



## IFES West Bank & Gaza

3 Al Zuhur Street,  
PO Box 4015, Al Bireh  
phone: +972 (2) 2402462  
fax: +972 (2) 2402465  
vpran@ifes.org

## Challenges to the 2010 Palestinian Elections

### Briefing Paper

June 2009  
Vladimir Pran

The Cairo reconciliation negotiations between Fatah, Hamas, and other Palestinian factions have covered a host of difficult issues; one of the most sensitive is that of elections for the presidency of the Palestinian National Authority and the members of the Palestinian Legislative Council (PLC). Media reports from Cairo indicate that Palestinian factions have agreed to hold the elections no later than 24 January 2010, the date the four-year mandate of the PLC expires<sup>1</sup>.

Strong statements by President Abbas, other Palestinian National Authority (PNA) officials, as well as Fatah and Hamas leaders appear to support this impression. Recent opinion polls also show that Palestinians question the democratic legitimacy of the President and of the PLC should they extend their mandates without an election. Yet, despite this apparent consensus, the holding of elections in January 2010 is far from certain.

This briefing paper does not consider the advisability or otherwise of elections<sup>2</sup>. Rather, it seeks to present the various contextual challenges to implementing elections in January of 2010. At the time of writing it was impossible to forecast whether these challenges will be overcome or they will lead to a postponement of the elections.

---

<sup>1</sup> For detailed information on legality of the presidential mandate, see IFES' brief "When Are the Next Palestinian Elections Q&A".

<sup>2</sup> Nathan Brown's "The Green Elephant in the Room" (Carnegie, June 2009) is excellent contribution to the debate on way forward <http://tinyurl.com/greenelephant>. Also, ICG's briefing <http://tinyurl.com/icggaza>

## Palestinian National Reconciliation

There have been several rounds of reconciliation negotiations held in Cairo between Fatah, Hamas and/or other Palestinian factions. Elections are one of the five principal issues discussed among the factions. Within this issue, the *system of representation* – more specifically the proportion of seats to be elected under the *Block Vote* and under the *List PR* system<sup>3</sup> – was the most crucial question<sup>4</sup>. Media reports have suggested that this is the only outstanding issue regarding elections, implying that Hamas and Fatah have agreed on holding elections before 24 January 2010.

However, this agreement is only apparent. Both sides continue to refer to the January date because Palestinians believe elections are important to maintain the legitimacy of the government. Yet, no agreement to conduct elections in January 2010<sup>5</sup> has really been settled; “*nothing is agreed until everything is agreed*”<sup>6</sup>. For that reason, even if there were an agreement on elections, implementation is no closer than an agreement on all the other outstanding issues, including security forces, the national unity government, and the reconstruction of Gaza<sup>7</sup>.

President Abbas cannot call for elections without prior agreement between the PNA and Hamas<sup>8</sup>. Hamas controls Gaza and it could easily terminate any attempt to initiate the electoral process<sup>9</sup>. In addition, President Abbas would meet resistance from the Central Elections Commission (CEC). The Commission would not be willing to work on elections without an agreement between Palestinian factions, nor would it conduct elections in the West Bank only, under the control of the PNA.

In the meantime, the next round of the Cairo negotiations is scheduled for 5 July.

## Political (‘Constitutional’) Framework

Were the various Palestinian factions and the President to agree on conducting the elections, they would then need to agree on a political/constitutional framework under which the elections would be held.

---

<sup>3</sup> Factions consider Block Vote system beneficial to Hamas while they see List PR beneficial to Fatah and other factions.

<sup>4</sup> Other topics included appointment of composition of elections commission, elections court etc.

<sup>5</sup> There were rumors that Hamas was asking for elections to be postponed for two years after the formation of a national unity government.

<sup>6</sup> Position stated both by Hamas and Fatah.

<sup>7</sup> The reform of the Palestinian Liberation Organization is also negotiated.

<sup>8</sup> Of course, if Hamas voluntarily stood aside, elections could be held on a presidential decision, but that is unlikely.

<sup>9</sup> In practice, Hamas have already exercised control over the electoral process, banning the activity of the Central Elections Commission in Gaza. This prevented annual update of the voters list.

The 1996 elections were conducted as result of the “*Oslo Accords*” between the Palestinian Liberation Organization (PLO) and Israel. When President Arafat died in 2004, Palestinians carried out a ballot to elect a President and the members of the Palestinian Legislative Council. They did this without a political agreement with Israel, following the Basic Law<sup>10</sup>. The negotiations between Palestinians and Israel over the presidential elections were largely reduced to organizational issues<sup>11</sup> including logistics, movement restrictions, and transport of materials from/to the West Bank and Gaza etc. Although both Israelis and Palestinians exploited some provisions from *Oslo Accords* – namely regarding implementation of elections in Jerusalem<sup>12</sup> – the *Accords* were not the foundation of elections<sup>13</sup>.

The 2006 PLC elections were organized in the context of the 2005 intra-Palestinian *Cairo Agreement*. In early 2005, Palestinian factions agreed on the political participation of Hamas in PLC elections as well as incorporating Hamas into the PLO. Perhaps because nobody thought it possible for Hamas to win, the faction was not asked to explicitly subscribe to the PLO political framework, whose components could be defined as:

- Recognition of the PLO as the “*sole representative of Palestinian people*”,
- Respect of the *Oslo* and other agreements with Israel, and
- Acceptance of the “*Declaration of Independence*”<sup>14</sup>.

It is very difficult to conceive Hamas’ participation under such conditions. Beyond the condition that Hamas accepts the *Quartet Principles* articulated in 2006, at the moment there are no other articulated proposals on a solution that would allow the participation of Hamas. There is no law on political parties that would govern political activities of factions and their participation in elections. The Basic Law and the 2005 Elections law do not contain provisions that would ban factions outside PLO framework and those opposing recognition of Israel from participating in elections<sup>15</sup>.

On the other hand, President Abbas made the first step in changing the framework through the 2007 election law<sup>16</sup>, which requires candidates to recognize the PLO as the only legitimate representative of Palestinians and to subscribe to the “*Declaration of*

---

<sup>10</sup> Article 37 of the Amended Basic Law of 2003

<sup>11</sup> Except on the question of Jerusalem.

<sup>12</sup> Palestinians to assert the right of Jerusalemites to vote, Israelis to limit voting in Jerusalem to “*postal voting*”

<sup>13</sup> Furthermore, both Palestinians and Israelis disregarded many provisions from “*Oslo 2*” Annex II, such as Israeli – Palestinian coordination committees, sharing of the voters list etc.

<sup>14</sup> Palestinian Declaration of Independence implicitly recognizes the two state solution

<sup>15</sup> Introductory text has some vague language on the “*fact that Palestine Liberation Organization is the sole and legitimate representative of the Arab Palestinian people*” and *Oslo*

<sup>16</sup> More on election law under “*Legal Framework*”.

*Independence*". Similar conditions are articulated in the draft of the Political Parties Law proposed by the Cabinet<sup>17</sup>.

But this political framework issue is not only a matter of importance to the PNA; it is also paramount to the international community and Israel.

## **International Community**

In 2006, the international community supported an electoral process in which Hamas took part. The financial and technical support of the international community was essential for the Central Elections Commission<sup>18</sup>. It supported the CEC's outreach and voter education activities; aided political factions<sup>19</sup> in campaign organizing; and funded international observation missions. The large number of international observers contributed greatly to the credibility of the electoral process.

However, the support to the new elections under the same 2006 framework is uncertain. In the three years since 2006, the rules of engagement (*especially for the EU and the US*) have changed to become stricter to ensure that no assistance is provided to Hamas. But prior to working out what is legally allowed, the international community needs to review its position and articulate conditions under which it will be able to provide political, financial and technical support.

## **Israel**

Israel's support is also fundamental. Israeli authorities must facilitate implementation in several aspects for the elections to take place. Even a passive Israeli rejection of the Palestinian elections would render the implementation of the electoral process impossible. Aspects that require Israeli approval and facilitation pertain to:

- The movement of Elections Commission goods (*election materials*) and personnel in the West Bank, between the West Bank and Gaza and to Jerusalem, during all of the phases of the electoral process;
- The import of election materials from the overseas;

---

<sup>17</sup> Political Parties law has not been signed in by the President, but at the time of writing it was still on the Cabinet's legislative agenda

<sup>18</sup> International community (namely the EU) financed election operation in total

<sup>19</sup> Excluding those classified as terrorist organizations (*Hamas, Islamic Jihad, PFLP etc*)

- The movement of candidates and voters across the Palestinian territories during campaigning activities;
- Enabling the registration of candidates and campaigning in East Jerusalem and easing restrictions on voting of the Jerusalemite Palestinians;
- The coordination of deployment of Palestinian security forces.

To note, the context in which the last election took place is still fresh in the minds of many Israelis. The widely accepted view holds that then U.S. Secretary of State Rice pressured Prime Minister Sharon into facilitating the elections against Israeli recommendations. The Israeli public believes that Israel should not have allowed Hamas' participation. It ensues that all that has gone wrong in Gaza since that election stems from Sharon bowing down.

## Fatah

Fatah's situation has not improved much since the 2006 election defeat. Fatah's political program is unclear<sup>20</sup> and the transition from a national movement into a political party is not going smoothly. The leadership remains divided and cannot agree on formula for the (s)election of delegates of the long overdue 6<sup>th</sup> Fatah General Conference. Demands of the party base that the delegates are selected through internal elections processes are largely ignored and lead to friction between the leadership and the party base.

As it stands, Fatah's position in any electoral process is far from desired. The potential release of Marwan Barghouti that will lead Fatah into election victory remains only an urban legend<sup>21</sup>.

Recent opinion polls show that Fatah enjoys a larger support base than Hamas. However, the 2006 results and the effect of the *Block Vote* electoral system remain very much present in the mind of Fatah leaders. They are aware that the popular support will not necessarily translate into votes unless they succeed in presenting a united front and an articulated political platform.

---

<sup>20</sup> "You have at the same table people that want to erase Israel geographically, politically and culturally and people that advocate for the two state solution", Fares, June 2009; "We are asking Hamas not to do so because Fatah never recognized Israel's right to exist", Dahlan, March 2009.

<sup>21</sup> Marwan Barghouti was heading the breakaway list "The Future" in 2006 elections.

## Legal Framework

In September 2007, President Abbas issued an election law under the pretext of an emergency government. Any piece of legislation issued by decree must be ratified at the end of the rule of the emergency government by the Palestinian Legislative Council for it to be legally binding. For this reason, Hamas disputes the validity of 2007 Elections Law basing their negotiation position on the 2005 Election Law.

There are two main areas of contention in the 2007 Elections Law: the system of representation and the “*PLO requirements*”<sup>22</sup>. If Hamas and the PNA agree on these two topics, it is safe to assume that legality of the law will not be an issue. The Central Elections Commission is abstaining from taking sides, choosing not to interpret either law. Instead, the CEC has designed operational plans for either scenario. From the operational perspective, a *Proportional List* system of representation (*as proposed in the 2007 election law*) would be much easier to implement than the system used in 2006 PLC elections.

## Election Operation

In 2005 and 2006, the Palestinian Central Elections Commission successfully defied domestic political pressures and Israeli occupation and organized several large-scale operations<sup>23</sup>. The CEC proved its independence and capacity to conduct sound elections. After the legislative elections and voters’ list update in 2007, it reduced its staff but preserved the core infrastructure. Since the last elections the CEC has been actively working on further building the capacity of its staff, reforming some aspects of the electoral process and fine-tuning operational plans.

Having said that, the CEC will face a challenge if the elections are called without sufficient time for expansion of its infrastructure and staff. These are needed to carry out the most demanding immediate task: the registration of voters. While the CEC was developing a plan to introduce continuous voter registration<sup>24</sup>, the plan has not been rolled out because of the intra-Palestinian conflict. The CEC also planned to update the voters’ list on annual basis, but it could not implement this update either in 2008 or 2009.

The CEC needs at least three months notice before polling begins to implement a voter registration as registration centers must open directly following the call for elections in order to update the list. This involves the opening of about 1,000 registration centers;

---

<sup>22</sup> Recognition of the PLO as the only legitimate representative of Palestinians and acceptance of the “*Declaration of Independence*”

<sup>23</sup> Large-scale operations include: polling, registration of candidates, and registration of voters.

<sup>24</sup> A continuous voter registration eliminates a need to launch massive voter registration operation just prior to elections.

recruiting and training about 3,000 staff; procuring and distributing materials and setting up the data entry center. Registration Centers will have to stay open for at least a week.

Another challenge for the CEC is uncertainty over the system of representation. The registration of candidates, ballot printing, polling procedures and election materials all depend on the system chosen: whether the current system or a pure *List PR* system.

The CEC will also have little time to make arrangements for matters pertaining to Jerusalem, which have to be negotiated between the PNA and Israeli authorities. The Commission will have to invest substantial efforts to provide the best possible voting conditions to Jerusalemite Palestinians.