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Palestinian Elections in East Jerusalem:

Lessons Learned, Anticipated Challenges

In recent months, important steps were undertaken by the PA that have increased the prospects of Palestinian elections taking place in the coming months. In accordance with the Palestinian President decrees that were [issued](#) on January 15, 2021, elections for the Palestinian Legislative Council (PLC) are now scheduled for May 22, to be followed by elections for the Presidency on July 14, with the third and last election poll scheduled for the PLO Palestinian National Council (PNC) on August 31, 2021. The last elections for Presidency took place on January 9, 2005, and for the PLC on January 25, 2006.

The international and Palestinian domestic push to conduct these elections reflects concern over governance in the PA, the fragmentation of the Palestinian polity and the need for both President Abbas and Hamas to reinforce the legitimacy of their respective authority.

Not unexpectedly, the question of conducting elections in East Jerusalem is considered to be one of the key issues which could seal the fate of the very possibility of holding elections. Since the onset of negotiations regarding the permanent status of the West Bank and Gaza decades ago, matters relating to East Jerusalem elections have traditionally been highly sensitive and hotly contested. Ironically, the intense controversy regarding the elections and their results, is inversely proportionate to their impact on daily life in East Jerusalem and the lives of its Palestinian residents.

We will examine how the issue of East Jerusalem elections was addressed in the 1995 [Israeli-Palestinian Interim Agreement on the West Bank and the Gaza Strip](#) ("the Interim Agreement"), how it played out in the three rounds of elections (1996, 2005 and 2006), and what can be learned from these precedents regarding the challenges of holding elections in the near or distant future.

1. The Provisions of the Interim Agreement

The right of the Palestinians of East Jerusalem to participate in elections for the Palestinian Authority and its institutions is anchored in Article 2 of the Interim Agreement, with the general rules of conduct of the electoral process laid out in Annex II of that Agreement, [Protocol Concerning Elections](#).

While citing Jerusalem as one of the core issues to be resolved in permanent status negotiations (see Article XVII(1)(a) of the Interim Agreement), each side remained firmly entrenched in their zero-sum "non-negotiable" positions. For Israel, this meant exclusive Israeli sovereignty over Jerusalem, East and West; whereas for Palestinians this meant nothing less than Palestinian sovereignty over their capital in East Jerusalem. The mechanism laid down regarding elections in East Jerusalem sought to allow each side to claim that they had not compromised on these mutually exclusive core claims. The Palestinians asserted that the inclusion of East Jerusalemites in the elections reflects formal recognition that East Jerusalem is part of the Palestine, while Israel could claim that its sovereignty remained intact, with the residents of East Jerusalem merely casting an absentee ballot, as is common with expatriates around the world.

To that end, the provisions of the agreement stipulated that only a limited number of Palestinians would vote at five Israeli post offices (rather than the polling stations in the West Bank that were located in schools). The vast majority of voters have to cast their ballots at polling places run by the PA's Central Election Committee ("the CEC") that were located in the West Bank, beyond Jerusalem municipal boundary as defined by Israel.

The arrangements of Annex II could not possibly bridge the chasm between the parties on Jerusalem, and they sparred over virtually everything: who will carry out voter registration? What ID cards would be valid for purposes of identification? Where could political rallies take place, and who could participate? On which billboards could campaign posters be posted, etc.? What content would be allowed to appear in the campaign literature.

One small issue illuminates the nature of virtually all the disputes cited above: the ballot boxes, which was such a contentious subject that extended even to the legitimacy of using the term "ballot boxes". Israel [aspired](#) to have the slot on the front of the ballot box, indicating that the voters were dispatching their absentee ballots by mail. The Palestinians insisted the slot be on top, as is customary with ballot boxes. Ultimately, the slot was placed at the top edge, and the box was called neither a ballot box nor a letter box, but rather "a receptacle".

There was never full agreement reached over all of the outstanding issues, but not in a manner that prevented the conduct of reasonably credible, albeit "messy" elections in East Jerusalem. In spite of the bickering and skirmishing that took place during the 1996 elections, the parties found it advantageous to replicate these arrangements, however

inadequate, in the subsequent 2005 and 2006 elections. It was the path of least resistance, and will likely remain so in upcoming elections.

2. The Three Rounds of Elections – 1996, 2005 and 2006

Beyond the most basic components of the election process detailed in the Interim Agreement and Annex II, Israel and the Palestinians have throughout the three elections disagreed about virtually everything. With rare exception, the elections took place without the disputes ever being resolved. This led to low-grade skirmishing during the voter registration process, the campaign and election day, but none so serious as to undermine the fundamental authenticity of the elections.

Prominent and recurring among these difficulties were the following:

- **The Real and Reported Risks of Participation.** There is one issue that has hung like a pall over the three rounds of elections and had a major impact on them: the persistent rumors that any individual participating in the elections ran the risk of losing residency rights in Jerusalem and the freedom of movement and entitlements that derive from it. There is no evidence that such a loss of rights ever took place, but it was and likely remains widely accepted that this risk indeed exists.

In the 1996 elections, right-wing Israelis plastered billboards in East Jerusalem threatening the residents of loss of rights, which prompted the Israeli Foreign Ministry to issue a [denial](#). In 2005, these rumors became so rampant that under pressure of the Bush administration, the Sharon government adopted a similar resolution in this regard (see below).

- **Who can be a candidate?** To further dissimulate the significance of including East Jerusalem in the elections, an East Jerusalemite cannot become a candidate for the 1996 PLC based exclusively on his Jerusalem residency. Formally, Israel acknowledges the candidacy only of those who can point to a significant [tie](#) to the West Bank (not necessarily a residential address but could be a business, family members or other). In practice, this demand is a thinly veiled fiction.

The more daunting issue relates to candidates representing or affiliated with Hamas. In 1996 and 2005, Hamas boycotted the elections but did participate in the 2006 PLC elections. Since the question of Hamas participation will likely loom large in the coming elections, we will discuss the issue at length below.

- **Campaigning in East Jerusalem.** One aspect of Israeli policy in East Jerusalem particularly highlights the absurdities inherent in conducting an election campaign in East Jerusalem: under Israeli law, the activities of Palestinian political parties in general, and the PLO in particular, are illegal, unless specifically approved by Israel.

Accordingly, Israel was not enthusiastic, to say the least, to allow campaign activities. Agreement with the Palestinians on campaign regulations was inevitably reached, if at all, shortly before the elections.

In 1996, prominent activist [Hanan Ashrawi was detained](#) because she had a campaign sticker on the bumper of her car. In 2004, after a prominent Palestinian candidate for President, Mustafa Barghouti, was arrested for campaigning in Jerusalem, the situation was best [summarized](#) by the Israeli Police spokesperson: "Normally electioneering without prior approval is not permitted and [neither is] anything that shows evidence of sovereignty." Political campaigns, however, indeed took place: rallies in the private domain, and campaign posters plastered on a handful of billboards where such activities were permitted by the Jerusalem Police. It was a never-ending game of "cat and mouse".

- **Voter eligibility.** The authorities needed for the conduct of a credible electoral process were vested in the PA's Central Election Committee (CEC). Already challenged with a daunting task, the CEC was compelled to make arrangements for the voting in East Jerusalem while it was illegal for them to operate in the city, and where Israeli consent was required for every move. Under these circumstances, it proved impossible to have a systematic voter registration process. However, ad hoc arrangements, many of which put in place on election day, allowed for most of those seeking to vote to cast their ballot. At times a system of tickets was improvised on election day. At others, even presenting the blue Israeli Identity Card sufficed. While this clearly had a negative impact on the voter turnout, there was no evidence of significant voter fraud.

In [1996](#), there were approximately 35,000 eligible voters in East Jerusalem, of whom 5,000 were assigned to vote in the five polling sites in the city. In [2005](#) and 2006, the number of eligible voters rose to approximately 90,000 – 100,000, of whom 6000 were assigned voting places in the city. In all three elections, the others were referred to polling stations in the West Bank.

- **Election Day.** Annex II designates five post offices which are to serve as polling stations (a sixth, in Sur Bahir was added in 2005), with only a limited number of voters allowed to vote there. All but one of these post offices were small, cramped stores converted to post offices, hardly [suited](#) for the purposes of conducting elections. Casting a secret ballot was challenging. The police initially patrolled outside, and, at time, within the polling places while taking videos shots of the voters. At the insistence of the international observers, the Police was withdrawn. On occasion, small numbers of right-wing Israeli demonstrators would appear, attempting to intimidate voters.\

The remaining tens of thousands of voters was relegated to polling places in the West Bank. In 1996, these voters faced acute problems of access to the polling places. Between the 1996 elections and those of 2005, much had changed regarding access between East Jerusalem and the West Bank: the separation wall had been built and a strict regime of checkpoints limited access and movement in both directions. That said, while the security presence was high on election day in 2005 and 2006, the checkpoints were uncharacteristically open. The West Bank was more accessible to

East Jerusalem than on routine days. Voting was highly inconvenient, but less than had been feared.

At the end of the day, the elections in East Jerusalem were inherently flawed processes that against all odds succeeded in becoming a credible electoral process. There was no violence and no evident voter fraud. The voter suppression indeed existed but was not brutal. It was challenging, but all who wanted to vote could vote, and with impunity. Still, a vast majority of East Jerusalemites voted with their feet, and stayed at home, for highly significant reasons that need to be examined.

3. The Voter Turnout

In the three rounds of national elections to date, the voter turnout in East Jerusalem has been consistently much lower than the national average. In 1996, the turnout inside municipal Jerusalem was [27.3%](#), as opposed to 78% nationally; in 2005, the turnout in municipal Jerusalem plummeted to [6%](#), with the national participation at approximately [54%](#). In 2006, [16%](#) of the eligible voters of East Jerusalem cast their ballot inside municipal Jerusalem, as opposed to [77%](#) nationally. *Note: These numbers reflect the turnout inside Municipal Jerusalem as defined by Israel, as opposed to the Jerusalem Governate, which as defined by the CEC extends well beyond, reaching as far as Jericho. Consequently, the size of the voting district is much larger than municipal Jerusalem, and the numbers of eligible voters much larger than those residing in municipal East Jerusalem. All of our figures relate exclusively to the residents of municipal East Jerusalem and exclude the others who reside and vote in the Jerusalem voting district. Precise statistics do not exist, and our data is based on the best available sources and our own research.*

There are several factors that cumulatively contributed to the low voter turnout:

- **The obstacles created by Israel's policy** - The international observers have speculated that the obstacles Israel had placed during voter registration, during the election campaign and at the polling places on election day, contributed to the low turnout. However, in 2005, when Israel [relaxed](#) many of these restrictions, the voter turnout was at its lowest. While Israeli policies no doubt has some impact on the turnout, it appears that the major reasons lie elsewhere. If this appraisal is indeed correct, streamlining the election process will not necessarily lead to a significant rise in voter participation.
- **The fear of losing residency rights** - As note, there is a primordial fear among the Palestinians of East Jerusalem that they risk losing residency rights and entitlements if they participate in the elections. There is no evidence that this has been the case, but the belief is virtually unshakable – at times for good reason. As noted, in 2005 the Sharon government adopted a formal resolution promising the potential voters that no harm would befall them if they went to vote. However, when the author of

this report participated in town meetings explaining this resolution to potential voters, Israeli security personnel sat in the back row taking photographs, and the following day the owner of the hall was hauled in for interrogation.

- **The ambiguous status of East Jerusalemites** - The most powerful factor underlying the low turnout may well lie in the inherently anomalous status of East Jerusalem. It is instructive to compare voter participation in PA elections to the far lower voter turnout in the Jerusalem Municipal elections, which in 2018 stood at 1.5%. When juxtaposing the PA elections with the Municipal elections, one can discern a clear sub-text embodied in these voting patterns. East Jerusalemites do not consider themselves as part of the Israeli society and will not participate in the Israeli body politic, even if the elected officials exercise power over them. They will not barter in their national identity. However, while they may be part of the Palestinian body politic, the Palestinian elected officials have absolutely no authority to operate in Jerusalem, and the election results have little or no impact on everyday life in East Jerusalem. And in any event, the perception is that the leadership in Ramallah has all but abandoned them.

The Palestinians of East Jerusalem are doubly disenfranchised. Their political activities in East Jerusalem are systematically quashed, and permanently disempowered politically. The elections afford them a tenuous link to a Palestinian leadership from whom they are alienated and who has little impact on their lives.

So if there will be elections, Israel will inevitably point to a low voter turnout as proof that East Jerusalem Palestinians really want to be Israeli, and the PA will assert that the low voter turnout is the result of a systematic campaign of Israeli voter suppression. Neither claim has much merit, and the Palestinians of East Jerusalem will see this as further proof that under Israeli occupation, they are on their own.

Consequently, if our analysis is correct, the potential for a much higher voter turnout in East Jerusalem will not be realized until there is a significant change in the very nature of governance in East Jerusalem. Nonetheless, this is no way to detract from the vital importance of elections in East Jerusalem, the symbolic significance of elections in East Jerusalem is inversely proportionate to their impact on the residents of the city.

4. Hamas Participation in the Elections

- **Hamas' boycott of 1996 and 2005 elections** - In both the 1996 and 2005 elections, Hamas, which opposed the Oslo Accords and challenged the legitimacy of the PA that was created by them, boycotted the elections, but took no active measures to disrupt them. It is questionable if the elections could have taken place were Hamas to have actively try to prevent them, which they did not.

- **Israel's initial reaction to Hamas' decision to participate in the 2006 elections** - In the 2006 PLC elections and riding on their unexpected success in the 2005 municipal elections in the West Bank and Gaza, Hamas decided for the first time to participate in the PLC elections.

Initially, Israel [responded](#) by threatening to disallow elections in East Jerusalem. This time, the prohibition was not justified on the basis of the erosion of the sovereignty claimed by Israel in the city, but on the rejection of Hamas as a terror organization that denied the legitimacy of Israel. Reportedly, neither Israel nor the Palestinian Authority actually wanted to conduct elections, both fearing the electoral success of Hamas (a fear that proved to be well founded). Disallowing elections in East Jerusalem provided both sides with the perfect pretext that justified deferring them once again (after they had been repeatedly put off since 1996). However, President Bush [pushed](#) for the elections to take place, including in East Jerusalem, and the elections that took place on January 25, 2006 led to a decisive Hamas victory.

There were six seats in the PLC allocated to East Jerusalem, two of which were reserved for Christian candidates. Under the banner of the “Change and Reform List”, Hamas fielded candidates for the remaining four seats, and won all four.

- **Israel's punitive measures** - Shortly after the 2006, Israel's Minister of Interior revoked the permanent residency rights of the "Change and Reform List" under the authority vested in him under **The Entrance to Israel Law** to revoke residency rights in case of disloyalty (literally: "breach of faith"). The practical result of such a decree was exile. The disloyalty attributed was two-fold: (1) the plaintiffs participate in the PLC elections and subsequently took office, and (2) that their party list was affiliated with a terror organization.
- **Is Jerusalemites' participation in Palestinian elections a crime?** - Under current Israeli law, it quite possibly is. The Hamas legislators elected in 2006 filed suit to the Israeli Supreme Court ([HCJ 7803/86](#)) to oppose the revocation of its residency rights and was adjudicated by an expanded panel of judges of nine headed by Chief Justice Miriam Naor. The Plaintiffs argued, among else, that they had participated in elections to which Israel was formally committed under the Oslo Accords, that those commitments included the rights of the residents of East Jerusalem to vote and to stand for office, and that specifically, they had participated in the elections with the consent of Israel. Under such circumstances, these actions can hardly be called disloyalty or breach of trust.
In a split verdict, a majority of six of the panel of judges ruled that the Minister of Interior does not possess the authority to revoke residency rights of East Jerusalem residents based on "disloyalty". However, in the lengthy opinions by each of the six, none addressed whether the participation in the elections for the PLC was in itself disloyalty or breach of faith, and that participation by those affiliated with Hamas even more so. They also ruled to delay for six months the cancellation of the Ministry of Interior's decision so as to allow the Knesset to specifically grant this authority to the Minister of Interior.

On March 7, 2018, the Knesset did just that and empowered the Minister of Interior to revoke residency rights in response to disloyalty or breach of faith.

The three justices in the minority dealt head on with the issue of whether participation in the elections was indeed disloyalty or breach of faith. Justice Hanan Melczer ruled:

"9. The Minister of Interior exercised said authority by revoking the residency license of the plaintiffs based on two main reasons:

a. their election to the institutions of the Palestinian Authority (Plaintiff 1 as a Minister and Plaintiffs 8, 15 and 21 as members of the Palestinian Parliament)

b. The illegal activity in the framework of Hamas."

Justice Melczer affirmed that the Minister of Interior had the authority to do so.

The plaintiffs were spared the fate of statelessness, but the punitive measures did not end. Since 2006, they have been subject to temporary expulsion from Jerusalem based on military orders, administrative [detention](#), indictment and imprisonment etc.

The 2017 court judgment should serve as a warning as to how difficult it will be to elicit Israeli consent to the participation of anyone even remotely affiliated with Hamas. It is also well worth noting that three justices of the Supreme Court have ruled that ANY East Jerusalem candidacy in the Palestinian elections is by its nature disloyalty and breach of faith, and actionable, Israel's international undertakings notwithstanding.

5. The Prospects for PLC Elections in 2021

The growing pressure from the international community and Palestinian civil society to conduct elections for President and the Legislative Council derive from very compelling considerations. The failure to conduct elections for the past fifteen years is one of the major causes of decay of governance under the Palestinian authority, which is accompanied by growing manifestations of authoritarian policies. It has so seriously undermined the legitimacy of the PA among Palestinians, that it has raised questions about the Authority, and has become a major impediment to any progress on national unity.

The prospects of holding elections in May are currently not very high, first and foremost due to the growing difficulties within Fatah of uniting their rank and to Hamas and Fatah to agree on all aspects related to the conduct and oversight of the elections. The parallel internal election for [Hamas](#) shura council and head of politburo, that has started a few days ago and is supposed to end before the PLC elections may also have an impact on that internal Palestinian dynamic. Aside from remaining internal Palestinian disagreements, several factors related to East Jerusalem are likely to determine whether the elections will take place as scheduled or not:

- **Israeli position** - The Israeli government still hasn't formally expressed its position on whether it will allow elections to take place in East Jerusalem (and the PA hasn't yet made a formal request to the Israeli government on that issue and may wait until after the Israeli elections to do so).

The position that was reportedly conveyed in private by Israeli officials is that it will not put obstacles to the holding of Palestinian elections. However, the government is not expected to state its position in regard to elections in East-Jerusalem until after the Israeli general elections scheduled on March 23. Two observations can be made in regard to the likelihood that the next Israeli government will decide to oppose elections in East Jerusalem.

On the one hand, the precedent indicates that even when Prime Ministers Peres, Sharon and Olmert, respectively feared to appear as they were ceding Israeli claims in Jerusalem, all three allowed the elections to proceed and acted in good faith. However much has changed since 2006. Trump's recognition of Jerusalem as capital of Israel and a succession of follow-up moves have led many Israelis to believe that Jerusalem has indeed been taken off the table, and Netanyahu has been taking measures to guarantee that the achievements accomplished in Jerusalem by Trump will not be lost.

Even though one attempts to anticipate the results of the March 23 elections at one's own peril, should the next Prime Minister be Netanyahu he will likely be more defiant towards the Palestinians. And under any of the plausible election results, the next Prime Minister will likely be more vulnerable to coalition parties representing the nationalistic and religious right.

- **Possible Israeli-Palestinian collusion** – Abbas has many compelling reasons NOT to conduct elections, but he can simply not allow himself to reveal any opposition he may have publicly. And no Israeli Prime Minister supports elections in East Jerusalem, and at best can begrudgingly allow them to take place. The conduct of elections in East Jerusalem provides the perfect pretext that will make elections impossible, and “without leaving fingerprints”. A defiant Israeli Prime Minister could refuse to allow elections in East Jerusalem (wink-wink) and an equally defiant Abbas could rally the Palestinian public under the battle-cry of saving Palestinian Jerusalem and Al Aqsa.
- **Elections to be held on a Saturday** – Both the PLC and presidential elections are scheduled on a Saturday, a choice that was made by Palestinian officials to facilitate the use of school facilities as polling stations in the West Bank. The CEC is apparently concerned that it could create an obstacle for the conduct of elections in the post offices in East Jerusalem, although a precedent exists as the 1996 elections also took place on a Saturday.
- **International reaction** – It seems clear that part of Abbas' motivation to hold elections is to respond to the growing international pressure, most particularly from the EU, that the Palestinian governance will be based on democratic principles, the

rule of law and respect for human rights.

However, the newly elected US administration has held its silence on most issues regarding Israel-Palestine, and has yet to weigh in on the subject of elections (at least publicly). A number of sources have indicated that the [timing](#) of Abbas' decision to issue the presidential decrees is in large part based on the Palestinian understanding, or at least assumption, that this is compatible with US expectations of them. In addition, the PA has also reportedly tried to address US' concerns related to the participation of Hamas by a [letter](#) of clarifications containing commitments made by the various factions taking part in the elections. Whether this was done at the request of the US, or in anticipation of future demands is not clear.

Will the EU and the US pressure Israel and the PA to proceed with the elections?

The EU has [denied](#) claims that it has threatened the PA with possible sanctions if the elections were to be cancelled. Yet, the closer the date of the elections is getting, the more difficult it will be for Abbas to justify their postponement or cancellation. As for the US, it is unclear whether they will choose to exert any pressure on Abbas, and it is difficult to predict how strong the US will choose to react if Israel were to be the one that thwart the elections by opposing them in East Jerusalem.

The question of elections in Jerusalem creates a trifecta of three of the most incendiary issues of the conflict between Israel and the Palestinians: Jerusalem, Palestinian unity and the role of Hamas. Individually, each of these is problematic. Together they pose a daunting challenge not only to the parties but to the international community.

Is it possible that elections be held without being conducted in Jerusalem?

Perhaps, but at a high price. These matters are not being discussed in isolation. US recognition of Jerusalem as Israel's capital, the move of the Embassy, the Trump plan, elements of the normalization agreements and Israel's actions on the ground all conspire to call into question the Palestinian equities in East Jerusalem. Another move that will indicate that Jerusalem has been "taken off the table" will be yet another blow to the already challenged commitment to a two-state outcome. Palestinian elections in East Jerusalem are no mere whim, and are explicitly rooted in Israel's binding commitments under the Oslo accords, and international law.