



**THE RIGHT OF PALESTINIAN RESIDENTS  
OF EAST JERUSALEM TO PARTICIPATE IN THE  
2021 PALESTINIAN ELECTIONS**

**ANALYSIS PAPER**

**April 2021**



Funded by the European Union

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### INTRODUCTION

Elections for the Palestinian legislature (Palestinian Legislative Council, the Palestinian parliament, the Palestinian National Council) are scheduled to take place on May 22, 2021 followed by the presidential elections for the Palestinian Authority (PA) two months later on July 31, 2021.

If carried out, this will constitute the third time that the Palestinian Authority is holding elections since its establishment 25 years ago. The election regulations were determined in the agreements signed between Israel and the PLO (the Oslo Accords); since then, elections took place for the first time in 1996, while a decade later presidential elections were held in January 2005 followed by elections for the Palestinian Legislative Council in January 2006.

In the past decade, election degrees were published several times for numerous institutions of the Palestinian Authority, however, they were all cancelled for various reasons stemming from internal Palestinian disputes, including the issue of participation of East Jerusalem residents in the elections with or without coordination with Israel. The elections that were planned for 2011 and for 2012 were postponed due to disagreements between Fatah and Hamas. Discussions aimed at the unification of Fatah and Hamas were not successful and failed to likewise bring about elections in the years following.

In a survey from December 2020, conducted by Dr. Khalil Shikaki of the Palestinian Center for Policy and Survey Research in Ramallah, approximately 75% of those surveyed stated that elections should take place.<sup>1</sup> On January 15, 2021, for the first time in 15 years,

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<sup>1</sup> Amira Hess, *Analysis: Abbas Declares Palestinian Elections, but They're Unlikely to Actually Happen*, HAARETZ, Jan. 16, 2021 <https://www.haaretz.com/middle-east-news/palestinians/.premium-abbas-declares-palestinian-elections-but-they-re-unlikely-to-actually-happen-1.9457756>.

Mahmoud Abbas, the president of the Palestinian Authority, formally set a date for both parliamentary and presidential elections.

The aim of this paper is to examine the right of Palestinian residents of Jerusalem to participate in the upcoming Palestinian elections. This document is not an attempt to become involved in Palestinian disputes concerning the elections, the proper place of which is, of course, within internal Palestinian debate. In lead up to these elections, robust discussions are occurring within Palestinian society, concerning among other issues, the functioning state of the Palestinian Authority, the limitations imposed upon candidate lists, the positions of the various parties regarding the occupation and the struggle to end it, the intra-party struggles, and the extent to which these elections are for the Palestinian state or rather for the Palestinian Authority itself.

It is worth noting that based on the four election cycles which took place in Israel in less than two years, it is clear that elections must allow for a diversity of opinions, and parties should not be restricted to compete in the elections, save for proper and limited grounds.

## **THE CIVIL STATUS OF PALESTINIAN RESIDENTS OF JERUSALEM -- THE RIGHT TO VOTE AND STAND FOR ELECTION**

The right to vote and to be elected is a fundamental civil right that must be upheld in every democratic regime. Exercising the right of citizenship is a basic right from which derives all other rights an individual is entitled to as a member of a community. Being citizens of a democratic state affords those with the right to participate in the conduct of public affairs and grants them influence over democratic processes which regulate life in the state in which they live. The Palestinian residents of Jerusalem<sup>2</sup> do not possess full citizenship status of any state, and their lives under Israeli occupation clearly lack characteristics of a democratic nature.

### **The Palestinian Residents of Jerusalem are not Citizens of the State of Israel**

After the war in 1967, Israel applied its laws of jurisdiction and administration over East Jerusalem,<sup>3</sup> effectively annexing it to its sovereign territory. Thus, pursuant to internal Israeli law, East Jerusalem is considered part of the State of Israel. According to international law, East Jerusalem is an integral part of the West Bank and Israel's annexation is not recognized. International law views East Jerusalem as occupied territory. Therefore, according to international law, Palestinian residents of East Jerusalem, like

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<sup>2</sup> For more, see the Ir Amim Report, [Permanent Residency: A Temporary Status Set in Stone](#), May, 2012

<sup>3</sup> Section 11B of the Law and Administration Ordinance No. 1, 5708-1948 as amended by section 1 13 Law and Administration Ordinance (Amendment No. 11) Law, 5727-1967.

residents of the West Bank, should be recognized as “protected” residents, who are entitled to protections pursuant to international humanitarian law.

The status of East Jerusalem Palestinians as permanent residents is based upon the Nationality Law, 5712-1952, which does not confer sweeping collective citizenship rights on Palestinians in the city. Palestinian residents of East Jerusalem do not possess the basic right to vote or to run for institutions in the central government. They can neither vote for and/or be elected to the Knesset,<sup>4</sup> nor do they not hold Israeli passports.<sup>5</sup> While they are entitled to vote and run in the Jerusalem municipal elections,<sup>6</sup> they are prohibited from running for the office of mayor.<sup>7</sup> As persons lacking Israeli citizenship, yet living under Israeli control, Palestinian residents of Jerusalem are denied a fundamental and inalienable civil right.

### **The majority of Palestinian residents of East Jerusalem are not citizens of Jordan**

Prior to 1967, Jordan granted citizenship to the residents of the West Bank, including residents of East Jerusalem. This right enabled them to vote and to run for election in the Jordanian parliament. After 1967, Palestinian residents of East Jerusalem became Israeli residents with Jordanian citizenship. As part of limited understandings and ad hoc arrangements between Jordan and Israel, the Chamber of Commerce in East Jerusalem continued to renew Jordanian passports and obtained permits that enabled East Jerusalem residents to travel to Jordan.

In July 1988, the Hashemite Kingdom cut off its legal and administrative connections with the West Bank (but retained its control over the Waqf and its responsibility for the Muslim holy sites in Jerusalem). In a gradual process, the status of West Bank residents, including those of East Jerusalem, was altered, and they could no longer participate individually, if they wanted, in the Jordanian elections. At present, some of the residents of East Jerusalem still hold Jordanian passports with an identity number (apparently those who were citizens in the past), while some hold Jordanian passports without an identity number and without citizenship.

**In general, residents of East Jerusalem are also not considered citizens of the Palestinian Authority** and do not hold Palestinian passports (in contrast to West Bank residents). However, they are given the right to vote in the elections and be elected for public office in the Palestinian Authority.

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<sup>4</sup> Sections 5-6 of Basic Law: The Knesset.

<sup>5</sup> Section 2 of the Passport Law, 5712-1952.

<sup>6</sup> The Local Authorities (Elections) Law, 5725-1965.

<sup>7</sup> The Local Authorities (Election and Tenure of Head and Deputy Heads) Law, 5725-1965.

Pursuant to Israeli law, the Palestinian Authority is banned from operating in the area of Jerusalem,<sup>8</sup> and therefore, Palestinian residents of East Jerusalem ultimately vote for elected officials who have no direct, tangible and immediate impact on their daily lives. Israel also customarily shuts down any event occurring in East Jerusalem that has the slightest hint of cooperation with the Palestinian Authority.

Thus, the participation of East Jerusalem residents in the Palestinians elections is far from exercising full citizenship rights, including the right to vote and be elected as is customary in democratic states. However, as long as these are the current political conditions, the assurance of their participation in these elections amid this difficult reality is the absolute minimum required.

### **THE RIGHT OF JERUSALEM RESIDENTS TO VOTE AND RUN IN THE PALESTINIAN AUTHORITY ELECTIONS – THE OSLO ACCORDS**

Section I of Annex I of the Declaration of Principles on the Interim Self-Government Arrangements that were signed between Israel and the PLO on September 13, 1993 (hereinafter: Oslo I Accord)<sup>9</sup> – Protocol on the Mode and Conditions of Elections<sup>10</sup> – 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.”

In September 1995, the Israeli-Palestinian Interim Agreement on the West Bank and the Gaza Strip (hereinafter: Oslo II Accord) was signed in Taba and subsequently in Washington. Article II (Elections), paragraph (3) of the Oslo II Accord provides that “Palestinians of Jerusalem who live there may participate in the election process in accordance with the provisions contained in this Article and in Article VI of Annex II (Election Arrangements concerning Jerusalem).”<sup>11</sup> Annex II<sup>12</sup> of the Oslo II Accord – Protocol Concerning Elections – is devoted to the topic of elections to the Palestinian Legislative Council. Article VI in Annex II defines the voting arrangements with respect to Palestinian residents of Jerusalem, including the matter of election campaigning. The

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<sup>8</sup> Implementation of the Interim Agreement Regarding the West Bank and the Gaza Strip (Limitation of Activity) Law, 5755-1994; section 6 of the Basic Law: Jerusalem the Capital of Israel (*Sefer Hahukim* 1760, Dec. 7, 2000).

<sup>9</sup> As appears on the Israeli MFA website:

<https://mfa.gov.il/mfa/foreignpolicy/peace/guide/pages/declaration%20of%20principles.aspx>

<sup>10</sup> Pursuant to article XVII (2) of the Accord, the protocols constitute an integral part of the Accord.

<sup>11</sup> As appears on the Israeli MFA website:

<https://mfa.gov.il/mfa/foreignpolicy/peace/guide/pages/the%20israeli-palestinian%20interim%20agreement.aspx>

<sup>12</sup> <https://mfa.gov.il/MFA/ForeignPolicy/Peace/Guide/Pages/THE%20ISRAELI-PALESTINIAN%20INTERIM%20AGREEMENT%20-%20Annex%20II.aspx>

article provides that Palestinians can vote in Israeli post offices, under the supervision of international observers (*see the complete provision in the box below*).

According to Annex II, Palestinian citizens of Israel are not permitted, pursuant to the Accord, to participate in Palestinian Authority elections either as voters or as election candidates.<sup>13</sup> East Jerusalem residents, however, can be elected to the Palestinian Legislative Council provided that they have an additional address in the West Bank. The Israeli position was that in such a case, those elected would represent the area outside of Jerusalem where they have a permanent address. The candidates were required to prove an attachment to some place outside of Jerusalem, which could be a place of residence, work or business.<sup>14</sup>

**ARTICLE VI**  
**Election Arrangements Concerning Jerusalem**

1. Election Campaigning

A subcommittee of the CAC shall be established comprising representatives of the CEC and Israel, to coordinate issues relating to election campaigning in Jerusalem. Candidates conducting campaign activities in Jerusalem shall apply for the necessary permits through the CEC. The CEC shall obtain the necessary permits from the Israeli side in the CAC subcommittee. In addition, the CEC may disqualify candidates whose election campaigning in Jerusalem fails to comply with the provisions of the Palestinian Election Law and this Agreement.

2. Polling Arrangements

a. Location

A number of Palestinians of Jerusalem will vote in the elections through services rendered in post offices in Jerusalem, in accordance with the capacity of such post offices. The relevant post offices for the purposes of these arrangements shall be:

- (1) Salah-a-din post office;
- (2) Jaffa Gate post office;
- (3) Shuafat post office;
- (4) Beit Hanina post office; and
- (5) Mount of Olives post office.

b. International Observation

International observers will be present in the above post offices on the day of the elections.

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<sup>13</sup> Article II 1. e. of Annex II of the Accord, provides that “Israeli citizens shall not be entered on the Electoral Register,” and article III 1. c. of the Annex, provides that “Israeli citizens may not be candidates for election to be a member of the Council or to be the Ra’ess.”

<sup>14</sup> AMNON RAMON, RESIDENTS, NOT CITIZENS, The Jerusalem Institute for Policy Research, 2017 [Hebrew].

c. Procedure for Voting

(1) Those Palestinians of Jerusalem who will vote in the elections through post offices in Jerusalem shall be notified of the relevant post office by Electoral Registration card provided by the CEC (hereinafter "the electors").

(2) On arrival at the post office, electors shall identify themselves to the relevant postal personnel (hereinafter "the personnel") and present their Electoral Registration card.

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...

(5) At the end of the day, the receptacles shall be promptly delivered to the office of the relevant DEO. Such delivery shall be open to international observers. These receptacles shall be sealed prior to delivery.

(6) The DEO shall be responsible for the counting and totaling of votes cast through the arrangements set out above as part of the total election count.

## **PARTICIPATION OF PALESTINIAN RESIDENTS OF JERUSALEM IN THE PALESTINIAN ELECTIONS – TOWARDS THE 2021 ELECTIONS**

**In lead up to the first elections for the Palestinian Authority in 1996**, legal petitions were submitted to the Israeli High Court of Justice which demanded the Court instruct the government to prevent the elections from taking place in East Jerusalem and to block East Jerusalem residents from participating in such elections. The government defended its decision to enable elections in East Jerusalem, and the petitions were dismissed. The Court ruled that there was no contradiction between the election arrangement that was proposed following the Oslo Accords and Israeli sovereignty over East Jerusalem.<sup>15</sup>

However, in the 1996 elections, voter turn-out in East Jerusalem was the lowest compared to other districts in the West Bank and stood at approximately 30% (34, 200) of some 114,000 eligible voters in the city.<sup>16</sup> Only 6,000 of these voters cast their votes in post offices in Jerusalem. Most of the Palestinians from East Jerusalem voted in polling places in Abu Dis, outside the municipal boundaries of Jerusalem. Israel made it difficult for voters to participate in the election, including interfering with physical access to polling places, significant deployment of police and security forces at campaign assemblies, and the arbitrary harassment of activists and summoning them to interrogations. Yet at the same time, Palestinian election organizers also contributed to the challenges with

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<sup>15</sup> HCJ 298/96 Peleg v. The Government of Israel (Jan. 14, 1996).

<sup>16</sup> At the end of 2018, the general population of Jerusalem was 936,000, of whom 579,400 (61.9%) were Jews and others and 345,000 (38.1%) were Arabs.

technological problems and confusion regarding poll locations, which fueled criticism by East Jerusalem residents of the Palestinian political system.<sup>17</sup>

**Presidential elections were likewise held in the Palestinian Authority in 2005 followed by parliamentary elections in 2006.** The 2005 elections were hastily organized in a particularly tense atmosphere in the wake of Yasser Arafat's death in November 2004. Shortly after the end of the second Intifada, the Palestinian and Israeli authorities found themselves obligated to conduct negotiations concerning the procedures for democratic elections in the Palestinian Authority. Hamas' decision to participate in the election this time caused the Israeli government to declare that it would prohibit the election from taking place in East Jerusalem.

Following a united call by all of the Palestinian factions in Jerusalem to condition the holding of elections on participation of Jerusalem residents, the Americans, who supported the elections taking place at their appointed time (*they did not foresee a Hamas victory*), persuaded Israel to permit the city's residents to vote. At first, Israel proposed allowing East Jerusalem residents to cast their vote in areas outside of the city, however, two weeks prior to the elections, Israel capitulated and announced that it would enable Jerusalem residents to vote in the city. According to the arrangement that was established, Israel permitted a limited number of people to vote within the boundaries of Jerusalem.<sup>18</sup>

Again legal petitions filed to the Supreme Court against the government decision to allow PA elections in Jerusalem were likewise rejected.<sup>19</sup> As in the previous round of elections, the Israeli government defended its decision, arguing, among other things, that it was operating by virtue of its authority pursuant to the implementation laws of the Oslo Accords and in fulfillment of its obligations under them.<sup>20</sup>

As in 1996, there was likewise a heavy police and security presence at campaign rallies in 2005, which included incidents of harassment of activists and summoning them for interrogation. However, election day itself proceeded without incident: there was no presence of Israeli authorities at the polls, and Palestinians from Jerusalem and the vicinity were not prevented from reaching their various polling stations—not even at the checkpoints along the Separation Barrier in Jerusalem. The international observers who

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<sup>17</sup> MENACHEM KLEIN, *DOVES OVER JERUSALEM'S SKY – THE PEACE PROCESS AND THE CITY 1977-1999* (The Jerusalem Institute for Israel Research, 1999) [Hebrew].

<sup>18</sup> HILLEL COHEN, *THE RISE AND FALL OF ARAB JERUSALEM 1967-2007* (Routledge Studies on the Arab-Israeli Conflict, The Jerusalem Institute for Israel Studies, 2007)

<sup>19</sup> HCJ 550, 596/06 Ze'evi et al. v. The Government of Israel and the Palestinian Authority (Jan. 23, 2006).

<sup>20</sup> See Government Decision 4636 Provision of Regulations Prior to the Elections for the Legislative Council of the Palestinian Authority, Jan. 15, 2006, including concrete references there in sections 3-4 to elections in Jerusalem.



presided over the election process were likewise of the impression that Israel refrained from interfering with the elections. Yet again, few residents of East Jerusalem participated in the elections.

In the 2005 presidential election, when Mahmoud Abbas (Abu Mazen) was elected, approximately 6,300 residents of East Jerusalem (only 6% of eligible voters) took part. 1,200 of these residents voted in the city itself at designated post offices in East Jerusalem: Damascus Gate, Sur Baher, A-Tor, Beit Hanina, Shuafat and at the main post office on Salah a-Din Street. Around 5,100 Palestinians from East Jerusalem voted at polling places set up in the 'Jerusalem district' – neighborhoods located along the municipal boundaries of Jerusalem.

In the 2006 parliamentary elections, 18,000 residents of East Jerusalem (16% of those eligible to vote) took part with a minority of them voting within Jerusalem itself. In that election, Hamas won a majority of the seats (76 out of 132). Half of the members of parliament were elected through proportional representation and half of them in regional elections. In the elections for the national lists in the Jerusalem district, Hamas received 41% of the votes, while Fatah received 35%. All of the other lists together received 16% of the votes. Six seats in the Palestinian Legislative Council were allocated to Jerusalem as part of the district elections. Hamas representatives won the four seats which were allocated to Muslims out of the total of six seats assigned to Jerusalem.<sup>21</sup>

Following the 2006 election, Israel arrested the majority of the elected Hamas representatives in the West Bank and even amended the law which enabled the revocation of permanent residency of the four elected Hamas members from Jerusalem (after the Supreme Court ruled out the possibility of it earlier, but delayed its decision to allow an amendment to the law that would facilitate the revocation<sup>22</sup>). Some of the members of the Palestinian parliament, including the four elected representatives in the Jerusalem district elections, were likewise imprisoned by Israel.

After Hamas won the majority of the seats in parliament, on Jan. 30, 2006, the Middle East Quartet published a statement declaring that any government which operates in Palestine "must be committed to principles of non-violence, recognition of Israel and acceptance of previous agreements and obligations including the Road Map."<sup>23</sup> The statement provided that only such a government could receive financial assistance. Accordingly, the United

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<sup>21</sup> HILLEL COHEN, *THE RISE AND FALL OF ARAB JERUSALEM 1967-2007* *supra* note 16, p. 177.

<sup>22</sup> Amendment 13 of the Nationality Law, 2017; HCJ 7803/06 Abu Arafat et al. v. The Minister of the Interior, et al. (Sept. 13, 2017).

<sup>23</sup> Statement by the Middle East Quartet, 30 January 2006:  
[https://mfa.gov.il/MFA/ForeignPolicy/Peace/MFADocuments/Pages/Statement\\_Middle\\_East\\_Quartet\\_30-Jan-2006.aspx](https://mfa.gov.il/MFA/ForeignPolicy/Peace/MFADocuments/Pages/Statement_Middle_East_Quartet_30-Jan-2006.aspx)

States and the European Union refrained from recognizing the government headed by Hamas. After funding was suspended to the Hamas-led Palestinian government, attempts were made to form a unity government between Hamas and Fatah to prevent the imposition of sanctions. The efforts proved ineffective, leading to a split between the Hamas-led government in Gaza and the Fatah-led government in parts of the West Bank. Due to the rift between Fatah and Hamas, the Palestinian parliament ceased to operate in 2007.

### **Concerning the 2021 Elections**

The Palestinian Authority has made it clear that elections will not be held without the participation of East Jerusalem residents. However, according to information published in the media, Israel has yet to relate to the matter.<sup>24</sup> It is reasonable to assert that Israel, particularly during its own election season and tenuous coalition negotiations, has refrained from addressing the issue, which is often viewed as a direct challenge and affront to the notion of Israeli sovereignty over East Jerusalem. The various Palestinian parties, in particular, Fatah and Hamas, have been holding meetings to coordinate between them in an effort to ensure that elections are indeed held and to put an end to the split between the West Bank and Gaza that has persisted until the present.

One of the challenges facing the Palestinian General Election Commission is the participation of East Jerusalem Palestinians in the election. As noted previously, the issue of elections in Jerusalem has served as a source of friction between Fatah and Hamas in the past. There are those who fear that in lead-up to the upcoming elections, and particularly after publication of the parliamentary election results, the issue of Jerusalem will be used as a tool by various parties to skew the outcome.

If the elections are indeed held, the revocation of residency from the elected Hamas representatives from Jerusalem in the 2006 elections will certainly have implications for the rate of participation among Jerusalem residents along with the city's diversity of candidates. Israel has already begun to warn Hamas activists in the West Bank against running in the upcoming elections.<sup>25</sup> There have been reports of arrests of social and political activists in the West Bank who have expressed positions contrary to those of the Palestinian Authority, while administrative detention has been used against those who have based their candidacy on such. These measures will likewise impact the participation of East Jerusalem Palestinians in the elections, both as voters and as potential candidates, on Election Day itself and in the period leading up to it.

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<sup>24</sup> TOI Staff, *EU to push Israel on Jerusalem voting as Abbas set to delay election – report*, TIMES OF ISRAEL (27 April 2021).

<sup>25</sup> Amira Hess, *Israel Pressures Hamas Members not to run in the Palestinian Elections*, HAARETZ, Mar. 4, 2021.

International bodies of course have an essential role to play in ensuring the elections do indeed take place.<sup>26</sup>

## **EXERCISING THE RIGHT TO VOTE AND TO RUN FOR ELECTION UNDER OCCUPATION**

Currently, the only general elections in which Palestinian residents of East Jerusalem are entitled to participate are those for the Palestinian Authority. It is insufficient to ensure the participation of East Jerusalem residents in the elections themselves. The right of Palestinian residents of East Jerusalem to participate in the Palestinian elections must also lead to the full realization of their right to take part in political activity in East Jerusalem before and during the election campaign without fear of sanctions by the Israeli authorities and infringement on the freedom of movement and expression.

Similarly, although according to the Oslo Accords, polling stations are to be set up in only five post offices, it would be appropriate to allow for the opening of additional and accessible polling places throughout the city. It should be noted that for the purposes of comparison, in the Jerusalem municipal elections, the Israeli authorities set up more than 100 polling stations intended to serve the Palestinian population of the city.

There is no doubt that the participation of Palestinian residents of East Jerusalem in the Palestinian elections is far from realizing full citizenship rights and the right to vote and be elected as is customary in democratic regimes. Under the existing circumstances, Palestinian residents of Jerusalem vote for representatives in the Palestinian Authority which has no direct influence over their lives under Israeli annexation and occupation. The position of the Minister of Jerusalem Affairs in the Palestinian Authority over the years has likewise been substantially weakened, both practically and financially.

However, at the very least, the right of Palestinian residents of East Jerusalem to participate in the Palestinian elections under the present political circumstances must be optimally realized, both in light of the fundamental rights that underlie it and the binding agreements between the Palestinian Authority and Israel.

*This publication was produced with the financial support of the European Union. Its contents are the sole responsibility of Ir Amim and do not necessarily reflect the views of the European Union.*

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<sup>26</sup> Hugh Lovatt, *Back to Democracy: Europe, Hamas, and the Palestinian Elections*, The European Council on Foreign Relations (ECFR), Mar. 18, 2021.