



**NATIONAL DEMOCRATIC INSTITUTE
FINAL REPORT ON THE PALESTINIAN PRESIDENTIAL ELECTION
JANUARY 9, 2005**

**NDI WOULD LIKE TO ACKNOWLEDGE THE
UNITED STATES AGENCY FOR INTERNATIONAL DEVELOPMENT WHICH
SUPPORTED THE INSTITUTE'S ELECTION OBSERVATION MISSION**

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NATIONAL DEMOCRATIC INSTITUTE FOR INTERNATIONAL AFFAIRS

The National Democratic Institute for International Affairs (NDI) is a nonprofit organization working to strengthen and expand democracy worldwide. Calling on a global network of volunteer experts, NDI provides practical assistance to civic and political leaders advancing democratic values, practices and institutions. NDI works with democrats in every region of the world to build political and civic organizations, safeguard elections, and promote citizen participation, openness and accountability in government.

Democracy depends on legislatures that represent citizens and oversee the executive, independent judiciaries that safeguard the rule of law, political parties that are open and accountable, and elections in which voters freely choose their representatives in government. Acting as a catalyst for democratic development, NDI bolsters the institutions and processes that allow democracy to flourish.

Build Political and Civic Organizations: NDI helps build the stable, broad-based and well-organized institutions that form the foundation of a strong civic culture. Democracy depends on these mediating institutions—the voice of an informed citizenry, which link citizens to their government and to one another by providing avenues for participation in public policy.

Safeguard Elections: NDI promotes open and democratic elections. Political parties and governments have asked NDI to study electoral codes and to recommend improvements. The Institute also provides technical assistance for political parties and civic groups to conduct voter education campaigns and to organize election monitoring programs. NDI is a world leader in election monitoring, having organized international delegations to monitor elections in dozens of countries, helping to ensure that polling results reflect the will of the people.

Promote Openness and Accountability: NDI responds to requests from leaders of government, parliament, political parties and civic groups seeking advice on matters from legislative procedures to constituent service to the balance of civil-military relations in a democracy. The Institute works to build legislatures and local governments that are professional, accountable, open and responsive to their citizens.

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Most important, the delegation wishes to express its appreciation to the many government and election commission officials, political party leaders and election day workers who facilitated the work of the international observers, and to the Palestinian and Israeli interlocutors with whom it met.

EXECUTIVE SUMMARY

At the invitation of the Palestinian Central Election Commission (CEC), the National Democratic Institute (NDI), in partnership with The Carter Center (TCC), organized a 76-member international delegation to monitor the January 2005 Palestinian presidential election. The delegation was led by former United States President Jimmy Carter, former Swedish Prime Minister Carl Bildt and former New Jersey Governor and United States Environmental Protection Agency Administrator Christine Todd Whitman, and supported by a grant from the United States Agency for International Development.

This observation mission is part of NDI's comprehensive effort to monitor Palestinian electoral processes. As part of this program, the Institute also observed the recent voter registration process and the first round of local elections conducted in the West Bank on December 23, 2004 and the Gaza Strip on January 27, 2005. The Institute plans to observe subsequent rounds of the local elections as well as the upcoming parliamentary elections.

SUMMARY OF OBSERVATIONS

THE ELECTION WAS A CLEAR EXPRESSION OF THE DEMOCRATIC WILL OF THE PALESTINIAN PEOPLE.

While noting a number of problems and shortcomings, the observation mission found that the presidential election was a clear expression of the democratic will of the Palestinian people. The election was contested vigorously and administered fairly. Election day was orderly and generally peaceful. The process, organized in 60 days in accordance with the Palestinian Basic Law and under the difficult circumstances of the ongoing conflict and occupation, represents a step forward for Palestinian democracy. The successful organization of this election demonstrates the potential for the start of a new era in Palestinian politics and the development of representative and accountable governance.

RULE CHANGES ON ELECTION DAY WERE PROBLEMATIC, MADE UNDER DURESS, CAUSED CONFUSION AND CREATED OPPORTUNITIES FOR ELECTORAL MANIPULATION.

The presidential election was marked by a series of changes to rules and their application, which became a source of confusion to voters, candidates, observers and election officials. Election day changes to voter eligibility rules, to the application of eligibility rules, and to voting hours by the Central Election Commission commissioners undoubtedly enabled some Palestinians to vote who otherwise would have been frustrated in their desire to do so. The last minute changes, however, were made in a non-transparent manner, and without consultation, were not communicated precisely and in a timely fashion to the public, candidates and election officials, and produced not only the perception but the likelihood of unfairness, creating opportunities for voting fraud or other forms of electoral manipulation.

The decisions taken by the CEC commissioners concerning the extension of voting hours and change in eligibility requirements were taken under duress and the threat of physical violence. Six days after the election, 46 staff members of the Commission resigned, stating that they were pressured to extend the voting hours and change voting procedures on election day. While the CEC's decision did not materially affect the outcome of the poll, the departing officials argued rightfully that it impacted negatively on the process and the work

of the Commission. NDI hopes that the action taken by the election officials will deter similar misconduct during the upcoming legislative polls.

THE USE OF THE CIVIL REGISTRY WAS PROBLEMATIC; THE NEWLY COMPILED VOTER LIST WAS RELIABLE AND SOUND.

In September and October of 2004, the CEC established voter registration centers across the West Bank, Gaza and Jerusalem to create an entirely new registry of voters. NDI mounted an observer mission that judged the exercise as successful, with the exception of East Jerusalem. This effort was supplemented with the re-opening of registration centers in November. Approximately 71 percent of eligible voters were estimated to have been captured by the process and had their names inscribed on the voter list.

Despite the success of the voter registration process, the Palestinian Legislative Council (PLC) amended the election law in November 2004 to require the CEC additionally to permit any eligible voter whose name appeared on the civil registry to vote. The civil registry is a document compiled for purposes unrelated to voting. It is known to be inaccurate, containing the names of hundreds of thousands of people who have died or emigrated. To comply with the law, the CEC established two types of polling centers: one for those who had registered, “regular” polling centers, and another for those whose names only appeared on the civil registry, “special” polling centers. Seventy special voting centers were established throughout the West Bank and Gaza, in addition to the more than 1,000 regular polling centers.

While NDI recognizes that the CEC was attempting to craft a solution to a problem not of its own making, having fewer special polling centers put a greater burden on voters on the civil registry attempting to cast their ballots. Regardless, the civil registry has proven to be incapable of serving as a reliable voter list. As noted above, the document was not compiled for the purposes of voting, compromising its quality and, in the end, did not significantly increase voter participation. According to the CEC, final turnout from the civil registry was 12 percent, even with the last minute rule changes. This is approximately 84,000 votes of a total of 802,077 cast.

ARRANGEMENTS FOR JERUSALEM WERE INADEQUATE.

In anticipation of the presidential election, the Palestinian Authority (PA) sought, and received from Israel, agreement to renew the arrangements for voting in East Jerusalem that had been developed for the 1996 elections. These were, in summary, that voting would be permitted at five Israeli-administered post offices in East Jerusalem. (Israel later agreed to add a sixth post office.)

On the morning of election day, it quickly became apparent that these arrangements were not working adequately. Many registered voters who turned up at the post office polling stations to vote were turned away because their names did not appear on the voter list for that station. This was apparently in part as a result of either defects in the voter lists provided to the polling stations by the CEC or flaws in the distribution of the lists by Israeli authorities.

The NDI delegation recognized this problem early in the day; delegation co-leader, President Jimmy Carter, contacted both Israeli and Palestinian officials to ask them to rectify the problem. In the early afternoon, the PA, the CEC, the Israeli Prime Minister’s office, and the

Israeli post office agreed to allow voting at the post office stations, under international supervision, by those holding valid IDs and the receipt that was proof of voter registration, regardless of whether or not their names appeared on the voter list.

This new procedure relieved tensions at many of the post offices, and allowed many eligible voters who might otherwise have been refused, to cast their ballots during the late afternoon and evening of election day. Unfortunately, this new arrangement was not communicated clearly or in writing to the Israeli postal officials required to give it effect, or the international observers, including those from the NDI delegation, expected to oversee the new procedure. Nor were the public or the candidates advised in a timely or effective manner. As a result, there were different understandings of the agreement by election workers and the role expected of international observers in the process.

ISRAELI AUTHORITIES PLAYED A LARGELY POSITIVE ROLE FACILITATING THIS ELECTION;
FREEDOM OF MOVEMENT WAS EASED ON ELECTION DAY.

Israeli authorities took many helpful steps that materially assisted in the conduct of the presidential election. These included:

- A general relaxation of checkpoints and roadblocks on election day.
- The absence of a visible Israeli security presence at voting stations, notably in East Jerusalem. This was a substantial improvement from 1996.
- The establishment of a special center at the Ministry of Foreign Affairs that proved responsive to concerns raised by international observers, the CEC and others.
- Cooperation in the movement of CEC materials and personnel in preparation for election day.

However, it is also clear that problems and difficulties encountered in the course of the election process arose from conditions imposed for security reasons. Israel could contribute to the success of coming municipal and legislative elections by expanding and deepening its cooperation in a number of areas, most notably by expanding the freedom of movement during the campaign period and in facilitating voting in East Jerusalem.

SUMMARY OF RECOMMENDATIONS

- 1) Decision making mechanisms of the CEC should be formalized, public and transparent.
- 2) Palestinian and Israeli officials should consider reopening negotiations to ease voting in Jerusalem in preparation for the legislative elections.
- 3) The PLC should remove the use of the civil registry as a voter list in the election law; and the CEC should reopen voter registration to supplement the voter list in preparation for the legislative elections.
- 4) Greater freedom of movement should be provided to candidates, party activists and voters during the campaign period; election officials should receive greater freedom of movement well before the campaign begins.
- 5) More detailed regulations with enforceable sanctions are required to address issues of campaign finance and the use of public resources in campaigns.

- 6) To avoid repetition in future elections of the inappropriate pressure applied to the CEC on election day, a code of conduct for political parties should be developed and enforced.

INTRODUCTION

At the invitation of the CEC, NDI, in partnership with The Carter Center, organized a 76-member international delegation to monitor the January 2005 Palestinian presidential election. The delegation was led by former United States President Jimmy Carter, former Swedish Prime Minister Carl Bildt and former New Jersey Governor and United States Environmental Protection Agency Administrator Christine Todd Whitman, and supported by a grant from the United States Agency for International Development. The delegation included former legislators and ambassadors, elections and human rights experts, civic leaders and regional specialists from 15 countries in Asia, Europe, Latin America, the Middle East, North Africa and North America.

The objectives of the mission were to: demonstrate the international community's continued interest in and support for the development of viable democratic institutions that will enable Palestinians to freely choose their leaders and representatives; and provide Palestinians and the international community with an impartial and accurate assessment of the election process and the political environment surrounding the election. The Institute conducted its assessment on the basis of international standards for election observation, comparative practices for democratic elections and respect for Palestinian law.

This observation mission was part of NDI's comprehensive effort to monitor Palestinian electoral processes. As part of this program, the Institute also observed the recent voter registration process and the first round of local elections, conducted in the West Bank on December 23, 2004 and the Gaza Strip on January 27, 2005. NDI plans to observe subsequent rounds of the local elections as well as the parliamentary elections.

An accurate and complete assessment of any election must take into account all aspects of the electoral process, as well as the political context in which it takes place. From December 13-20, 2004, NDI and The Carter Center conducted an assessment of the pre-election political environment. From January 5-8, 2005 delegation members held meetings with: presidential candidates; the chairman and representatives of the CEC; representatives of the news media; civic leaders; representatives of the European Union's Election Observation Mission; and senior Israeli government officials, including the President, Prime Minister and Foreign Minister.

This report is informed by the observations of the election day delegation, as well as those of the pre-election assessment team. It also draws upon the work of NDI's Jerusalem-based staff members who have been engaging with Palestinian political leaders and electoral authorities on a regular basis.

POLITICAL CONTEXT

Following the death of Palestinian Authority President Yasser Arafat¹ on November 11, 2004, the presidential election was scheduled for January 9, 2005 in accordance with Palestinian law.² PLC Speaker Rawhi Fattouh assumed the duties of the presidency in the interim period.

The official process to nominate candidates began on November 20 and ran for 12 days. Ten individuals submitted successful candidate applications to the CEC by the deadline: Mustafa Barghouthi (independent), Abd As Sattar Qasim (independent), Mahmoud Abbas (Fatah), Bassam As Salhi (Palestinian People's Party), Tayser Khaled (Democratic Front for the Liberation of Palestine), Abd Al Karim Shbair (independent), Hasan Khresheh (independent), Marwan Barghouthi (independent), Abd Al Halim Al Ashqar (independent) and Al Sayyed Barakeh (independent).

Former Prime Minister Abbas, Chairman of the Palestinian Liberation Organization (PLO), quickly emerged as frontrunner in the presidential race. Political analysts began to speak of a return to peace negotiations and an increase in international financial assistance for the PA following the democratic election of a new president.

The Islamic Resistance Movement, Hamas, and Islamic Jihad boycotted the election, because they do not recognize the office of the presidency, established by the terms of the Oslo Accords they reject.

Three candidates, including jailed Fatah leader Marwan Barghouthi, withdrew from the race by the December 17 deadline. With seven candidates still in the race, the official campaign period began December 25 and ended January 8, with a ban on campaigning the day before and the day of the election. The abbreviated campaign period hindered the ability of candidates without an existing base of support to compete successfully. Additionally, Abbas' stature as chairman of the PLO meant that his movements – including a number of high-profile visits with international leaders – were more widely covered by the news media than those of other candidates. Even so, the final list of presidential candidates presented Palestinians with several viable options.

¹ In addition to being PA President, Arafat also held the chairmanship of the Palestine Liberation Organization (PLO) and leadership of the Palestine National Liberation Movement or Fatah. Mahmoud Abbas (Abu Mazen), previously the General Secretary of the PLO, replaced Arafat as Chairman. Farouk Kaddoumi was named leader of the Fatah political movement.

² According to the Palestinian Basic Law, an election must be held within the 60-day period after the death of a sitting PA president.

ELECTORAL FRAMEWORK

Legal Framework. The conduct of the January 9, 2005 presidential election was governed by the Basic Law, the Palestinian election law (No. 13 of 1995) and its amendments (No. 16 of 1995 and December 2004 amendments), and presidential decrees. In addition, voting for Palestinian residents of East Jerusalem was conducted in accordance with the conditions set forth in the 1995 Declaration of Principles, Annex II, Article 6, “Election Arrangements Concerning Jerusalem” with minor changes.

As the election law does not provide sufficient detail for the conduct of elections, CEC decisions were significant in shaping the legal framework of the election. CEC decisions regulated: voter registration, polling center districting, management of civil registry records, election day procedures, tabulation and announcement of results, accreditation of observers and the production of polling materials.

CEC decisions were not issued as legal decrees. Prior to the unexpected death of Arafat and the announcement that a presidential election was to be held, the Commission was in the process of drafting bylaws to institutionalize critical electoral regulations. For example, the CEC had drafted a bylaw regarding voter registration that was never signed by Arafat.

The Central Election Commission. The CEC was established in 2002 as a new, independent electoral body and is largely funded by the international community. The structure of the CEC is centralized under the management of nine commissioners: Dr. Hanna Nasir, CEC Chairman;³ Dr. Rami Al-Hamdallah, Secretary General; Mr. Ishaq Muhanna, CEC Member; Mr. Mazin Sisalem, CEC Member; Mr. Ali As-Safarini, CEC Member; Mr. Shukri An-Nashashibi, CEC Member; Iman Nasser Eddin, CEC Member; Mrs. Lamis Al-Alami, CEC Member; and Mr. Ibrahim As-Saqqa, CEC Member. As Chief Elections Officer, Ammar Dwaik manages all subsidiary bodies of the CEC, including the National Elections Office (NEO).⁴

In the short period provided for the election, the CEC trained more than 16,000 electoral officials, the 16 District Elections Commissions (DECs)⁵ and various support teams. It organized the printing and distribution of ballots and other materials to some 2,800 polling stations, as well as their collection, and other logistical requirements.

The Voter Registry. Due to concerns about the quality and accuracy of the civil registry developed in preparation for the 1996 elections, the CEC decided to create an entirely new voter list. In September and October 2004, the CEC conducted a technically sound voter registration process, which was monitored by an NDI international observation mission. The CEC reopened voter registration on November 24 to accommodate voters who had not registered, but wished to vote in the presidential election.

³ Initially, the positions of Secretary General and Chief Elections Officer were both held by Dr. Ali Jarbawi. However, since Jarbawi’s resignation in October 2004, the positions have been held by two different people. Jarbawi reportedly resigned to protest what he considered to be inappropriate intervention in the CEC’s affairs by political actors.

⁴ The CEC established the NEO as the administrative and executive body in charge of the development of the logistical and administrative plans necessary for the conduct of all phases of the electoral process.

⁵ There was some concern that the late appointment of the DECs on January 1 would make it difficult for them to complete their tasks by election day. However, this proved not to be the case.

There was no formal agreement between Israel and the Palestinians regarding registration for Jerusalemites during the process conducted in September and October, and the centers in East Jerusalem were shut down within 10 days of a planned five-week registration period by Israeli authorities. After the date for the presidential election was set, however, the CEC conducted door-to-door registration canvassing in East Jerusalem.

Registration by proxy was permitted for Palestinians who were in jail or detention, including those in Israeli custody. A case was taken to the Israeli High Court seeking to allow such prisoners to vote in the presidential election. The court rejected the petition on the grounds that it was not administratively feasible to organize voting in time for the election.

Despite the fact that more than 70 percent of eligible Palestinian voters were registered to vote, the Palestinian Legislative Council (PLC) passed an amendment to the election law requiring the CEC to permit any eligible voter whose name appeared on the civil registry to vote, even if he had not registered with the CEC. This measure was taken ostensibly to permit as many eligible voters to cast ballots as possible. Political observers believe the decision was also designed to favor the dominant Fatah faction which sought to maximize voter turnout, which was considered an important indicator of support for Fatah and Abbas, especially in light of the election boycott by Hamas.

The civil registry was compiled for purposes unrelated to voting and is known to be inaccurate, containing the names of hundreds of thousands of people who have died or emigrated. The registry has been managed at times by Israeli authorities and at times by Palestinian authorities. Before the CEC could employ it, some data had to be translated from Hebrew to Arabic. Further complicating the matter, the respective authorities use different names and designations for some of the same geographic locations, as well as for some of the same proper names.

To comply with the law, the CEC established two types of polling centers: one for those who had registered, “regular” polling centers, and another for those whose names only appeared on the civil registry, “special” polling centers. It was determined that approximately 700,000 names appeared on the civil registry that were not on the CEC registry. Seventy special voting centers were established throughout the West Bank and Gaza, along with more than 1,000 regular polling centers.⁶ Registered voters returned to the center where they registered to vote; non-registered voters were assigned to a special center alphabetically by first name. Those whose names appeared neither on the civil registry nor on the CEC voter list were not to be permitted to vote.⁷ Although the CEC made an effort to ensure voters’ names appeared on one list only – either the CEC registry or the civil registry – a policy of marking every voter with indelible ink was instituted to prevent double voting.

Voting in East Jerusalem. For this election, Palestinian and Israeli authorities agreed to return to the terms of the agreement they entered for the 1996 Palestinian elections. According to that agreement, 5,367 voters were eligible to cast ballots in five post offices in East Jerusalem. For the 2005 presidential election, Palestinians were permitted to vote in one

⁶ There was some concern prior to the election that special polling centers would be overwhelmed by voters if turnout were high owing to the significantly higher number of voters they were intended to serve – approximately 1328 voters per station in comparison to 438 per station at regular polling stations. However, there was only 12 percent turnout at the special polling centers on election day.

⁷ A last minute change on election day permitted any eligible voter with a Palestinian identity card to vote in any special center. See pages 16-19.

additional post office, bringing the total number to six. The CEC estimated that approximately 90,000 Palestinian residents of East Jerusalem were required to travel outside the city to cast their ballots at 12 voting centers in the distant suburbs. This arrangement likely contributed to low voter turnout in East Jerusalem.

The Israeli government considered the casting of ballots at post offices a form of absentee voting; the Palestinian authorities considered it voting in polling stations that happened to be in post offices. Voting was overseen by Israeli postal workers, many of whom are Palestinians, but no CEC officials were allowed on site. The agreement with Israel included a fee for renting the space. Ballots were deposited in "receptacles" resembling mail boxes, rather than regular ballot boxes. The ballots were transported by Israeli postal vehicles to CEC officials, who then tallied the votes. Security at the post offices during the voting process was the responsibility of Israeli authorities.

FINDINGS AND OBSERVATIONS

THIS ELECTION WAS A CLEAR EXPRESSION OF THE DEMOCRATIC WILL OF THE PALESTINIAN PEOPLE.

As noted in NDI's preliminary statement, the January 9 Palestinian presidential election was a major accomplishment. The election was contested vigorously and administered fairly. Election day was orderly and generally peaceful. The process, organized in 60 days in accordance with the Palestinian Basic Law and under the difficult circumstances of the ongoing conflict and occupation, represents a step forward for Palestinian democracy. The successful organization of this election demonstrates the potential for the start of a new era in Palestinian politics and the development of representative and accountable governance.

The executive office of the CEC is professional and technically proficient. In general, the Commission organized and implemented a national election that met international standards. Election workers were well trained and were able to execute their responsibilities consistency and integrity. Many observers commented that election workers expressed a high degree of pride and enthusiasm in the importance and quality of their work.

In this election, most Palestinian eligible voters who wished to vote were able to do so.⁸ Indeed, hundreds of thousands of Palestinians expressed pride, optimism and a strong sense of civic responsibility as they traveled to polling places throughout the territories and stood in lines to cast their ballots. In many communities, this election was a celebration. Families came to vote and frequently stayed for the day, gathering outside of polling centers. The hopeful climate of the day, largely without incident, seemed to reflect the depth of the desire of Palestinians to embark on a democratic path.

NDI's observers also noted and extolled the sizeable participation of nonpartisan domestic monitors and party agents at polling centers. These observers play an important role in any democratic electoral process.

The vital role that women played in this election is also worthy of recognition. Women were active and visible as voters and political activists and took on critical responsibilities as election officials. Observers found women election officials at all the stations they visited.

There were some problems with procedures in the polling stations, particularly concerning assisted voting. Observers reported a disproportionately large number of voters claiming to need assistance because of illiteracy. Regulation and management of those assisting such voters – in order to prevent “coaching” by representatives of certain candidates – was haphazard and varied by polling station. Some officials noted the names of helpers to regulate the number of people they could assist, while other officials said they were simply making a mental note of who they were. There were also reports of supporters of specific candidates actively campaigning within polling centers and polling stations.

Despite these problems, the result of the election was characterized, not only by NDI, but also by other international and domestic observers, as a clear expression of the democratic will of Palestinian people. Voters should have confidence in the outcome of the election.

⁸ It should be noted, however, that many voters in East Jerusalem faced significant challenges in attempting to exercise their right to vote.

RULE CHANGES ON ELECTION DAY WERE PROBLEMATIC, MADE UNDER DURESS, CAUSED CONFUSION AND CREATED OPPORTUNITIES FOR ELECTORAL MANIPULATION.

The January 9, 2005 presidential election was marked by a series of changes to rules and their application, which in itself became a source of confusion among voters, candidates, observers and election officials.

As noted in NDI's preliminary statement, election day changes to voter eligibility rules, to the application of eligibility rules, and to voting hours by the CEC commissioners undoubtedly enabled some Palestinians to vote who otherwise would have been frustrated in their desire to do so. The last minute changes, however, made in a non-transparent manner, and without consultation, were not communicated precisely and in a timely fashion to the public, candidates and election officials, and produced not only the perception but the likelihood of unfairness, creating opportunities for voting fraud or other forms of electoral manipulation.

CHANGES IN REQUIREMENTS FOR VOTING

The most significant rule change made by the CEC on election day was to permit Palestinians whose names did not appear on either the list of registered voters or the civil registry to vote simply with the presentation of a valid Palestinian or Jerusalemite identification card. In November 2004, the PLC passed legislation requiring the CEC to use the civil registry as a valid list of voters on election day, in addition to the new voter list the Commission had compiled during the voter registration process conducted a month earlier.

Early on election day, there appeared to be problems with the civil registry. Many voters complained that they were not able to find their name on the list. Others complained that they were not able to find the correct special center, or that because the assignments were made by first name, different members of the same family had to travel to different polling centers, causing confusion. The CEC claims to have received approximately 15,000 calls to its election day troubleshooting center, as well as direct calls to staff members and commissioners.

Mid-afternoon on election day, the CEC announced that eligible voters with a valid Palestinian or Jerusalem identification card would be able to vote at any of the special polling centers whether or not their name could be found on either the civil registry or the voter list. A two hour extension in voting was announced as well. The CEC commissioners explained at the time and in subsequent statements⁹ that these changes were made to accommodate voters who were turned away because of the confusion surrounding the civil registry and the special center assignments, as well as to ensure that members of the security forces, many of whom were on duty away from their places of residence, would be able to vote.

It is unclear whether the CEC commissioners had the legal authority to take such a procedural decision since the electoral law requires eligible voters to be listed on the register. Article 73 states, "The elector may be identified by means of the electoral registration card . . . the identity card, or any other document admitted for this purpose . . . upon condition that he or

⁹ See, "What happened in the last two hours of the presidential election?", by Dr. Hanna Nasser, Head of the CEC, published in *Al Quds* newspaper, 24 January 2005.

she is entered in the electoral register.” Additionally, the abrupt decision to, in effect, expand the voter registry on election day was made without consultation with the candidates – or certainly not all of them – and was not even communicated directly to them. Nor was it communicated clearly to the public, or even in some cases, to the election officials who were expected to implement the rule change.

Despite the practice of inking voters’ thumbs to avoid double voting, there is evidence that some people took advantage of the rule change to cast more than one ballot. In addition to several observers witnessing this abuse, the CEC reported on February 26, 2005 that it identified 504 cases of double voting and 85 cases of underage voting, all using the civil registry. The names of these individuals were reported to the governor general for possible indictment and prosecution.

The efforts undertaken by the CEC to accommodate members of the security forces were unsuccessful. The CEC claims that it requested the names of security personnel who would be away from home in advance, so that this information could be transferred to the districts where they would be working, and they could then vote in those districts. The Commission apparently received the list only two days before the election when it was not technically possible to make the changes.

In special polling stations in Jericho and Ramallah observers witnessed busloads of security personnel being brought in to vote under the new regulations. Security personnel work for the Palestinian Authority and, therefore, it is likely that most were supporters of the Fatah candidate, Mahmoud Abbas. In any case, it is clear that Fatah was better positioned than any other faction to react to the rule change.

EXTENSION OF VOTING HOURS

In the mid-afternoon, well before polls were scheduled to close, the CEC announced a change in voting hours, extending the closing of polls throughout the West Bank, Gaza and East Jerusalem from 7:00 p.m. to 9:00 p.m. This change, once again, was made without general consultation and with inadequate notification.

A decision on extending voting hours is typically taken when turnout is high and there is concern that voters will be disenfranchised if polls do not stay open longer to accommodate them. However, by 1:00 p.m. on election day, turnout throughout the West Bank, Gaza and Jerusalem had only reached 30 percent. There is no evidence that voting demand was abnormally or unexpectedly high.

Given that there was a well-publicized concern on behalf of one of the competing factions in the election, Fatah, about the level of voter turnout, there was an entirely understandable concern raised by other candidates, domestic and international observers that the change might have been made for partisan reasons. Indeed, anecdotal accounts suggest that, again, only Fatah was in a position to mobilize to take advantage of the extension of hours. In the end, however, there was no evidence of large-scale additional voting as a result of the rule changes.

DECISIONS TAKEN UNDER DURESS

Most seriously, the decisions taken by the CEC commissioners concerning the extension of voting hours and change in eligibility requirements were taken under duress and the threat of physical violence. Six days after the election, 46 members of the Commission resigned, stating that they were pressured to extend the voting hours and change voting procedures on election day.

At the release of its preliminary statement on January 10, NDI was unable to confirm allegations regarding these pressures. The delegation noted, however, that “concerns have been raised about the timing and need for such decisions.” The Institute has since had the opportunity to conduct interviews with several parties involved. In these interviews, several CEC commissioners as well as senior members of the administrative staff reported being pressured into making these changes by representatives and supporters of the Abbas campaign. Political contestants in the campaign and political observers have noted that last minute rule changes may have been motivated by a desire within the Abbas campaign to increase turnout figures.

THE USE OF THE CIVIL REGISTRY WAS PROBLEMATIC; THE NEWLY COMPILED VOTER LIST WAS RELIABLE AND SOUND.

In September and October, the CEC established voter registration centers across the West Bank, Gaza and Jerusalem to create an entirely new registry of voters. NDI mounted an observer mission that judged the exercise as successful, with the exception of East Jerusalem. (The statement from NDI’s observer mission is attached.) This effort was supplemented with the re-opening of registration centers in November. Approximately 71 percent of eligible voters were estimated to have been captured by the process and had their names inscribed on the voter list.

Although there is a lively debate in many jurisdictions about the best method to compile a voter list, in NDI’s view the CEC’s chosen method was sound and had every prospect of producing a fair and honest process. Additionally, using the voter registration method rather than the civil registry allowed the entire universe of eligible voters to participate in the system, even those with no official Palestinian identification card.¹⁰ Indeed, the evidence from the regular voting stations, in which this voter list was used on election day, suggests that judgment was correct. Voting in these regular centers using the voter list went smoothly.

Despite the success of the voter registration process, the PLC amended the election law in November 2004 to require the CEC additionally to permit any eligible voter whose name appeared on the civil registry to vote. The CEC resisted the amendment to the law, but once it was passed had no choice but to implement it. It did so by identifying the approximately 700,000 names appearing on the civil registry but not on the existing voter list, thus creating a special voter list. It announced that it would establish 70 special polling stations at which people on this new list could vote, along with approximately 1,000 for those who had registered to vote.

¹⁰ An unknown portion of the Palestinian electorate is without any form of official, valid identification from a government entity. The CEC accommodated these voters by allowing them to produce proof of residency and three witnesses in order to register to vote.

NDI recognizes that the CEC was attempting to craft a solution to a problem not of its own making. However, the creation of a small number of special voting stations had the effect of creating two categories of eligible voters. Those voting at special voting stations had an extra burden of travel to vote. This is especially of concern, of course, because of the difficulties of movement in the territories.

Additionally, the inclusion of the civil registry as part of the final voter list was dubious because the election law requires that the final list go through an exhibition and challenge process.¹¹ The civil registry was never presented to the public for this purpose, mostly likely because the amendments to the law were made too close to the election to allow this to happen.

Regardless, the civil registry has proven to be incapable of serving as a reliable voter list. As noted above, the document was not compiled for the purposes of voting, compromising its quality and, in the end, did not significantly increase voter participation. According to the CEC, final turnout from the civil registry was 12 percent, even with the last minute rule changes. This is approximately 84,000 votes of a total of 802,077 cast.

ARRANGEMENTS FOR JERUSALEM WERE INADEQUATE.

A CHALLENGING ENVIRONMENT

Of the anomalies inherent in conducting elections in the current political and security situation, none has proved as daunting as East Jerusalem, where approximately 120,000 eligible voters, or roughly between 7 – 9 percent of the total estimated eligible voters, reside. Unfortunately, as a result, nowhere were more eligible voters effectively disenfranchised than in East Jerusalem.

As previously mentioned, the CEC opened several registration centers within the Israeli municipal boundaries of Jerusalem as part of its registration drive in September and October of 2004. However, these centers were subject to intense scrutiny from Israeli authorities from the moment they opened, and were closed after just 10 days of a planned five-week process. After the presidential election was called in November, the CEC attempted to supplement its voter register in East Jerusalem with a door-to-door canvass of voters. But even together, the number of Jerusalemites registered to vote was considerably low.

Moreover, East Jerusalemites reportedly expressed concerns that registering to vote or voting, might jeopardize their right to the Israeli-issued Jerusalemite identification card necessary for them to work and live in Jerusalem. Some stated concern that if they registered, Israeli authorities would use this information to stop their health, insurance and retirement benefits. This may be the legacy of threats to this effect made by some Israeli political groups at the time of the 1996 election. Israeli officials pointed to statements issued to reassure Palestinian voters regarding benefits and identification cards, however most Palestinians denied any knowledge of such statements.

¹¹ Articles 16 and 17 of the Election Law stipulate that the electoral register “shall be public and open to scrutiny” so that the public may challenge data that is “incorrectly expressed” as well as the “erroneous inclusion or omission” of individuals ahead of the register’s finalization.

Additionally, candidates and their campaign workers faced limitations on their activities in Jerusalem. A system was set up to allow candidates to apply for permits to enter Jerusalem and conduct campaign activities. However, no candidates were ever granted such explicit permits; they were only given permits to travel through Jerusalem on their way to Gaza, for example. Dr. Mustafa Barghouthi and Dr. Bassam al Salhi each encountered difficulties as they attempted to campaign in Jerusalem.

NDI invited several of the presidential candidates to address its observer delegation in the days before the election. The Institute was able to secure permits for their entry into Jerusalem where the meetings were held, but these permits were only valid for four hours.¹² Two of the candidates, Dr. Mustafa Barghouthi and Dr. Bassam al Salhi, were escorted out of Jerusalem by Israeli police almost immediately after addressing the delegation.

AN INADEQUATE AGREEMENT

In anticipation of the January 9, 2005 presidential election, the PA sought, and received from Israel, agreement to renew the arrangements for voting in East Jerusalem that had been developed for the 1996 elections. These were, in summary, that voting would be permitted at five Israeli post offices in East Jerusalem. (Israel later agreed to add a sixth post office.)

Voting at these post offices would be administered not by CEC officials, but rather by Arabic-speaking workers in the Israeli postal system. Voters would have their names checked against a voter list in the usual way, and would have their thumbs inked as elsewhere. However, their ballots would be deposited not in standard ballot boxes, but in special “receptacles” designed to resemble post boxes. The ballots would not be counted *in situ*, but transferred at the end of voting to CEC officials outside of the municipal boundaries of Jerusalem to do the counting.

The total number of voters who would be permitted by Israel to cast their ballots in these post offices, ostensibly because of space constraints, was fewer than 6,000. All other eligible voters would be required to vote outside of the Israeli municipal limits, possibly passing checkpoints or other barriers to do so. The CEC made special transportation arrangements for these voters, but the average roundtrip was estimated at two hours.

On the morning of election day, it quickly became apparent that these arrangements were not working adequately, primarily because even those who were registered to vote often found that their names were not contained on the voter list at the post office near where they lived or had registered. Many registered voters, perhaps as high as 60 – 80 percent in some cases, who turned up at the post office polling stations to vote, were turned away because their names did not appear on the voter list for that station. This was apparently in part as a result of either defects in the voter lists provided to the polling stations by the CEC or flaws in the distribution of the lists by Israeli authorities.

The names of many registered voters appeared on the voter list only at a polling station other than the one closest to their residence. In one case, two sisters who lived at the same address, and who had registered to vote at the same registration center in East Jerusalem in September, found their names on the lists of two different polling stations several kilometers apart. In

¹² This is an abbreviated time period to the norm. Most permits are good for at least the daylight hours of one day.

other cases, voters who had duly registered were unable to find their names on any lists. In all cases, voters who could not find their names on the list were turned away or directed to one of the special polling centers outside the municipal boundaries of Jerusalem.

The NDI delegation recognized this problem early in the day; delegation co-leader, President Jimmy Carter, contacted both Israeli and Palestinian officials to ask them to rectify the problem. In the early afternoon, the PA, the CEC, the Israeli Prime Minister's office, and the Israeli post office agreed to allow voting at the post office voting stations, under international supervision, by those holding valid IDs and the receipt that was proof of voter registration regardless of whether or not their names appeared on the voter list.

This new procedure relieved tensions at many of the post offices concerned, and allowed many eligible voters who might otherwise have been refused, to cast their ballots during the late afternoon and evening of election day. Unfortunately, this new arrangement was not communicated clearly or in writing to the Israeli postal officials required to give it effect, or to the international observers, including members of the NDI delegation, expected to oversee the new procedure. Nor were the public or the candidates advised in a timely or effective manner. As a result, there were different understandings of the agreement and the role expected of international observers in the process.

As a consequence, the new procedure was applied unevenly. In some instances the process worked smoothly, with postal workers inspecting the relevant documents and allowing registered voters to cast their ballots under the eye of international observers. A number of international observer groups were reluctant to become engaged in a process about which they had not been formally apprised. At the Saleh a-Din post office, for example, a senior postal official in attendance instructed an NDI observer that it was up to him to determine who might vote and who might not. The observer informed the official that he would only record the names of the voters but would not assume a formal role in determining voter eligibility. An observer from another delegation, however, agreed to follow the instruction of the postal official.

In addition, this rule change, which had applicability only in the Israeli-controlled area of East Jerusalem, became confused in the minds of some prospective voters, and even some officials, with the separate decision of the CEC to allow holders of valid Palestinian ID cards to vote at any special (civil registry) polling station. In at least one case, again at Saleh a-Din post office, a disgruntled crowd of prospective voters who did not have the required registration slips heatedly demanded a right to vote there under the new procedures. By the end of the day, some people were allowed to vote on presentation of no more than a Jerusalem ID. Additionally, observers trying to oversee the process witnessed several fraudulent practices, including more than a dozen consecutive voters who produced fake registration slips in one case, and incidents of under-age voting.

Many of the difficulties that arose can be traced to the inadequacies of the agreement between the Israeli government and the Palestinians that was adapted from the 1996 elections. It was deemed insufficient by domestic and international observers in 1996, was inferior to the technical requests made by the CEC in order to run the election this time, and did not adequately serve the Palestinian residents of Jerusalem.

A NUMBER OF IMPORTANT CAMPAIGN ISSUES REMAIN UNADDRESSED AND UNREGULATED.

CAMPAIGN EXPENDITURES AND USE OF PUBLIC RESOURCES

The Palestinian election law is limited in how it addresses campaign financing and spending. The only clear restrictions are that public and foreign funds may not be used, and that each partisan entity that participated in the election, as well as all *elected* candidates, must submit a report to the CEC within 20 days of the announcement of the final results detailing funding sources and expenditures. This means that independent candidates who do not win are free from any reporting requirements.

The CEC asked all presidential candidates to submit financial reports, whether or not they were technically required to by law. All but one of the candidates, Dr. Abd Al Karim Shbair, complied with the request. Two candidates who were legally bound to produce the financial reports missed the February 1 deadline for submission, Mahmoud Abbas and Taysir Khaled.

The reports largely took the form of general statements on expenditures and income. They did not contain itemized lists of funding sources or specific information on how money was spent or which vendors or individuals received payments from the campaigns. Based on the figures given by candidates, more than \$4.5 million was spent on this campaign.

Throughout the campaign, there were a number of questions raised by candidates and observers as to the use of funds. For example, Mahmoud Abbas' campaign was criticized for allegedly using state resources on behalf of his campaign. The CEC criticized some PA officials for campaigning for Mr. Abbas while on the public payroll: for example, uniformed Palestinian security forces appeared as supporters at some of Mr. Abbas' political events.

The election law is explicit about what the conduct of the governing authority must be during an election. Article 54 states, "The Palestinian Authority 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." Article 93, Section 3, states, "The Palestinian National Authority shall refrain from helping or financing the electoral campaign of any candidate."

Public resources, including government funds, vehicles, communications equipment, materials and work hours of government officials and employees belong to the citizens and should not be used for the benefit of any private individual or political party. This is a fundamental element of the principle of separation of party and government, as well as a broader issue of public trust. While it was difficult to verify the basis of the complaints and measure the impact of the issue, even a perception of misuse of public resources undermines public confidence in government.

Additionally, Dr. Mustafa Barghouthi was charged by other candidates with allegedly misusing funds and resources from his non-profit health organization, which his accusers maintained included foreign funding. Again, it was not possible for NDI to verify these charges, but the lack of a clear regulatory framework concerning the financing of campaigns certainly adds to the public perception of problems and mishandling of campaign resources and finances.

MEDIA ACCESS

As noted in the mission's preliminary statement, the Palestinian mass communications media are free of official censorship and gave widespread coverage of the presidential election campaign. Palestinians also have access to regional and international media in addition to Palestinian news sources. Throughout the campaign period media played a generally positive role in allowing candidates to reach voters and allowing voters to gain information about them.

Media monitoring by international experts working with the European Union Election Observation Mission and other respected sources indicate that news coverage by publicly owned broadcast media demonstrated heavy bias toward the Fatah candidate. Free time was provided to all candidates by the public broadcasters, however, allowing them to air political messages, and paid political advertisements were allowed in the private media. Two of the presidential candidates own or control private media outlets, and media analysts found that those outlets provided biased coverage favoring their electoral interests. Overall, there was considerable media coverage of the main candidates and of the election process more generally. Also, media analysts found that candidates did not use inflammatory rhetoric to attack each other.

ISRAELI AUTHORITIES PLAYED A LARGELY POSITIVE ROLE FACILITATING THIS ELECTION; FREEDOM OF MOVEMENT WAS EASED ON ELECTION DAY.

In its preliminary post-election statement, NDI noted that Israeli authorities took many helpful steps that materially assisted in the conduct of the presidential election. These included:

- The establishment of a special center at the Ministry of Foreign Affairs that proved responsive to concerns raised by international observers, the CEC and others.
- Cooperation in the movement of CEC materials and personnel in preparation for election day.
- A general relaxation of checkpoints and roadblocks on election day.
- The absence of a visible Israeli security presence at voting stations, notably in East Jerusalem. This was a substantial improvement from 1996.
- Cooperation on election day in changing voting rules in East Jerusalem to alleviate some of the problems that had arisen.

Israeli authorities rightly received praise from many quarters for their cooperation during the presidential election. It seems certain that without many of these measures by Israel, the presidential election would not have been as successful as it was.

However, it is also clear that many of the problems and difficulties encountered in the course of the presidential election arose directly from conditions imposed by the ongoing conflict. Israel could contribute to the success of coming municipal and legislative elections by expanding and deepening its cooperation in a number of areas, most notably by expanding the freedom of movement during the campaign period and in facilitating voting in East Jerusalem.

FREEDOM OF MOVEMENT

The continuing violence in Gaza and some parts of the West Bank, hundreds of checkpoints, the barrier wall, temporary closures and other security controls hampered the work of election officials, limited the ability of candidates and their supporters to campaign and had an inhibiting effect on some voters. While the violence and security measures related to the continuing conflict and its consequences rather than the election, their adverse impact on electoral processes was apparent. However, there was no indication that they had a material effect on the electoral outcome or the successful organization of the election process.

The PA and the Israeli government reached agreements on a number of issues related to the election process. Israeli officials committed to facilitating the process and to relaxing some security measures, particularly around checkpoints, in the 72-hours surrounding the election. However, freedom of movement over the entire electoral period would have been necessary for candidates, voters and election authorities to participate fully in the election process. And while international monitors certainly enjoyed highly facilitated movement, particularly during the 72 hours around the election, this did not appear to be the case for both domestic monitors and voters. Both complained to the NDI delegation that while notable changes were made on election day, these were not made on the day before or the day after the election.

Most candidates reportedly faced routine difficulties traveling in the West Bank and Gaza, particularly at Israeli checkpoints. Dr. Mustafa Barghouthi reported being detained at a checkpoint and roughly handled.

Candidates living in the West Bank were required to obtain permits from Israeli authorities to travel through Israel to the Erez Crossing if they wished to enter Gaza. Such permits were difficult to obtain for most candidates, and even when candidates were granted such permission, sometimes their campaign aides were not. Additionally, violence and incursions in the southern Gaza Strip made campaigning there next to impossible at times. Palestinian attacks and Israeli military responses led to the closure of the Erez crossing on several occasions. During these closures, it was difficult or impossible for candidates to travel in and out of Gaza.

With rare exception, Israeli officials did not permit campaigning in East Jerusalem. One candidate successfully held a campaign meeting in Jerusalem after obtaining a permit. Another candidate, who had been granted permission to campaign in Jerusalem, declined to do so, reportedly because he was uncomfortable with the likely presence of Israeli security officials at campaign events. When at least two other candidates attempted to campaign in Jerusalem, they were detained by Israeli authorities on the grounds that they had not acquired a permit or because they were said to have exceeded the scope of the permit that had been issued. In some cases, the permits issued to candidates granted permission only for a private visit, so that any campaign activity might be construed as a violation.

Campaigning took place in most areas other than East Jerusalem and Gaza without major obstacles, and there was no indication that Israeli authorities intervened in the election process in order to affect the outcome.

It is likely that some voters were deterred or prevented from attending campaign events due to restrictions on their movements. Undoubtedly, there was some effect. It appears, however, that average Palestinians were able to obtain information about the candidates from a variety

of sources, and it was likely that most voters would have been able to make an informed choice at the ballot box.

In addition to these matters, the PA as well as several of the candidates complained that many Palestinians, numbering in the thousands, had been prevented from returning from Egypt to the Gaza Strip through the Rafah checkpoint, which was closed after Palestinian militants set off an explosion in a tunnel beneath the Israeli military checkpoint. It was regrettable that a workable solution to this problem was not reached in time for them to vote in the election.

RECOMMENDATIONS

DECISION MAKING MECHANISMS OF THE CENTRAL ELECTION COMMISSION SHOULD BE FORMALIZED, PUBLIC AND TRANSPARENT.

The CEC mobilized quickly and effectively to organize the election, generally performing its duties impartially and effectively. For future elections, the Commission should consider formalizing all decisions; and those decisions that affect the operations of elections should be issued as decrees and published via a medium that is easily accessible to the public. Such decisions should be in force until they are further modified in a legal, decision-making process.

Adopting such operating standards now will help ensure greater public confidence in the decisions taken by the Commission and help protect its commissioners and staff from inappropriate influences or political pressures, which are less likely to take place in an open environment.

PALESTINIAN AND ISRAELI OFFICIALS SHOULD CONSIDER REOPENING NEGOTIATIONS ON VOTING IN JERUSALEM NOW IN PREPARATION FOR THE LEGISLATIVE ELECTIONS.

In light of the experience of the presidential election, and in anticipation of legislative elections scheduled for July of this year, NDI would recommend that Israeli and Palestinian authorities negotiate a new agreement that would permit East Jerusalemites to exercise their franchise. Elements in such an agreement might include:

- An early, forceful, and well-publicized commitment by the Israeli government that participation in the elections in any way, through registration, campaigning, voting or working as an election official would not jeopardize Jerusalemite status, nor incur any other civil, criminal or administrative sanctions.
- That the CEC be permitted to conduct voter registration in East Jerusalem in a manner it judges efficient, consistent with Israel's security concerns.
- That candidates, campaign workers and East Jerusalemite voters be permitted full participation in the election process, not only on election day but during the campaign.
- That arrangements be made, consistent with Israeli security concerns, to establish an adequate number of polling stations, staffed by CEC-appointed officials, to service all the eligible voters living within the municipal borders of Jerusalem.

THE PALESTINIAN LEGISLATIVE COUNCIL SHOULD REMOVE THE USE OF THE CIVIL REGISTRY AS A VOTER LIST IN THE ELECTION LAW. THE CENTRAL ELECTION COMMISSION SHOULD REOPEN VOTER REGISTRATION TO SUPPLEMENT THE VOTER LIST IN PREPARATION FOR LEGISLATIVE ELECTIONS.

The evidence of the presidential election is that the introduction of additional categories of voters who were not contained on the original register is an experiment that was not workable. The PLC should consider repealing legislation that allows voting from the civil registry.

The CEC could use the months before the legislative elections, currently scheduled for July 2005, to supplement their original registry by reopening registration centers in the course of the spring. The CEC could also consider establishing permanent opportunities for voter registration through the district electoral offices, which would close within a reasonable amount of time before an election.

Modifications could also be made to the electoral law to allow the CEC to accommodate absentee, tendered ballot or proxy voting. Such ballots would not need to be included in polling station results, but could be tabulated in a District Office or centralized counting center.

The voter list is a public document and, according to the law, should be available for scrutiny of observers and elections stakeholders. Thus, the CEC should make the voter list accessible to accredited observers, political parties and candidates in a way that will enable them to verify the voter registration process. The Commission should also consider issuing a code of conduct for the use of the records in the voter list so that no abuse of this information occurs.

GREATER FREEDOM OF MOVEMENT SHOULD BE PROVIDED TO CANDIDATES, PARTY ACTIVISTS AND VOTERS DURING THE CAMPAIGN PERIOD. ELECTION OFFICIALS AND MATERIALS SHOULD RECEIVE GREATER ACCESS WELL BEFORE THE CAMPAIGN BEGINS.

The experience of the easing of checkpoints and roadblocks in the 24 hours around the election demonstrates what is possible with sufficient coordination and cooperation. Israeli and Palestinian authorities should consider working together early to expand this policy to allow greater movement during the campaign, not only for candidates, but also for voters and rank-and-file party workers.

For example, in the legislative elections, Israel might consider issuing candidates *laissez-passer* for the area in which they were competing and for full access for election officials, so that they do not have to request special permission for their movements.

MORE DETAILED REGULATIONS WITH ENFORCEABLE SANCTIONS ARE REQUIRED TO ADDRESS ISSUES OF CAMPAIGN FINANCE AND THE USE OF PUBLIC RESOURCES IN CAMPAIGNS.

The Palestinian election law provides a solid foundation for the conduct of free and fair elections. However, the use and abuse of financial and public resources in electoral campaigns is a challenge in every political system and requires further attention in the Palestinian regulations. The CEC and the PLC should work to develop legislation regulating election-related fundraising and spending and ensuring fair access to the media by all candidates.

TO AVOID REPETITION IN FUTURE ELECTIONS OF THE INAPPROPRIATE PRESSURE APPLIED TO THE CENTRAL ELECTION COMMISSION ON ELECTION DAY, A CODE OF CONDUCT DEFINING TECHNICALLY LEGAL AND ETHICALLY ACCEPTABLE BEHAVIOR FOR POLITICAL PARTIES IN ELECTORAL CAMPAIGNS SHOULD BE DEVELOPED AND ENFORCED.

A fundamental element of a democratic society is an independent electoral body that can administer elections without fear of reprisal or threats of violence. Equally important is the right of individual citizens to campaign on behalf of a party or candidate, or engage in the civic activities of an election, without fear or concern for personal security.

In preparation for the legislative elections, the political parties, factions, movements and independent candidates should commit to a code of conduct. This code should be negotiated and monitored by Palestinian civil society organizations, ideally organizations that are already monitoring the overall campaign and election cycle. Breaches of the code should be publicized and any violation of the election law should be referred to prosecuting authorities or an elections tribunal that could be established for this purpose.

APPENDIX A

PRELIMINARY STATEMENT OF THE NDI INTERNATIONAL ELECTION OBSERVER DELEGATION TO THE JANUARY 9, 2005 PALESTINIAN PRESIDENTIAL ELECTION

Jerusalem, January 10, 2005

This preliminary statement is offered by the National Democratic Institute's international election observer delegation to the January 9, 2005 Palestinian presidential election. The delegation, organized by NDI in partnership with The Carter Center, was led by former United States President Jimmy Carter, former Prime Minister of Sweden Carl Bildt and former Governor of New Jersey and Administrator of the United States Environmental Protection Agency Christine Todd Whitman. It also included current and former legislators, former ambassadors, elections and human rights experts, civic leaders and regional specialists from 15 countries in Asia, Europe, Latin America, the Middle East, North Africa and North America. The delegation visited the Palestinian territories from January 4-10 and deployed 80 observers to the West Bank, Gaza and East Jerusalem.

The delegation is part of NDI's comprehensive monitoring of Palestinian election processes, which is supported by USAID and which began with the September-October voter registration process and the December 2004 municipal elections. The Institute plans to continue through further municipal and Palestinian Legislative Council elections scheduled for 2005. The Institute issued a statement on the voter registration process, and NDI and The Carter Center issued a statement on the pre-election environment, both of which are available on NDI's web site at www.ndi.org. (Arabic versions are available at www.ndi-wbg.org).

The purposes of the delegation were twofold: to demonstrate the international community's continued interest in and support for the development of viable democratic institutions that will enable Palestinians to freely choose their leaders and representatives; and to provide Palestinians and the international community with an impartial and accurate assessment of the election process and the political environment surrounding the election to date. The delegation conducted its assessment on the basis of international principles for election observation, comparative practices for democratic elections and Palestinian law. For more than a decade, NDI has conducted, on an impartial basis and across the political spectrum, programs to support the development of democratic Palestinian institutions and processes. NDI and The Carter Center jointly organized an international election observation mission for the 1996 Palestinian elections.

The delegation wishes to emphasize that this statement does not constitute a conclusive assessment of the election process, given that the final official tabulation of results is not complete and that any electoral complaints that may be lodged will require monitoring through their completion. The delegation recognizes that ultimately it will be the Palestinian people who will judge the quality of the election process.

SUMMARY OF OBSERVATIONS

The January 9 Palestinian presidential election was a major accomplishment. The election was contested vigorously and administered fairly. Election day was orderly and generally

peaceful. The process, organized in just 60 days in accordance with the Palestinian Basic Law and under difficult circumstances of the ongoing conflict and occupation, represents a step forward for Palestinian democracy. The successful organization of this election demonstrates the potential for the start of a new era in Palestinian politics and the development of representative and accountable governance.

Having successfully conducted this presidential election, there are now opportunities to advance positive developments in a broader context necessary for peace and prosperity. Palestinians also face a number of immediate challenges as they move to consolidate their democratic institutions. They must quickly move to prepare for the next round of municipal and legislative elections, which are scheduled within the next six months. Palestinians also should enhance efforts to ensure public order and to curtail violence. It is important that the Palestinian President and his designated Prime Minister establish an effective working relationship, taking into account the 2003 amendments to the Basic Law, and the specific political, economic and social challenges facing Palestinian society today. Palestinians will require continued support from the international community and will need to build upon the Palestinian-Israeli cooperation in election planning that took place in this election period.

Election day was characterized by the following positive developments:

- A generally peaceful process, even though there were serious concerns beforehand that violence could disrupt the election;
- A mostly orderly election administration conducted by dedicated and professional officials;
- Large numbers of Palestinians who came out to cast their votes;
- The significant presence of political party and candidate agents, as well as nonpartisan domestic election observers, adding transparency to the process;
- The large role played by women in the election process as electoral officials, party and candidate agents, nonpartisan observers and voters; and
- The easing of travel through check points by Israeli authorities to facilitate freedom of movement and election day processes.

Election day, however, was not without problems, including the following developments:

- The large percentage of registered voters whose names did not appear on the appropriate voter list at post offices designated for voting in Jerusalem;
- Certain last-minute changes by the Central Election Commission (CEC) to conditions and hours for voting were implemented in ways that caused confusion;
- Reliance on two separate voter lists, with separate voting places based on them, caused confusion and opened potential for abuse; and
- Scattered incidents of intimidation and harassment by some Fatah activists.

The delegation recognizes that one of the candidates has challenged the election, citing abuses in the process and discriminating effects of the CEC's last minute changes in voting rules. The adjudication processes at the CEC and the Election Appeals Court may be called upon to consider these and other complaints. NDI and The Carter Center will continue to

monitor developments until the process is completed and may issue additional statements or reports.

THE ELECTORAL CONTEXT

Upon the death of the President of the Palestinian National Authority Yasser Arafat, Palestinian political leaders moved in accordance with the Basic Law to schedule the January 9 presidential election. This demonstrated their political will to provide a smooth transition in accordance with the rule of law.

The successful completion of the election process will allow Palestinians to confirm that their chief executive was chosen by popular mandate in accordance with the will of the people. This would signal the determination of Palestinians to establish a democratic process by which leaders are elected and held accountable to the public. The completion of a democratic election process by Palestinians could set the stage for the development of responsive representatives and institutions of governance, which would have substantial positive implications here and throughout the region.

Legal Framework. The legal framework for the election was provided by the Basic Law and the Palestinian Election Law. Though not without shortcomings, they provide the general bases for democratic elections. In accordance with the Basic Law, the election had to take place within 60 days following the death of President Arafat. While providing for a speedy transition between elected presidents, the 60-day time limit created serious challenges for organizing the election, and the truncated 14-day official campaign provided little opportunity for new political leadership to emerge.

Election Administration. The Central Election Commission (CEC), which was formed in 2002 as an independent body, mobilized quickly and effectively to organize the election, taking advantage of having successfully conducted voter registration in late 2004. In the short period provided for the election, the CEC trained more than 16,000 electoral officials to staff the approximately 2,800 polling stations, the 16 District Election Commissions (DECs) and various support teams. It organized the printing and distribution of ballots and other materials, as well as their collection, and other logistical requirements. This was all the more impressive given the difficulties presented by the ongoing conflict.

The CEC enjoyed a high degree of confidence among Palestinians. It has in many instances demonstrated its ability to withstand political pressure and to perform its duties impartially and effectively—prerequisites for independent, nonbiased election administration. This was an essential accomplishment for organizing democratic elections. The successful completion of the presidential election will contribute substantially to confirming public confidence in the CEC's abilities to conduct future democratic elections, including those scheduled for this year.

The DECs and polling station officials are the subordinate election authorities, and their members are appointed by the CEC. The late appointment of the DECs on January 1 created some confusion in the organization of their work, although they appeared to accomplish their tasks by election day. The vast majority of electoral officials worked diligently and cooperated with candidate agents, as well as with domestic and international election observers. Electoral authorities also had to reconcile a number of competing and sensitive interests concerning registries of eligible voters, voting in East Jerusalem and the effects of

violence and Israeli security measures on the movement of personnel and material, particularly in Gaza.

CAMPAIGN ENVIRONMENT

Seven presidential candidates competed in the election, presenting Palestinians with a choice among distinct points of view. The candidates took advantage of opportunities to campaign for voters' support, though campaigning was limited by a number of constraints described below. While the rhetoric of the campaign was heated at times, the candidates avoided inflammatory attacks on one another, and there were very few incidents involving violence between supporters of the various candidates. This is a tribute to the seriousness of the political competitors and to the Palestinian people's desire to respect political pluralism. While Hamas and Palestinian Islamic Jihad called for a boycott of the election, there was little evidence of their use of intimidation, which points to the powerful demand of average Palestinians that political processes should be conducted freely. That candidates were able to campaign without fear of violence or retribution from those in government or on the political extremes was a major accomplishment.

Limitations on Freedom of Movement. The continuing violence in Gaza and some parts of the West Bank, hundreds of checkpoints, the barrier wall, temporary closures and other security controls hampered the work of election officials, limited the ability of candidates and their supporters to campaign and had an inhibiting effect on some voters. While the violence and security measures related to the continuing conflict and its consequences rather than the election, their adverse impact on electoral processes was regrettable. However, there was no indication that they had a material effect on the electoral outcome or the successful organization of the election process.

The Palestinian Authority and the Israeli government reached agreements on a number of issues related to the election process. Israeli officials committed to facilitating the process, and they relaxed some security measures in the 72-hours surrounding the election. However, freedom of movement over the entire electoral period would have been necessary for candidates, voters and election authorities to participate fully in the election process. The delegation raised with Israeli officials several issues related to limitations on freedom of movement, and steps were taken by the officials to address these issues.

Campaigning took place in most areas other than East Jerusalem and Gaza without major obstacles, and there was no indication that Israeli authorities intervened in the election process in order to affect the outcome. Nonetheless, most candidates reported that they faced routine difficulties when traveling in the West Bank and Gaza, particularly at checkpoints, which often forced them to take circuitous routes to reach their destinations. In many instances, candidates were required to obtain permission from Israeli authorities to travel to campaign events. Some candidates complained that even when they were granted permission to travel, their campaign aides were not. In addition, several candidates were detained or arrested as they attempted to pass through checkpoints, and some apparently were beaten.

The most acute problems occurred in Gaza and Jerusalem. Violence and incursions in the south of the Gaza Strip made campaigning there impossible for several days. Rocket, mortar, gun and bomb attacks by Palestinians near the Erez checkpoint led to its closure by Israeli authorities on several occasions. This in turn made it difficult or impossible for candidates to enter, or in some cases, to leave Gaza. There were also violent incidents in the West Bank.

For example, just two nights before the election there was a violent incident in Nablus in which Palestinian gunmen attacked two Israeli cars, killing one person and seriously wounding others. For a period, the Israeli military imposed a curfew on villages near Nablus, which raised concerns about electoral preparations, but no large-scale military action was taken.

Israeli officials did not allow candidates free access to Jerusalem during the campaign. One candidate successfully held a campaign meeting in Jerusalem after obtaining a permit. Another candidate, who had been granted permission to campaign in Jerusalem, declined to do so, reportedly because he was uncomfortable with the likely presence of Israeli security officials at campaign events. When at least two other candidates attempted to campaign in Jerusalem, they were detained by Israeli authorities on the grounds that they had not acquired a permit or because they were said to have exceeded the scope of the permit that had been issued. In some cases, the permits issued to candidates granted permission only for a private visit, so that any campaign activity might be construed as a violation.

It was impossible to determine to what extent Palestinian citizens were prevented or discouraged from attending campaign events because of restrictions on their movement. Undoubtedly, there was some effect. It appears, however, that average Palestinians were able to obtain information about the candidates from a variety of sources, and it was likely that most voters would have been able to make an informed choice at the ballot box.

In addition to these matters, the Palestinian Authority as well as several of the candidates, complained that many Palestinians, numbering in the thousands, had been prevented from returning from Egypt to the Gaza Strip through the Rafah checkpoint, which was closed in response to a series of attacks. It was regrettable that a workable solution to this problem was not reached in time for them to vote in the election.

Role of the Mass Media. The Palestinian mass communications media are free of official censorship and gave widespread coverage of the presidential election campaign. Palestinians also have access to regional and international media in addition to Palestinian news sources.

Media monitoring by international experts working with the European Union Election Observation Mission and other respected sources indicate that news coverage by publicly owned broadcast media demonstrated heavy bias toward the Fatah candidate. Free time was provided to all candidates by the public broadcasters, however, allowing them to air political messages, and paid political advertisements were allowed in the private media. Two of the presidential candidates own or control private media outlets, and media analysts found that those outlets provided biased coverage favoring their electoral interests. Overall, there was considerable media coverage of the main candidates and of the election process more generally. Also, media analysts found that candidates did not use inflammatory rhetoric to attack each other.

The media played a generally positive role in allowing candidates to reach voters and allowing voters to gain information about them. However, news bias in publicly owned media violates the public's trust. Public media must operate impartially towards all candidates and political parties, presenting accurate and balanced information so that citizens can make informed electoral choices and have a sound basis for demanding governmental accountability. In addition, the lack of any regulation of paid political advertising creates the

possibility of lopsided campaigning and prevents the transparency needed to establish and maintain public confidence in the media and the election process.

Use of Public Resources and Campaign Financing. There were significant differences among the candidates concerning their access to campaign resources. One complaint raised by several presidential candidates and others was the apparent use of resources of the Palestinian Authority (PA) by government officials for the benefit of the Fatah candidate. The CEC criticized some PA officials for campaigning for Mr. Abbas while on the public payroll, and uniformed Palestinian security forces appeared as supporters at some of Mr. Abbas' political events.

Public resources, including government funds, vehicles, communications equipment, materials and work hours of government officials and employees belong to the citizens and should not be used for the benefit of any private individual or political party. This is a fundamental element of the principle of separation of party and state, as well as a broader issue of public trust. While it was difficult to verify the basis of the complaints and measure the impact of the issue, a perception of misuse of public resources undermines public confidence in government. The issue of possible misuse of funds of a nongovernmental organization on behalf of a candidate was also raised to the delegation. The lack of a clear regulatory framework concerning the financing of campaigns adds to the public perception of such problems.

Voter Registration and Use of the Civil Registry. In September and October 2004, having decided to create a new voter registry to better ensure the integrity of elections, the CEC conducted a technically sound voter registration process. That process was monitored by an NDI international observation mission. Following President Arafat's death and the announcement that a presidential election was to be held, the CEC reopened voter registration on November 24 to accommodate voters who had not previously registered, but who wished to vote in the presidential election.

As a consequence of the additional registration period, it was estimated that approximately 71 percent of eligible Palestinian voters appeared on the new voter registry. NDI's voter registration monitoring mission was able to conduct computer tests of the voter registration data base and found it to be sound. However, due to the condensed timeframe for the presidential election, it was not possible to complete independent verifications of the registry, although the NDI mission intends to conduct such activities before further elections are held.

The Palestinian Legislative Council (PLC) amended the Election Law after the date for the presidential election was set, requiring the CEC to complement the new voter registration list with the civil registry. It was unclear why the PLC required that the civil registry be used, since it has been seen to be seriously inadequate, containing the names of many people who have died or emigrated. The CEC determined that approximately 660,000 names appeared on the civil registry that were not on the existing voter lists. It decided to establish 70 special voting places where anyone whose name appeared on the civil registry but not on the general voter lists might vote.

The CEC expressed concern that the two types of polling stations might be confusing to voters and vulnerable to voting abuses, but it believed potential problems could be mitigated by a combination of special safeguards and voter education. The CEC required, for example, that indelible ink be placed on the thumb of each voter to ensure that he or she could not vote

more than once. However, the limited time available for voter education proved insufficient to communicate to many voters where they should vote.

During the 2004 voter registration process, the CEC introduced proxy registration for Palestinians who were in jail or detention, including those in Israeli custody. A case was taken to the Israeli High Court seeking to allow such prisoners to vote in the January 9 presidential election. The court rejected the petition on the grounds that it was not administratively feasible to organize voting in time for the election; this left open the possibility of Palestinian prisoners and detainees voting in future elections.

Voting in Jerusalem. The status of the city of Jerusalem created unique challenges for the election. During the recent voter registration, there was no formal agreement between Israel and the Palestinians regarding registration for Jerusalemites, and the centers in East Jerusalem were shut down by Israeli authorities after the first 10 days of a planned five-week process. However, the CEC conducted door-to-door registration canvassing after the presidential election was set. For the January 9 presidential election, the Palestinian Authority and Israeli government agreed to return to the terms of the agreement they entered for the 1996 Palestinian elections.

In 1996, Palestinians cast ballots in five post offices in Jerusalem. This time the number was expanded to six. The Israeli government considered this a form of absentee voting; the Palestinian authorities considered it voting in polling stations that happened to be post offices. Under the agreement between the Palestinian Authority and the Israeli government, approximately 6,000 voters were eligible to vote at the post offices.

Voting was overseen by Israeli postal workers, many of whom are Palestinians, but no Palestinian election officials were allowed on site. International observers were allowed to witness the procedures. All but one of the facilities were small and could not accommodate many voters inside their premises at any one time. Regular ballot boxes were not used, but ballots were deposited in "receptacles". Counting was not done on the spot, and ballots were transported to CEC officials by Israeli postal vehicles. Security of the post offices during the voting process was the responsibility of Israeli authorities.

In addition to voting in the six post offices, Palestinian residents of Jerusalem were allowed to vote outside the city at 12 voting centers. The CEC estimates that approximately 90,000 such voters would need to travel to the 12 centers outside Jerusalem even though the travel could be difficult.

The arrangement for Jerusalem's Palestinian voters was inadequate and likely discouraged voter turnout. In addition, Palestinians living in Jerusalem must possess a special identity card. Rumors had been spread in 1996 and before the present election that if one of them were to vote, they may be subject to having the card revoked or otherwise face the loss of certain benefits. These rumors may have had a negative effect on voter participation despite the fact that no such reprisals took place following the 1996 elections. Also, a statement of reassurance was made by Israeli authorities that no such reprisals would take place. No matter what the contributing and mitigating effects may have been, the low voter turnout in Jerusalem on January 9 was a disappointing element in the election.

ELECTION DAY

Election day was orderly and generally peaceful. This was a particularly significant accomplishment, given the ongoing conflict and occupation, as well as the serious concerns widely expressed that violence could erupt on election day. There were, however, scattered incidents of intimidation and harassment by some Fatah activists of some voters, supporters of other candidates and at least one incident involving an international observer.

The delegation was impressed by the dedication and professionalism of polling station officials, members of the District Election Commissions and representatives of the CEC, who worked long hours under difficult conditions. The voting and counting processes at polling stations were conducted transparently. Election authorities cooperated with party and independent candidate agents and with nonpartisan domestic and international election observers.

One of the most encouraging elements of the Palestinian election process was the continued development of election monitoring by party and independent candidate agents, as well as by nonpartisan Palestinian nongovernmental organizations. More than 14,000 party and independent candidate agents were accredited by the CEC to act as poll watchers. In addition, several thousand nonpartisan domestic election observers were accredited by the CEC, the main body of which were mobilized by the Palestinian Election Monitoring Civil Committee (EMCC). Together, these efforts represented a strong interest and participation in the election process.

An important safeguard in the election process was the requirement that an official protocol (tally sheet) setting forth the results of the vote count be posted publicly outside of each station. This promoted public confidence and allowed candidate agents and domestic election observers to record the results and conduct independent verifications of the consolidated vote tallies at the DEC's and the CEC.

There were problems with the voter lists derived from the civil registry that were used at special polling stations and with the lists used in Jerusalem, discussed below. Last minute changes to voting procedures and hours were confusing to voters and election officials and resulted in uneven opportunities to vote. This led some to question the fairness of the voting process.

During the course of election day the CEC decided to extend voting by two hours, moving the close of polls from 7:00 to 9:00 pm. The CEC also decided during the course of election day to allow anyone who could prove that they were Palestinians and had not yet voted to vote at the 71 special polling stations. These decisions were not communicated to election officials or voters in a precise and timely way, which resulted in confusion and uneven implementation. While these decisions were within the CEC's legal discretion, concerns have been raised about the timing and need for such decisions.

A large percentage of registered voters names did not appear on the appropriate voter list at post offices designated for voting in Jerusalem. This caused tensions at those voting places and threatened to produce significant disenfranchisement. President Carter raised this problem with officials. As a consequence, the Palestinian Authority, the CEC, the Israeli government and Postal Service came to an agreement at mid-day to allow persons who could provide proof that they had registered to vote to cast ballots at the post offices, even if their

names were not on the voter lists. This process was to be verified by international observers.

The agreement eased tensions at the post offices and allowed a significant number of eligible voters to cast ballots who may otherwise have been disenfranchised. Inconsistent application of the agreement at the various post offices also caused some confusion and uneven opportunities to vote for some Palestinians. For future elections, restrictions on Palestinian voting in Jerusalem should be addressed.

Many expressed concerns in the lead-up to the election that Israeli checkpoints and barriers would seriously hinder election day activities. In response, the Israeli Ministry for Foreign Affairs (MFA) assembled a professional team that worked together with the Israeli Defense Force other agencies and dedicated its emergency crisis center to coordinate responses to election related problems. Internal checkpoints were eased on election day to facilitate the movement of voters. There was little presence of Israeli security forces at Jerusalem post offices designated for voting, which was a major difference from the 1996 elections. The MFA crisis center also facilitated the activities of international election observers and sought to address concerns expressed by them.

THE DELEGATION AND ITS WORK

NDI and The Carter Center are independent, nongovernmental organizations that have conducted more than 100 impartial pre-election, election-day and post-election observations around the world. Both organizations recognize that elections cannot be separated from the broader political process of which they are a part. NDI's and The Carter Center's methodologies for assessing elections are based on the premise that all aspects of the election process must be considered to accurately understand the nature of an election. Considerable weight must be assigned to the pre-election periods, as well as to the resolution of complaints and disputes following elections.

The delegation held meetings with: representatives of presidential candidates; the Chairman and representatives of the Central Election Commission (CEC); representatives of the news media; civic leaders; the heads of the European Union's Election Observation Mission; other representatives of the international community who are concerned with supporting a democratic Palestinian election process; and senior Israeli government officials, including the President, Prime Minister and Foreign Minister. The delegation worked in cooperation with Palestinian nonpartisan election monitoring organizations and with the international election observer mission organized by the European Union.

Delegates divided into teams and were deployed to all 16 election districts of the Palestinian territories for meetings with governmental, electoral, political and civic leaders in their respective localities. On election day, the teams observed the voting, counting and tabulation processes in over 200 polling stations selected on the basis of a scientific statistical sample and at District Election Commissions. Delegates then reconvened in Jerusalem to debrief and develop this statement. The delegation expresses its gratitude to all with whom it met.

APPENDIX B

STATEMENT OF THE NATIONAL DEMOCRATIC INSTITUTE PRE-ELECTION ASSESSMENT MISSION TO THE PALESTINIAN PRESIDENTIAL ELECTIONS

Jerusalem, 22 December 2004

This statement has been prepared by a pre-election assessment team organized by the National Democratic Institute (NDI) in partnership with The Carter Center (TCC). The delegation examined technical preparations and the political environment leading up to the presidential election in the West Bank and Gaza, currently scheduled for Sunday, 9 January 2005. From 13-20 December 2004, the delegation conducted a series of meetings with electoral authorities, campaign representatives, Palestinian and Israeli governmental officials, representatives of domestic and international monitoring organizations, political party and civic leaders, and representatives of the international community.

The delegation included: Leslie Campbell, NDI Senior Associate and Director of Middle East and North Africa programs; Jennifer Collins-Foley, an election administration and voter education expert; Joseph Hall, NDI Senior Regional Representative for Middle East and North Africa programs; Matthew Hodes, TCC Director of Conflict Resolution programs; Audrey McLaughlin, former leader of the New Democratic Party in Canada and NDI Senior Program Director in Morocco; and, Shannon O'Connell, a specialist in campaigns, elections and political party development and Director of NDI's programs in the West Bank and Gaza Strip. In addition to the delegation's combined expertise in political development, election administration and voter education, the delegation's members have participated collectively in more than 40 electoral and political assessments around the world, including several in the Middle East and North Africa.

This pre-election assessment is part of a comprehensive international observation effort for the 9 January presidential election being organized by NDI, in partnership with TCC. The purpose of this initiative is to assist in the development of viable democratic institutions that will enable Palestinians to choose their leaders and representatives freely. Observation of the presidential elections will build on NDI's international monitoring of the recent voter registration process conducted in the West Bank and Gaza. A preliminary statement of NDI's findings from voter registration was released on 7 October 2004. In addition to placing long term observers in the West Bank and Gaza in late December, the Institute is organizing an international observation delegation for the 9 January election in partnership with TCC.

Summary of Observations

The Political Context

The delegation found a remarkable degree of consensus among Palestinian political leaders, civil society activists and political observers. The January 2005 election to choose the next President of the Palestinian Authority (PA) succeeding President Yasser Arafat, is almost universally regarded as a key opportunity to start a new era in Palestinian politics and to initiate needed reforms in Palestinian governance. Although the presidential election is an opportunity welcomed by most Palestinians, they also recognize that it is a limited exercise with respect to ongoing democratic institutional development in the Palestinian territories. The truncated official campaign period – 15 days - provides little time for new political

leadership to emerge and is a serious impediment to little-known political contestants. Name recognition and access to resources by better-known candidates may play a disproportionate role in determining the winner of the January 2005 contest. Political party activity and voter education, both key elements of an ongoing democratization process, will not reach the level that might be expected in a presidential race.

These potential shortcomings result from following a legal mandate to call an election within 60 days of the death of the president and should not necessarily be viewed as hampering the conduct of a legitimate election. In fact, the final list of seven candidates for president of the PA contains the names of several respected and viable political leaders, who, under fair conditions, should provide Palestinians with real political alternatives on election day.

The work of the Central Election Commission (CEC) in anticipation of local elections in 2004 and 2005 – both in the preparation of a new voter list and in training and deploying election workers – has been well integrated into presidential election preparations. The CEC enjoys high confidence levels among the people interviewed by the delegation, and most election competitors express satisfaction with technical election preparations. The Institute and other observers have noted that the CEC is recognized for having established an ability to withstand political pressure - a quality that is requisite for an independent commission.

Israel has committed to facilitating the process of Palestinian elections, and, indeed, officials express the willingness to expend considerable time and effort in ensuring a smooth process in the areas under Israeli military control. It would appear that a number of meetings are taking place between Palestinians and Israelis to negotiate the details of cooperation. Palestinian and Israeli officials have acknowledged that agreements concerning election modalities, for example on freedom of movement or on voting in East Jerusalem, are being or have been negotiated. The delegation notes, however, that the details of agreements concerning these key issues, if they exist, are unknown to most political parties. The lack of such information at this late date may lead to voter confusion and uncertainty, in addition to necessitating unduly hurried implementation of such agreements, if and when they are finalized.

The Palestinian Central Election Commission, the Palestinian Authority and the Government of Israel have all pledged to welcome and support the work of accredited international election observers. The NDI pre-election delegation was welcomed and assisted by the entities listed above and anticipates full cooperation in its work leading up to and on election day.

While the political context surrounding the 2005 Palestinian presidential election is generally positive – particularly in light of an ongoing atmosphere of conflict and uncertainty – there are a number of fundamental problems that remain unresolved as of this writing. The main issues of concern are the following:

Freedom of Movement

Freedom of movement for election officials needing to provide materials and training to poll workers, for candidates and campaign workers needing to attend meetings and campaign events and, ultimately, for voters to cast their ballots, is a significant unresolved issue. At present, many Palestinian towns and cities throughout the West Bank and Gaza are under

military occupation and curfew. Since the beginning of the second *intifada*, movement in between villages, towns and cities in the West Bank and Gaza has been severely restricted.

Restricted movement has implications for a successful election process. If election officials cannot deliver the materials and training to each polling station and poll worker, the franchise of certain voters may be compromised. If candidates and political party officials are not free to reach out to and communicate directly with voters, an opportunity to strengthen the relationship between citizen and elected leadership – important in both the short and long term – may be lost. Candidates who do not already have substantial political support may be at a disadvantage if their travel is restricted.

Israeli and Palestinian officials have stated in the press that there exists an agreement that will allow freedom of movement for political candidates and their assistants and elections workers. They have further stated that Palestinian voters will enjoy freedom of movement in the 72 hours surrounding election day. The details of this reported agreement have not been publicized widely or printed, nor does it appear that any such agreement is being fully implemented at the Israeli checkpoint level at this time.

Election Preparations and Freedom of Movement in Gaza

Electoral preparations in Gaza are taking place under extraordinarily difficult conditions. In recent days, armed clashes, checkpoints and road closures have complicated the logistical tasks of transporting election materials and training staff. Election officials have not been able to complete their preparations in all polling centers, particularly those south of the Abu Holi checkpoint, because of restrictions on movement. If such access is not granted without delay, a deadline may soon be reached which makes preparations for the necessary technical aspects of a democratic election extraordinarily difficult, if not impossible. As of this writing, there were seven areas in Gaza where election supplies could not be delivered, and a training of election supervisors in Gaza scheduled to take place last week was delayed because training materials could not be delivered. The CEC Director in Gaza was reportedly not permitted to leave Rafah for five days.

Voting in Jerusalem

The political status of the city of Jerusalem remains an unresolved issue, as does the right of Palestinian residents of the city to participate in elections for Palestinian governing authorities. During the recent voter registration process, there was no formal agreement between Israel and the Palestinians regarding registration for Jerusalemites, and the centers in East Jerusalem were shut down within 10 days of opening by Israeli authorities.

Public statements by Israeli and Palestinian officials have referenced a replication of the agreement made for voting in Jerusalem in 1996, in which Palestinians voted in five post offices throughout the city. The Israeli government considered this a form of absentee voting; the Palestinian authorities considered it voting in polling stations that happened to be post offices. However, as of this writing, the CEC and political parties have not received the details of any formal agreement to implement.

In the 1996 elections, areas in East Jerusalem had the lowest turnout of all electoral districts for a number of reasons, including concerns of Jerusalemites about the potential loss of certain benefits if they were to participate in voting. Public assurances that Palestinian

residents of Jerusalem will not face any negative consequences for exercising their right to vote may help increase voter turnout.

The CEC estimates that the total number of possible Palestinian voters in Jerusalem may exceed 200,000. Some of the five post offices used in 1996 could accommodate the presence of only six voters at one time, and that calculation does not take into consideration observers and the media who will undoubtedly pay special attention to these centers. Consideration should be given to increasing the number of voting centers in Jerusalem.

The Voter Registry and Technical Preparations

In September and October 2004, the CEC conducted a technically sound voter registration process, which was monitored by an NDI international observation mission. Following Yasser Arafat's death and the announcement that a presidential election was to be held, the CEC reopened voter registration on November 24 to accommodate voters who had not registered, but who would like to vote in the presidential elections.

The CEC was established in 2002 as a new, independent electoral commission. The CEC decided to create an entirely new voter list, rather than simply use the civil registry, because of concerns and accusations of voter fraud in the 1996 elections and questions over the quality of the registry.

Currently, the main issue of contention regarding the voter list is an amendment to the election law recently passed by the Palestinian Legislative Council (PLC) requiring the CEC to "complement" its voter registration list with the civil registry. Without adding the names on the civil registry, the voter list included an estimated 72 percent of eligible Palestinian voters. In a statement released on October 7, NDI found the recent voter registration process to have been conducted at a high level of technical proficiency. It is unclear why the PLC would insist on the use of the civil registry, the quality of which is in dispute, when a new voter registry has recently been created in a technically sound process.

This decision by the PLC has led to a situation that is potentially confusing for voters as they will now travel to different polling stations according to the list on which they appear. The CEC intends to create separate polling stations (62 throughout the West Bank and Gaza) for those who are only on the civil registry. Voters who recently registered with the CEC must return to the site where they registered to vote, which will be transformed into "regular" polling stations. Voters who are on the civil registry but not on the official voter list must identify and travel to "special" voting centers, according to their first name. Those who appear neither on the civil registry nor on the CEC voter list will not be allowed to vote. There is also a possibility of people being on both lists, so the CEC is now planning to mark every voter with indelible ink – a system used successfully around the world to avoid multiple voting.

Although the quality of the civil registry is in dispute, therefore calling into question the real number of eligible voters present on that list, regular polling stations would then service an average of 438 per station, while special polling stations would service an average of 1,328 voters per station, according to recent estimates of both populations. If turnout is high, there is the potential for long lines at special polling stations.

Voter Education, Communication and Domestic Election Observation

To date, voters have received limited information on the new system for voting. Additionally, agreements on freedom of movement and voting in East Jerusalem referenced by Palestinian and Israeli officials, have not been detailed to the public, nor have Palestinian and Israeli officials yet made sufficient efforts to reassure the Palestinian public that such agreements will be faithfully implemented. In an information vacuum, Palestinian political parties and voters may not have the confidence to campaign and vote in the numbers they might in other circumstances.

The death of Yasser Arafat and the short election preparation time seems to have limited the scope and depth of voter education activities. Anecdotal information suggests that Palestinians are largely unaware of the details of the presidential vote, and know little about most of the candidates running. This situation may well be remedied during the official campaign period but it is an issue that bears further attention.

Palestinian non-governmental organizations are organizing a domestic election observation exercise. The CEC reports that as many as 10,000 domestic monitors are expected to register to observe the presidential election. Despite this admirable level of activity, it is unclear whether a comprehensive voter education campaign will be part of these efforts.

Recommendations

1) *Freedom of Movement*: The ability of election officials, candidates, campaign teams and political party officials to move freely throughout the West Bank and Gaza will have a profound affect on the quality of the campaign and the election itself. As noted in this statement, Israeli officials have stated their willingness to facilitate the requirements of these elections. To this end, NDI recommends that election officials and workers receive full freedom of movement and access to all necessary areas immediately.

Additionally, candidates for the presidency, their campaign staff and political party officials should receive the same facilitation of movement as soon as possible, and certainly no later than the start of the official campaign period.

Also, all voters must have full freedom of movement from at least 8 – 10 January for the purposes of reaching voting centers. The election law requires citizens to register and vote where they live for national elections, which will undoubtedly require travel for some. Additionally, many voters on the civil registry will have to go to special voting centers, which are less numerous than regular voting centers and therefore less conveniently located.

2) *Jerusalem*: Time is running out to reach an agreement on voting in Jerusalem that could be implemented in time for election day, both in terms of the meeting technical requirements for operating an election and fully informing voters of the systems in place for voting.

Jerusalemites need explicit reassurances from Israeli and Palestinian officials that exercising their voting rights in the January elections will not lead to sanctions in any form. NDI recommends that any agreement reached include specific protections and guarantees that voters in East Jerusalem will not suffer any consequences as a result of participating in these elections. On election day, a judicious deployment of Israeli security forces around polling

stations will serve as an important confidence building measure that these guarantees are genuine.

Additionally, NDI recommends that any agreement reached should expand the number of locations used for purposes of voting. The Institute also recommends that special consideration be given to the training of poll workers, who are postal workers rather than CEC employees, and the transportation of ballots.

3) *Voter Education and Communication*: Recent amendments to the election law and the CEC's plans for incorporating the new regulations into this election, have led to a complicated system for voting on election day. Voters who recently registered with the CEC must return to the site where they registered to vote, while those only on the civil registry must vote in separate polling stations. This new and potentially confusing system requires an aggressive voter education campaign to ensure that voters are fully aware of these arrangements on election day and to avoid disenfranchisement of voters and potential chaos at polling stations.

NDI recommends that Palestinian civil society organizations, the Central Election Commission and all relevant Palestinian authorities work together to organize a comprehensive and appropriate voter education effort to insure that all voters are fully informed of the processes in place for these elections. This would include public distribution of the details of any and all agreements reached between Israeli and Palestinian officials on these elections, including freedom of movement and arrangements for Jerusalem. The details of such agreements should be publicized immediately upon completion, so that voters are fully aware of all procedures in place and the CEC can move quickly to implement them.

APPENDIX C

PRELIMINARY STATEMENT OF THE NATIONAL DEMOCRATIC INSTITUTE INTERNATIONAL OBSERVER DELEGATION TO THE REGISTRATION OF PALESTINIAN VOTERS SEPTEMBER-OCTOBER 2004

Jerusalem, 7 October 2004

This statement has been prepared by a multinational delegation organized by the National Democratic Institute for International Affairs (NDI). The observer mission assessed the voter registration process in the West Bank and Gaza throughout the official five-week period, beginning on 4 September with the majority of field visits to registration centers conducted between 27 September and 7 October. Among its activities, the mission visited 117 registration sites, conducted a series of meetings with political and civic leaders, governmental and electoral authorities, and representatives of the international community.

The observer mission included experts in elections, voter registration and democratic development from seven countries. Several were selected because of their unique understanding of these fields in areas of conflict. The delegation included:

Paul Adams, former Middle East Bureau Chief for *The Globe and Mail* and former NDI Senior Program Director in the West Bank and Gaza Strip; Shari Bryan, an attorney experienced in civil, criminal and international law who has led election monitoring missions in a number of countries and currently serves as NDI's Regional Director of Southern and East Africa Programs; Kate Fearon, founding member of and political advisor to the Northern Ireland Women's Coalition and currently Political Party Program Director for NDI in Bosnia and Herzegovina; Joseph Hall, currently NDI Senior Regional Representative for the Middle East and former director of several NDI programs, including those in the West Bank and Gaza Strip; Richard Klein, a Senior Elections Advisor to NDI programs, co-author of the manual, "Building Confidence in the Voter Registration Process"; Shannon O'Connell, a specialist in campaigns, elections and political party development and Director of NDI's programs in the West Bank and Gaza Strip; Sasha Pajevic, NDI Resident Deputy Director for Political Party Programs with NDI Montenegro; Vladimir Pran, a Senior Elections Advisor to NDI programs and former director of Parallel Vote Tabulation for GONG, a nonpartisan citizens organization in his native Croatia; David Rose, Deputy Leader of the Progressive Unionist Party of Northern Ireland and a specialist in democratic and transformation processes in conflict regions; Bjarte Tørå, former International Secretary and Deputy Secretary General of the Christian Democratic Party of Norway and Resident Director of NDI's programs in Kenya; Félix Ulloa, a former magistrate with the Supreme Electoral Tribunal in El Salvador and presently Resident Director of NDI's programs in Haiti.

The purpose of the NDI observation effort is to assist in the development of viable democratic institutions that will enable Palestinians to choose their leaders and representatives freely. NDI began work in the West Bank and Gaza Strip in 1994 in anticipation of the first Palestinian general elections. In 1996, NDI organized an international observer mission that monitored the preparations for Palestinian elections and later the balloting process itself. From 1996 to 1998, the Institute also supported the effort of Palestinian groups that monitored those polls. NDI worked with the Palestinian Legislative Council and assisted in the development of Civic Forum, a civic education initiative.

Currently, NDI is assisting in the efforts of Palestinian parties and factions to develop their capacity to participate in the emerging democratic process.

Beginning in September, the Palestinian Central Election Commission (CEC) undertook to assemble a new register of Palestinian voters for use in municipal, parliamentary and presidential elections. In order to express the international community's support for democratic elections to Palestinian institutions, NDI organized a delegation of observers to monitor the process. The possibility of democratic progress for Palestinians is a matter of deep interest not only to Palestinians themselves but also to the region and to the world. A credible and fairly administered voter registration system is a prerequisite to any democratic reform.

During the last two weeks, delegation members visited 117 registration centers representing all the governorates in the West Bank and selected by statistical sample. Because of armed conflict in the Gaza Strip, NDI's observers were unable to witness the operation of registration centers there. However, local staff did conduct 20 observation visits in Gaza. In addition, NDI intends to dispatch international observers to monitor registration centers in Gaza when they re-open, as the CEC has promised, and when security circumstances permit.

The comments contained herein represent NDI's preliminary conclusions based on the first of three phases of the observation process. Once the CEC publishes the register of voters, NDI will conduct physical tests of the list to determine whether voters have been properly inscribed and to ensure that names have not been improperly inserted onto the list. In the final stage of its observation program, NDI will monitor the process that permits challenges to the list in November.

NDI intends to publish a comprehensive report on the voter registration process in December.

Summary of Observations

The registration of Palestinian voters, which began on September 4, 2004, took place under extraordinarily difficult conditions. During the registration period there were armed clashes and Israeli military operations, particularly in the north of the Gaza Strip. Smaller incursions, military operations, and checkpoints also complicated the logistical tasks of establishing and supplying registration centers as well as training staff. Despite these obstacles, over a five-week period, the Central Election Commission (CEC) undertook to draw up an entirely new register of Palestinian voters through a network of approximately 1000 local registration centers located throughout the West Bank and the Gaza Strip.

The CEC also faced the daunting task of convincing Palestinians to make the effort to go to the centers to register. NDI observers found that many Palestinians were sceptical of their ability to influence the political system through elections. Moreover, with no elections scheduled (except in a few municipalities), there was no near-term motivation to register. With a few exceptions, political parties, factions and community organizations failed to mobilize in support of the voter registration effort until relatively late in the process.

Given these challenges, the CEC conducted the registration process at a high level of technical proficiency. The CEC launched a publicity campaign before the centers were opened to raise public consciousness about the voter registration process. The officials who staffed the centers were generally well trained in the procedures they had to administer and

the centers were well supplied with the necessary materials. The centers were for the most part well identified with large banners and were numerous enough that most people were able to access them by foot. The CEC also introduced a system of proxy registration for Palestinians in jail or detention.

Furthermore, the Commission proved itself responsive in the face of many of the difficulties it inevitably faced in mounting an entirely new process. During the course of the registration period, it adopted a special procedure for home-registration of the elderly and the disabled who found it difficult to travel to registration centers. Early in the registration process, when turnout at the stationary registration centers was lower than might have been hoped, the CEC devised a successful system of mobile registration centers located near busy areas such as markets and mosques to augment the work of the stationary centers. These centers signed up many people who might not otherwise have taken the trouble to register.

Most important for the future of Palestinian elections, the CEC conducted itself impartially. This is crucial for the restoration of the confidence of Palestinians in their electoral system. The system of compiling the voters' list by door-to-door canvass in the 1996 election was hastily designed, and although some voters found it more convenient than the current system, it was also more open to manipulation or abuse. The NDI observer team was unanimous in its view that the quality of the CEC's work during this voter registration process was unusual, if not unique, in a conflict zone. While some of its decisions have been the subject of debate, the Commission established its credibility and integrity during the process.

The responsibility for making the registration system work does not lie solely with the CEC. Political and civic organizations also had a responsibility to mobilize in order to ensure its success. Although many of these organizations were slow to mobilize support for the registration process, there is evidence that some of them became increasingly active as the process unfolded. The CEC informed NDI that 6,500 domestic observers and agents had registered to participate as of 6 October.

It is clear that public acceptance of the registration process has grown over the past five weeks. The number of people registering each day roughly doubled from the beginning of the five-week initial registration period to the end. In many communities a majority, and in some a very large majority, of eligible voters have now registered. From the information NDI has been able to obtain through its observation activities and discussions with the CEC, it appears that roughly 900,000 Palestinians have been registered to vote so far. While this is a significant achievement, NDI believes that there remain many more Palestinians who would be interested and prepared to register to vote. In some areas, particularly in refugee camps and some of the larger cities, registration rates were relatively low. NDI believes that a larger number of registered voters would lend greater legitimacy to elections when they are held.

Despite the achievements of the initial registration experience, there are a number of serious problems that need to be addressed.

1. *Access to registration in Jerusalem:* The CEC established seven registration centers in East Jerusalem. However, in their first week of operation they were subject to frequent raids by Israeli authorities, according to staff in the centers we interviewed. This intimidated staff and discouraged potential registrants, they said. After a little more than a week, all the centers in East Jerusalem were closed under Israeli directives. Some CEC officials in East Jerusalem were detained and later told our

observers that they were threatened with arrest if they did not discontinue their work. Although the CEC did react by establishing some centers outside the municipal boundaries of Jerusalem, they attracted few voters. Palestinian residents of East Jerusalem are required by Israeli authorities to carry special identity cards permitting them to live in the city; many said they feared losing their right to live in Jerusalem if they were found by Israeli authorities to have registered. The result was that tens of thousands of Palestinians in East Jerusalem were denied the opportunity to register and have thus been potentially disfranchised.

2. *Registration problems in areas of conflict:* Military clashes in the north of the Gaza Strip resulted in the indefinite closure of dozens of registration centers. In addition, more localized military actions by Israeli forces elsewhere in Gaza and in the West Bank resulted in the temporary closure of many registration centers, in some cases for extended periods. Election officials also reported that the presence of Israeli soldiers or military vehicles close to registration centers had sometimes discouraged potential registrants even when the centers remained open.
3. *Movement of registration forms:* The CEC informed NDI that it had been unable to secure passage of an estimated 300,000 registration forms out of Gaza through Israeli-controlled border stations. Because the CEC's data-processing center is in Ramallah, this may delay the preparation of the voters' lists, an issue of particular concern for municipalities in which local elections are scheduled for December.
4. *Public participation:* Many voters demonstrated an initial lack of enthusiasm to the idea of registering to vote, particularly because no date has been set for presidential or parliamentary elections. Despite the CEC's publicity campaign, scepticism about the possibility of elections and their potential impact has only slowly given way to growing interest. In some areas, significant numbers of people have only started coming to the registration centers in recent days.
5. *Municipal elections:* The Palestinian Authority (PA) has called for local elections to be held in 36 of its approximately 500 municipalities on December 9. The PA has said that it intends to call elections in all the municipalities over the next year. However, local elections are currently regulated by a different law than parliamentary and presidential elections. Confusingly for voters, the rules for voting in local elections are different and there is a separate system of registering to vote. NDI was told that the committees organizing local elections will rely in part on the work done by the CEC, but this is certainly not sufficient to reduce voter confusion or eliminate unnecessary administrative duplication.

The NDI observer team believes that all of these issues can and should be addressed. Doing so would contribute to the credibility and legitimacy of Palestinian elections.

Interim Recommendations

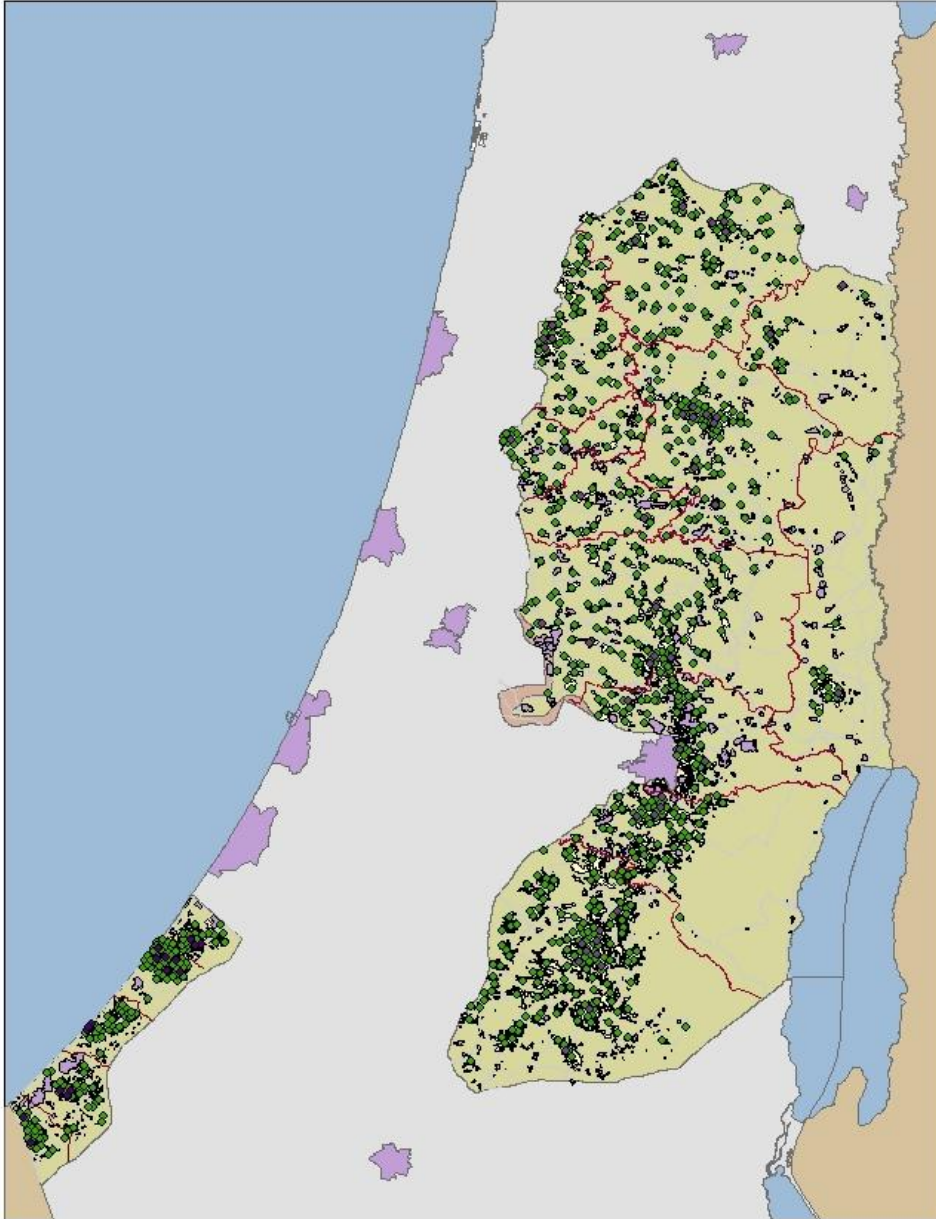
1. *Access to registration in Jerusalem:* The closure of registration centers in East Jerusalem illustrates how difficult it will be for Palestinians there to exercise their voting rights without a political agreement between Israel and the Palestinian Authority. Prior to the 1996 election, an agreement was negotiated between the Palestinian Authority and Israel that allowed Palestinians in East Jerusalem to vote.

NDI recognizes that the political situation has deteriorated since then. Nonetheless, NDI would urge the parties to seek an accommodation that will allow Palestinians in East Jerusalem to cast their ballots.

2. *Extending registration in conflict areas:* The CEC should reiterate its commitment to extend the registration period in areas, notably in the Gaza Strip, where registration has been seriously disrupted by armed conflict.
3. *Movement of registration forms:* Israel cooperated with the movement of registration materials into the Gaza Strip at the beginning of the registration process. NDI recommends that Israel continue this cooperation by allowing the movement of registration forms from the Gaza Strip to the West Bank in a way that ensures the integrity of these documents. At the same time, NDI encourages the CEC to accommodate Israel's legitimate security concerns in a way consistent with its own duties to protect the registration process.
4. *Ensuring full access to registration:* The current registration process will allow the CEC to form the basis of a permanent, regularly updated voters list. NDI supports the CEC's decision to allow a general extension of the current registration period beyond this week. This will help ensure more of those who wish to register are able to do so. The CEC should also expand its use of the mobile registration centers in high-traffic areas that have already proven effective in augmenting the reach of local centers. To be most effective, these measures should be accompanied by a continuation of the CEC's publicity campaign. Moreover, to ensure that no interested eligible voter is denied the franchise, NDI would recommend that the CEC introduce methods to update the register, particularly when election dates have been announced. This will be a time when voter interest is likely to be high. NDI realizes that this is an expensive endeavor. We acknowledge the generosity of foreign donors, particularly members of the European Union, in supporting the process so far, and urge the international community to continue its support.
5. *Clarifying procedures for municipal elections:* NDI commends the CEC and the Local Government Ministry for their efforts to cooperate. However, the best way to minimize confusion among voters and ensure the fair and efficient conduct of municipal elections would be to harmonize election procedures fully and place the administration of all elections - parliamentary, presidential and municipal - under the CEC. The Palestinian Legislative Council could adopt the legislative changes necessary to allow this harmonization. NDI would recommend that the Palestinian Authority lay out a timetable to hold elections in every locality over the next year so that voters in each municipality will have a reasonable assurance that they will be able to elect their local representatives.

APPENDIX D

MAP OF POLLING CENTERS IN THE WEST BANK, GAZA STRIP AND EAST JERUSALEM



- 998 regular polling centers (green dots)
- 64 civil registry polling centers (purple dots)
- 6 post offices for “absentee” voting in East Jerusalem

APPENDIX E

NDI Pre-Election Assessment Palestinian Presidential Election January 9, 2005

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APPENDIX F

NDI Election Observation Mission Palestinian Presidential Election January 9, 2005

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APPENDIX G

PHOTOGRAPHS OF THE OBSERVATION MISSION







