes to the parameters of this right.

²¹ The term "government media" is used in this report to refer to media outlets that are owned, operated or controlled by the PNA, as well as outlets that are managed by government appointees or that are governed by boards, a majority of whose members are selected by the PNA. See AL-HAQ and ARTICLE 19, *Guidelines for Media Coverage of the Palestinian Elections* (Ramallah: AL-HAQ, 1996) p. 3.

²² Detailed guidelines for respecting freedom of expression and information during these elections have been published and distributed by ARTICLE 19 and AL-HAQ. *Ibid.*

²³ See United Nations Centre for Human Rights, *Human Rights and Elections*, *supra* note 20, pp. 14, 17.

- 6- the electoral process must ensure the possibility for voters to enjoy a real and informed choice;
- 7- to the extent that the government controls the media, all parties must have the opportunity to present their views through the media;
- 8- the election must be overseen by an independent council or commission not tied to the government or to any party, faction, or individual; and
- 9- elections must occur in an atmosphere where basic human rights, including freedom of expression, assembly, association, and movement, are guaranteed.²⁴

2.3 The Administration of the Elections

The Election Law and the Agreement contain a detailed system for administering the election process. The system comprises the Central Elections Commission (hereinafter "CEC"), the District Elections Commissions (hereinafter "DEC"), and the Polling Stations Commissions (hereinafter "PSC") (article 21 of the law). The responsibilities and duties of each are detailed in the law. Further, the law establishes an Election Appeals Court (hereinafter "EAC") with specific jurisdiction to adjudicate on claims and appeals related to decisions of the CEC or any other decisions subject to appeal before the court (articles 21-37 of the law). The following sections do not discuss the authority and powers of each of these bodies in detail. Rather, they highlight some of the shortcomings of the law in relation to these bodies.

2.4 The Central Elections Commission

2.4.1 The Legal Framework

Article I(3) of the Protocol specifies that the CEC will be appointed by the PNA and will be responsible for the administration of the elections. The CEC is to enjoy the powers and competence necessary to fulfill these functions, as defined by the Election Law. Article I(3) requires that the CEC and its subordinate bodies be independent.

²⁴ *Ibid.*, pp. 6-14.

According to article 24 of the Law, the CEC is responsible for preparing, organizing, conducting, and controlling the elections. It has the power, *inter alia*, to register partisan entities and their symbols and logos, to register candidates for the Council and the Presidency, to enact its own internal regulations, and to enact the regulations stipulated for the implementation of the Election Law.

An issue of concern is the limited authority of the CEC. It is doubtful that the CEC itself possessed the authority to ensure free and fair elections due to limitations contained primarily in the Agreement but also in the Election Law. The Agreement specifically limits the CEC's powers, for instance, in relation to overseeing election arrangements in Jerusalem, guaranteeing freedom of movement, and ensuring freedom of expression and equal access to the media.²⁵

Limitations on the authority of the CEC are also a feature of the Election Law. The law made the CEC more of a fiscal and administrative organ in relation to the elections, rather than an independent governmental commission.²⁶ Also, the law does not give the CEC the authority to call the election. This is given to the President of the PNA.

The Election Law does not make proper provisions for the dissolution of the CEC, merely stating that "once the election process is finished, the [CEC] shall be dissolved.." (article 23). The law, however, does not define the point which marks the end of the election process. The law is also vague as to who dissolves the CEC; is it the President of the PNA, who is responsible for appointing the members of the CEC, or does the CEC dissolve itself? The law also does not specify what should happen to the assets of the CEC following its dissolution.²⁷

Additionally, the law states that the members of the permanent CEC, which is to supervise future elections, are also to be appointed by the President of the PNA. A procedure in which the elected Council was responsible, possibly in cooperation with the President, for appointing future members of the CEC would be more democratic since it would promote pluralism.

2.4.2 The Working of the CEC in Practice

Delay in the implementation of the Election Law and non-adherence to its provisions

²⁵ Palestinian newspapers published in Jerusalem continue to be subjected to Israeli military censorship.

²⁶ Indeed, the independence of the CEC guaranteed by article 23(1) is restricted to being "independent in economic and administrative terms."

²⁷ To administer the elections, the CEC owned a number of computers and cars.

resulted in a further undermining of the authority and the independence of the CEC. The members of the CEC were appointed on 21 December 1995, by Presidential Decree No. 3. This was a considerable period of time after the election process, particularly registration of voters, had begun and observers, both international and domestic, had called for its appointment. Prior to its formation, the elections were administered by the Palestinian Commission for Local Government and Elections appointed by a presidential decree in December 1993.²⁸ Neither the law nor the decree, however, contains provisions on the capacity of the CEC to dissolve any of the decisions taken by the Commission of Local Governance or to amend such decisions.

Moreover, the manner in which the members of the CEC were appointed was arguably not the consultative process envisioned under article 22(3) of the Election Law.²⁹ It should be noted that in conformity with the law, the President of the PNA appointed the members of the CEC, although he himself was a candidate. The manner and timing of the appointments thus left the CEC open to charges that it was not independent. If specific requirements (such as a minimum number of years of experience, as is required by the law in the case of the appointment of judges of the EAC) had been mandated for persons to be appointed to the CEC and if each of the three groups involved (academics, judges, and lawyers) had held a meeting earlier to nominate candidates, the independence of the CEC would have been greatly strengthened.³⁰

One of the most significant powers of the CEC was usurped by the President, in contravention of the Election Law. Although the law empowers the CEC to issue regulations implementing the Election Law, most election regulations were issued by presidential decree.³¹

²⁸ CEC Press Office, *The Central Election Commission*, 3 January 1996. See also article 104 of the Election Law.

²⁹ That paragraph provides that "The members of the Central Election Commission shall be appointed by the President of the Palestinian National Authority in the Decree calling the elections, following consultation with the Palestinian National Authority and with the different political parties and Palestinian political groups."

³⁰ See Rizi Shuqair, "General Observations concerning the Law for the Election of the President of the Palestinian National Authority and Members of the Council and on Elections in Light of the Taba Agreement," *al-Quds*, 15 and 16 November 1995 (Arabic).

³¹ For instance, of the eight legal developments since the adoption of the Election Law on 7 December 1995 deemed major by the European Union, six were effected by presidential decrees, one by presidential promulgation of an amendment to the Election Law, and only one by a regulation issued by the CEC. (Memorandum of ICJ meeting with European Union observer Hannu Taimisto, 18 January 1996.) However, under article 107(1) of the law, the CEC (and by implication not the

This experience with the CEC underlines the importance of ensuring the separation of powers in the future Palestinian Basic Law. In this respect, the provision in article VI(2) of the Agreement that the Council may form small committees "to assist in controlling the activity of its Executive Authority" is a welcome start.³²

2.5 The Election Appeals Court

Article 31 of the Election Law mandates the formation of a five-judge EAC. It is composed of two judges from the Gaza Strip and three from the West Bank. The EAC can sit in three-judge panels or in full session if its President decides that the case is of special importance. As with the CEC, there was a serious delay in setting up the EAC, its members only being appointed by presidential decree on 23 December 1995.

The law is rather ambiguous concerning the jurisdiction of the EAC. According to article 35, the court is to "adjudicate on claims and appeals related to decisions taken by the [CEC], or any other decision subject to appeal before the Court, according to the provisions of this Law." However, despite this wide jurisdiction, article 25 of the law specifies which decisions of the CEC can be subject to appeal before the EAC. These are decisions relating to: (1) the admission or rejection of nomination of candidates; (2) to call or not to call a re-election in any polling district; (3) the admission or rejection of the registration of any partisan entity; and (4) the registration of symbols or logos for parties or groups. Therefore, it is unclear whether all kinds of decisions taken by the CEC are subject to appeal before the court, as article 31 suggests.

In fact, there are certain decisions taken by the CEC that are specifically not subject to appeal to the court. For example, the registration of voters is conducted by the PSCs and can be appealed to the CEC (article 17). However, the decision of the CEC is regarded as "final and not subject to further appeal" (article 18). Additionally, no challenge regarding the allocation of Council seats to the constituencies can be brought before the court.

Finally, there is no provision in the existing legal arrangements for any kind of

President) has the authority to issue regulations under the Election Law. See also article 4 of the law which specifies the role of the President.

³² See also article 3(3) of the Election Law.

constitutional judicial review.³³ While there is judicial oversight of the administration of the electoral law, Palestinian courts do not currently have jurisdiction to review administrative action on the basis that it contravenes recognized human rights standards.

2.6 The Electoral System

The Agreement does not require that a particular type of electoral system be adopted by the Election Law, although it envisions the division of the territory into various constituencies.³⁴ The Election Law opts for a majority (first past the post) system rather than a proportional representation system.³⁵ The system of constituencies and simple majority is a form of democratic election and does not contradict international norms. However, proportional representation could be preferable, in the context of the West Bank and the Gaza Strip, in terms of maximizing citizens' degree of participation in general political decision-making. In a letter to President Arafat on 1 December 1995, the ICJ stated that extensive experience of the organization in observing elections demonstrated that "a proportional system is widely acknowledged as more appropriate for democracies, especially new ones, ... [and] is utilized in many countries."³⁶ A proportional representation system would have promoted a multi-party system and political partisanship in Palestinian society, as opposed to reliance on tribal and traditional allegiances.³⁷

2.7 The Counting of Votes

The law describes in detail the procedure for counting of votes in polling stations (articles 77-80) and provides that the ballot boxes and protocols containing the results shall be transferred from the polling stations to the DEC's. However, the law

³³ It is not clear whether constitutional judicial review is envisioned in article 3(3) of the Election Law, which states that "the constitutional regime shall be based on the principle of popular sovereignty, on democratic principles, the separation of powers, the independence of the judiciary, the equality among citizens and the respect of the fundamental rights of citizens."

³⁴ See for example article II(1)(c) and II(2) of the Protocol.

³⁵ Explanatory notice of the Election Law.

³⁶ See Appendix II for the full text of the letter.

³⁷ See Sub-section 6.2.2 for further discussion.

does not make provision for storing ballot boxes and protocols securely in the PSCs or transporting these items securely from the PSCs to the DEC, and onwards, at a later stage, to the CEC. Nor does the Election Law specify how and where the ballot boxes should be stored after the votes are counted in the PSCs. Article 85 only requires that the president of the DEC shall hand over the protocols to the CEC in person. No other details are provided.

2.8 Voting Arrangements for Special Categories of Electors

2.8.1 Voters in Jerusalem

The Agreement makes important distinctions between Palestinians based on where they live. Firstly, different arrangements apply for voting and nomination in relation to Palestinian residents in Jerusalem, on the one hand, and Palestinian residents in the rest of the West Bank and the Gaza Strip, on the other. The conduct of elections within the Israeli-defined municipal boundaries of Jerusalem is governed by article VI of the Protocol, while elsewhere in the OPT, the conduct of elections is governed by other provisions of the Protocol. The Election Law also contains special provisions relating to elections in Jerusalem.

Article VI of the Protocol provides that a subcommittee of the Joint Civil Affairs Coordination and Cooperation Committee, composed of representatives of Israel and of the Palestinian CEC, will coordinate issues regarding election campaigning in Jerusalem.³⁸ Thus, the CEC does not have direct authority over certain election issues in Jerusalem. Article VI(1) provides that candidates shall apply through the CEC for the necessary permits for campaigning from the Israeli members of the subcommittee.³⁹ Under article VI(1) the CEC also has the power to disqualify a candidate for failure to comply with the Election Law or the Agreement. This sanction is only expressly mentioned in the Agreement in relation to Jerusalem. Article VI further states that the elections in Jerusalem shall be subject to the observation of international monitors. It is silent on the issue of observation by domestic monitors.

These limitations on campaigning and other activities in Jerusalem are acknowledged in article 102(3) of the Election Law which states that the election shall take place in Jerusalem in accordance with the provisions of the Agreement.

³⁸ This subcommittee is established by article II(2)(f) of the Protocol.

³⁹ Note also article 3(4) which provides: "Within the limits of its jurisdiction, the Palestinian Council shall exercise its legislative power over all the territory as a sole geographical unit."

This provision treats Jerusalem as an area outside Palestinian jurisdiction. This affects the question of sovereignty over Jerusalem, which is considered occupied territory under international law. In what appears to be an attempt to indicate that this provision should have minimal negative effect, article 102(4) states:

Notwithstanding the provisions of paragraph 3 above, elections in Jerusalem shall be subjected to the same provisions as those established by this Law for the elections in any other constituency.

The article imposes a condition, as required by article III(1)(b) of the Agreement, that any candidate for the Council or the Presidency from the constituency of Jerusalem shall have a valid address in an area under the jurisdiction of the Palestinian National Authority or the jurisdiction of the Council to be elected, *i.e.* in certain areas of the rest of the West Bank or the Gaza Strip. The significance of this provision is that Palestinians living inside Jerusalem are not entitled to nominate themselves for the Council or Presidency, even if they are registered voters, unless they have a valid address outside Jerusalem, a clear violation of article 25 ICCPR, which guarantees the right to stand for elected office without discrimination. Additionally, registered electors who do not hold a Jerusalem identity card cannot be nominated as candidates for the constituency of Jerusalem, since they are not entitled to reside in Jerusalem, although they can nominate themselves in every other constituency in the West Bank and the Gaza Strip if they have a valid address in that constituency.

Article VI(2) of the Protocol provides that a number of Palestinians of Jerusalem will vote in five post offices and makes detailed arrangements for the voting procedures in such offices. Ballot papers from the post offices are to be counted outside Jerusalem by "the relevant DEC." It should be noted that the Israeli High Court of Justice rejected a petition from representatives of right-wing groups which alleged that the election arrangements for Jerusalem were impermissible because they impinged on Israel's sovereignty. The court noted that Palestinians required Israeli permission to set up polling stations at the post offices.⁴⁰ The court thus interpreted the Agreement as confirming ultimate Israeli legal authority in East Jerusalem over the Palestinian elections.

⁴⁰ Evelyn Gordon, "Court Rejects Petitions on PA Ballot in Jerusalem," *The Jerusalem Post*, 15 January 1996, p. 2.

2.8.2 Palestinians in the Diaspora

In a second example of the distinctions made by the Agreement between Palestinians based on where they live, the Agreement states that only Palestinians who have residency status in the West Bank, Jerusalem and the Gaza Strip; hold identity cards; or are eligible to obtain such a card according to certain specified criteria are eligible to participate in the elections.⁴¹ Therefore, the Agreement excludes Palestinians living abroad from the right to participate in this political process. This essentially means that Palestinian refugees, who constitute a majority of the entire Palestinian population, are excluded from the electoral process. Further, the law does not contain procedures for Palestinians abroad who hold residency status to vote by absentee ballot. In fact, the law requires that “[e]very elector shall exercise his or her right to vote in person, freely, directly, secretly, and individually.” (article 6(2)) Therefore, Palestinians who are abroad for work, study, or other reasons are not able to vote unless they return to the country for election day.

2.8.3 Disqualification and Detainees

Article 8 of the Election Law denies the right to vote to any person who has been deprived of this right by a judicial sentence, has been declared incapable by judicial ruling, or has been imprisoned by sentence of a Palestinian court for a common crime.

In relation to persons imprisoned for common crimes, it is arguable that a person should not be deprived of his political rights to participate in elections simply because he has been deprived of his liberty for committing a crime.

Further, neither the law nor the Agreement includes any provisions related to the right to vote and to stand as a candidate for Palestinians who were in Israeli detention during the elections or who were being held in pre-trial detention by the PNA. It should be noted that at the time of the elections, there were about 2,250 Palestinians detained in Israeli prisons.⁴² Of these, about 217 were serving out administrative detention orders, held without charge or trial.

Although article 8 of the Election Law states that persons who have lost their legal capacity through a court order are not entitled to vote, the application of this provision to persons who are voluntarily or involuntarily treated in psychiatric hospitals and institutions is unclear. Clear guidance would have been highly desirable given popular assumptions of a facile and naive nature that persons

⁴¹ Article 2 of the Protocol.

⁴² Source: the Mandela Institute for Political Prisoners.

suffering from all types of mental illness lack the requisite facilities to participate in the political process.

2.9 Freedom of Expression, Campaigning, and Political Activity

The law is ambiguous regarding the steps for registration of partisan entities for the elections and the nomination of their candidates. It is not clear from the law whether the Ministry of the Interior or the CEC has the power to register partisan entities, or whether registration is a two-stage procedure involving both the ministry and the CEC. Article 48 of the law states that "[a]ny partisan entity seeking to participate in the elections must register as such before the Minister of Interior." No criteria are set down for this procedure. Registered entities may then submit their nomination to the CEC. Articles 49-50 detail the procedure for registration of partisan entities with the CEC, the information which must be supplied, and the criteria on which registration by the CEC can be rejected.

It is also not clear from the above if the registration of the parties with the Minister of Interior is only for the purpose of the elections or of a permanent nature. If it is the latter, the legal basis for requiring registration with the Minister of the Interior is not clear.⁴³ Further, the procedure for appealing a rejection of registration by the Minister is not specified. The law only provides for appeal of CEC decisions to the EAC.

Campaigning is protected by article IV(1) of the Protocol which allows "all activities carried out by nominated candidates or by political parties, coalitions, or groupings of electors who have nominated candidates that are directly addressed to obtain the electorate's vote". This definition of electoral political activity is a relatively restricted definition of campaign activities. In particular, the campaign definition of the Election Law does not include within the scope of campaigning the activities of those who would oppose the elections.⁴⁴

⁴³ It should be noted here that a draft Political Parties Law was issued by the Palestinian authorities in 1995. However, there were many substantive comments on the draft law by the political parties and NGOs. The law has not been adopted and remains in its draft form.

⁴⁴ By comparison, the South African electoral law protected as part of the electoral process "any registered party and any party, organization or movement of a political nature which publicly supports or opposes the policies, candidates or cause of any registered party, or which propagates non-participation in the election." Electoral Act, No. 202 of 1993, s. 1 (xxxix).

Article IV(2)(d) requires that each side (Israeli and Palestinian) take measures to prevent public disorder and to protect the electoral process from any hostile propaganda. The wording of this provision is vague and, especially when seen in conjunction with the requirement in article IV (2)(e) that a permit is necessary for the holding of a rally, meeting, or march, invites abuse and discriminatory application. In addition, the special arrangements for campaigning in Jerusalem described above limit freedom of expression and campaigning in this crucial constituency to a greater extent than in the rest of the OPT.

Finally, article 94 of the Election Law states that no party or candidate "shall receive funds for the electoral campaign from any foreign source." Such a blanket restriction seems unnecessary. It would be preferable if the law contained clearer provisions prohibiting the receiving of funds from foreign sources if they were obtained in an illegal manner or used for illegal purposes. Further, article 93(1) states that the PNA, in coordination with the CEC, "shall provide the funds necessary to finance all operations of the electoral process and the work of the different electoral commissions and their administrative organs." Article 93(4) requires every partisan entity and every elected candidate to submit to the CEC within 20 days from the announcement of the final results a detailed report about its funding sources and its expenditure during the campaign. However, there is no provision that requires that information concerning the records of expenditure of the PNA and parties and candidates should be available to the public. It is also not satisfactory that only elected candidates are required to present reports on their sources of funding and expenditure, and not all the candidates in the elections.

2.10 Recommendations

To the Legislative Council:

- 1- Enact a legal provision stating that there shall be "free and fair elections", as required by international standards.*
- 2- Amend the law to place a general responsibility on the CEC for ensuring free and fair elections.*
- 3- Introduce stronger legal guarantees to ensure the CEC's independent status.*
- 4- Make specific provision in the law for the dissolution of the CEC. In particular the law should clearly define the point marking the end of the election process, designate the body empowered to dissolve the CEC, and make arrangements for the distribution of CEC assets following dissolution.*
- 5- Amend the law to give the CEC the authority to call the elections.*

- 6- *Amend the law to allow participation by members of the Legislative Council in the selection of the members of the CEC.*
- 7- *Amend the law to provide for a right of appeal to the EAC concerning CEC decisions related to voter registration.*
- 8- *Consider adopting a proportional representation system for future elections in order to maximize political pluralism.*
- 9- *Amend the law to introduce clear and detailed provisions requiring the secure storage and transport of ballot boxes and protocols after the closure of the polls from the PSCs to the DEC and later to the CEC.*
- 10- *Make provision in the law for registered electors who are unable to vote in person to vote by absentee ballot, including persons who are in detention and awaiting trial.*
- 11- *Review the provisions of the law concerning disqualification of persons convicted of a criminal offense and persons suffering from mental illness from voting.*
- 12- *Clarify the legal position concerning the registration of partisan entities. The law should designate whether the Ministry of Interior or the CEC has the power to register partisan entities and should establish clear criteria and procedures for registration. There should be adequate possibilities in the law to allow different groupings of people, including trade unionists and environmental activists, to register as partisan entities and run for the elections.*
- 13- *Enact complementary legislation to guarantee freedom of expression whether orally, through the media, or otherwise, as well as freedom to seek and impart information.*
- 14- *Introduce explicit guarantees in the law to ensure the rights of persons opposing elections to express their opinions freely and to campaign.*
- 15- *Amend the law to make all records of election expenditure by the PNA, the CEC, and all parties and candidates available to the public. This requirement should apply to all candidates, whether they are elected or not.*
- 16- *Amend the provision of the law imposing a blanket prohibition on candidates or parties receiving funds for campaigning from any foreign source. The law should only prohibit the use of such funds if they are obtained by illegal means.*
- 17- *Introduce a provision into the law guaranteeing access to all polling stations for the elderly and persons with disabilities.*

To the PNA:

- 1- Present any future draft election law well in advance for consultation and public comment before its adoption by the Legislative Council. The law should be adopted in sufficient time before the elections to allow for proper preparation for the elections.*
- 2- Select members of the CEC prior to the commencement of the electoral process.*
- 3- Select members of the EAC prior to the commencement of the electoral process.*
- 4- Refrain from usurping the authorities vested by law in the CEC.*

To future Palestinian election commissions:

- 1- Disseminate the Election Law more widely to the general public so that the elections run more smoothly and the general public is enabled to act as a watchdog as to whether the elections are free and fair.*
- 2- Provide more comprehensive training on the provisions of the Election Law and CEC guidelines for all electoral officials to ensure that these officials have a through understanding of this material.*

3. PRE-ELECTION PERIOD⁴⁵

The election campaign period is at least as important as the day of the ballot itself if elections are to be free and fair. During the campaign period, candidates can present their platforms to the electorate, and potential voters have the opportunity to inform themselves of the policies and personalities of the candidates and the platforms of partisan entities. Any interference in this communication process impacts upon the ability of voters to make free and informed choices.

As well as direct interference with election propaganda, or bias or discrimination government media, it is important that there are no laws or practices in place which have a chilling effect on the free expression of ideas and opinions. It is for this reason that AL-HAQ, ARTICLE 19 and the ICJ have recommended that all laws restrictive of freedom of expression be abolished prior to an election campaign, or at least be lifted for the duration of the campaign.⁴⁶

In a first election it is also important that there is sufficient voter education during the pre-campaign and campaign periods to provide voters with the practical information necessary to enable them to vote, such as information on how to register and how to vote.

In the Palestinian elections, another factor entered into play: the right of those opposed to the elections themselves to call for a boycott. This was particularly important given that certain political groupings, such as Hamas, the PFLP, the DFLP, and certain other political organizations had decided not to participate in the elections, even though in certain cases candidates linked to these groups did stand as candidates. The right to participate in elections is one of the most fundamental means by which citizens can express their opinions within a society. However, this right must necessarily include the right to oppose the holding of elections, or the time, or manner in which they are being held. This is particularly true in a first election in a transitional situation, where, as was the case in the OPT, a significant proportion of the population disagreed with the holding of the elections or with the conditions under which they were being held. These citizens must continue to be free to express their opinions, even if those opinions are critical of the current peace process, or of the holding of elections and even if the majority of the population is supportive of the elections.

⁴⁵ AL-HAQ, ARTICLE 19, and the ICJ did not comprehensively document the pre-election period. Therefore, we rely on other reliable sources of information. Incidents included in this section were documented by AL-HAQ, ARTICLE 19, and the ICJ unless otherwise indicated.

⁴⁶ See AL-HAQ and ARTICLE 19, *Guidelines*, *supra* note 21.

In addition to ensuring full enjoyment of the right to freedom of expression during the campaign period, the authorities have an obligation to ensure that there is no intimidation of candidates or of the electorate, which might impact upon the way in which people vote and thereby affect the final outcome of the elections. The PNA and the Israeli authorities were therefore under an obligation to ensure that no such pressures on voters came from any quarter.

3.1 Neutrality of the PNA

In particular, the PNA was under an obligation to ensure that it did not act in a way which favored one candidate above another. The neutrality of the PNA during the election campaign is guaranteed in Article 54(2) of the Election Law which states:

The PNA and all of its administrative or security bodies shall remain neutral throughout the different phases of the electoral process and shall refrain from conducting any kind of activity which may benefit any candidate against others, or any partisan entity against others.

AL-HAQ, ARTICLE 19, and the ICJ found that in a number of instances, the PNA and its administrative and security bodies breached this provision and took action which clearly favored one or more candidates. Other NGOs monitoring the election reported similar examples which, taken together, indicate a wide range of bias and direct interference on the part of the PNA. These breaches constitute one of the most serious violations of the election process and may, individually or collectively, have influenced the outcome of the ballot in certain districts. Without a doubt, they created a climate in which it was more difficult for elections which were completely free and fair to take place. Examples of this lack of neutrality on the part of the PNA can be found in Sub-section 3.2.1 which documents the actions of the PNA to put pressure on independent or opposition candidates, and in Sub-section 3.2.4 which documents bias in the government media.

3.2 Monitoring Freedom of Expression

Taking the above aspects of the election campaign into consideration, ARTICLE 19, AL-HAQ, and the ICJ monitored respect for freedom of expression for candidates,

for opponents of the elections, for human rights and election monitors, for the media, as well as the electorate's rights to freedom of opinion, expression, and information. Other relevant rights such as freedom of movement and freedom from arbitrary detention were also monitored.

In the following sections, we assess the level of respect for these rights and detail examples of violations as documented by our monitoring team and other sources.

3.2.1 Freedom of Expression for Candidates

3.2.1.1 Insufficient Time for Preparation and Campaigning

One of the most serious restrictions on campaign activity was caused by the short period for preparation between the announcement of the date of the elections and election day, and the even shorter election campaign period.

It had been known since mid-November that the likely date for the elections was 20 January 1996, and indeed voter registration commenced in November, but the Election Law was not adopted until 7 December 1995. At that point no election date had been fixed. It was not until 13 December 1995 that President Yasser Arafat issued a decree calling for elections, fixing the polling day for 20 January 1996 and inviting nominations. This left very little time for candidates and parties to organize, register, and prepare their campaigns.

The campaign period, according to Article 55 of the Election Law, should start no less than 22 days before polling day and last for 21 days, ending 24 hours before polling day. Campaigning should therefore have commenced on 29 December 1995. On that date President Arafat issued a directive postponing the start of campaigning until 5 January 1996 and allowing for only 14 days of campaigning, in contravention of the Election Law.

This postponement was strongly criticized in a European Union statement entitled "Enough is Enough" issued on 1 January 1996. The statement described the election campaign as having been "arbitrarily shortened without any explanation". On 2 January, the CEC announced that the start of campaigning was being brought forward to 2 January 1996, allowing for a total campaign period of just under 17 rather than 21 days. The changes caused confusion as to the exact official start of campaigning; the announcement was made by the CEC in a press release issued on 2 January, which was first reported on *Soot Falastiin* (Voice of Palestine) radio

during the 6:00 p.m. news broadcast.⁴⁷ The announcement was carried in the press the following day.⁴⁸

Perhaps in part due to this curtailed campaign period, the prohibition on campaigning outside the period was widely flouted. For example, campaign posters appeared on the walls of many towns, and candidates' advertisements appeared in newspapers both before 2 January and, more seriously, on 19 January, the day preceding polling day. Furthermore, the restriction on campaigning gave the incumbent authority - and particularly the incumbent President - a considerable advantage in the government broadcast media which had even less incentive to strive for balanced coverage before official campaigning had begun.

In response to protests about the early start of campaigning, the CEC issued a statement, reported in *al-Quds* on 3 January, deeming electoral campaigning to have commenced on 31 December 1995. The CEC thereby freed itself of responsibility from taking action against those who breached the Election Law by starting to campaign early.

3.2.1.2 Police Order Restricting Freedom of Assembly and Expression

Article 54 of the Election Law provides that "the electoral campaign consists of any legal activity carried out by candidates or registered partisan entities, in order to present their programs to the electorate."

On 4 January 1996, the PNA's Director-General of Police, Brigadier-General Ghazi al-Jabali, issued a declaration banning marches during or after public election rallies and prohibiting the distribution of publications advocating a position in favor or in opposition to the holding of elections, again, during, or after such rallies.

Whilst this declaration by the Director-General of Police certainly included in its aims public order considerations - it restricted the carrying or firing of weapons during the rallies - its effect was to go far beyond the measures necessary to control public order, and it placed unjustifiable restrictions on freedom of expression and freedom of assembly. The prohibition ordered by the Director-General of Police on the distribution of such publications and printed materials certainly goes beyond Article 58(3) and (4) of the Election Law which only outlaws the distribution of materials which are highly offensive or which incite violence. The arrests linked to

⁴⁷ Reporters Sans Frontières, "A Reduced Campaign on Palestinian Public Radio and TV," 5 January 1996.

⁴⁸ See, for example, "CEC Statement Announces Start of Election Campaigning," *al-Quds*, 3 January 1996 (Arabic).

this order of persons handing out material calling for boycotts of the election were a clear violation of the right to freedom of expression as provided by the Election Law and the international standards which the PNA is pledged to uphold. The total ban imposed by the order on marches during and after rallies was also over-broad and a violation of the right to freedom of assembly.

3.2.1.3 Detention of a West Bank Candidate by the Israeli Authorities

On 5 January 1996, the Israeli police in Hebron city arrested and detained Aref al-Rajabi, an independent candidate in the Council elections, in what amounted to a clear violation of his right to freedom of expression and an unlawful restriction on campaigning activity. The previous day Mr. al-Rajabi had been distributing campaign leaflets and Palestinian flags at the entrance to his home, which is located in the heart of Hebron city, near a Jewish settlement. Israeli settlers passed by and a confrontation occurred between Mr. al-Rajabi and the settlers, who objected to his distribution of leaflets and flags. The following day Israeli police officers came to Mr. al-Rajabi's home and asked him to sign a document stating that he would undertake not to display flags on his house or in the street. Mr. al-Rajabi declined to sign the statement. The police officers then arrested and handcuffed him, informing him that he was being arrested for displaying a Palestinian flag outside his home. He was taken to the military government center in Hebron and detained there. He continued to refuse to sign the statement. After a few hours he was released.⁴⁹

3.2.1.4 Disruption of Campaigning Activities in Jerusalem

As discussed in Sub-section 2.8.1, the provisions of the Agreement and the Election Law concerning campaigning in Jerusalem are ambiguous but evidently place more restrictions on campaigning in Jerusalem than elsewhere. The Israeli authorities interpreted these provisions in the most restrictive manner possible, the practical impact of these provisions thereby being that there was considerable restriction on campaigning activity in Jerusalem. The Israeli authorities limited the locations for the display of campaign posters to those sites specified by its Jerusalem municipality. The municipality provided candidates with a total of just 34 billboards across Jerusalem and ordered that the posting of campaign material be limited to these sites.⁵⁰ The Israeli police were more assiduous than the PNA in ensuring that these regulations were not breached and are reported to have torn down election

⁴⁹ "Abbas defends Commission," *Palestine Report*, 12 January 1996, p. 6.

⁵⁰ *The Jerusalem Times*, 12 January 1996.

posters which were displayed in non-designated areas.⁵¹ Other actions by the Israeli police to restrict campaigning included the prohibition of meetings and restrictions on freedom of movement and even arrest of candidates and members of their campaign teams.

On 11 and 12 January 1996, between 10:00 p.m. and 12:30 a.m., the Israeli police arrested two Palestinian residents of Jerusalem, Rashid al-Mahalwis and Iyad al-Mahalwis, for posting pictures of a candidate in Beit Hanina in Jerusalem. The two were held in Neve Yacov settlement police station in Jerusalem until morning, when their attorney was able to secure their release on a 3,000 NIS (\$1000) bond for each.⁵²

On 14 January 1996, the campaigning of a number of candidates for the Jerusalem constituency was disrupted by the Israeli authorities. In particular, as a result of two incidents, one candidate and three campaign workers were arrested on the grounds that they had no right to display election campaign posters on their vehicles. All those arrested were released on bail after spending several hours in detention and being charged with traffic-related offenses.⁵³

In the first incident, Israeli police forces and border guards at the al-Ram checkpoint (north of Jerusalem) prevented Dr. Hanan Ashrawi (candidate for the Jerusalem constituency) from entering Jerusalem and ordered her to remove posters from her car. After a long argument, her driver, 'Amer Radwan, was arrested by the police. The police also physically abused and then arrested one of the campaign team members. In addition, the police tore the posters from Dr. Ashrawi's car. The detainees were taken to the Neve Yacov settlement police station where they were held for approximately six hours before being released on bail after being charged with offenses relating to disrupting the traffic.

In another incident, which also occurred on 14 January, Mr. Suleiman Qirresh, the brother of another Jerusalem candidate, tried to enter Jerusalem from the east and was stopped at the military checkpoint near al-'Eizariyya village. When told to remove posters from his car, he refused to do so. In the meantime the candidate himself, Mr. Samir Qirresh, arrived at the checkpoint. After both brothers continued to refuse to remove the posters, they were arrested and taken to the police station in

⁵¹ "Jerusalem, Voters and Candidates Warned Off," *Palestine Report*, 12 January 1996, p. 2.

⁵² Palestinian Domestic Monitoring Committee, *Observations Concerning Jerusalem*, 12 January 1996.

⁵³ See open letter, dated 16 January 1996, sent to Israel's Minister of Justice and Chief of Police by AL-HAQ, ARTICLE 19, and the ICJ, condemning Israeli interference in the election process in East Jerusalem. Reprinted in Appendix III.

al-Mascobiya (Russian Compound). They were detained at the station for approximately five hours and then released on bail.

Jerusalem candidate Mr. Anis al-Qaq reported to one of our international NGO monitors a number of problems which he had experienced with the Israeli police in connection with election campaigning activities. In one incident, about two weeks before the election, Israeli police came to Mr. al-Qaq's office in East Jerusalem and requested that he take down an election campaign poster hanging outside. He refused to do so, arguing that the poster was located on private property. The police confiscated the office manager's identity card and left to get reinforcements. Mr. al-Qaq locked the office and refused to open it when the police returned. The Israeli police called the fire brigade who removed the poster on the outside of the building.

Mr. al-Qaq also reported problems with campaign meetings, even when these meetings were held in private locations for invitees only and were not public campaign rallies. A meeting of families in a private building near Bab al-Hadid and a meeting of colleagues and friends at the Palestine National Theater were disrupted by members of the Israeli security services who insisted that permission was needed to hold the meetings.

Furthermore, Mr. al-Qaq reported that people with whom he had met as part of his campaign activities, such as owners of cafés and shops received requests from the Israeli police for meetings the next day. In some of these cases his lawyer intervened.

3.2.1.5 Harassment of Candidates and their Teams

A significant number of independent candidates were linked to Fateh, which was also participating as a partisan entity in the elections.⁵⁴ In a number of cases, these independent candidates had put themselves forward for the district Fateh candidates' lists, and certain candidates had actually been selected for these lists by "primaries" held by the local Fateh branches. However, the final decision on which candidates were selected was taken by the Fateh Central Committee. In some cases persons who had been successful in the "primaries" were not selected as official Fateh candidates, and they decided to put themselves forward as independent candidates.

While it is not the place of this report to comment upon the way in which Fateh selects its candidates, it should be noted that, in a number of cases, candidates who were linked to Fateh but had chosen to stand as independents were the targets of harassment and intimidation. This harassment seems to have come in some instances from members of the PNA's security forces and must be regarded as a serious abuse

⁵⁴ Fateh is a member group of the PLO.

of power with the aim of securing election success for the official candidates of one of the factions of the previous ruling authority.

In one case, Dr. Saleh 'Ali Mara'ba of Qalqilya, a Fateh supporter standing as an independent in the Qalqilya constituency, was subjected to systematic harassment in an attempt to pressure him to withdraw his candidacy. Dr. Mara'ba received verbal and telephone threats against his physical integrity and that of his family and received verbal messages calling for his withdrawal. It appears from our documentation that those responsible for this intimidation were members of the Palestinian *mukhabarat* (intelligence service).⁵⁵

In addition, it was reported that Mr. Azam al-Ahmad, a Fateh candidate in the Jenin constituency, speaking on a *Soot Falastiin* radio broadcast, threatened independent candidates with "dire consequences" in an effort to pressure them to withdraw their candidacies.⁵⁶

In the Salfit constituency, a People's Party activist was also subjected to harassment by PNA officials. Mr. Thamin Yousef Badah, campaign coordinator for Khamis al-Hamad, a People's Party candidate, was arrested by the Palestinian security services on 7 January and detained until 11 January. At about 2:00 p.m. on 7 January, Mr. Badah was in the People's Party office in Salfit, when four men in civilian clothes entered. One, known as Abu-Jihad, showed a card of the security services with the PNA symbol and told Mr. Badah that he was wanted for five minutes at the security services' office in Salfit; the officers did not present him with any arrest warrant. Mr. Badah was initially taken to the Salfit office and then transferred to the governorate building in Nablus. Although Mr. Badah was generally treated well during his detention, on the day of his arrest, before he had been interrogated, a member of the security forces behaved in a threatening manner towards him. The officer, who was alone in a room with Mr. Badah, began to "make movements like a boxer makes, moving his neck and showing his muscles". Following this Mr. Badah was hooded and handcuffed whilst he was transferred to another room.

Mr. Badah was interrogated on four occasions, and in two sessions he was questioned about his involvement in the People's Party. He was asked about his activities during the election campaign on behalf of the party, where he had traveled during the campaign, and where he had slept on these trips. He was also interrogated about his uncle's activities in the People's Party.

⁵⁵ See statement, dated 18 January 1996, by AL-HAQ, ARTICLE 19, and ICJ expressing concern about the harassment of Dr. Saleh 'Ali Mara'ba. Reprinted in Appendix III.

⁵⁶ Peace Watch, *Statement #1 of the Peace Watch Elections Observer Team*, 4 January 1996.

3.2.2. Freedom of Expression for Persons Opposed to the Elections

Six political groups expressed their opposition to the elections and/or announced that they would boycott the process. These were the Hamas, the PFLP, the DFLP, Islamic Jihad, the Islamic Liberation Party, and the Arab Socialist Ba'ath Party.⁵⁷ As has been noted in the Introduction, prior to the elections, harassment of members of these groups by Israel and the PNA had resulted in a climate in which the rights to freedom of opinion and freedom of association can be regarded as limited for those opposed to the peace process.

3.2.2.1 Detention of Members of the Opposition by the PNA

During the election campaign, these groups continued to be targeted by the PNA security services. Some of the most serious violations of the right to freedom of expression during the election process were directed against members of these groups. The cases documented by AL-HAQ, ARTICLE 19, and the ICJ indicate that there was a deliberate policy to suppress the expression of opposition to the elections. The result of actions by the PNA against members of groups opposed to the elections was to circumscribe their right to freedom of expression in a discriminatory manner and to create a climate hostile to the expression of dissenting opinions. This was compounded by exclusion of these voices from the government media.⁵⁸

Certainly the declaration by Ghazi al-Jabali, the PNA Director-General of Police, on 4 January 1996 banning the distribution of leaflets in favor or in opposition to elections during and after public election rallies, was aimed, at least in part, at the opposition, and the only arrests linked to this policy were of members of the opposition.

On 4 January 1996, three members of the DFLP were arrested by the Palestinian Force 17 security unit in Bethlehem while distributing materials expressing opposition to the elections. The security officers ripped up posters being carried by the DFLP activists and confiscated other materials and publications in their possession. The three were detained for a few hours and then released following the intervention of their lawyer.

On 6 January 1996, four members of the PFLP Haytham 'Abd al-Hamid M'alla, Bassam Rizeq 'Weida, Fozan Rizeq 'Weida, and Jihad Khalil Hamayel, all residents

⁵⁷ These groups are generally opposed to the current peace process between Israel and the PLO and are generally described by Palestinians as "the Opposition".

⁵⁸ See Sub-section 3.2.4.

of Beita village, Nablus district, were arrested in Nablus for distributing leaflets calling for a boycott of the election. All four were detained until 13 January 1996 and were released only after the intervention of some candidates and notables in Nablus city.

On 10 January 1996, five members of the DFLP, Mahmoud Abu-'Isa, Ma'moun al-Sheikh 'Ali, Jihad al-Dalaq, Mahmoud Abu-Salem, and Muhammad 'Amara, were detained by the police when returning to Tulkarem from villages in the area where they had been delivering leaflets. They were detained at the Palestinian security police headquarters in Tulkarem. Police officers made their release conditional upon signing statements that they would not continue to deliver leaflets. They refused to sign the statements and were then taken to the prison.

Other DFLP activists protested about the detentions to the General Military Commander of Tulkarem district, Major-General 'Awad Allah, informing the media and international election observers as well. They also contacted the Governor of Tulkarem, Iz-al-Din al-Sharif, who stated that the detainees should sign the statement before being released. However, after substantial pressure from domestic and international bodies, the five were released on 11 January 1996 at 5:00 p.m. without having signed the statement.

The taxi driver who had been with them, who was not a DFLP activist, was released after he signed a statement undertaking not to transport activists in future.

Mr. Ahmad Sa'dat, a PFLP activist, was taken from his home in al-Bireh, Ramallah district, by members of Palestinian Security at 10:00 p.m. on the evening of Wednesday 17 January 1996. According to Mr. Sa'dat's wife, the men asked him to accompany them, and he went willingly. At 10:30 p.m. Mr. Sa'dat telephoned his wife to tell her that he was being held in detention by the PNA.

Ms. Sa'dat went to the prison and was told by Lieutenant Younes that her husband was being held in order to prevent him disrupting the election process. According to the affidavit given to AL-HAQ by Mrs. Sa'dat, Lieutenant Younes told her that he had orders to arrest people opposed to the election as a preventive measure and to hold them until after the election. Mr. Younes was only released on the evening of election day.

Sultan al-Sa'di, aged 17 years, was detained in Jenin on 14 January 1996 while distributing leaflets and was held for two hours.

AL-HAQ and ARTICLE 19 heard allegations, for example during an interview with the Governor of Tulkarem on 17 January 1996, that one particular leaflet handed out by the opposition was inciteful. This leaflet and a similar poster signed by the DFLP and the PFLP, and bearing the slogans "Don't Bury the Cause in election ballots" and "Boycott the farcical elections" were widely distributed and were the

motive behind some of the detentions. We are of the opinion that this leaflet, which includes phrases such as "No to elections while Jerusalem is under occupation", "No to elections while land is pillaged by settlement", and "No to elections under the Oslo restrictions", does not constitute incitement under international standards. We note that, to the best of our knowledge, no charges of incitement or any other misdemeanor have actually been brought against those detained for handing out the leaflet, which adds to the suspicion that these arrests were arbitrary actions taken by the PNA against those who peacefully expressed their opposition to the circumstances under which the elections were being held.

3.2.2.2 Detention of Members of the Opposition by the Israeli Authorities

In the period prior to and during Israeli redeployment from towns in the West Bank, the Israeli authorities carried out mass arrests, placing under administrative detention a large number of persons, mainly individuals allegedly associated with groups critical of the peace process, including intellectuals, professionals, and social leaders. Some of these persons were moved to Israeli interrogation centers, but most were placed under administrative detention without trial. This apparently selective detention of Palestinian political activists who were calling for a boycott of the elections, constituted a serious interference by the Israeli authorities with the electoral process.⁵⁹

3.2.3 Freedom of Expression of Human Rights and Election Observers

Freedom of expression, information and movement for those monitoring the elections are recognized as essential elements of a fair election through their inclusion in the Agreement. The Agreement and the Election Law contain extensive and detailed provisions concerning arrangements for both international and domestic election observers.

3.2.3.1 Restrictions on Domestic Election Monitors and Delays in Accreditation

One early concern was the limit placed by the CEC on numbers of domestic election

⁵⁹ When one human rights group, the Society of St. Yves, brought a *habeas corpus* petition to the Israeli High Court for the release of all Palestinian political detainees on several grounds, *inter alia*, that Israel had selectively detained persons opposed to the elections, the court dismissed the petition, fining the lawyers 5,000 NIS (\$1,600) for bringing the suit on the ground that the issue was political, not legal.

monitors who could register from any one group. For example, in the first instance, the CEC informed AL-HAQ that it could only issue accreditation for five monitors, although after further representations, the CEC accredited additional AL-HAQ monitors; the Gaza city-based Palestinian Centre for Human Rights applied to the CEC for accreditation for 75 domestic monitors, but only received 25 accreditations.

Such limits on the numbers of domestic monitors were discriminatory and churlish, given that no international NGO monitors were placed under similar restrictions. It should be noted that Article 103 of the Election Law imposes a duty on the CEC to "accredit and issue accreditation documents to *any* observer, both international and domestic, who so requests" [emphasis added].

Of increasing concern through the campaign period, was the failure of the CEC to issue even those accreditations which had been applied for early in the electoral process. After repeated inquiries as to when the cards would be ready, AL-HAQ was informed during the final days before polling that in some cases the photographs and paperwork had been misplaced and fresh applications should be submitted. In the event, all AL-HAQ's monitors, along with two from the ICJ and one from ARTICLE 19, received their cards on 18 and 19 of January, just before polling day.

Other Palestinian NGOs reported similar problems with limitations on numbers of observers and delays in receiving accreditation.

3.2.3.2 CEC's Negative Attitude to Comments by Monitors

An additional sign of the intolerance of the PNA and its representatives of criticism is the CEC's response to two letters from the Palestinian Centre for Human Rights (PCHR), raising concerns about various procedural and human rights matters related to the elections. The letters were phrased in very standard, polite human rights language.⁶⁰ They were returned to the PCHR with the following letter, dated 4 January 1996, from the Chair of the CEC:

Dear Mr. Sourani

In regard to your letters dated 2 January 1996 we would like to inform you that such letters cannot be accepted because they are impolite.

⁶⁰ See Appendix IV for the text of these two letters.

It is not acceptable to use words such as "draw your attention to" since this suggests that we are deserving of punitive measures. In addition it is not acceptable for you to be issuing an order such as "requesting you to act immediately".

We are sorry that we have to return the letters back to their source, but they contradict acceptable standards of speech.

Yours sincerely

Mahmoud. Abass [*sic*]

Head of the Central Elections Commission⁶¹

AL-HAQ, ARTICLE 19, and the ICJ note that they did receive a response to one of their letters to the CEC.⁶² The substance of the questions raised was dealt with and there was no attempt to undermine the inquiry through criticism of the language used. Despite difficulties relating to accreditation, the CEC cooperated with AL-HAQ, ARTICLE 19, AND THE ICJ in other areas. However, that a body charged with monitoring the fair conduct of the elections should write even one letter such as that above to a reputable human rights organization is to the discredit of the CEC rather than the NGO concerned.

3.2.3.3 Restrictions by Israeli Authorities on Free Movement of Election Observers

Under the Agreement, Palestinian domestic election observers are guaranteed similar rights as are guaranteed to international observers. However, restrictions were placed by the Israeli authorities on the freedom of movement of domestic monitors. In Annex II, Appendix 2(B)(6) of the Agreement Israel undertook "to allow

⁶¹ Translation by the Palestinian Center for Human Rights. In February 1996, however, Mahmoud Abbas, President of the CEC, sent a letter to the Palestinian Centre for Human Rights thanking them enormously for the major role which they played in observing the elections.

⁶² Letter from the CEC to AL-HAQ, ARTICLE 19, and the ICJ dated 18 January 1996, in response to a letter sent to the CEC by AL-HAQ, ARTICLE 19 and the ICJ on 16 January 1996.

accredited domestic observers from the list provided by the CEC to travel through Israel in the course of their duties.” According to the Palestinian Domestic Monitoring Committee, the CEC provided a list of accredited domestic observers to the Israeli authorities. The Israeli and Palestinian authorities had previously agreed that observers on the list would be able to enter Jerusalem and travel between the West Bank and the Gaza Strip, using their domestic election observer cards, unless Israel objected to any particular observer for security reasons. Despite this, the Israeli authorities did not allow domestic observers to travel to Jerusalem or between the West Bank and the Gaza Strip.

Furthermore, even those domestic observers who obtained permits from the Israeli authorities had problems. The Palestinian Domestic Monitoring Committee reported that its Chairperson, Mr. Naseef Muallem, and several colleagues, were prevented from entering Jerusalem on 7 January 1996, despite their possession of valid entry permits and domestic monitor identity cards issued by the CEC.⁶³

These restrictions on freedom of movement undoubtedly had a negative impact on the ability of domestic observers to monitor the electoral process adequately. However, as will be seen in Section 4 below, the most serious violations of the rights of domestic monitors by the Israeli authorities occurred on polling day itself.

3.2.4 Media Coverage of the Election Campaign

It is difficult to estimate the exact impact of the media on the elections, but it is widely felt not to have been as great as it normally is in elections in transitional or established democracies. This results from a number of factors, including low circulation of printed media, and relatively low audiences for the PBC (which is still developing its television station), balanced against the strength of other factors, such as allegiances to local personalities and families, and the information and opinions gained in personal discussions and public meetings, and from other campaign propaganda such as leaflets and posters.

It is for this reason that this report does not focus in great detail on the media aspects of the campaign.⁶⁴

⁶³ Palestinian Domestic Monitoring Committee Press Release of 12 January 1996.

⁶⁴ Full details of the legal and practical environment in which the media in Palestine operate will be found in a forthcoming report from ARTICLE 19.

3.2.4.1 The Print Media

The print media has a relatively low readership with circulation of daily newspapers estimated not to exceed 50,000, although the readership is likely to be higher. The quality of political and other news coverage in the Palestinian press is widely criticized for the low levels of professionalism and high levels of self-censorship. It should be remembered that during this interim period the press, which has not recovered from nearly 30 years of Israeli prior censorship, now operates in an environment in which Palestinian journalists find themselves subject to attempts by two authorities, rather than one, to control the flow of information and to suppress critical opinions.

In the days before the campaign began, *al-Quds* editor Maher al-Alami was detained for five days in late December 1995, apparently as a result of his decision to move a story about President Arafat receiving a medal from the Greek Patriarch from the front page to an inside page. After a meeting with President Arafat, he was released without charge. This certainly indicates the type of risks run by journalists and editors, although it is widely stated by journalists that they have far less leeway concerning President Arafat than other leading PNA figures who can be criticized. However, not many other examples of direct interference or violations of the right to freedom of expression for the printed press occurred during the campaign; the self-censorship system works very effectively.

As for the coverage of the campaign by the newspapers, independent monitors reported a bias towards President Arafat and the Fateh party and a tendency to exclude those calling for election boycotts, although within a relatively high diversity of coverage.⁶⁵

Much campaign coverage took the form of paid-for advertisements promoting individual candidates, including advertisements on the front pages of newspapers in the slots traditionally reserved for death announcements. The proportion of editorial coverage of the campaign increased in the final days from about 20 percent to nearly 50 percent.⁶⁶

3.2.4.2 The Electronic Media

The PBC is still finding its feet and attracting viewers from a range of other media, including the Arabic language programs of Israeli television and radio, Jordanian

⁶⁵ Reporters Sans Frontières, *Fair access to Palestinian public broadcasting only respected in the final week of the official campaign*, 20 January 1996.

⁶⁶ *Ibid.*

broadcasting, the satellite broadcaster Middle East Broadcast Center, and unlicensed local television stations. PBC television, which broadcasts out of Ramallah, with some broadcasting out of Gaza, does not yet cover the whole OPT. For example, the Nablus transmitter only went into operation on polling day itself, 20 January, to bring coverage up to 80 per cent of the region.

Accurate audience statistics are hard to obtain, but one estimate of the number of listeners to *Soot Falastiin* radio before the elections put the figures at about 50 percent of the inhabitants of the OPT; it is widely believed that the number of listeners increased significantly during the election campaign.

When considering indirect news coverage, the greatest bias exhibited by the broadcast media came in coverage of candidates for the presidency. The previous PNA President, Mr. Yasser Arafat, had a considerable advantage as the incumbent, particularly as many newsworthy events occurred during the run-up to the election - such as his trip to Paris where members of the international community pledged large sums of money for Palestinian development and where he happened to be the first world leader to offer condolences on the death of former French president François Mitterand.

News coverage of candidates and parties exhibited a distinct bias towards Fateh candidates and supporters. This imbalance was also observed in the Arabic language broadcasts of Israeli TV and radio. However, as the media monitors, Reporters Sans Frontières, documented, there was increased balance in coverage by PBC of both presidential and legislative candidates towards the latter part of the campaign. Furthermore, it should be noted that the PBC disputes some of Reporters Sans Frontières' figures and notes that it ran live phone-ins and provided a wide range of opportunities for non-Fateh candidates, and the wider opposition to express their platforms on air. The PBC argues that the imbalances observed correspond to the spread of views of the Palestinian people, as reflected in the election results, rather than being the result of deliberate manipulation.

There were a number of problems initiating direct access slots for candidates, which resulted in some confusion in the general awareness of what slots were available. It became widely known that two to three minute radio spots were available to candidates. These began to be broadcasted on Friday 12 January, although over the remaining seven days of campaigning, only about 150 candidates availed themselves of this opportunity. Candidates were not given the opportunity to run direct access spots on television due to financial and technical difficulties faced by the PBC television station.⁶⁷

⁶⁷ "Abbas defends Commission," *supra* note 48.

In addition to PBC, there exist numerous local television stations which broadcast across the West Bank, particularly in northern areas outside the footprint of the PBC television signal. It is believed that there are upwards of 15 such stations operating, with the larger stations attracting audiences of 100,000 people. Private radio stations do not yet exist in the same way.

We identified such television stations in the towns of Jenin, Tulkarem, Nablus and Hebron, with others broadcasting from inside Israel from towns such as Jat, Taibay, Tira, and Beqa. In Ramallah during the election campaign, there was re-broadcasting of the transmissions of Middle East Broadcast Center in addition to occasional advertisements in favor of People's Party candidates.

Privately-owned media do not have the same obligations to provide balanced coverage of the elections, and there was no detailed monitoring of their broadcasts. Many of the local television stations sold advertising space, sample prices are 20 NIS (about 7 \$US) per minute to 150 NIS (50 \$US) per minute for the night of 18 January, the final night of campaigning. Some of these stations were used to promote particular candidates, while others strove to provide balanced coverage of the issues with special election information programs and phone-ins.⁶⁸

These privately-owned television stations are not licensed - there is as yet no law which permits them to operate nor are they forbidden from operating - and therefore face an uncertain future as PBC extends its coverage and the legislative framework is developed. However, in the meantime, interference in the activities of these stations is a violation of the right to freedom of opinion and expression, particularly where this interference is directed only at ensuring that the stations do not broadcast opinions critical of the ruling authority. We have received reports of interference by PNA officials in the coverage of these stations. For example, in Qalqilya at a campaign meeting, the head of the *mukhabarat* (intelligence services) for Qalqilya, instructed the local television station not to broadcast the remarks of one candidate, Dr. Saleh 'Ali Mara'ba, and this section was indeed cut from the report on the meeting broadcast by the station that evening.

In Tulkarm, the local television station *al-Sha'ab* on a number of occasions during the election campaign received telephone calls from anonymous persons claiming to be from the "offices of the state" instructing them not to broadcast certain material. The station managers believed that these calls had come from the local authorities rather than the PNA itself. In one instance, during the broadcast of a rally which had accompanied the burial of Yehiya Ayyash, the caller ordered transmission to be

⁶⁸ ARTICLE 19 and AL-HAQ participated in an hour-long phone-in on the elections and human rights on TV al-Sha'ab in Tulkarem.

stopped immediately, and the television station complied. On three subsequent occasions, however, the station refused to comply and eventually requested to the anonymous callers that in future these demands be made in writing.

On one occasion, following al-Sha'ab's transmission of an interview with a representative of the DFLP, a caller, apparently from the Governor of Tulkarem's office, ordered that the DFLP's views should not be aired in future. This concern was raised with the Governor, by ARTICLE 19 and AL-HAQ on 17 January 1996, and he stated emphatically that all groups had the right to broadcast their views in future without repercussions against either the individuals or the media. However, further calls to al-Sha'ab followed in the early hours of Friday 19 January, objecting to coverage including non-Fateh candidates and the broadcasting of campaign advertisements after midnight (because of electricity cuts earlier in the evening). However, al-Sha'ab was not in contravention of the Election Law or a written notice from the local authorities, both of which allowed campaigning to continue until 7:00 a.m. on 19 January (*i.e.*: exactly 24 hours before the polling stations opened).

3.2.5 Freedom of Expression and Freedom of Information for Voters

3.2.5.1 Attempted Discrimination against Those Who Did not Register in the Elections

A number of Palestinians in the OPT chose not to register for the elections. In many cases, those who did not register did so because they wished to boycott the elections. Since no legislation made registration compulsory and no regulations or statements from the PNA indicated that there would be any negative consequences for failing to register, the decision to register was a matter of personal choice.

However, on 2 January 1996 an official announcement appeared in Palestinian newspapers stating that citizens wishing to acquire a Palestinian passport must produce a voter registration card. After widespread objections by domestic human rights organizations and international observers, including AL-HAQ and ARTICLE 19, PNA Deputy Interior Minister al-Tamimi announced that this requirement had been withdrawn.

3.2.5.2 Threats against Residents of East Jerusalem

Posters plastered over the walls of East Jerusalem during the night of 14-15 January 1996, some covering over candidates' campaign posters, warned Palestinian residents of the city that they would lose their rights as holders of Jerusalem identity cards if they voted in the upcoming elections. Purporting to be signed by the Israeli Likud party and written in Hebrew and Arabic, the posters, headed "Caution" read:

*Warning and Caution to the Honorable Resident: This Saturday, 20 January, 1996, elections for the National Authority will be held in Jerusalem. Any resident of Jerusalem who votes in the Authority elections might lose his Israeli ID card. We beg you to think and think again before voting. You have to decide between voting for the Authority and keeping your Israeli ID card.*⁶⁹

3.3 Recommendations

To the Legislative Council:

- 1- Enact statutory guidelines, consistent with international standards, addressing fair access to, and balanced reporting by, the government media during election campaigns, taking into account the Guidelines for Media Coverage of the Palestinian Elections published by AL-HAQ and ARTICLE 19.*

To the PNA:

- 1- Maintain neutrality during the electoral campaign vis-a-vis candidates and political parties, as required by Article 54(2) of the Election Law and sanction any PNA official who violates this provision.*
- 2- Adhere to the election timetable set down in the Election Law, e.g. in regard to opening and closing of candidates' nominations and fixing of polling day.*
- 3- Guarantee the right of freedom of expression to all, including persons expressing opposition to the elections, through whatever means, including the distribution of material or through the media.*
- 4- Protect all candidates from harassment, particularly pressure to withdraw their candidacies.*
- 5- Refrain from making registration or participation in the elections a precondition for the enjoyment of any other rights, including the right to obtain a Palestinian passport.*

To future Palestinian election commissions:

- 1- Respond constructively to the comments and interventions of international and domestic election observers.*

⁶⁹ "Jerusalem." *supra* note 50.

- 2- *Inform election monitors well in advance of the conditions under which they will be able to work and of any facilities allocated to them so as to allow local organizations to make adequate preparations, provide appropriate training for their staff, and obtain the necessary accreditation. Conditions of operation for election monitors should be consistent with international human rights standards.*
- 3- *Refrain from placing unreasonable limitations on the numbers of accredited local monitors.*
- 4- *Respect the principle of freedom of information. The CEC should publish and make materials to assist voters in participating fully in the elections available as widely as possible.*

To the government media:

- 1- *Inform the public about the political parties, candidates, campaign issues, voting processes, and other matters relevant to the election. The government media should prepare itself and train its employees in advance to fulfill this role.*
- 2- *Be scrupulous during the elections in complying with the obligation to provide accurate, balanced, and impartial information in the reporting of news and current affairs.*
- 3- *Grant candidates affordable air time for direct access spots on a fair and non-discriminatory basis and ensure candidates are informed in advance of the arrangements made.*

To political parties and candidates:

- 1- *Campaign only during the 22-day period provided by law.*
- 2- *Refrain from using non-designated areas for posting campaign material.*

4. ELECTION DAY

4.1 Continuation of Campaigning Activities

On polling day election campaigning continued in most areas, despite the fact that article 55 of the Election Law requires campaigning to cease 24 hours in advance of the opening of the polls *i.e.* by 7:00 a.m. on Friday 19 January 1996.

To a certain extent, campaign activities, such as the continued distribution of leaflets, posters, and pictures in towns and villages, reflected undisciplined over-enthusiasm for campaigning rather than any deliberate ill-intention to manipulate the outcome of the ballot. However, certain aspects of this continued campaigning do give cause for concern.

In certain instances, campaign activities were conducted in the immediate vicinity of polling stations and, in a number of cases, actually inside the stations; polling station officials made no attempts to prevent this unlawful activity. The failure of polling station officials to prevent campaigning from taking place was a serious dereliction of their duty to ensure the fairness of the vote.

Such campaigning was widespread in the Ramallah constituency where our monitors observed campaigning activities, such as the display of posters and the distribution of leaflets, being conducted in seven polling stations.⁷⁰ Similarly, in the Jerusalem constituency, our monitors saw constituency posters displayed in the yards of certain polling stations and leaflets being distributed. In the Hebron constituency, Fateh candidates were seen distributing hats to voters outside a polling station, and in Jenin our monitors witnessed Fateh supporters handing out leaflets inside the polling station.⁷¹ In a polling station in the Salfit constituency Fateh supporters campaigned outside the station without hindrance.

At two polling stations in the Bethlehem constituency, candidates' supporters were wearing badges, rather like large accreditation cards, with pictures of candidates on them, inside the stations.⁷² In the Hebron and Jerusalem constituencies, our monitors saw loudspeakers being used to call people to vote for Fateh candidates. Jenin municipality cars with loudspeakers were used throughout polling day by Fateh members to call on people to go to vote.

⁷⁰ Polling stations nos 3, 4, 5, 8, 14, and 45, and Bitouniya, Ramallah constituency.

⁷¹ Polling station no. 53, Jenin constituency.

⁷² Polling stations nos 25 and 26, Bethlehem constituency.

Certain Palestinian newspapers broke the prohibition on campaigning for 24 hours before the opening of the polls by carrying campaign advertisements in their election day issues.

4.2 Lack of Secrecy for Voters

Secrecy when casting the ballot is an essential component of all democratic elections, but is paramount in a first election in which voters are inexperienced and may be nervous about selecting candidates who are not those of the current, or likely future ruling authority. However, during the Palestinian elections, in many polling stations a combination of cramped conditions and poor layout resulted in minimal secrecy for voters. For example, at a polling station in Nablus, polling booths were exposed to each other so voters could see for whom other voters were voting.

One common concern raised by our monitors was that there was a lack of secrecy for voters from candidates' agents and election observers. Agents and observers were often positioned so close to polling booths that they effectively invaded the secrecy of the voters. Whilst observation of all stages of the election is important, provision should have been made to ensure absolute secrecy for voters while they were completing ballot papers.

In a number of locations, our monitors observed that the PSCs allowed the stations to become very crowded. Overcrowding impacted on the secrecy of the ballot as well as on the general state of order of the polling stations. In particular, overcrowding increased the possibility for voters to talk to each other while they were casting their votes, opening up possibilities for attempts to influence voters. For example, at one station in the Jerusalem constituency, the polling booths were very close together which caused problems when the room became crowded with voters.⁷³ At the instigation of our monitor, the president of the PSC limited the number of voters, but the problem repeated itself towards the end of the day.

Similarly some polling stations in the Hebron constituency were very crowded; in one station there were about 20 candidates' agents, in addition to election observers, voters, and the members of the PSC.

One polling station in the Ramallah constituency was extremely crowded and, as a result, polling station officials were not registering the persons who entered. This

⁷³ Polling station no. 44, Jerusalem constituency.

could have enabled persons to vote more than once.⁷⁴ At three stations in Khan Younes constituency, the rooms were very crowded allowing voters at the six polling booths, separated only by cardboard partitions, to speak to one another.⁷⁵ At a station in the Ramallah constituency, the situation was so chaotic that it was possible to observe for whom a person was voting.⁷⁶ In addition, there were times when two voters were simultaneously voting in the same booth.

4.3 Intimidating Presence of Palestinian Security Forces

In a first election, voters may be nervous about selecting candidates who are not those of the current or likely future ruling authority. For this reason the polling station must be free of members of the security forces and other representatives of the authorities who are acting in their official capacity, and who may, by their mere presence, pressure voters into making certain choices.

However, in a number of polling stations in several constituencies, our monitors found uniformed and plainclothes Palestinian security personnel - some of them armed - present inside polling stations during voting. It is important to note that even if these persons were in civilian clothing, members of the local community often knew that they were security or intelligence agents, and their presence was therefore as intimidating as that of uniformed personnel.

According to article 75 of the Election Law, the president of the PSC is responsible for keeping law and order in the precinct of the polling station. Security personnel may be called into the polling station at the behest of the PSC to assist with crowd control. The security forces should remain within the polling station for only as long as their presence is necessary in order to restore order. However, monitors found that in some instances the polling station officials seemed to have relinquished their responsibility for keeping law and order in the station to the security forces. For example, at a polling station in Khan Younes, a police officer was supervising the conduct of voters and stopping them from communicating with each other.⁷⁷ Armed members of the security forces were also present inside another polling station in the Khan Younes constituency.⁷⁸ Although they claimed that they were present in the

⁷⁴ Al-Jalazon school polling station, Ramallah constituency.

⁷⁵ Polling stations nos 3, 29, and 61, Khan Younes constituency.

⁷⁶ Polling station no. 45, Ramallah constituency.

⁷⁷ Polling station no. 80, Khan Younes constituency.

⁷⁸ Polling station no. 3, Khan Younes constituency.

station for the purpose of maintaining order, there were no public order problems in the station at the time, and their attendance did not appear to be necessary.

Elsewhere in the Khan Younes constituency, security officials, including plainclothes officers and uniformed security personnel, many with special "Election Security" badges, were observed moving freely in and out of polling stations.⁷⁹

In the Jenin, Qalqilya, and Ramallah constituencies, security officials were present inside the precincts of many polling stations. At one station in the Ramallah constituency, three security men were present; two of them were uniformed and remained outside the station, the third, in civilian clothes, moved in and out of the station making comments about the organization of voters without any objections from the polling station president.⁸⁰

At a polling station in the Ramallah constituency, our monitor observed a member of the *mukhabarat* (intelligence services) acting as a candidate's agent.⁸¹ While it is perfectly acceptable that members of the security forces act in their personal capacity as candidates' agents, they should make it quite clear that they are acting on this basis and are not on duty during the election. Otherwise their presence is likely to have an intimidating effect. In this case, when our monitor approached the agent and asked in what capacity he was present, the man initially said that he worked with intelligence, indicating that he was on duty. Our monitor asked why, in that case, he was present in the polling station. The man replied that he was also a candidate's agent and produced a letter from the CEC to that effect.

4.4 Attempts to Influence Voters

4.4.1 PNA and CEC Employees Attempting to Influence Voters

According to article 54 of the Election Law, the PNA and all of its administrative or security bodies must remain neutral throughout the different phases of the electoral process and refrain from conducting any kind of activity which may benefit any candidate or party. Any actions on polling day whereby representatives of the PNA within the polling station attempt directly to influence the choice of a voter must be regarded as very serious violations of this provision. Although instances of such direct pressure as documented and verified by our monitors were relatively rare,

⁷⁹ Polling stations nos 18, 29, 46, 47, 61, Khan Younes constituency.

⁸⁰ Polling station no. 45, Ramallah constituency.

⁸¹ Polling station no. 5, Ramallah constituency.

those which did occur still give serious cause for concern. These cases are detailed below.

Two candidates' agents at a polling station in the Qalqilya constituency told our monitor that they had heard members of the security forces telling voters waiting in line to vote for Fateh candidates.

At a polling station in the Khan Younes constituency, armed security personnel present inside the polling station were witnessed collecting identity cards from residents and using them to vote.⁸² At another station in the same constituency, a police officer was seen voting on behalf of a number of voters.⁸³

In the Jenin constituency, the presidents of two polling stations were overheard telling people to vote for Fateh candidates.⁸⁴

4.5 Assistance for Illiterate and Purportedly Illiterate Voters

One widespread problem during the elections was the use and abuse of the voting procedure for illiterate and purportedly illiterate voters. Although estimated rates of illiteracy amongst the Palestinian population vary, even the lowest estimates place the rate at 10% of the adult population. Rates of illiteracy are higher in rural areas and amongst women.

As noted above, article 74(3) of the Election Law which allows a person who is illiterate or unable to mark the ballot paper to be assisted by an elector whom s/he trusts with the PSC's permission, is ambiguous and easily open to abuse. Our monitors observed that many polling station officials did not know how to interpret this provision and did not implement it uniformly. In addition, voters did not have a clear understanding of what was expected of them. This led to exploitation of the provision, with polling station officials often making no attempt to prevent abuse of this procedure by verifying the need for assistance.

4.5.1 Incidents of Persons Assisting Large Numbers of Voters

Our monitors observed several incidents where one person assisted a number of voters on grounds of their illiteracy, although other persons present claimed that the

⁸² Polling station no. 18, Khan Younes constituency.

⁸³ Polling station no. 40, Khan Younes constituency.

⁸⁴ Polling stations nos 28 and 96, Jenin constituency.

individual being “assisted” were not illiterate. In some cases the number of people whom they helped was not enough to arouse suspicion. However, in other instances, the number of people who were being helped indicated a possibility that the procedure was being abused.

At a polling station in the Qalqilya constituency, a candidate’s daughter provided assistance to around 40 persons on the grounds that they were illiterate.⁸⁵ When this repeated assistance was noticed by the president of the PSC, she was prohibited from continuing to help voters, although it is reported that she then found someone else to replace her in providing assistance.

At another station in this constituency a candidate’s representative helped more than 60 persons on the grounds that they were illiterate.⁸⁶ When our monitor raised his concerns about this with the president of the PSC, the latter refused to intervene on the basis that it would be impossible to prove that a person claiming to be illiterate was in fact literate.

Domestic election monitors were observed helping voters without hindrance at a station in the Ramallah constituency.⁸⁷ Our monitor raised an objection, but no action was taken by the president of the PSC.

The president of one PSC in the Qalqilya constituency was seen asking voters repeatedly if they were illiterate and offering help.⁸⁸ In one instance, the president insisted that an old man was illiterate and needed assistance. The president entered the polling booth with him, even though the man had indicated that he did not require assistance.

4.5.2 Incidents of Men Directing Female Relatives on How to Vote

In a number of cases, male family members were witnessed directing female family members on how to vote; in particular husbands were seen helping wives to vote on the pretext that their wives were illiterate. Inquiries by our monitors to candidates’ agents revealed that quite a few of the women being assisted were, in fact, literate. In the Jenin constituency, men were observed standing beside their wives, mothers, and sisters and pointing at the names of the candidates whom they should select, and in many cases it appeared that the women were not illiterate but were being directed how to vote. In the Ramallah constituency, there were a number of polling stations

⁸⁵ Polling station no. 17, Qalqilya constituency.

⁸⁶ Polling station no. 26, Qalqilya constituency.

⁸⁷ Polling station no. 6, Ramallah constituency.

⁸⁸ Polling station no. 31, Qalqilya constituency.

where men were observed assisting their wives to vote with no verification by polling station officials that these women were illiterate.

4.5.3 Incidents of Candidates' Agents and PNA Employees Assisting Voters

In a number of polling stations, voters were assisted by candidates' agents or by employees of the PNA. Although it is arguable that the law permits anyone who is a registered voter and who is trusted by the illiterate person to assist, the involvement of candidates' agents or PNA employees was obviously undesirable.

At one polling station in the Hebron constituency, a Fateh agent who was helping illiterate voters was overheard telling them for whom they should vote. At a station in the Ramallah constituency, candidates' agents assisted voters.⁸⁹ In the Khan Younes constituency, Fateh activists were distributed in polling stations throughout the constituency, entering on the grounds that they had security accreditation cards and in some stations helping voters to vote.

At a polling station in Khan Younes constituency, a PNA security officer assisted voters, and the President of the PSC was prepared to allow individual candidates' agents to assist, although other agents protested against this, arguing that there must be two agents involved.⁹⁰ At a station in Qalqilya, a member of the security forces was witnessed voting for an illiterate man.⁹¹

4.6 Inadequate Voting Arrangements for Members of the Security Forces

There was tremendous confusion among members of the security forces as to the voting arrangements which applied to them. This confusion reflected the lack of clarity throughout the election campaign period about how and where security personnel would vote. It was not until 19 January, the day before polling day, that the CEC issued a statement announcing that members of the security forces would, like ordinary electors, vote in the constituency in which they were registered. This announcement was not communicated adequately to either PSC personnel or security personnel. Polling station officials appear to have received differing instructions concerning this issue, at least insofar as they gave varying responses to inquiries by

⁸⁹ Polling station no. 3, Hebron constituency and Abu-Rayya polling station, Ramallah constituency.

⁹⁰ Polling station no. 61, Khan Younes constituency.

⁹¹ Polling station no. 25, Qalqilya constituency.

our monitors about the arrangements. Even a CEC official was unclear as to the correct voting procedure.

In many cases, members of the security forces informed our observers that they were waiting for mobile polling stations. For example, in the Ramallah constituency, security personnel told one of our monitors that they had heard on the radio that a mobile station would be arriving and that they would vote there. Elsewhere in the same constituency, security personnel informed our monitors that they were expecting to vote at one station when changing shifts.

The Presidents of two PSCs in the Ramallah constituency informed our monitors that the security forces could vote in any polling station if they were in possession of a voting card and if their names had been added to the electoral register. In the Jerusalem constituency, most polling station officials questioned by our monitor understood that the security forces should have a special registration card entitling them to vote in the polling station to which they were assigned on election day. Some officials believed that security personnel could vote without any restrictions in the polling station where they were stationed.

A CEC official questioned by our monitor at the polling station at al-'Umma College in the Jerusalem constituency was unclear as to the procedure but said that each security member had to vote in the constituency in which he or she was registered.

As a result of the CEC's failure to provide adequate information to polling station officials and members of the security forces as to how and where the latter should vote, many members of the security forces were effectively disenfranchised.

At a polling station in Nablus, confusion amongst election officials as to how members of the security forces should vote resulted in some personnel voting and others not voting. One member of the security forces was arrested after he became angry and shouted at the president of the PSC who had prevented him from voting.⁹²

4.7 Inaccuracies in Electoral Registers

In a large number of stations, our monitors observed that there were inaccuracies in the electoral registers. The most widespread problem was the absence from the registers of names of some persons who had registered to vote and received voting cards. This difficulty was compounded by the fact that polling station officials were not adequately informed of the designated procedures in the event of queries - such

⁹² Askar refugee camp polling station, Nablus constituency.

as the option of calling the CEC hotline at the Palestinian Bureau of Statistics - in order to remedy this problem. The availability of a hotline had only been announced in the press on 19 January, the day before election day. Many persons were prevented from exercising their right to vote, arousing emotions ranging from disappointment to anger in voters who were eager to vote in what was, for many, the first opportunity in their lives to participate in an election.

For example, at a polling station in the Nablus constituency, where the PSC president refused to allow those not listed on the electoral register to vote, our monitor witnessed one person ripping up his voting card because he had been unable to vote.⁹³

Our monitors also observed this problem in two polling stations in the Bethlehem constituency, one station in the Hebron constituency, nine polling stations in the Ramallah and all stations visited in Jerusalem.⁹⁴

At 10:00 a.m. on the morning of election day, the CEC issued and distributed a directive to polling stations instructing officials to allow persons with voting cards, but whose names were missing from the electoral register, to vote.⁹⁵ At a station in Khan Younes, our monitor was shown an order to this effect from the CEC president Mahmoud Abbas (Abu-Mazen) hanging on the wall.⁹⁶ However, in many other polling stations potential voters faced refusals throughout the day.

An additional irregularity observed in a number of stations was the presence of additional names which polling stations officials had not registered on the electoral register, whilst many names of person who had registered were missing. At a polling station in Turmus'ayya in the Ramallah constituency, there were around 100 additional names on the register whilst dozens of names of persons who had registered were missing.⁹⁷ The PSC had returned a corrected election register to the CEC, but it had been sent back to the station uncorrected.

4.8 Discrimination against Female Voters

At one polling station in Khan Younes, our monitor noticed that not a single woman

⁹³ Polling stations nos 1 and 2, 'Askar camp polling station, Nablus constituency.

⁹⁴ Polling stations in Bethlehem, Hebron, Ramallah, and Jerusalem constituencies.

⁹⁵ This information was obtained by AL-HAQ from the CEC by telephone on 20 January.

⁹⁶ Polling station no. 59, Khan Younes constituency.

⁹⁷ Turmus'ayya polling station, Ramallah constituency.

voted for the first 40 minutes after the opening of the station.⁹⁸ She discovered that female voters were being delayed from entering the polling station, with priority being given to male voters. Our observer discovered that some women had become discouraged and had left the polling station without voting. When our monitor raised this issue with the president of the polling station, he refused to intervene and stated that it was the responsibility of the police who were controlling entry and exit to the police station. Our monitor complained to the police officer in charge at Haifa School, and he issued instructions that women should be admitted to the station in order to vote.

4.9 Technical and Procedural Problems and Violations

A wide range of technical and procedural problems occurred during the day. These violations disrupted the electoral process in some stations and, in certain cases, increased the risk of more serious violations.

4.9.1 Changing of Location of a Polling Station

The location of one polling station in the Ramallah constituency was changed at the last moment from al-Sirraj Hall to Ramallah High School for Boys because an event had been held in the hall and it had therefore not been possible to set up the polling station. Voters only learnt of the change of venue when they arrived at al-Sirraj Hall, and found a notice on the door informing voters about the change of location.

4.9.2 Closures of Polling Stations

Our observers found several polling stations closed for short periods, although article 72(1) of the Election Law requires stations to be open from 7:00 a.m. until 7:00 p.m. A polling station in the Jenin constituency was closed for half an hour between 11:30 a.m. and 12:00 p.m. without any explanation being provided.⁹⁹ Three polling stations in the village of Bani Suheila in the Khan Younes constituency were closed for half an hour between 1:00 p.m. and 1:30 p.m. for prayers and a break, and voters appeared to have been given no prior warning of this closure.

⁹⁸ Polling station no. 61, Khan Younes constituency.

⁹⁹ Anin village polling station, Jenin constituency.

4.9.3 Unofficial Assistance for PSCs

One polling station in Ramallah constituency was staffed by four polling station officials and an additional volunteer. When our monitor questioned this, she was informed that the additional person was a friend who was helping, admittedly without permission from the CEC.¹⁰⁰

4.10 Violations by the Israeli Authorities in Jerusalem

Voting arrangements for the Jerusalem constituency were complex. The Israeli authorities allowed less than 5,000 electors registered in the Jerusalem constituency to vote within the Israeli-defined municipal boundaries of Jerusalem. Voting inside Jerusalem took place in East Jerusalem's five post offices. The majority of voters living inside the municipal area had to vote in polling stations under direct PNA control outside the boundaries, often at some distance from their homes. This was part of a compromise arrangement negotiated between Israel and the PLO allowing Israel to argue that voting inside the municipal boundaries was merely a postal ballot and therefore that there was no concession of its claims to exercise sovereignty over Jerusalem; even the ballot boxes were of a different design from those used elsewhere. Significant violations of the Election Law and the right to participate in free and fair elections occurred in East Jerusalem. Many of these violations were attributable to the Israeli authorities, but the CEC bore responsibility in certain areas.

4.10.1 Inaccuracies in Electoral Registers

Last-minute changes were made in the allocation of voters to polling stations, after some voters had received their voting cards telling them where to go to vote. So, for example, a significant proportion of voters who, according to their voting cards, were designated to vote in Salah al-Din post office, arrived at the post office and found that they were not on the electoral register held there. At first such persons were turned away by the post office staff, although after a while information about the CEC hotline circulated and those not on the list were assisted in finding where they should go to vote by monitors using their mobile telephones. The hotline was able to redirect some voters, although alternative arrangements were often bizarre, with persons often having to vote at great distance from their homes, in areas with

¹⁰⁰ Abu-Rayya polling station, Ramallah constituency.

which they were not familiar. For example, many persons from Sheikh Jarrah were redirected to polling stations in Abu-Dis, eight kilometers away, and persons from Abu-Dis were redirected to stations in al-Umma, 15 kilometers away. However, a more fundamental problem was that a significant number of names were missing from the Jerusalem electoral register as a result of administrative errors.

For those voters whose names did not appear in the electoral register and/or who were not able to find out to which polling station they had been transferred, the CEC issued a directive rather late on election day that Jerusalemites who had voting cards but whose names were absent from registers at the post offices could vote in the Jerusalem Hall at Abu-Dis, the headquarters of the DEC for the Jerusalem constituency.

4.10.2 Voting at Post Offices in East Jerusalem

In contrast to the rest of the West Bank and the Gaza Strip, PSCs did not administer voting in the Jerusalem post offices. Employees of the Israeli postal system handled voters and followed different procedures than those applicable elsewhere. Israeli police officers were present inside some post offices directing voters and even intervening when post office employees experienced problems in voting. This was in clear breach of the Agreement.

Little or no information concerning how to vote was displayed at the post offices, and the electoral registers were not posted outside the polling stations, although in Salah al-Din Street post office, the telephone number of the CEC hotline was posted on the wall later in the day. In many of the post offices, Jaffa Gate being a notable exception, post office staff were instructed not to talk to anyone except the voters, towards whom they were not particularly communicative either.

4.10.2.1 Inadequate Administrative Safeguards

Although voters in Salah al-Din Street post office checked in at the entrance and were then directed to one of seven counters to vote, in many of the post offices, a single employee handled the entire voting process at the counters. This person was responsible for checking names against the electoral register, providing voters with ballot sheets, receiving completed ballot sheets, and inserting the envelopes into the boxes set next to him or her. No double checking was conducted by another employee at any of these stages. There were, therefore, no safeguards to ensure that these employees were carrying out all the procedures correctly.

4.10.2.2 Considerable Lack of Confidentiality for Voters

Voting took place at the post office counters which had a small screen affording minimal confidentiality. Post office staff standing behind the counter, from whom the voter received the ballot paper and to whom s/he handed the sealed envelope containing his/her ballot paper, had full view of the voter completing the ballot paper, particularly as the Council ballot paper, which contained the names of 58 candidates, was cumbersome. At Beit Hanina post office, there was an additional problem of insufficient space between the voters themselves. Generally at the post offices, it was easy for monitors and other persons present to see for whom a voter was voting.

4.10.2.3 Assistance for the Illiterate

As in other polling stations throughout the West Bank and the Gaza Strip, post office employees were not adequately trained to deal with the problem of assistance for illiterate voters. At Salah al-Din Street post office, the chief postmaster chose an international observer who spoke Arabic to assist more than 50 illiterate voters during the day. This did cause some problems, and objections were raised. For example, in one case, an illiterate woman brought her daughter to help her, and when this was not permitted, she refused to vote and left with all 11 of her family members, who joined her in boycotting the vote.

However, at Jaffa Gate post office, after some initial confusion, the postmaster contacted the CEC and Israeli authorities and clarified that people could employ persons accompanying them to assist them or could obtain help from others upon request.

4.10.2.4 Intimidating Behavior by the Israeli Security Forces

The heavy presence of armed Israeli police at the entrances to and around post offices serving as polling stations in Jerusalem had an extremely intimidating effect on voters and may have deterred persons from voting. The Israeli police imposed tight security cordons outside post offices, particularly at Salah al-Din Street post office, making it very difficult for voters to enter the stations. At Salah al-Din Street, police officers checked the identity cards of persons seeking to enter. They were overheard turning potential voters away on the ground that the post office was full, which was rarely, if ever, the case. In any event, there was a line outside the post offices where voters could wait.

While Israel undoubtedly had legitimate security considerations, this heavy-handed approach seemed to be a deliberate attempt to create a barrier between the voters

and the ballot box. In a further act bound to intimidate voters, Israeli officers photographed and videotaped persons entering Salah al-Din post office and the surrounding areas.

4.10.2.5 Harassment and Detention of Domestic Monitors

Post office officials and the Israeli police were resistant and even hostile to the presence of domestic monitors, and it was hard for them to gain access to the post offices. At Beit Hanina post office, our local monitor was prevented from entering until she exercised her right to enter the post office to buy stamps. When challenged about the refusal of access to domestic monitors, the postmaster at the Salah al-Din office merely stated emphatically, "This is Israel!"

However, the most serious violation of the rights of domestic monitors was the Israeli police's arrest and detention for a few hours on the morning of polling of at least seven Palestinian domestic monitors, most of them arrested outside the Salah al-Din post office.

4.11 Recommendations

To the PNA:

- 1- Conform with article 75 of the Election Law which states that members of the security forces may only be present inside polling stations for as long as their presence is necessary to restore public order.*
- 2- Ensure that PNA officials do not attempt to influence voters*
- 3- Bring to justice any PNA official who attempts to influence voters.*

To future Palestinian election commissions:

- 1- Enforce the provisions of the law requiring campaigning to cease 24 hours before the opening of the polls.*
- 2- Make adequate arrangements with regard to the layout of polling stations so as ensure the secrecy of the ballot.*
- 3- Make adequate arrangements to ensure that polling stations do not become overcrowded.*

- 4- *Make adequate arrangements to guarantee access to all polling stations for the elderly and persons with disabilities.*
- 5- *Develop clear guidelines for polling station officials concerning assistance for voting by the illiterate and ensure that these guidelines are implemented uniformly.*
- 6- *Make adequate arrangements for voting for members of the security forces who are unable to vote in their constituencies because they are on duty, and inform members of the security forces of these arrangements.*
- 7- *Ensure that electoral registers are accurate and that each voter knows at which polling station s/he can vote well in advance of polling day.*

To PSCs:

- 1- *Carry out responsibilities to keep law and order in the precincts of the polling station and refrain from delegating these responsibilities, except where authorized by the law, to members of the security forces.*
- 2- *Maintain strict neutrality.*
- 3- *Refrain from attempting to influence voters.*
- 4- *Verify whether a person is actually illiterate or requires assistance for any other reason, before allowing a person to assist a voter.*
- 5- *Ensure that any one individual does not provide assistance to large numbers of voters and that candidates' agents do not assist voters under any circumstances.*

To political parties and candidates:

- 1- *Respect article 55 of the Election Law, which requires campaigning to cease 24 hours before the opening of the polls.*

5. POST-ELECTION PERIOD

5.1 Attempt to Intimidate a PSC President

One of our monitors observed a serious incident following the closure of a polling station in Ramallah.¹⁰¹ The PSC closed the station at 7:00 p.m., in accordance with the law. At 7:15 p.m. the brother of one of the candidates arrived at the station and asked the PSC's president to reopen the station and allow several people to vote. The president refused. This man accused her of bias and threatened her. He then attempted to assault the president, but was prevented from doing so by security officials, whom he also threatened. The situation was only resolved when the Governor of Ramallah arrived and undertook to prevent the man from interfering in the PSC's work.

5.2 Problems with Counting of Votes in the PSCs

In many cases, our monitors observed that members of the PSCs were exhausted and experienced difficulties in counting the ballot papers and preparing the protocols containing a breakdown of the results.¹⁰² This was hardly surprising since these officials had already spent more than twelve hours running the polling stations. Fatigue inevitably slowed down the counting process and increased the chances that errors would be made. Our monitors observed that a number of protocols prepared by PSCs in the Ramallah and Jenin constituencies were not completed correctly. Again in Ramallah, certain ballot boxes were sent to the DEC without protocols. Some of these protocols were eventually found in the possession of the presidents of the PSCs.

In a polling station in the Nablus constituency, the president of the PSC asked the observers, police officers, and members of the security forces to participate in the count.¹⁰³ All requested parties eventually agreed to participate because they realized that the result of the count would otherwise be extremely delayed. Al-Haq's monitor did not assist, but he did remain in the polling station to observe the count.

¹⁰¹ Polling station no. 17, Ramallah constituency.

¹⁰² The protocol provides information on the conduct of the election in each polling station, including details about voting and any election claims made by any of the candidates or candidates' agents concerning the count."

¹⁰³ 'Askar refugee camp polling station, Nablus constituency.

There was a serious incident of harassment of an election official by a member of the PNA security forces in the Nablus constituency, resulting in the death of an innocent bystander.¹⁰⁴ On the evening of election day, Iyad Ibrahim Shraiyya attempted to enter this polling station with a colleague while the count was being conducted. The president of the PSC refused to admit Shraiyya because he did not have the proper accreditation. Upon refusal Shraiyya shouted at the president and threatened to kill him. Eventually he left the polling station but returned at 2:00 a.m. the following morning and sought admission again. When he was again refused admittance, he began to fire his gun in the air. As a result one man, Hashem Assad Aisa, aged 28, was killed.

5.3 Logistical Difficulties in the Delivery of Ballot Boxes from PSCs to DEC's

In many constituencies, our monitors noted that there were severe logistical problems in transporting protocols, ballot papers, and other election material securely and quickly from the PSCs to the DEC's. In many cases it appeared to our monitors that arrangements for delivery either had not been made or had completely broken down. The president of a PSC in the Ramallah constituency waited until 8:00 a.m. on 21 January, expecting that an official car would come to the station to pick up the protocols and the ballot boxes. Since no official transport arrived she arranged her own transportation (a taxi) to the Ramallah DEC¹⁰⁵

Election officials at a station in the Jerusalem constituency telephoned the Jerusalem DEC and requested that someone be sent to pick up the protocols and the ballot boxes.¹⁰⁶ An official at the DEC said that the commission could not arrange for the transportation of the boxes. The official insisted that members of the PSC should leave all the materials in the school, even after it was explained to him that it was not possible to lock the building. Eventually all the members of the PSC left the station, even though it was unlocked. The protocols and ballot boxes were left unattended inside the station.

These logistical difficulties resulted in severe delays in the arrival of the protocols in the DEC's. In the Hebron constituency, certain protocols arrived late at the DEC because they were taken by mistake to the Hebron municipality. Dr. Muhammad Ishtayya, the Secretary-General of the CEC, publicly admitted to candidates'

¹⁰⁴ Salem Girls' School polling station, Nablus constituency. AL-HAQ questionnaire 96/17.

¹⁰⁵ Polling station no. 17, Ramallah constituency.

¹⁰⁶ Bir Nabala polling station, Jerusalem constituency.

representatives during a visit to the Hebron constituency that more than 40 ballot boxes and a number of protocols had not reached the Hebron DEC until the evening of Sunday 21 January. The protocol for polling station no. 113 did not arrive until Monday 22 January. Delays of over 48 hours in the delivery of protocols and boxes to the DEC were also reported from the Jenin constituency.

Our monitors observed that a number of DEC's were not properly organized to receive the protocols and ballot papers, nor to verify that the protocols had been correctly completed. Three overworked officials at the Jenin DEC had to try to process large numbers of protocols which arrived during a very short period of time. They were unable to check the material and did not notice that certain protocols had not been completed correctly and that other protocols had not been submitted with the ballot papers. They also mislaid protocols, which were found later amongst other materials.

The president of one polling station in the constituency reported to our observer that after she handed over the protocol to the head of the Ramallah DEC he threw the papers on the floor. The president stated that she saw other protocols scattered on the floor.¹⁰⁷ Protocols were also mislaid in this DEC although some were eventually found. The protocols for 18 polling stations have never been located by the Ramallah DEC. According to Taha al-Faqih, head of the Ramallah DEC, these protocols were lost by the DEC due to the "chaos" in its offices, where officials were exhausted following the elections due to overwork. He stated that some protocols had been mislaid in the offices and were found later. Other protocols were later found in the possession of the polling station presidents.

5.4 Irregularities in the Counting of the Protocols in the DEC's

In the Khan Younes and Hebron constituencies, our monitors observed that members of the security forces were present in large numbers during counting of the protocols by the DEC's. According to article 82(2) of the Election Law, members of the security forces are not entitled to be present at these counts.

In two cases, security forces and election officials interfered with the work of al-Haq's monitors, although, according to article 82(2)(d), accredited domestic observers are entitled to be present at these counts. Our observer was initially prevented from attending the DEC's count for the Jerusalem constituency in Abu-Dis Hall. She was only admitted after she insisted on her legal right to be present. At the

¹⁰⁷ Polling station no. 17, Ramallah constituency.

count in the Khan Younes constituency, security officials attempted on several occasions to move the domestic election observers, including two of al-Haq's monitors, away from a position where they could observe what was taking place. All the observers refused to move on the basis that they could only monitor effectively if they remained where they were.

Officials also prevented the entry of candidates and/or their agents to the DEC counts in two constituencies, although they also are entitled to be present, according to article 82(2)(c) of the Election Law. At the count in Hebron, candidates together with their agents and representatives, with the exception of those persons linked to Fateh, were prevented from attending for the first twelve hours of the count. They were only admitted at 7:00 p.m. after complaints had been made to the CEC. At the count in the Jerusalem DEC in Abu-Dis, a large number of candidates' agents were refused entry.

In Ramallah, Jenin, and Hebron constituencies, preliminary results were announced before all the protocols had even been located. In Jenin, the protocol for polling station no. 140 (Ya'bad) had been missing. Despite this, the preliminary results for the Jenin constituency were announced. The missing protocol was discovered later, and the preliminary results had to be altered. In the Hebron constituency, the preliminary results were announced before all the protocols had reached the DEC; only 75 percent of the votes had been counted. As noted above, more than 40 protocols or ballot boxes did not arrive until the evening of 21 January, and another protocol did not arrive until the evening of the 22 January.

In two cases, unauthorized persons were observed participating in the count. In Khan Younes, a person known to one of al-Haq's observers to be employed by the *mukhabarat* (the PNA's intelligence service) assisted in the count. Despite the protest of a journalist, the president of the DEC insisted that the officer should continue to assist. In Hebron, municipal employees took over the count while the DEC held a meeting. The DEC did not check their work, even though other persons discovered that the employees had made mistakes in part of their work. It is possible therefore that other mistakes were made by the municipal employees and not corrected.

5.5 Scrutiny of the Protocols in the DEC's

After the Hebron DEC completed the scrutiny of the elections for the Council, the protocol for polling station no. 113, which had not been counted, was located by the DEC. According to Dr. Awni al-Khatib, the Chair of the Hebron DEC, this protocol had been found amongst the protocols for the elections for the President. A person

present in the room alleged that he had seen the protocol brought in from outside the building, and he pointed to the person who had brought it. Dr. al-Khatib insisted on adding the results contained in the protocol into the final DEC results.

5.6 Final Scrutiny by the CEC

A significant number of candidates from the Ramallah constituency filed claims against the Ramallah DEC, which did not include the results from 18 polling stations in the preliminary and final results, because the protocols for these stations had been missing. As a result of these claims, the CEC scheduled a public recount of the ballot papers for these 18 stations for 4 February. According to article 24(15) and 86(5) of the Election Law, the CEC has the power to call re-elections in any polling district if it is proved that circumstances exist that affect the final results of the elections in any of the constituencies. However, the Election Law does not appear to give the CEC the power to order a recount at a polling station. The candidates who brought the claims rejected the CEC's order of a recount, on the basis that the ballot boxes had remained unsupervised in the Ramallah DEC and that there could be no guarantee that there had been no interference with their contents. The candidates involved called for new elections in the polling districts affected.

In the event, a recount of only two ballot boxes took place on 4 February. The presidents of the other PSCs involved refused to participate. Therefore the final results for the Ramallah constituency remained incomplete.

The time and the location of the final scrutiny was not announced by the CEC, and therefore not all candidates, their agents and representatives, accredited international and domestic observers, and accredited journalists had the opportunity to attend, even though these categories of persons are entitled to be present at the final scrutiny, according to article 86(2) of the law. The presence of candidates and their representatives at the scrutiny by the CEC is particularly crucial since representatives can make submissions to the CEC in support of their claims filed by candidates. Instead, the CEC announced the final election results on 10 February 1996 at a press conference.

5.7 The Operation of the Election Appeals Court

Following the announcement of the final results of the Palestinian elections on 10 February 1996, five petitions were filed before the EAC in the West Bank by

candidates, challenging decisions made by the CEC in relation to the Ramallah, Hebron, Jenin, Toubas, and Jericho constituencies.¹⁰⁸

The EAC violated article 87(2) and article 34(2) of the Election Law in relation to the appeals from the Ramallah and Hebron constituencies by failing to adjudicate on them within five days from the date of their filing and by postponing hearings of the cases on two occasions. The Israeli authorities bore responsibility for this. The EAC, which consists of three judges from the West Bank and two judges from the Gaza Strip, was due to sit in plenary session to hear these two cases, as the president of the EAC had decided that these cases raised matters of special importance. The hearing of the cases was postponed twice because the two judges from the Gaza Strip, one of whom was the EAC's president, were unable to travel to the West Bank to attend the sessions because the Israeli authorities had imposed a strict closure on the West Bank and the Gaza Strip, making travel between the two areas impossible. The Election Law does not address the problem of how to proceed if the EAC is not quorate. Eventually the president of the court made an *ad hoc* decision that the appeals should be heard by the three judges in the West Bank. Article 31(2) of the Election Law requires the president to sit at all EAC sessions. Therefore the president appointed Judge Shukri Nashashibi to sit as the president of the EAC in the West Bank.

Three appeals were refused on procedural grounds. The appeal from a group of candidates in the Jenin constituency was rejected because the application had been made out of time. In two separate appeals, certain candidates from the Ramallah and Hebron constituencies both challenged the CEC's refusal of their requests to hold re-elections, despite evidence that clear violations of the Election Law had taken place. In its judgments, the EAC found that the appellants were effectively seeking the cancellation of the elections and the holding of new elections in the Hebron and Ramallah constituencies. The EAC found that the appellants should have named the successful candidates as defendants, in addition to the CEC, because the relief requested by the appellants, if granted, would affect the interests of these candidates. The EAC refused the appeals on the basis that the appellants had failed to name the elected candidates as defendants in their applications. In reaching its decision in both cases, the EAC relied on four judgments of the Jordanian High Court of Justice, in which the court required elected candidates to be named as parties in certain types of election appeals.¹⁰⁹

¹⁰⁸ The EAC also sat and heard cases in the Gaza Strip. This sub-section only deals with appeals to the EAC sitting in the West Bank.

¹⁰⁹ Jordanian High Court cases 35/67, 39/67, 44/93, and 68/94.

The EAC also considered an appeal by certain candidates in the Toubas constituency against the CEC's decision, taken a few days before the elections, to transfer al-Fara'a village from Toubas to Nablus constituency. The EAC allowed this appeal and annulled the CEC's decision.

Yousef Marar, a candidate in the Jericho constituency, appealed to the EAC concerning a procedural matter. Four candidates, including Mr. Marar, brought a complaint to the CEC. The CEC took a decision concerning the complaint but informed only two candidates of its decision. It failed to notify Mr. Marar and another candidate. Mr. Marar appealed to the EAC concerning the CEC's failure to inform him of its decision. The EAC found that Mr. Marar should be deemed to have received a response from the CEC since the appeal was made jointly by the four candidates and two of the candidates had been informed of the decision. The appeal was therefore refused.

5.8 Recommendations

To the Legislative Council:

- 1. Amend the law to either remove responsibility for counting ballots and completing protocols from PSCs or to introduce some form of division of PSCs' work of running polling stations, counting ballot papers, and completing protocols into shift systems.*

To the PNA:

- 1. Ensure that the Palestinian security forces respect provisions of the law which generally prohibit members of the security forces from attending the count and the scrutiny in the DEC.*
- 2. Ensure that members of the security forces permit entry to all persons authorized to be present at the count and the scrutiny, in particular domestic election observers, candidates, and their agents and representatives.*

To future Palestinian election commissions:

- 1. Make adequate arrangements for the prompt delivery of election protocols and ballot boxes from the PSCs to the DEC.*
- 2. Make adequate arrangements to ensure that the DEC registers receipt of election materials delivered from the PSCs and verify that all requisite items*

are present and correctly completed.

- 3. Make adequate arrangements to ensure that the DEC's store all election materials securely and in an organized manner.*
- 4. Ensure that the DEC's permit entry to all persons authorized to be present at the count and the scrutiny and deny entry to all persons not so authorized.*
- 5. Ensure that only members of the DEC's conduct the preliminary count and the scrutiny.*
- 6. Ensure that the DEC announces preliminary results only after protocols for all the polling stations in that particular constituency have been received and counted.*
- 7. Order a re-election in any polling stations for which election protocols are not available.*
- 8. Publicize in advance the date and location of the final scrutiny at the CEC to all concerned individuals and organizations.*

To political parties and candidates:

- 1. Ensure that all agents are aware of how to file an electoral claim against the PSCs.*

6. AN ANALYSIS OF THE PALESTINIAN ELECTIONS

General international standards and minimum requirements for elections are identified by the international community on the basis of the experience accumulated from monitoring elections and from advisory services extended to various states. However, in evaluating elections in any particular country, as well as taking into account these international standards, it is important to recognize the particular context in which elections occurred and to consider the objectives that the elections and the bodies elected are meant to realize. Therefore, in a certain sense, each election experience is unique to a particular country, and the special context and situation of the country should be taken into account. However, this specificity does not in any sense excuse any violations of basic human rights and election standards.

Generally, on the national level, political groups, human rights activists and organizations, NGOs, and grassroots movements regard democratic political elections in any country as critical for the country's development in the political, economic, and social fields; and for achieving respect for the rule of law. Elections are crucial for realizing popular participation in governance. Elections of councils or parliaments that enjoy legislative powers are of special importance, because of the potential role that the law can play in facilitating and encouraging development and in empowering different sectors of the population. This is one of the reasons why popular movements and NGOs involve themselves to such an extent in the election process and seek to maintain links with elected legislative bodies.

This section will review the first experience of Palestinian elections and analyze the effects of the irregularities that occurred on the final results of the elections. However, in order to make a sound evaluation of these elections, it is necessary to consider first the special social, political, and cultural context in which these elections occurred.

6.1 The Palestinian Context

The first Palestinian elections received a great deal of attention from the local and international community due to the particular political context in which the elections occurred. As stated earlier, these elections were the result of political negotiations between Israel and the PLO. The DOP and the Agreement laid down the principles on which these elections were based. The powers and authorities of the elected Council, the President, and the Executive Authority were defined and limited by these agreements.

It should be recognized that the potential of the elected Council and President is dependent on the scope of their powers and authorities, the relationship between the Council and the Executive Authority, and the mechanisms available for the Council to make its work effective. These issues are significantly affected by the internal dynamics of Palestinian society and its structure, but interference and restrictions by Israel will also have an impact. For example, restrictions on freedom of movement in the OPT and the limited authority that the Council enjoys by virtue of the Israeli-Palestinian agreements will reflect on the achievements of the Council.

The legislative powers of the elected Council are of particular importance in the Palestinian context. Palestine has for centuries been under the rule of foreign administrations and occupiers, with the result that Palestinians have been unable, to a large extent, to govern themselves. Legislative power has been in the hands of the foreign powers that ruled the country, except for a short period between 1962 and 1967 when there was an active Palestinian legislative council in the Gaza Strip. With this one exception, the laws that were implemented in the West Bank, including Jerusalem, and in the Gaza Strip were adopted by a non-Palestinian power. The current laws in force are a combination of laws enacted by the Ottoman Empire, the British Mandate, Egypt, Jordan, and Israel. Most of these laws were designed to serve the interests of the legislating power rather than to promote Palestinian development. Since Israel assumed control in the OPT in 1967, Palestinian development has been severely impeded. More than 1400 Israel military orders issued in the West Bank and 1100 orders issued in the Gaza Strip have generally promoted the interests of the occupier, often at the expense of the interests of the occupied population. Development of the economy, infrastructure, and the educational system and the enjoyment of basic rights have been severely restricted by the laws, regulations, and practices of the Israeli occupier. This has had a severe impact on the development of Palestinian society as a whole. As a result, the economy of the OPT is highly dependent on Israel, with Palestinians serving as a source of cheap labor for Israel and a major market for Israeli products.

Legislative reform and the unification of the different legal systems that exist in the country are thus identified as a priority by Palestinians. The first Council elections were the focus of attention because of the Council's potential role in achieving these objectives, despite the limitations on the Council's legislative powers imposed by the various Israeli-Palestinian agreements. The elections were also seen as an important step towards realizing basic human rights through legal reform and the monitoring of the executive branch by the Council.

In addition, these elections had the potential for significant achievements on the social level. Due to the political situation in Palestine, the political struggle was to a large extent given priority over social issues. Further, most of the attention of the

community and Palestinian NGOs regarding human rights issues was focused mainly on civil and political rights. Until recently, there had been little concentration on development and enjoyment of economic, social, and cultural rights.

The political situation had a tremendous impact on the society in many ways. For example, restrictions on the economy affected standards of living and job opportunities, for women in particular. Also, the decentralized and inadequate mechanisms for supervising and monitoring children's attendance at school, which was the responsibility of the Israeli occupier, was one of the causes of a high student drop-out rate. Issues of equality and non-discrimination on the basis of sex were given secondary attention compared with the national struggle. The lack of a central civil body that governed the community created a vacuum and produced many problems. The community at large was alienated from participating in the governance of the country at many levels. In some sense, the life of the community was repressed by the oppressive Israeli military system. The community was also significantly affected by the Palestinian political organizations that functioned as revolutionary movements and gained their legitimacy from the people on this basis. These political movements also operated under severe restrictions by the Israeli authorities.

On the other hand, several community-based Palestinian organizations and other NGOs managed to play a major role in the development of Palestinian society and to provide essential services in the fields of education, health, and the economy. These NGOs also supported particular sectors of the society, such as women, workers, children, etc. Such organizations played a role in providing relief and services to maintain the Palestinian people's steadfastness in the face of occupation. Later these organizations stressed development as their prime concern. However, the Israeli occupation authorities attempted to suppress these organizations. These NGOs, which consider themselves one of the pillars of Palestinian civil society, showed significant interest in the elections, because of the potential which they represented for the continuing development of civil society.

The community-based organizations saw in the elections an important opportunity to raise "internal issues" (issues not directly related to the Israeli occupation, such as the status of women in society). Several activities by local and international organizations preceded the elections. Some of these activities commenced well before the elections and even before the decision to hold elections had been taken on the political level. The women's organizations were possibly the first sector to focus on the elections. They organized a number of activities addressing the role of women in political life, the empowerment of women through law, and the need to change social patterns and values that hinder women's development. Further, seminars and discussions on civic education, civil society, democracy, and principles of the rule of

law, including the separation of powers, were the subject of activities and campaigns by many NGOs concerned with issues of democracy, particularly organizations focusing on human rights, women's issues, and research. It was interesting to see that such issues were raised by several candidates in their programs. Voters also raised these issues on many occasions with candidates.

The elections were thus seen by many organizations and individuals as an important opportunity to discuss certain unhealthy patterns in the society, to seek to change these patterns, and to promote sectors and structures that are important for the development of civil society. In that sense, the elections were seen as an important step towards changing the basis of governance of Palestinian society from revolutionary legitimacy to elected civil legitimacy. The whole discussion that preceded the elections revolved around the importance of, and need for civil and organizational transparency and accountability. It is now a common concern that the elected Council as well as NGOs should be accountable to the society as a whole and allow for adequate interaction between them and the rest of society.

6.2 Limitations

Despite the special importance of the Palestinian elections, the election process and election results were affected by limitations of a structural nature, as well as limitations of a political and social nature. These limitations must be taken into account in any evaluation of the elections. This section will examine the main types of limitations, focusing on their macro effect rather than their micro effect.

6.2.1 Structural Limitations

The election process was highly affected by structural limitations arising from weaknesses in the law regulating the elections, from violations of that law, and from the adoption of unsatisfactory procedures for the implementation of the law. Many structural problems arose as a result of lack of organization, due to the speed with which the elections were arranged, or lack of experience. The following sections describe the main types of structural limitations.

6.2.1.1 Hasty and Centralized Decision-Making

There was insufficient opportunity for consultation concerning the content of the Election Law and the nature and composition of the main electoral institutions - the CEC and the EAC. The decision-making process regarding the elections was highly

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centralized. This centralization was further magnified by the PNA President's issuing of regulations regarding matters which fell within the responsibilities of the CEC, as discussed above.

In addition, many important decisions were taken late into the elections process. The Election Law was issued on 7 December 1995, only shortly before the elections. Elections were called on 13 December 1995 only five weeks before election day, and members of the CEC and the EAC were appointed even later.

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The campaigning period was arbitrarily shortened. According to the Election Law, campaigning was due to begin on 29 December 1995. A presidential directive issued on 29 December 1995 postponed campaigning to 5 January, but after protest, another directive authorized campaigning to begin on 2 January. The official campaigning period was therefore reduced by four days. The CEC created even more confusion by announcing that although campaigning had commenced on 2 January, it would not act against candidates who had commenced campaigning on 31 December.

These changes also created confusion that was counterproductive to the process and unfair to certain candidates. The shortened process reduced the ability of all actors to prepare properly for the elections, particularly the opportunity for candidates and partisan entities to conduct their campaigns and to present and discuss their programs. Further, this limited the chance for NGOs and grass-roots movements to discuss societal issues during the campaign.

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6.2.1.2 Technical and Logistical Problems

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Many avoidable technical and logistical problems, which had a significant impact on the elections, occurred. Such problems were caused by inadequate preparations, lack of clear provisions in the law, and, apparently, inappropriate instructions being given to the members of the PSCs to deal with particular situations.

Prior to the elections, insufficient attention was paid to the need for voter education and for raising community awareness concerning the election process. For the vast majority of the electorate, this was the first time that they had voted in their lives, and some kind of preparation was therefore critical.

Domestic monitors were informed at a very late stage of the conditions under which they would be allowed to operate. This affected the level of training and preparation that the different local organizations wishing to monitor the elections could achieve, which, in turn, reflected on the behavior of the monitors in the field and their ability to assist in ensuring that the elections were free and fair, by playing an active and interventionist role.

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In relation to the work of the PSCs, problems included the lack of detailed provisions on how to transfer ballot boxes and protocols from the polling stations to the district elections offices. As Section 5 of this report demonstrates, several of the principal appeals concerning violations of the Election Law related to these two issues. In other cases, it seems that either inadequate or inconsistent instructions were given to the PSCs concerning crucial issues, such as voting for the illiterate and for security personnel.

Further, the entire election process during polling day, from the setting up of polling stations to the counting and completion of protocols, was all carried out by one team of four persons in each polling station. These teams worked continuously, for more than 24 hours in some cases, and were therefore exhausted. Such demands inevitably affected the efficiency of PSC officials at the later stages of vote-counting and completion of protocols. Such problems could have been avoided if more teams had been trained and a system of shifts or division of responsibilities between these teams had been used.

All these problems could have been avoided, or at least minimized, if there had been adequate time for consultation before the election process commenced, and if there had been sufficient time for training elections officials and preparing the community at large.

6.2.1.3 The Media

The media can have a major impact on elections by raising awareness of issues related to elections and democracy and educating the electorate about the election process. Further, the media is one of the main channels that candidates and partisan entities can use for campaigning. Since the media, in its various forms, reaches the majority of the population, any limitations on the role of the media have a major impact, affecting individuals and groups in all geographical areas and of different political affiliations and opinions.

Palestinians are very accustomed to listening to radio, watching television, and reading newspapers. This may be attributable to Palestinians' need for fast and reliable sources of information because of the complex and rapidly changing political atmosphere in the country. In relation to the Palestinian elections, the media had the potential to play a major role in informing the electorate, particularly in the absence of a centralized body in the CEC specialized in raising awareness on a mass popular level.

However, the ability of the media to fulfill this role was affected by the speed of the election process and the shortened campaign period. The media itself had no experience in playing this kind of role, and therefore needed special training. As a

iled result the media did not play a very active role in educating voters and raising
is to community awareness.

the The shortened campaign period reduced the possible coverage that each candidate
two could obtain. A major part of media campaigning for the candidates was in the form
ions of paid advertisements and in fact was very expensive. Therefore, the degree of
rate campaigning depended very much on the extent of the candidate's campaign funds.

lling Contradictory information was issued during the first stages of the campaign period
cam regarding the possibilities for campaigning which the public-controlled media made
more available for candidates. This confusion possibly resulted in candidates not using the
ably broadcast media to their full potential. However, it should be noted that the press
and and broadcast media allocated a major part of their output to the elections. However,
had this came at a very late stage, about two weeks before election day.

these

6.2.1.4 Restrictions on the Opposition

been Activities expressing opposition to the election were carried out by a number of
there small, but effective, political groups. In addition to opposition expressed by the
unity supporters of these groups, there were a number of unaffiliated individuals who did
not participate in the elections. This opposition took the form of refraining from
registering for the elections, not voting or casting a protest vote, and organizing
others to do the same.

ssues An atmosphere of intimidation surrounded the opposition. On 4 January 1996,
ction Brigadier-General Ghazi al-Jabali issued an order prohibiting the opposition from
rtisan distributing leaflets or carrying out activities disseminating their positions regarding
es the elections. As Section 3 of this report shows, a number of opposition activists
major were detained by the Palestinian security forces. Further, posters and leaflets
ferent expressing opposition to the elections were torn down. All these measures severely
restricted the fundamental right to freedom of expression of the members of the
opposition. Such restrictions created an atmosphere of intimidation not only for the
n, and opposing political parties and their supporters, but also for any person considering
st and boycotting the elections or making a protest vote. Such intimidation was magnified
unging by the special political context in which the elections occurred, and because these
media were the first elections of this kind in the OPT. The Israeli authorities also severely
in the restricted the actions of the opposition by detaining many opposition leaders in the
mass West Bank prior to the redeployment of the Israeli forces shortly before the
elections.

of the As discussed in Section 2, the Election Law does not even guarantee the right to
had no freedom of expression. Such an omission is significant and can be considered one of
3. As a the law's principal shortcomings. The guarantee of freedom of expression to all is

essential for encouraging political pluralism and for maximizing the possibilities for voters to make informed choices, as shall be shown below.

Certain individuals' decision to boycott the elections could also have been affected by the advertisement placed on 2 January 1996 in the local newspapers by the PNA Ministry of Interior, declaring that one of the documents required in order to apply for a Palestinian passport was a voter's registration card. After protests by different community organizations, this requirement was withdrawn. Such linkage of acquisition of a Palestinian passport to registration for the elections is unjustified, especially since the Election Law does not make registration mandatory. It also has the additional effect of creating an atmosphere of uncertainty and intimidation for those who chose not to register for the elections. A clear indication that such an atmosphere was created was the increasing number of questions raised by people as to whether the PNA would deprive them of any of their rights or privileges if they did not participate in any step of the election process. This led the CEC to announce later that there would be no adverse consequences for people based on whether they chose to participate in the elections or not.

6.2.1.5 Restrictions Imposed by Israel

The Agreement and subsequently the Election Law were sources of certain types of limitations to the Palestinian elections, including the special arrangements for voting in Jerusalem. However, administrative practices resulted in additional restrictions and violations, as shown earlier. The restrictions imposed by Israel occurred mainly in Jerusalem and Hebron, including restrictions on freedom of movement for the general population and domestic election observers, detention of members of the opposition, and the harassment of candidates and voters.

Prior to the elections, posters were found in East Jerusalem warning Palestinian residents that they would lose their rights to reside in Jerusalem and to receive Israeli welfare benefits if they voted.¹¹⁰ Such posters created an atmosphere of fear and intimidation. Further, as the documentation shows, restrictions on free campaigning occurred in Jerusalem.¹¹¹ This also hindered partisan entities, many of whose

¹¹⁰ Bill Hutman, "Israeli-Arabs to Guard PA Poll in Capital," *The Jerusalem Post*, 16 January 1996, p. 2.

¹¹¹ Further, Israel insisted that the ballot boxes used in Jerusalem should be different from the other constituencies. It first insisted that the normal postal boxes be used. This was refused by the Palestinian side. At the end, it was agreed that the design of the ballot boxes used would be similar to that of the postal boxes, except that the opening would be on the top rather than the side of the

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activists were entitled to enter Jerusalem to provide campaign support to candidates standing in the Jerusalem constituency. Restrictions on movement also prevented many domestic observers from moving between the West Bank and the Gaza Strip, and into Jerusalem.

However, the main interference by the Israeli authorities in Jerusalem was seen on election day, as described in Section 4 of this report. Prior to the election, the Jerusalem police were reported as having agreed to "keep their distance" from the five post offices being used as polling stations. Instead, unarmed Israeli Arab guards were to be used to keep order at the offices.¹¹² On polling day, there were indeed unarmed guards inside the offices, but the heavy police presence in Jerusalem intimidated many voters.

All these factors resulted in a much lower level of voter turnout in Jerusalem than in other constituencies (voter turnout in Jerusalem was 40.37 percent, compared with an average for the West Bank of 73.5 percent).¹¹³ It seems that the principal objective of Israel's restrictions was to assert its claims to sovereignty over Jerusalem. However, such acts were in violation of the spirit and provisions of the Israeli-Palestinian Agreements. Further, such restrictions aimed to separate Jerusalem from the rest of the West Bank and the Gaza Strip and to jeopardize its status, which is one of the subjects of the final status negotiations.¹¹⁴

The rate of registered voter participation in the Hebron constituency was 66.4 percent, lower than the rate in other constituencies apart from Jerusalem.¹¹⁵ The Israeli presence in Hebron may have been one of the reasons for the lower voter turnout there. Before the elections, there were contradictory reports as to whether Israeli security forces had agreed to leave Hebron for the day of polling and to go into the Jewish settlements instead.¹¹⁶ In fact Israeli security forces did not withdraw to the settlements.

box. Israel apparently insisted on this on the pretext that this was a postal ballot, rather than normal voting.

¹¹² Bill Hutman, "Israeli Arabs," *The Jerusalem Post*, 16 January 1996, p. 2.

¹¹³ As'ad Ghanem, "Founding Elections in A Transitional Period: The First Palestinian General Elections," *The Middle East Journal* Vol. 50, No. 4 (1996) p. 525.

¹¹⁴ It should be noted that article XXXI(7) of the Agreement states that "Neither side shall initiate or take any step that will change the status of the West Bank and the Gaza Strip pending the outcome of the permanent status negotiations."

¹¹⁵ As'ad Ghanem, "Founding Elections," *supra* note 111, p. 525.

¹¹⁶ Jon Immanuel, "IDF Will Remain in Hebron During PA Elections," *The Jerusalem Post*, 15 January 1996, p. 2 and Bill Hutman, "Israeli Arabs," *supra* note 110.

These hard-line measures taken by Israel during the election process affected the level of participation in the election, and intensified a pre-existing atmosphere of intimidation and uncertainty. Israeli measures made some Palestinians question whether there were real possibilities for change during the interim period.

6.2.2 Political and Cultural Limitations

For many voters this was the first-ever experience of participating in an election. Much of the electorate was therefore unfamiliar with election systems, the Election Law, and the voting process. Raising awareness on these issues was imperative if voters were to make free and informed choices at the ballot box. Voter education was particularly crucial in the Palestinian elections because the roles that the elected Council and the President were to play were markedly different from the role that such institutions would normally play in transitional democracies. Therefore, special considerations and preparations or voter education should have been taken into account.

The Election Law was the product of a particular political culture in Palestine where political life is largely based around political movements. The law had to accommodate that reality but also should have aimed to create the opportunity for other forms of popular participation, particularly by other special interest groups such as trade unionists, workers, and women. The law mainly focused on political partisan entities. Further, the shortened elections process did not allow enough time for such groups to come together, develop strategies, and form entities to run in the elections.

The Election Law adopted a simple majority system. While this is familiar to the society and is used in many parts of the world, alternative electoral systems might have been more suitable. For example, the use of proportional representation (PR) has been very common in other elections that have been held in the past in the OPT for student councils, professional associations, and trade unions. A PR system would have been preferable given that there are several smaller parties active in the OPT that did not stand much chance of winning seats under a simple majority system. However a PR or combined system would have given such parties a real chance of gaining seats. Additionally, the simple majority system, based on small constituencies, emphasized factors other than the program of the candidate and the political affiliation, for example allegiance to the extended family.

The Election Law did not place any form of limitations on the amount of money which candidates were allowed to spend on their campaigns. This meant, in reality, that candidates who had more money could campaign more widely.

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Finally, it seems that the law did not address some of the cultural patterns prevalent in Palestinian society which militate against free and fair elections. For example, the provisions of the Election Law concerning voting for illiterate persons were inadequate and open to abuse. This caused problems, particularly for women, due to two linked factors. Firstly, the level of illiteracy in Palestinian society is higher amongst women than men.¹¹⁷ Secondly, it is common in the society that women are often accompanied in public by their husbands, fathers, or brothers, who may often instruct the woman on what to do and not give her much freedom to make her own choices. Therefore, illiterate women who came to vote accompanied by a male family member often turned to this family member to assist them in voting. This caused some abuse, since there was no guarantee that this man would in fact consult the woman or vote according to her electoral choice.

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Further, it was also observed that on some occasions men voted on behalf of women whom they were accompanying, without the polling station officials verifying whether the woman was in fact illiterate. In fact, as our documentation shows, in some cases the women concerned were not illiterate.

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Further, it is possible that illiterate people and blind or partially-sighted persons did not have equal access to voter education, since most information was in written form. Some of these problems could have been avoided if there had been adequate voter education targeted especially at illiterate or blind/partially-sighted persons.

The Election Law and the implementing regulations did not guarantee access to polling stations for persons with disabilities. Although the CEC stated that all the polling stations would be placed on the ground floor to facilitate access, our monitors observed that some stations were located on upper floors of buildings with no access for persons with disabilities.

6.2.3 Effects of These Limitations

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Many of the limitations discussed above were magnified in their effect because these were the first elections for a legislative body and president in the whole of the OPT. For example, the problem of inadequate voter education was exacerbated by voters' ignorance of and lack of previous experience with election processes and systems.

These limitations had an impact on voters' ability to make a free and informed choice and consequently on the results of the elections themselves.

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¹¹⁷ Marian Beiberg and Geir Ovensen, *Palestinian Society in Gaza, West Bank and Arab Jerusalem: A Survey of Living Conditions*, (Oslo: FAFO, 1993 pp. 136-137.

6.3 Conclusions

The international community very quickly reached the conclusion that the Palestinian elections had been free and fair. Certain representatives of the international community were even expressing this view on election day itself before the polls had closed. Such hasty conclusions do not assist in an objective identification of problems with the purpose of learning from the experience, and finding ways of redressing such irregularities in the future. It is very important for the community at large to learn from these first, important, and historic Palestinian elections. It is the responsibility of all parties concerned, each in their relevant capacity, to evaluate these elections and produce recommendations so that problems which occurred can be avoided in the future.

The irregularities and structural problems that occurred during the first Palestinian elections possibly had an effect on their outcome. If the irregularities described in this report had not occurred, voters would possibly have made different choices.

Many of the problems could have been avoided if there had been sufficient time for thorough preparation and consultation. Before future elections, adequate time should be allocated for these tasks.

Omissions and problematic provisions in the Election Law should be identified and, on this basis, a new law should be drafted. Drafts of this new law should be presented to the general public and to individuals and organizations with relevant specialized experience for comment.

There is a need for a thorough evaluation of the different components of the electoral system, including the law, the voting system, the procedures, and the accessibility of the information to the public. Such evaluation should involve members of the different electoral institutions, such as representatives of the Polling Station Commissions, the District Election Offices, the Central Elections Commission, and the Election Appeals Courts. It should also involve voters and candidates, their agents, and the partisan entities.

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Appendices

APPENDIX I

CHRONOLOGY OF ELECTION EVENTS

12 November 1995	Registration of voters commences
2 December 1995	Registration of voters ends
10 December 1995	Publication of the draft electoral register Period for registration of claims and appeals regarding the electoral register commences
13 December 1995	Issue of presidential decree calling for elections
14 December 1995	Period for registration of claims and appeals regarding the electoral register ends
14 December 1995	Opening of nominations for the Palestinian Council and the Presidency
18 December 1995	Issue of presidential decree concerning the distribution of seats for the Palestinian Council
21 December 1995	Issue of presidential decree appointing the members of the CEC
22 December 1995	Closure of nominations for the Palestinian Council and the Presidency
23 December 1995	Issue of presidential decree appointing members of the EAC Publication of provisional list of nominated candidates
25 December 1995	Final date for registration of claims and appeal regarding the provisional list of nominated candidates
28 December 1995	Issue of presidential decree increasing the number of seats in the Palestinian Council from 83 to 88
29 December 1995	Issue of presidential decree amending the Election Law to reopen nominations for the Palestinian Council for two additional days and to reduce the election campaign period from 21 days to 14 days. The decree fixes 5

	January 1996 for the opening of campaigning.
30 December 1995	Publication of the final list of nominated candidates and the final electoral register
2 January 1996	Announcement by the CEC that 2 January will be the first day of campaigning
19 January 1996	Closure of election campaigning at 7:00 a.m.
20 January 1996	Polling day
22 January 1996	Announcement by the CEC of the provisional results of the Palestinian Council elections
31 January 1996	Re-elections in two polling stations in the Gaza North constituency
4 February 1996	Re-counting of ballot papers from two polling stations in the Ramallah constituency. Election officials refuse to count ballot papers for 16 other polling stations
10 February 1996	Announcement by the CEC of the final results of the Palestinian Council elections
26 February 1996	Final hearing of the EAC

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APPENDIX II

LETTERS OF CONCERN

ICJ
INTERNATIONAL
COMMISSION
OF JURISTS

His Excellency President Yasser Arafat

President of the Palestinian National Authority

Gaza

1 December 1995

Your Excellency,

The International Commission of Jurists (ICJ) is a non-governmental organisation dedicated to promoting the Rule of Law and the legal protection of human rights.

For many years, we have been looking forward to restoring the Rule of Law in the West Bank and Gaza. The ICJ has long documented Israeli violations of human rights in the Occupied Palestinian Territories, together with its West Bank affiliate al-Haq and its Gaza affiliate the Gaza Centre for Rights and Law. We have repeatedly intervened with the Israeli Government protesting violations of human rights. We have also sent missions and observers to document and report on the administration of justice in these territories.

It is with the aspirations that democracy and human rights will finally be reinstated in the West Bank and Gaza that we will be carefully examining the coming presidential and parliamentary elections in the Palestinian Autonomous Areas. The ICJ has special expertise in this field. On behalf of the European Community/European Union, the ICJ has observed elections in a number of countries including Burundi, Gabon, Guinea, Guinea-Bissau, Madagascar, Malawi and South Africa. The ICJ has also observed elections in Sri Lanka and Tunisia.

We are aware of the current debate in the West Bank and Gaza concerning the Palestinian elections. We are concerned that dates are set for the elections to take place in January 1996; yet the electoral system, laws and regulations have not been

finalised. More significant is our concern of whether the proposed Palestinian electoral code conforms with democratic and human rights values.

We understand, for instance, that it is proposed that Palestine adopts the electoral system of direct elections in districts. Our experience demonstrates, however, that a proportional representation system is widely acknowledged as more appropriate for democracies, especially new ones. The proportional system is utilised in many countries including Austria, Belgium, Benin, Brazil, Bulgaria, Denmark, Iceland, Mozambique, Namibia, The Netherlands, Peru, and Sri Lanka. A mixed system could also be elaborated. Mixed electoral systems are used in Finland, Germany, Guatemala, Guinea, Mexico, and Sweden. While the United States of America uses a system that is based on direct bi-partisan elections of candidates in States, such a system does not adequately serve the interests of other multi-party societies. The ICJ is currently examining the proposed Palestinian legislation and will be sending its detailed comments to Your Excellency in the near future.

In the meantime, allow me, Your Excellency, to request that the Palestinian National Authority not proceed with elections until proper preparations are made, including its adoption of an adequate electoral system.

Please accept the assurance of our highest considerations.

Adama Dieng
Secretary-General
ICJ

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AL-HAQ

Affiliate, International Commission of Jurists - Geneva

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XIX

ARTICLE 19 International Centre Against Censorship

11 January 1996

Ref: 1/96

Mr. Mahmoud Abbas

Head of the CEC

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Dear Sir,

ARTICLE 19 and AL-HAQ are writing to you in your capacity as the highest ranking member of the Central Elections Commission (CEC), which is responsible for the administration and supervision of the elections. We understand that you are empowered to take all necessary steps to ensure the freedom and fairness of the elections, and are responsible for the implementation of all the regulations and procedures issued by the CEC, by District Elections Commissions, or by the various Palestinian national security forces related to the elections. During the electoral process freeness and fairness must be guaranteed for voters, candidates, and different political groups, including the right to freedom of expression without any restrictions. This right is guaranteed by the Palestinian Election Law, in accordance with international standards for free and fair direct elections.

The declaration by the Director-General of Police Ghazi al-Jabali, on 4 January 1996, includes a ban on marches during and after public rallies and a ban on distribution of publications for or against the election process. We believe that this declaration violates the standards of freedom and fairness of elections and also contravenes various provisions of the Palestinian Election Law of 1995 which relate to election campaigning. We recognize that the statement also contains provisions intended to guarantee safety during the electoral process, such as bans on carrying arms and opening fire.

AL-HAQ and ARTICLE 19 believe that the statement by the Director-General of Police prohibiting popular marches during and after election rallies

violates article 5(1) of the law which states: "To assist coordination of the electoral propaganda activities of candidates and registered partisan entities, the District Election Offices shall assemble a list of all available venues and facilities [in their constituency] for the holding of such activities, as well as for the display of electoral posters" and therefore violates the rights of the electorate.

The right to distribute publications and printed materials is an integral part of the election process and we cannot conceive of an election campaign without publications, printed materials and electoral programs. We note that the Election Law bans certain types of materials but does not prohibit all publications. Article 58(3) and (4) of the Election Law specify what is prohibited (primarily material which is highly offensive or incites violence), and it therefore appears that the distribution of all other materials is permitted. Consequently the declaration issued by the Director-General of Police contravenes Article 58 of the Election Law.

We are concerned by a number of arrests carried out by the Palestinian Police, as a result of the Director-General's declaration, for distributing publications calling for a boycott of the elections. Three people were arrested in Bethlehem on 4 January 1996, which we note is the date on which the Director-General's statement was issued. We understand that the Palestinian police held these persons for a few hours and tore up their materials. In addition, another four individuals were detained in Nablus for the same reason.

Freedom of expression must be guaranteed not only to participants in the election or those in favor of the electoral process, but to all citizens regardless of their positive or negative views about the electoral process.

We hope that you will take all necessary steps to uphold the positive provisions contained in the declaration by the Director-General of Police and will annul these measures which breach the Election Law and which violate the right to freedom of expression without discrimination. We hope that you will inform the general public of these steps.

Yours, in anticipation,

ARTICLE 19

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**XIX****ARTICLE 19
International Centre
Against Censorship**

16 January 1996

Ref: 2/96

Mr.: Mahmoud Abbas

Head of the CEC

Dear Sir,

In order secure the fundamental rights of voters to access to information, particularly during the election campaign period, and to ensure that the CEC adopts satisfactory procedures and arrangements for the Palestinian elections, AL-HAQ and ARTICLE 19 would like to raise with you some issues of public concern. We would be grateful if you could reply as quickly as possible to these inquiries, which are as follows:

The Electoral Register

1- We are concerned about:

- a) Recently released detainees whose names have not been added to the electoral register and the type of measures which will be taken to guarantee their right to vote;
- b) Persons who have obtained identity cards in accordance with the Israeli-Palestinian Agreement after the deadline specified for registration of voters.

2- We would be grateful if you inform us what arrangements have been made by the CEC to publicize the electoral register in the Jerusalem constituency, especially since only two [sic] days remain before polling day. We would also like to obtain

details of the reasons for not making the register available for scrutiny by the electorate, candidates and concerned organizations at an earlier time.

Voting Arrangements for Police Officers and Members of the Security Forces

We would be grateful for details of the measures which you have taken to ensure that police officers and members of the security forces may not vote twice if they are transferred from one district to another.

Voting Arrangements for Persons with Disabilities

We would also like to obtain information concerning the arrangements which have been made by the CEC to ensure that persons with disabilities have easy access to polling stations and are able to exercise their right to vote.

Regulations and Guidelines for Heads of Polling Station Commissions

What kind of regulations and guidelines has the CEC issued to heads of polling station commissions to ensure that the freeness and fairness of the elections.

We hope that you will take the issues raised in this letter into consideration and respond to our queries promptly. We would also like to enquire whether you will be able to respond to our joint letter dated 11 November 1996 (Ref: 1/96) concerning Colonel Ghazi al-Jabali's statement regarding the election campaign.

Yours respectfully,

AL-HAQ
Executive Director

ARTICLE 19
Helen Darbshire

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AL-HAQ

Affiliate, International Consultation of Jurists - Geneva

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20 January 1996

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Ref: 4/96

Mr. Mahmoud 'Abbas

Head of the CEC

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RE: URGENT REMARKS ON THE ELECTION PROCESS

Dear Mr. 'Abbas,

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AL-HAQ would like to bring to your attention a number of practices that have taken place during the election process which violate the Palestinian Election Law. These violations were noted by our monitors, who have been distributed in most of the constituencies.

1- Electoral campaigning: campaigning continued during the election process in the majority of the sites, in violation of the election law which clearly states that campaigning must stop on Thursday 18 January 1996.

2- Security forces:

- a) Members of Preventative Security were present inside some polling stations, particularly, in the Gaza Strip;
- b) Some armed policemen entered polling stations without being sent after by the polling station president;
- c) There was a lack of clear procedures for voting for members of the security forces.

3- Voting rolls:

- d) Voting rolls did not include names of all persons eligible to vote, including registered voters;

b) Voting rolls included names of voters registered in other polling stations.

- 4- Polling station officials: volunteers were present at some polling stations assisting the polling station officials in their job, particularly at polling station no. 34 in the Ramallah constituency.
- 5- Secrecy of the ballot: some persons present in polling stations breached the right of voters to secrecy in casting their ballots. In addition to the problem of poor layout of polling booths, in general presidents of polling stations did not attempt to prevent those present inside the polling stations, such as candidates' agents, from identifying the candidates for whom voters were casting their ballots.
- 6- Monitors at polling stations: in some polling stations, security officials did not check the accreditation of persons who were monitoring inside stations.
- 7- Assisting voters: in general polling station officials were not familiar with the regulations regarding assistance for illiterate voters, and this resulted in some problems.

We hope that AL-HAQ's efforts will assist in promoting free and fair elections. We hope that your excellency will bring these notes to the attention of the CEC in its conduct of the scrutiny.

Yours respectfully,

Nabil S. Handal
Executive Director



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ARTICLE 19 International Centre Against Censorship

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INTERNATIONAL COMMISSION OF JURISTS

26 January 1996

Mr. Mahmoud 'Abbas
Head of the CEC

RE: IMPORTANT REMARKS ON THE ELECTORAL PROCESS

Dear Mr. Abbas,

During its joint monitoring of the Palestinian elections, representatives of AL-HAQ, the ICJ, based in Geneva, and ARTICLE 19, based in London, visited 11 constituencies and 238 polling stations. We observed certain irregularities which may have helped to create an atmosphere of confusion and may have affected the right of voters to cast their ballots freely. Please find enclosed a copy of a press release issued today by the above-mentioned organizations regarding these irregularities and their effects on the election process.

We hope that the CEC will take these remarks into account when taking decisions in relation to the elections and when considering election claims. Due to difficult circumstances prevailing in certain constituencies in the West Bank and the Gaza Strip during the election process, we urge you to take all appropriate measures to enable the candidates to file appeals as guaranteed by the Palestinian Election Law. We also hope that the CEC will take into account all the information presented to it by local or international monitors and adopt appropriate measures to prosecute persons who committed violations of the Election Law.

Finally, we would like to inform you that the three organizations are preparing a report about the Palestinian election process from a human rights

perspective. The report will include a section concerning the work of the CEC and the Election Appeals Court, and the handling of elections claims and appeals.

We hope that our efforts help to promote free and fair elections. We also hope that your excellency will bring this letter and the attached statement to the attention of the CEC.

Respectfully yours,

AL-HAQ

ICJ

ARTICLE 19



His Excellency Mr. Mahmoud 'Abbas
Head of the Central Elections Commission

6 February 1996

Re: The Results of the Elections in the Ramallah District

Dear Sir,

The Central Elections Commission has admitted that a number of the protocols from polling stations in the Ramallah district have been lost. As a result there has been a delay of more than two weeks in the announcement of the final results of the elections in Ramallah District. These admissions corroborate information gathered by AL-HAQ's election monitors exposing irregularities and lack of adherence to proper procedures by some officials in the Ramallah District Elections Office. Such irregularities pertained to problems in receiving the protocols from the heads of polling stations, a problem that was widespread in the Ramallah constituency, and the absence of mechanisms (or lack of awareness of these mechanisms) for the transfer of protocols and ballot boxes to the District Elections Office after the votes had been counted. As a result heads of polling stations had no other choice except to improvise.

On the basis of its concern for the upholding of correct procedures and guarantees to ensure the fairness of the elections, AL-HAQ calls on the CEC to find an alternative solution for the problem of lost protocols other than the re-count which was scheduled to take place on 4 February 1996 at Bir Zeit University, since this step was not welcomed by a number of candidates and the heads of the concerned polling stations. We also believe that it is essential that the CEC publicize its position on the following matters in advance:

- 1- the solution that the CEC reaches in relation to this problem;
- 2- the date and location of the hearings of appeals by the Elections Appeals Court;
and
- 3- whether domestic observers are entitled to attend the sessions of the Election Appeals Court.

We hope that you will be able to cooperate with us in relation to these matters.

Sincerely,

Nabil S. Handal

Executive Director

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INTERIM STATEMENTS

AL-HAQ

Affiliate, International Commission of Jurists - Geneva

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XIX

ARTICLE 19

International Centre
Against Censorship

Ramallah, West Bank, 9 January 1996

**AL HAQ AND ARTICLE 19 CALL FOR GREATER RESPECT FOR
FREEDOM OF EXPRESSION IN PALESTINIAN ELECTION
CAMPAIGN.**

Two leading human rights organizations today highlighted a range of freedom of expression concerns which have arisen during the early stages of the Palestinian election campaign. AL-HAQ, Law in the Service of Man (Ramallah), and ARTICLE 19, the International Centre Against Censorship (London), urge those involved in holding the elections, particularly the Palestinian Authority, the Central Election Commission, and also the Israeli authorities, to take urgent steps to ensure that these concerns are addressed and that every effort is made to ensure that the elections, to be held on 20 January, are genuinely free and fair.

AL-HAQ and ARTICLE 19 have published a set of *Guidelines on the Media Coverage of the Palestinian Elections* which focus on freedom of expression, and in particular access to the broadcast media, during the electoral process. These guidelines are available in both Arabic and English from AL-HAQ, and are being distributed widely to those involved in the election process including the relevant authorities, candidates, the media, and domestic and international election monitors. AL-HAQ and ARTICLE 19 will continue to keep these institutions and people informed of violations of the right to freedom of expression as part of a campaign to

have such violations addressed promptly and recorded so that they may be taken into account when assessing the validity of the elections.

AL-HAQ and ARTICLE 19 have announced the following areas of concern which they will continue to monitor during the remaining two weeks of the election campaign:

1. Freedom of expression for candidates
2. Freedom of expression for those opposed to the election process
3. Freedom of expression for human rights monitors and election observers
4. Freedom of expression for the media
 - 4.1 Freedom from interference by the Palestinian Authority
 - 4.2 Freedom from censorship by the Israeli authorities
5. The electorate's rights to freedom of opinion and expression

Further details on these areas of concern are attached.

For more information, please contact:

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273 273 (room 118)

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FREEDOM OF EXPRESSION CONCERNS IN THE PALESTINIAN ELECTORAL PROCESS

1. Freedom of Expression for Candidates

The Palestinian Authority, including the Central Election Commission, through its offices and through the District Election Commissions and Offices, and the Israeli Authorities, must ensure that the following rights are respected for all candidates participating in the elections:

- freedom to hold rallies and election campaign meetings.
- the right to have air time on radio and television stations operated by the Palestinian Broadcasting Corporation (under the authority of the Palestinian Authority) for campaign statements on an equitable basis with other candidates for the same office.
- balanced coverage of the election campaign in news programmes of media under the control of the Palestinian Authority and of the Israeli authorities.
- the right to receive protection from the PA security forces against all forms of physical harassment or other intimidation.
- freedom from undue pressure on candidates to withdraw from the elections: whilst it is perfectly acceptable that some candidates may choose to withdraw their nominations (as witnessed recently in the case of a number of Hamas-linked candidates), there must be no harassment or intimidation of candidates, which would force them to withdraw against their will, either by the Palestinian Authority, political groupings close to the PA or any other parties or groups.
- freedom of movement: a fundamental right in itself, freedom of movement is also an integral aspect of the right to freedom of expression during the election campaign.
- freedom to produce and distribute campaign propaganda, including the distribution of such material between different electoral districts, such as and from the West Bank and Gaza.

In addition, no steps may be taken by the Israeli authorities which would interfere with these rights, such as restrictions on freedom of movement or distribution of materials.

2. Freedom of Expression for those Opposed to the Election Process

Groups and individuals who have taken the decision not to participate in the election process must nevertheless have their right to freedom of opinion and expression fully respected during the election campaign. This right imposes a duty on media controlled by the Palestinian authority to report in a fair and balanced manner on views critical of either the elections or the policies of the Palestinian Authority.

3. Freedom of Expression for Human Rights Monitors and Election Observers

Freedom of speech and freedom of movement for those monitoring the elections are recognized as essential elements of a fair election through their inclusion in Annex II of the Oslo II accords. These freedoms are guaranteed for domestic observers (Appendix 2 paras B.3 and B.4) and for international observers (Article V, para 8, Appendix 3, para 1.b) and their staff (Appendix 3, para 8.a).

The detention on 3 January 1996 for 25 hours of Mr. Bassem 'Eid, a prominent human rights worker with the Israeli organization B'Tselem and the international media freedom group Reporters Sans Frontières, is particularly worrisome. This detention could create an atmosphere of self-censorship and raises concerns that national and international election monitors will not be permitted to exercise their right to freedom of expression and movement during the campaign period.

If the election process is both to be fair and be seen to be fair, it is imperative that the rights of all human rights observers and election monitors be fully respected by the Palestinian Authority and its security forces. Such rights include the right to freedom of movement and the right to seek, receive and impart information and ideas. AL-HAQ and ARTICLE 19 call for a clear statement from the Palestinian Authority that the rights of all observers of the electoral process and monitors of other human rights violations will not experience any further arbitrary interference in their work.

4. Freedom of Expression for the Media

Media freedom must be respected for all non-state-owned media and editorial independence must be ensured for all state-owned media. This fundamental principle carries even greater weight during election campaign periods when freedom of expression has to be upheld if the elections are to be regarded as having established a legitimate democratic government.

For the duration of an election campaign, all restrictions on freedom of expression

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and media freedom should be suspended and a clear pledge should be made by all parties to review such restrictions following the elections and to ensure that they are repealed or amended to accord with international standards.

4.1 Freedom from Interference by the Palestinian Authority

There is, therefore, particular onus on the Palestinian Authority and its security forces not to interfere in any way with media freedom. The detention on 25 December 1995 for five days of Mr. Maher Alami, editor of *Al Quds*, gives serious cause for concern because in addition to the harassment of this particular editor, the detention sent a clear signal to other media professionals to toe the line in their editorial decision-making.

AL-HAQ and ARTICLE 19 would welcome an unambiguous statement from the Palestinian Authority at the highest level that there must be no intimidation of the media or media professionals. We would also welcome a statement to the effect that those members of the security forces who breach the fundamental rights of media professionals will be disciplined.

4.2 Freedom from Censorship by the Israeli Authorities

Whilst continuing Israeli Military prior censorship of the Palestinian press has not resulted in any notable recent cases, it is reported that this is because the media know the limits of what is acceptable, rather than because of any relaxation on the part of the censors. Any form of prior censorship is regarded as particularly inimical to freedom of expression under international standards and should be abolished immediately.

5. The Electorate's Right to Freedom of Opinion and Expression

The electoral process is one of the most fundamental ways in which members of a democratic society exercise their right to freedom of opinion and expression. Reliable reports that teachers have been pressured into signing nominations for candidates raises concerns that the existing structure of the Palestinian Authority will also be used to pressure voters into casting their ballot for certain candidates. Such a violation of the right to freedom of expression would seriously call into question the validity of the election process. Voters must be safeguarded against all pressures to vote in one particular way or not to vote at all.

The decision by some groups to boycott the actual ballot has led to some of their followers voluntarily failing to enter themselves on the electoral register and has

therefore unfortunately restricted their ability to change their opinion and to vote if they so desire. These citizens must not be penalized in any way for the decision not to participate in the elections.

In addition, the Palestinian Authority has the duty to inform the voters about the electoral process and to ensure that all potential voters have the opportunity to receive information necessary to enable them to make an informed choice. Given the short time line before the ballot, it is particularly important that the Palestinian Authority, throughout the CEC and other offices, make every effort to ensure that voters are fully informed on areas such as the candidates and the campaign issues, as well as on the actual voting processes.

For more information, please contact:

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AL-HAQ / ARTICLE 19

January 1996

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AL-HAQ

Affiliate, International Commission of Jurists - Geneva

فروع لجنة المحققين الدولية - جنيف



XIX
ARTICLE 19
International Centre
Against Censorship

ICJ
INTERNATIONAL
COMMISSION
OF JURISTS

Ramallah, West Bank, 16 January 1996

OPEN LETTER TO:

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Minister of Justice, Israel
Chief of Police, Israel

copy to:

International Observers
CEC, Ramallah

**AL-HAQ, ARTICLE 19 AND INTERNATIONAL COMMISSION OF
JURISTS CONDEMN ISRAELI INTERFERENCE IN ELECTION
PROCESS IN EAST JERUSALEM**

AL-HAQ, ARTICLE 19 and the INTERNATIONAL COMMISSION OF JURISTS (ICJ) are greatly concerned by the interference of the Israeli authorities in the election campaign in the East Jerusalem constituency. In particular, their interference with the rights to freedom of expression and freedom of movement of Palestinian candidates.

On 14 January 1996, a number of candidates for the East Jerusalem constituency were prevented from carrying out their campaigning by the Israeli authorities. In particular, as a result of two incidents, one candidate and three campaign workers were arrested on the pretext that they had no right to display election campaign posters on their vehicles. All those arrested were released on bail after spending several hours in detention and being charged with traffic-related offences.

In the first incident, Israeli police forces and border guards at the al-Ram checkpoint (north of Jerusalem) prevented Dr. Hanan Ashrawi (candidate for the East Jerusalem constituency) from entering Jerusalem and told her to remove posters from her car.

After a long argument, her driver, Amer Radwan, was arrested by the police who also physically abused and then arrested one of the campaign team members. In addition, the police tore the posters from Dr. Ashrawi's car. The detainees were taken to the Neve Yacov Settlement police station where they were held for approximately six hours before being released on bail, having been charged with traffic offences (disturbing the traffic).

In the second incident, also on 14 January 1996, Mr. Suleiman Qirresh, the brother of an East Jerusalem candidate, tried to enter Jerusalem from the eastern side and was stopped at the military checkpoint near al 'Eizariyya village. When told to remove posters from his car, he refused to do so. In the meantime the candidate himself, Mr. Samir Qirresh, arrived at the checkpoint and when the brothers continued to refuse to remove the posters, they were both arrested. They were taken to the police station in al-Mascobia (Russian Compound) where they were held for approximately five hours after which they were released on bail.

AL-HAQ, ARTICLE 19 and the ICJ believe that such practices constitute a serious violation of the right to freedom of expression and freedom of movement which are fundamental elements in a free and fair campaign process. Candidates

must be permitted to carry out their election campaigns and to express their views without hindrance, obstruction or harassment. Candidates must equally be granted freedom of movement in order to meet and communicate with the electorate.

AL-HAQ, ARTICLE 19 and the ICJ call on the Israeli authorities to respect their obligations under international law and agreements between the Israeli and Palestinian sides in the peace process and to ensure that there is no interference in the legitimate activities of the candidates in the election campaign. We furthermore call on the authorities immediately and unconditionally to drop all charges brought against candidates or campaign workers, including Mr. 'Amer Radwan, Mr. Suleiman Qirresh, and Mr. Samir Qirresh, as a result of activities related to the peaceful conduct of election campaigning.

for AL-HAQ

for ICJ

for ARTICLE 19

**XIX****ARTICLE 19
International Centre
Against Censorship****ICJ****INTERNATIONAL
COMMISSION
OF JURISTS**

18 January 1996

AL-HAQ, ARTICLE 19 and the ICJ express deep concerns about the harassment of independent candidate (Fateh member), Dr. Saleh 'Ali Mara'ba of Qalqilya, in what appears to be a systematic campaign by members of the Palestinian Authority to prevent him being elected. AL-HAQ, ARTICLE 19 and the ICJ believe that this campaign against Dr. Mara'ba constitutes a serious violation of the electoral process.

According to our information, Dr. Saleh 'Ali Mara'ba, a doctor of psychology, a professor at al-Najah University, Nablus, and Director of Social Affairs for Qalqilya until he stepped down to run for the election, has been a member of Fateh since 1968. He put his name forward to be selected as a candidate for Fateh by the Qalqilya branch. In the primary selection on 16 December 1995 he was placed second and therefore qualified to be a candidate according to the internal system of the Fateh party. However, he learned three days later, when the Central Committee of Fateh publicized the final lists, that his name had not been placed on the list for Qalqilya and that another candidate had been selected in his place.

Dr. Mara'ba said that he then telephoned Mr. Marwan Kanafani, spokesperson for Mr. Yasser 'Arafat, and asked if he could, as a Fateh member, stand as an independent candidate; apparently Mr. Kanafani affirmed that he did have this right. Dr. Mara'ba submitted his candidacy on 23 December 1995 at 14:10 hrs. The same day, at 14:30, he was visited in quick succession by two groups of men.

The first group of four men told him to withdraw his nomination and threatened that if he did not do so, they would burn down his house. They also stated

that he was not as qualified to be a candidate as Mr. Abu Lu'ay, another independent (Fateh member) candidate. Dr. Mara'ba did not know these men but believes that he could identify them if he saw them again.

The second group consisted of three men who told him that he must be silent and that he had no right to stand as a candidate in Qalqilya as he came from a village. The men threatened to cut out his tongue. Dr. Mara'ba did not know these men either, but feels he could identify them.

Dr. Mara'ba reported these threats and intimidation to the two security services, Force 17 and the Palestinian Intelligence Agency.

Dr. Mara'ba reports that for the following 12 days he received anonymous phone calls every day warning him to take his children to the village as they were coming to burn down his house. There were also threats that he would be "captured" and that the "file on his father would be opened".

Dr. Mara'ba reports that in addition to these phone calls, he has received other calls from people he recognizes as being from members of the Palestinian intelligence services. He states that these were less threatening phone calls but that he was asked to withdraw his candidacy. He was also accused of working with a collaborator and was told not to expose the wrong-doings of the PA in the area.

On 31 December 1995, three men came to Dr. Mara'ba's house while he was out and, according to his spouse, waited one hour for him outside the house. They then fired shots into the air. A car arrived and the men left in it. Dr. Mara'ba informed the Preventive Security Service (PSS) who came and collected 13 empty cartridges from outside the house.

In the last week of December, Dr. Mara'ba received a verbal message which allegedly had come to him from the Chief of Intelligence via a Mr. Talal Sneina who passed it to Mr. 'Abd-al-Karim Muhammad Hammad, a friend of Dr. Mara'ba. This message requested that Dr. Mara'ba withdraw his nomination and informed him that a growing security file is being held on him. This was confirmed to AL-HAQ by Mr. 'Abd-al-Karim Muhammad Hammad who had passed on the message.

At a public meeting for candidates on 17 January 1996 (attended in part by AL-HAQ and ARTICLE 19) Dr. Mara'ba was asked by another candidate why he was not included in the official Fateh list. Dr. Mara'ba attempted to clarify and stated that he had approval from Yasser 'Arafat. At this point the Head of the Intelligence Agency for Qalqilya, Mr. Abu al-'Abed 'Aqil - who claimed to be acting in a personal capacity - interrupted, objecting that this was personal propaganda. The Intelligence chief also requested that the TV crew from the local Qalqilya television station covering the press conference not cover this exchange and also not broadcast what they had already filmed relating to Dr. Mara'ba. That

evening the television broadcast omitted Dr. Mara'ba's statement and clarifications, but did broadcast the interruption and comments by the Chief of Intelligence. Dr. Mara'ba alleges bias against him in previous TV coverage.

On 17 January 1996, Dr. Mara'ba went to the director of all security agencies in Qalqilya, Mr. Abu-'Awn to complain about continued harassment and intimidation. Mr. Abu-'Awn said he was already aware that this was taking place and stated that he would write to President Arafat complaining about these illegal practices. Mr. Abu-'Awn said that he would try to arrange for the Chief of Intelligence to be outside Qalqilya during the election. Mr. Abu-'Awn added that he believed that the Commander of Military Intelligence was also involved in this discreditation campaign. In Dr. Mara'ba's presence, Mr. Abu-'Awn telephoned the Chief of Intelligence, told him that his behaviour was illegal and that Dr. Saleh should not be subjected to any further harassment.

For more information, please contact:

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**XIX****ARTICLE 19
International Centre
Against Censorship****ICJ****INTERNATIONAL
COMMISSION
OF JURISTS**

Ramallah, West Bank, 19 January 1996

**PALESTINIAN ELECTION CAMPAIGN MARRED
BY SERIOUS VIOLATIONS SAY HUMAN RIGHTS OBSERVERS**

On the eve of elections, three leading human rights organizations today (Friday, 19 January) expressed concern about human rights violations which have tainted the Palestinian election campaign. These human rights abuses, together with the shortened campaign period and compressed preparation for the election, raise the possibility that voters making their choices tomorrow may not be fully informed.

Affirming the link between respect for fundamental human rights and a free and fair electoral process, AL-HAQ, ARTICLE 19 and the INTERNATIONAL COMMISSION OF JURISTS (ICJ) have monitored human rights violations during the campaign. These violations have resulted from actions both by the Palestinian Authority and its agents, and by the Israeli authorities, which retain considerable legal authority and thus responsibility in Palestine. These violations include:

- that candidates and their supporters have been harassed, intimidated and in some cases detained; the Palestinian Authority has either been involved in this action or has failed to take necessary measures to protect the candidates and ensure that there is no disruption to the campaign process;
- that opponents of the elections have been detained by both the Palestinian and Israeli authorities; these detentions were apparently aimed at silencing opposition voices; Israel has transferred detainees to prisons inside its territory in violation of international law;
- that restrictions have been placed on campaigning activity by both the Palestinian authorities (notably through the decree by General Commander of Police Ghazi

Jabali) and by the Israeli authorities (notably in East Jerusalem); there have been interferences with distribution of election campaign material as well as material calling for a boycott;

- that armed men are accompanying some candidates and have been harassing the supporters of opposing groups; other reports indicate that in some cases these are members of the Palestinian Security Service who have been given leave to participate in the campaign;
- that the Palestinian Broadcasting Corporation has not dealt with the campaign in a balanced fashion and local media have experienced interference from state officials;
- that, in keeping with the rushed circumstances which have characterized this election, important information about the ballot sheet, including details of form and content, has not been released to date.

AL-HAQ, ARTICLE 19, and the INTERNATIONAL COMMISSION OF JURISTS believe that these violations raise doubts about the commitment on the part of both the Israelis and the Palestinians to "direct, free and general political elections" and about protection of fundamental rights in the future. We therefore call for the following steps to be taken:

- that all detainees be released immediately and unconditionally;
- that the Palestinian Central Election Commission (CEC) take every possible measure to ensure that these violations from the campaign process are not compounded by violations on voting day;
- that all relevant Palestinian authorities, including the CEC and the Ministry of Justice, investigate in detail all reported violations and take appropriate action;
- that the domestic and international observers include human rights concerns in their evaluations of the elections and in their recommendations for further action;
- that all parties ensure both a peaceful process on 20 January 1996 and respect for human rights.

For more information, please contact:

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URGENT ACTION REQUIRED IN JERUSALEM
FACTS FROM THE FIELD

20 January 1996
Ramallah, West Bank
2:00 p.m.

Initial information with regard to the first hours of voting in Jerusalem in the Palestinian elections reveals some alarming practices. Voting takes place in five post offices. In three of these post office at least (Beit Hanina, Salah al-Din Street and Shu'fat), large groups of armed Israeli forces (approximately 20-30) are present inside and in the surrounding areas. They extensively check identification documents and in some cases cause lengthy delays in the voting process. This comes in the wake of threats that Palestinian residents of Jerusalem have faced in the last few weeks by Israelis that they might lose their residency status and benefits in Jerusalem if they participate in the Palestinian elections. President Carter was asked by Israeli Prime Minister Peres to assure the population that this will not happen. However, the presence of the Israeli forces in such large numbers is causing a great sense of intimidation to Palestinian voters. So far, very few people apparently have gone to vote.

The information below related to the situation in Jerusalem was obtained from the staff of al-Haq who are observing the election process in the field. The following is a summary:

- Israeli forces surrounding one of the post offices on Salah al-Din Street do not allow any person to enter the surrounding area of approximately one square kilometer unless electoral registration cards are shown, indicating registration to vote in that particular area. Voters are caused substantial delays despite showing the proper identification documents. However, it seems that selected persons are being allowed to proceed, based on no clear criteria.
- There is no guarantee of a secret ballot. The post offices are open for regular daily postal work. Voters make their choices while standing on the counter in front of the post office employee. Voters do not have special space/booths to separate them from other people in the post office.

- Only one post office employee is designated to check the names against the voters' lists, provide voters with ballot sheets, then receive the ballot sheets and insert the voting cast in the proper boxes set next to him. No double checking is practiced by another employee for any of the stages. There are no guarantees that these employees carry out all the procedures correctly and even do not fill an additional number of ballot sheets and place them in the boxes.
- The fear of malpractice is compounded by the fact that domestic observers are prevented by Israeli forces to gain access to polling stations in their capacity as local observers. Meanwhile, international observers are allowed access. Additionally, at least four domestic observers were detained for few hours by the Israeli forces.
- The lists provided by the CEC to electoral stations are apparently not complete. Initial information shows that some names of people registered to vote do not appear in the lists, although the people concerned previously went through all the appropriate procedure to ensure that they were registered.

On the basis of the above, al-Haq and the International Commission of Jurists (ICJ) are extremely concerned that there are no proper guarantees that the Palestinian elections in Jerusalem are free and fair. We urge you to intervene IMMEDIATELY with the addressees below requiring a proper redress.

Please send your interventions to

- Mr. Shimon Peres, Israeli Prime Minister and Minister of Defense,

Fax: 972 3 6917915

- Mr. Moshe Shahal, Israeli Minister of Internal Security

Fax: 972 2 811832

- Mr. Mahmoud 'Abbas, Head of the Palestinian Central Elections' Commission (CEC) Fax: 972 2 9954431

**XIX****ARTICLE 19
International Centre
Against Censorship****ICJ****INTERNATIONAL
COMMISSION
OF JURISTS**

Ramallah, West Bank, 26 January 1996

**HUMAN RIGHTS GROUPS URGE CEC TO CONTINUE TO RECEIVE
ELECTORAL COMPLAINTS**

AL-HAQ (Ramallah), ARTICLE 19 (London) and THE INTERNATIONAL COMMISSION OF JURISTS (Geneva) today wrote to the Palestinian election body - the Central Election Commission (CEC) - raising a number of concerns identified during monitoring of the first Palestinian elections on 20 January 1996. Noting that irregularities in the electoral process are still being uncovered, and that candidates may not have been in a position during the last few days to file complaints, the three organizations urged the CEC to find appropriate measures to enable candidates to continue to exercise their right to file complaints as provided to them by the Palestinian Election Law. The organizations called on the CEC to ensure that all complaints be thoroughly investigated and that action be taken, including, where appropriate, prosecutions of those found to have violated the Election Law.

AL-HAQ, ARTICLE 19 and THE INTERNATIONAL COMMISSION OF JURISTS (ICJ) expressed their belief that the range of irregularities observed, including violations of the Palestinian Election Law and international standards governing elections, are due, at least in part, to inadequacies in the legal and practical arrangements for the elections caused by an insufficient time period between the calling and holding of elections (a concern raised in a 1 December 1995 letter from the ICJ to Palestinian National Authority President, Yasser Arafat).

The organizations cite direct and indirect pressure on voters, and, in some areas, an atmosphere of intimidation, as well as a lack of clear remedies to redress administrative and other complications as they arose. These problems compounded

violations which occurred during campaigning (as detailed in joint statements of 9, 11, 16, 17 and 19 January) such as intimidation of candidates, lack of equal access to the media, the extremely short campaign period and restrictions on campaign activities. We are continuing to compile information on these irregularities.

AL-HAQ, ARTICLE 19 and THE INTERNATIONAL COMMISSION OF JURISTS believe that the accumulation of all these factors may have affected the final result of the ballot in some centres.

The irregularities summarized below were documented by a team of 26, including AL-HAQ staff, two ICJ lawyers and one ARTICLE 19 consultant all based in Ramallah. 20 field observers visited a total of 238 polling stations in 11 constituencies in the Gaza Strip and the West Bank, which includes East Jerusalem. Further details on these irregularities - which will be published in a forthcoming report - are available from AL-HAQ.

1. VIOLATIONS OF THE ELECTORAL LAW AND DIRECTIVES

- The electoral campaign for several candidates continued in the hours before and during polling, in violation of the Election Law which states that campaigning must stop 24 hours in advance of the opening of the poll, that is on Friday 19 January 1996 (Article 55 of Election Law).
- The voting rolls were not fully updated resulting in some names being omitted. This prevented many persons from exercising their right to vote (Articles 6 & 7). Polling station officials were not adequately aware of the designated procedures - such as the option of contacting the CEC hotline - to remedy this problem. Security personnel stationed away from home were poorly informed about the voting procedure they should follow, which resulted in many of them not voting.
- Poor management and disorder, particularly in overcrowded polling stations, resulted in persons without voting cards or accreditation as monitors or candidates agents gaining entry.
- Polling station officials breached regulations by allowing volunteers to assist in some centres (Articles 29 and 30).
- In some cases, members of the security forces acted beyond the limits of their authority and were seen inside polling stations assisting in running them. According to the election law, security forces should only be present inside a polling station for a limited time to maintain order at the request of the President of the Polling Station; their presence was clearly not required in these instances (Article 75).

- In some cases the polling station President relinquished responsibility for keeping law and order in the precinct of the polling stations (Article 75) to security personnel.
- Al-Haq's election monitors were in certain cases obstructed in their work of observing the electoral process and the count by election officials and security personnel (Article 103); in some cases there was discrimination against local - as opposed to international - monitors and, in one instance in Abu Dis, our monitor was requested to leave the count on the second day of counting; she refused and was eventually allowed to remain.

2. INTIMIDATION BY ISRAELI AUTHORITIES AND OTHERS

- The heavy presence of armed Israeli police forces at the entrances to and around polling stations (post offices) in Jerusalem had an intimidatory effect and may have deterred some from voting (there was a low voter turnout at these polling stations).
- Israeli police officers photographed and videotaped persons entering polling stations and the nearby area, which also constituted intimidation.
- The Israeli Authorities limited the activities of local monitors, including by arresting and detaining for a few hours on the morning of polling at least seven Palestinian domestic monitors, and by attempting to prevent local monitors from entering the polling stations.
- The distribution in advance of the election in Jerusalem of flyers purporting to be from the Israeli Likud opposition party, which threatened that those participating in the elections would lose their Jerusalem Identity Cards and associated rights, reportedly dissuaded some voters from exercising their right to vote.

3. FACTORS WHICH MAY HAVE PRESSURED VOTERS

In a first election, voters may be nervous about selecting candidates who are not those of the current or likely future ruling authority. For this reason voter secrecy is paramount and the polling station must be free of members of the security forces and other representatives of the authority who are acting in their official capacity, and who may, by their mere presence, pressure voters to making certain choices. Polling stations must also ensure that voters are not having their selection of candidates dictated by any party. We are therefore concerned about the following:

- The presence of uniformed - and in some cases armed - Palestinian security personnel inside a number of polling stations during voting. In one instance, a

uniformed soldier was witnessed assisting a number of people to vote.

- Reported instances of plainclothes Palestinian security personnel inside polling stations; in some cases they were observed instructing voters to vote for a particular candidate.
- The cramped conditions and poor layout without due regard to secrecy; it was possible for candidates' agents and other monitors to see who the voter was selecting.
- The provisions in the law for assisting illiterate and disabled voters were ambiguous and open to exploitation. In fact, in many cases, abuses were observed and polling station officials made no attempt to prevent this by verifying the need for assistance. Our monitors found that several women who had voted in the presence of their husbands were in fact capable of reading and writing. In one polling station, one person helped ten people to vote claiming that they were illiterate, but after enquiries by monitors and candidates' agents it was revealed that quite a few of the persons assisted were in fact literate.

In summary, AL-HAQ, ARTICLE 19 and THE INTERNATIONAL COMMISSION OF JURISTS (ICJ) are concerned that the electoral process lacked effective mechanisms to ensure that irregularities did not take place during the voting and counting or to remedy those which did occur. We do however note that, in general, the elections were more smoothly managed in Palestinian-controlled than Israeli-controlled areas. The three organizations believe that the irregularities and violations which did arise may have had an impact upon the results in some cases.

For more information, please contact:

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APPENDIX IV

LETTERS SENT TO THE CEC BY THE PALESTINIAN CENTRE FOR HUMAN RIGHTS

The Honorable Mahmoud Abbas (Abu-Mazen)
President of the CEC

Greetings,

As you are aware, the provision concerning election campaigning in the Election Law has been amended by a Presidential Decree issued on 29 December 1995 to state that the election campaign period will be for a duration of 14 days rather than 22 days. Therefore election campaigning is due to commence on 6 January 1995 [sic].

The Palestinian Centre for Human Rights earlier requested the CEC to put a stop to early election campaigning which contravenes the Election Law. In spite of a warning given by the CEC, election campaigning has not ceased. On the contrary it has increased. In addition, we have not been informed of any measures, which are entitled to be taken by law, adopted by the CEC against persons who conduct such campaigning apart from the publication of an appeal.

The conduct of election campaigning by candidates before 6 January 1996 is in clear violation of the provisions of the Election Law and infringes a fundamental principle of elections that candidates and voters are to be accorded equality of opportunity under the law.

We request you to take immediate steps to put a halt to early campaigning, to remove all campaign materials from streets and roads and to take the requisite action against persons who commit such violations.

We look forward to your excellency's prompt response.

With all our respect and appreciation.

Raji Sourani/Advocate
Director of the Palestinian Centre for Human Rights

Gaza/ 2 January 1996¹¹⁸

¹¹⁸ Translated by al-Haq.

The Honorable Mahmoud Abbas (Abu-Mazen)

President of the CEC

Greetings,

In coordination with and on behalf of Palestinian non-governmental organizations, the Palestinian Centre for Human Rights earlier applied to participate in observing the Palestinian elections for the President of the Executive Authority and the members of the Palestinian Council, to be held on 20 January 1996.

We have been informed by Usama Abu-Safiya, the Coordinator of the CEC, that you have kindly approved our application. We all hope and desire that the elections will be free and fair. Domestic observation of the elections constitutes one of the mechanisms to guarantee this.

We would like to draw your attention to the fact that the CEC has already provided cards to some observers. However, we have not yet received any cards. We hope that you will issue the necessary directions in this regard as soon as possible to enable us to make the appropriate arrangements, especially in light of the short period of time before the elections.

With all my appreciation and respect.

Raji Sourani/Advocate

Director of the Palestinian Centre for Human Rights

Gaza/ 2 January 1996¹¹⁹

¹¹⁹ Translated by al-Haq.

APPENDIX V

MAP OF ELECTORAL DISTRICTS IN THE WEST BANK
AND GAZA STRIP

