



Position Paper on the Palestinian Local Elections

Al Mezan Centre for Human Rights



Position Paper Guarantees to Ensure Respect for Freedoms, Impartiality in Elections, and National Agreement Prerequisites to Conducting Local Elections in Palestine

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This position paper aims to clarify the position of Al Mezan Center for Human Rights on the decision of the Palestinian Government in Ramallah to conduct elections in all local councils in the West Bank and Gaza Strip. Elections are set to be held in application of the High Court decision that was issued on 13 December 2010. The decision revokes a previous decision by the Ramallah Government, in which it postponed the local elections for an unlimited time. Following the High Court ruling, the Ramallah Government has decided to conduct elections in all local councils in the occupied Palestinian territory (oPt) on 9 July 2011.¹

Introduction

The terms of the local councils which were elected in May 2005 in oPt have now expired. Starting in 2007, the two governments in the West Bank and the Gaza Strip appointed new local councils, both in the West Bank and the Gaza Strip, including for those local councils whose terms expired, councils in which elections did not take place, and councils whose elections had been annulled by court decisions. The local councils elections were held in phases, beginning in late 2004. The first part of the first phase of the local elections was organized on 23 December 2004 in 26 local councils in the West Bank while the second part of the first phase was organized in 10 local councils in the Gaza Strip on 27 January 2005. The second phase of the local elections began on 05 May 2005 in 84 local councils in the West Bank and Gaza Strip. The third phase of these elections, which was supposed to be held in the main cities, has not been organized and these local councils have continued to be directly appointed by official bodies.

Cabinet Decision to Conduct Local Elections in 2010:

On 8 February 2010, the Cabinet of Ministers (Cabinet) in Ramallah decided to conduct elections in local councils in the oPt on 19 July 2010.² After considering the decision, the Central Elections Commission (CEC) sent a letter to the Cabinet describing its inability to prepare and conduct elections in the Gaza Strip. After considering the letter, the Cabinet decided to postpone elections in local councils in the Gaza Strip and to continue preparing for elections in the West Bank to be conducted on their due date. On 5 June 2010, President Mahmoud Abbas issued a decree in which he would allow police and security forces members to vote a day prior the election day, which would be determined by the CEC.

However, the Cabinet in Ramallah reneged on its decision to conduct the elections when they were due. On 10 June 2010, the Cabinet canceled the elections and decided that elections would be held later.

The decision to cancel elections has caused heated controversy over the reasons and aims of this cancellation and to what extent the procedures of the cancellation were

¹ See the Cabinet of Ministers decision on the Central Elections Commission website: <http://www.elections.ps/atemplate.aspx?id=882>.

² See the Cabinet of Ministers decision on the Central Elections Commission website: <http://www.elections.ps/atemplate.aspx?id=780>



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legal. On 9 August 2010 a representative of a list of independent candidates which is registered with the CEC office in Tulkarem lodged an appeal on behalf of the list and on his own behalf as a registered candidate at the High Court of Justice³ against the Cabinet's decision to postpone the election indefinitely. On 13 July 2010, a representative of the Assira Al-Qibliyeh Martyrs List, registered at the CEC office in the Nablus, District, lodged another appeal at the High Court of Justice against the Cabinet's decision.

After four months of proceedings, the Court issued its ruling on 13 December 2010 in which it revoked the appealed 10 July 2010 Cabinet decision. Consequently, the Cabinet in Ramallah issued a new decision, on 8 February 2011, to conduct elections in accordance to the law in all local councils in the oPt on 9 July 2011.⁴

The CEC welcomed the Cabinet's new decision and confirmed its preparedness to conduct the elections. In a press release, the CEC reaffirmed that it '[m]aintains itself as a neutral and independent commission,' and announced that "[i]t will exert every possible effort to uphold values essential to a fair and equal election process in the Gaza Strip, which is facing difficulties".⁵

This new decision to conduct elections was rejected by several Palestinian political factions, foremost by Hamas and Islamic Jihad Movements. The Gaza Government also rejected the decision. It became clear that conducting elections in the Gaza Strip would be impossible thus the Cabinet will postpone, as in the past, the elections in Gaza Strip and will conduct elections only in the West Bank on the due date.

Amidst these developments, conducting elections in the current circumstances with the absence of national agreement and the persistence of political split requires further evaluation, especially as to the respect of the rule of law principle, the respect for human rights and public freedoms, and other crucial factors that are inevitable for conducting fair and impartial elections. In this context, Al Mezan would like to highlight the following issues:

1 Fair Elections: Crucial Criteria

Elections are a demand of all Palestinian people in general and human rights organizations in particular, including Al Mezan. Elections are one of the basic means through which political systems achieve the peaceful transfer of power. Elections are also a tool for enacting the right to participation in political and public life and enabling the people to become involved in their country's governance. Participating in elections is a right of citizens enshrined in the Palestinian basic law.

There are certain criteria that must be ensured for elections to express the free will of voters. These criteria secure the equal opportunities of candidates to equally win the voters' trust. This paper presents the necessary criteria to conduct free and fair

³ see the decision of the High Court of Justice published on the CEC website <http://www.elections.ps/atemplate.aspx?id=876>

⁴ See 'Cabinet's Decision on the 2011 Local Council Elections', available at <http://www.elections.ps/template.aspx?id=535>.

⁵ See Central Elections Commission, 'Local elections announced for July 9th: Central Elections Commission reaffirms its readiness', 10 February 2011, available at <http://www.elections.ps/template.aspx?id=536>.



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elections from a human rights perspective. The following section sheds light on a set of basic freedoms that are not guaranteed in the oPt in the current circumstances, which raise serious doubts as to the fairness of elections.

i. Freedom of Opinion and Expression:

Elections are a means and not an end in themselves. Elections aim to enable citizens to freely express their political opinions and collective political will. They are a basic tool to ensure the right to politically participate in the administration of their country or community's affairs. Therefore, the ability to freely express factional opinions must be ensured during the every stage of an election.⁶ This includes the right to criticize current political, economic, and social situations and propose alternatives. Unconditional freedom to adopt political opinion is crucial in elections as it is impossible to ensure that the people's will could be reflected in an environment where freedom is absent or is limited.⁷

In this context, Al Mezan asserts that the right to free opinion and expression is violated in unprecedented ways in the territories under the control of the Palestinian Authority (PA). These violations have occurred mainly due to the ongoing Palestinian internal split. Therefore, it is untenable to assume that these freedoms for opposing political groups and parties, or individuals, will be ensured in the Gaza Strip or the West Bank. It is also doubtful that these freedoms would exist for independent candidates.

ii. Free Access to Information

Free access to information is one of the main conditions which must be guaranteed for achieving free and impartial elections. Voters must have the right to know the candidates' policies and programs, but also understand the electoral system and procedures followed on the election day, including the complaint procedures.

In this sense, free access to information is also necessary to enact effective election monitoring. This includes enabling the right of citizens to know about any relevant bills, decrees, and bylaws prepared by the CEC, and all information related to polling centers and stations. This enables the local and international monitoring committees to prepare work plans for election monitoring. These criteria can be achieved by following the procedures initiated by the CEC in the previous legislative elections. Any default in these criteria can be easily corrected.

More generally, but equally important, is the connection between free access to information and the right to freedom of opinion and expression. The free access to information is of high importance in effecting the choices of the voters. The public has the right to know how candidates plan to manage local and national government affairs, including managing budgets, political decisions, anti-corruption decisions, and engaging the public in decision making. These important practices are meaningless without giving the public, research centers and media access to information. These practices are crucial for voters' determining their choices and building their opinions.

iii. The Right to Peaceful Assembly

⁶ Human Right and Election, UN Center for Human Rights, chapter 3, page 5-7

⁷ Ibid page 6-7



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The right to peaceful assembly must be respected at all times. Public and political assemblies form an integral part of the election process as they enable effective mechanisms to popularize political information.⁸ The right to freedom of opinion and expression, the right to access information, and the right to peaceful assembly are fundamental rights. Nearly all election activities, particularly information about political parties' campaigns and policy intentions, depend on these rights. Without applying and protecting these rights all the activities related to elections become worthless as these rights constitute the basic characteristics of democratic society.

Any observer of the current Palestinian situation will notice that the right to peaceful assembly is not secured for people and political parties in the oPt because of the Palestinian internal split. Opposing political parties are deprived of this right. When the conflicting parties try to organize peaceful assemblies, they are usually confronted with violence and forced to sign documents preventing them from doing so or face imprisonment or fining.

iv. The Right to Form Associations and Societies

This right clearly includes the right to create and participate in political organizations. Respecting such a right is vital for the election process. The ability to create and participate in political parties represents one of the main tools that enable people to participate in the democratic process. The right to create associations, parties, and societies is a pillar of democratic society. With political competition, election campaigns are activated. When there is no political competition by different groups, election campaigns become empty and meaningless. The freedom to establish and maintain associations is also of high importance to ensure election monitoring by civil society. Local nongovernmental organizations and associations have played an important role in providing professional election monitoring. If this right is limited, elections will become an empty exercise that embellishes the political system. Neither would elections be free and impartial without this guarantee. Amid the absence of political parties and associations, elections will lose their role as a means towards peaceful transfer of power. Therefore, in the current situation of deep split between Fatah and Hamas in the West Bank and Gaza Strip, it is difficult to talk about free political action by the different political powers; a further indication that free and impartial elections are unlikely to occur

Moreover, there are other criteria that should be ensured such as enabling different types of election monitoring, periodicity of elections, ballot secrecy, and equal public ballot.

2. Election Monitoring

Election monitoring is an organized process that occurs at all the stages of an election, i.e. **before, during and after elections**. The pre-election monitoring looks at the electoral law, and the relevant decrees, including the creation of a neutral and independent CEC, and monitoring all decisions issued by the CEC to monitor the extent to which they respect the law and spot any discrimination in people's exercising of their right to nomination and ballot. Election procedures start with the process of registering eligible voters and end with announcing the election results in

⁸ Ibid page 8



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accordance with the law. This includes the initial and final registration of voters, the nomination stage, the appeal procedure, the electoral campaigns, the opening of polling centers, voting by people, the procedure to insure implementing the one-person-one-vote rule - e.g. using electoral ink - the procedure for assisting illiterate voters, the closing of polling centers, and examination of the ballots' eligibility, and the counting of votes. Trained observers must be allowed to monitor and draft complaints, reports and notes about the election process, for which there must be a system of communication with the CEC. In case a CEC employee, election candidate or an authorized person breaks the law, a mechanism must be agreed upon to follow and deal with such breach. This mechanism starts with sending a letter to the CEC and ends with filing a case with the electoral court, as established by law.

Election monitoring aims to ensure that no breaches that could undermine the voters will to freely express their collective will are committed. It also aims to guarantee that the final results reflect the real will of the voters. This can be achieved by enabling the concerned stakeholders to monitor breaches and verify to what extent they affect the final electoral results.

3. Elections and the Politics of Internal Split in oPt

Before the legislative elections were held on 25 January 2006, Al Mezan, other human rights organizations, and other social groups campaigned for elections to be held. Al Mezan believes that elections are one of the main tools to end the internal Palestinian political split, internal instability, and to secure true respect for the rule of the law. This can be achieved by involving all effective political powers in elections in a democratic way and with equal standing. Al Mezan believes that elections are one of the main, yet not the sole, tools to achieving Palestinian political unity. Nevertheless, the election results might also strengthen the current state of dualism and polarization, as we saw in 2005, when the results instated one political bloc to replace another one. The local and international disapproval of the election results augmented the deteriorating human security in Palestinian society and destroyed the basis of democracy. This led to the infighting which ended with Hamas taking control of the Gaza Strip and the creation of two Palestinian governments.

Today, with the rejection by Hamas and Islamic Jihad movements to conduct elections before reaching agreement on creating a CEC, and guaranteeing that opposition would not be repressed, and amidst deteriorating human rights conditions oPt, many questions need to be considered. Is it really possible for politically opposing parties and movements to participate in elections? Is it feasibly possible to conduct elections in which the different political powers and parties, including the opposition, can participate? Is it possible to secure respect to the freedom of candidates to carry out activities related to elections from a democratic and human rights point of view in the West Bank and Gaza Strip? Under the rather deep, prevalent internal political split, is it possible for the political powers to agree on forming a CEC, nominating such CEC members and agreeing on its staff and a method for recruiting and appointing them.

The situation in the oPt and the harmful Palestinian split which has for almost four years now violated people's rights and freedoms indicates that these questions need answers. The situation as it is, elections cannot be fair. Yet, while full reconciliation seems rather distant, national agreement to secure the conditions of fair elections can be achieved.



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Therefore, Al Mezan Center for Human Rights asserts the following:

- Free, democratic, and periodic elections constitute a constitutional merit. Participating in such elections is a right of citizens under the Palestinian basic law. It is also a fundamental human right and tool that citizens can use to hold their government and political parties accountable to them.
- Calling for elections is in line with Palestinian law and the democratic ambitions of the Palestinian people. It is a national demand of a high value and has the ability to create change and reform if carried out in national agreement. Democratic elections are a tool that could contribute to solving political issues and ending the political split and achieving political unity.
- It is important to differentiate between the full reconciliation in the Palestinian political system and the national agreement to secure the conditions for a process such as elections to take place in a fair and democratic way. National agreement can actually be achieved, even in the midst of the political split. There are various examples attesting to the possibility of national agreement in different fields, including education, electricity, health, youth, sports and civil affairs sectors. Al Mezan points out that all universities in the Gaza Strip might conduct free student councils elections soon based on such agreement that ensures guarantees to the competitors even under the political split. This experience is worth support, study, and building on, especially if the experience ends successfully.

In light of the above, Al Mezan urges all the Palestinian political powers, particularly Fatah and Hamas movements, to immediately work towards ending the political split or, at least, to reach an agreement to conduct free and impartial elections. Elections are now vital in order to end violations of human rights and public freedoms.

However, and most unfortunately, facts on the ground emphasize that it is impossible to conduct free and impartial elections in the oPt under the current situation with the internal split and its consequences without national agreement.

Al Mezan asserts that conducting elections that do not ensure the principles and criteria mentioned in this paper turn elections into an end in themselves. Elections will not be a tool to achieve a sound, healthy political system that ensures societal peace. On the contrary, elections, under the current conditions, will only deepen the split, which is expected to further exacerbate the human rights situation in oPt. Therefore, Al Mezan calls on the Ramallah Government to suspend the announced local elections and to work with all the Palestinian political powers to secure the necessary conditions for them based on national agreement in the oPt. It also calls on the Palestinian parties to find ways to achieve national unity without further delay.

End