

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 a 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.