

PLO NEGOTIATIONS AFFAIRS DEPARTMENT

THE RIGHT TO VOTE: PALESTINIANS IN OCCUPIED EAST JERUSALEM

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LEGAL ANALYSIS:

On January 25, 2006, Palestinians in the occupied West Bank, including East Jerusalem, and the Gaza Strip, will hold their first parliamentary elections in ten years. Israel's severe restrictions on Palestinian movement within and between Palestinian areas have frustrated the campaigning process and may impede the Palestinian elections.

While all Palestinians will be burdened in exercising their most basic democratic right, East Jerusalemites will face exceptional difficulties. Israel has been toiling to sever East Jerusalem from the rest of the occupied West Bank with settlements and an eight-meter-high concrete Wall that snakes through Palestinian communities in East Jerusalem. Israel has also been working to politically sever East Jerusalem from the West Bank: first by closing Palestinian political institutions and now by continuing to impede East Jerusalemites' right to vote.

Only 6.3% (6,300 of approximately 100,000) of Jerusalem's eligible voters who reside on the "Israeli" side of the Wall will be able to vote in their own city. The remaining 97% will have to traverse military checkpoints and the Wall to reach polling centers. This is despite the fact that the Wall does not run on the Israeli boundary with East Jerusalem and the West Bank; rather, it snakes deep into Palestinian territory. On July 9, 2004, the International Court of Justice held that all portions of the Wall built on occupied Palestinian territory, including those in East Jerusalem, are illegal and must be torn down.

This analysis presents East Jerusalemites' legal right to vote in Palestinian elections in East Jerusalem. Please refer to "Democracy under Occupation" for facts on the January 25, 2006 parliamentary elections in Jerusalem, available at www.nad-plo.org.

I. THE RIGHT OF SELF-DETERMINATION GIVES PALESTINIANS IN OCCUPIED EAST JERUSALEM THE RIGHT TO VOTE IN PALESTINIAN ELECTIONS

A. The Palestinian People Have the Right of Self-Determination

The right of self determination is guaranteed by the International Covenant on Civil and Political Rights and the International Covenant on Economic Social and Cultural Rights, both integral parts of the United Nations Agreements on Human Rights. Article 1 of these covenants reaffirms the right of all peoples to self-determination, and obligates State signatories to promote the realization of that right. The very essence of such right is the right to vote. Israel is a State signatory to these covenants.

The right of self-determination was reaffirmed by the international community in UN General Assembly Resolution 2625 (XXV) (1970), pursuant to which “Every State has the duty to refrain from any forcible action which deprives peoples referred to [in that resolution] . . . of their right to self-determination.”

The International Court of Justice ruled on July 9, 2004 (the “ICJ Ruling”) that the Palestinian people have the right of self-determination: “The Court considers that [the legitimate rights of the Palestinian people] include the right to self-determination, as the General Assembly has moreover recognized on a number of occasions. . .”¹

B. The Palestinians in Occupied East Jerusalem are part of the Palestinian People and are therefore Entitled to Exercise their Right of Self-Determination by Participating in Palestinian Elections.

The Palestinians of Occupied East Jerusalem are of the same legal status as Palestinians in the rest of the Occupied West Bank and consequently share the right of self-determination.

Israeli measures aimed at annexing or changing the legal status of East Jerusalem or its residents are of no legal validity according to the international community and international law.

The U.N. Security Council “*Considers* that all...actions taken by Israel...which tend to change the legal status of Jerusalem are invalid and cannot change that status.”² In response to Israel’s attempt to annex Occupied East Jerusalem in 1980 the U.N. Security Council reconfirmed that “all...actions taken by Israel, the occupying Power, which purport to alter the character and status of...Jerusalem have no legal validity and constitute a flagrant violation of the Geneva Convention relative to the Protection of Civilian Persons in Time of War and also constitute a serious obstruction to achieving a comprehensive, just and lasting peace in the Middle East.”³

In the ICJ Ruling, the International Court of Justice ruled that East Jerusalem is occupied territory: “All these territories (including East Jerusalem) remain occupied territories and Israel has continued to have the status of occupying Power.”⁴

A failure to permit the Palestinian of Occupied East Jerusalem to vote in Palestinian elections is tantamount to recognizing Israeli claims of sovereignty over occupied territory. Such recognition is a violation of international legal principles.

¹ International Court of Justice, Advisory Opinion, Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, ¶118 (2004)

² United Nations Security Council Resolution 252 (1968)

³ United Nations Security Council Resolution 476 (1980)

⁴ International Court of Justice, Advisory Opinion, Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, ¶78 (2004)

II. THE OSLO ACCORDS SET A PRECEDENT FOR GIVING PALESTINIANS IN OCCUPIED EAST JERUSALEM THE RIGHT TO VOTE IN PALESTINIAN ELECTIONS

A. The Declaration of Principles Permits the Palestinians of East Jerusalem to Vote for a Palestinian Legislative Council with the Understanding that such Council has No Jurisdiction over East Jerusalem

The Declaration of Principles on Interim Self-Government Arrangements dated September 13, 1993 (the “DOP”), provides for the Palestinian people of the West Bank and Gaza to elect a Council for self government in those territories. East Jerusalem is part of the West Bank, but excluded under Article 4 from the jurisdiction of the Council as it is a permanent status issue. Palestinians in East Jerusalem therefore participated in electing the Council even though they did not fall under that Council’s jurisdiction.

Annex I of the DOP (“Protocol on the Mode and Conditions of Elections”) provides that “Palestinians of Jerusalem who live there will have the right to participate in the election process, according to an agreement between the two sides.”

B. The 1995 Interim Agreement Permits the Palestinians of East Jerusalem to Vote in Palestinian Elections

The Recitals of the Israeli-Palestinian Interim Agreement on the West Bank and Gaza Strip of September 28, 1995 (the “Interim Agreement”) supports the “holding of direct, free and general political elections for the Council and the [President] of the Executive Authority in order that the Palestinian people in the West Bank, *Jerusalem* and the Gaza Strip may democratically elect accountable representatives” (emphasis added).

The Interim Agreement states that “Palestinians of Jerusalem who live there may participate in the election process”⁵ and that the electorate shall be “the Palestinian people of the West Bank, Jerusalem and the Gaza Strip”.⁶

Annex II of the Interim Agreement details the process necessary for the holding of elections, including Article VI which expressly addresses the process in East Jerusalem.

C. The Oslo Accords do not Address a Second Palestinian Election and therefore such Elections are Governed by International Law –Specifically the Right of Self-Determination – and Oslo Precedent

The Oslo Accords are silent as to the specifics or parameters of the current second round of elections. Consequently, the precedent of the first election and the Palestinian right of self-

⁵ Interim Agreement, Article 2(3)

⁶ Interim Agreement, Article 3(1)

determination (a right reserved under the Interim Agreement⁷) decisively weigh in favor of the right of Palestinians in East Jerusalem to participate in Palestinian elections.

III. THE ROAD MAP IMPLICITLY RECOGNIZES THE RIGHT OF PALESTINIANS IN OCCUPIED EAST JERUSALEM TO VOTE IN PALESTINIAN ELECTIONS

A. In requiring Israel to reopen Palestinian institutions in Occupied East Jerusalem, the Road Map not only recognizes that East Jerusalem is subject to Road Map obligations but also requires the opening of Palestinian voter registration centers.

The Road Map requires Israel to reopen the Palestinian Chamber of Commerce and “other Palestinian institutions” in East Jerusalem. Consequently, the Road Map not only recognizes that East Jerusalem is subject to Road Map obligations but also requires the opening of Palestinian voter registration centers which are clearly Palestinian institutions.

The closure of Palestinian voter registration centers also violates the 1993 promise of Mr. Shimon Peres, when he pledged in writing to the Foreign Minister of Norway that “all the Palestinian institutions of East Jerusalem, including the economic, social, educational, and cultural, and the holy Christian and Muslim places, are performing an essential task for the Palestinian population. Needless to say, we will not hamper their activity; on the contrary, the fulfillment of this important mission is to be encouraged.”

B. Since the Road Map recognizes East Jerusalem as subject to Road Map obligations, obligations with respect to Palestinian elections also apply to East Jerusalem.

The Road Map obligates Palestinians to undertake comprehensive political reform, including “free, fair and open elections.” Since the Road Map recognizes that its obligations apply to Occupied East Jerusalem, the Palestinians residing there consequently have a right to participate in such elections.

In addition, the Road Map obligates Israel to facilitate “election assistance, registration of voters, movement of candidates and voting officials.” Consequently, Israel’s closure of East Jerusalem voter registration offices is a direct violation of its Road Map obligation to “facilitate” Palestinian elections.

⁷ The Interim Agreement refers a number of times to the Palestinian people and its “legitimate rights” (Preamble, paras. 4, 7; Article II, para 2; Article III, paras. 1 and 3; Article XXII, para. 2). Paragraph 118 of the ruling of the International Court of Justice stated that such legitimate rights include the right of self-determination.

IV. PREVENTING PALESTINIANS IN OCCUPIED EAST JERUSALEM TO VOTE VIOLATES ISRAELI LAW

Under the 1994 Israeli law for the implementation of the Oslo Accords, Israel may only close a Palestinian Authority or Palestine Liberation Organization office in Occupied East Jerusalem if the activity of such office does not respect Israeli sovereignty.

This law violates the international legal prohibition on acquiring territory by force. But even if such law were valid, it would not apply to the Palestinian voter registration offices because voter registration for what Israel considers a foreign election still respects Israeli sovereignty. Registering to vote in Palestinian elections is no more disrespectful of Israeli sovereignty than Jerusalemites registering to vote in US elections, which is permitted under Israeli law.

In addition, there is no inconsistency between registration of voters and respecting the fact that Jerusalem remains a permanent status issue and therefore out of the jurisdiction of the Palestinian Council.