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## Palestinian Elections: An Opportunity to Restore National Unity or a Step To permanent Separation

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# Palestinian Elections: An Opportunity to Restore National Unity or a Step To permanent Separation

Jehad Harb

The request, stated in President Abbas' appointment letter to Mohammad Shtayyeh, the newly selected prime minister, to hold parliamentary, but not presidential, elections is a ready-made recipe inviting objection from and rejection by important Palestinian factions to these elections. The elections, under this condition, become an additional impediment to the reunification of the West Bank and the Gaza Strip rather than an opportunity to speed up the process of reconciliation and reunification. Given existing difficulties confronting Palestinians today, many due to the behavior of the various Palestinian factions, such elections are likely to consolidate the current West Bank-Gaza Strip split. In fact, such elections are likely to add further challenges making it highly unlikely that reconciliation or reunification can be restored in the near or medium term. Instead, regardless of intentions, parliamentary-only elections are likely to pose severe risks to the national project whose goal is the creation of a Palestinian state along the lines of June 1967. Refusing to hold presidential elections is tantamount to one of two things: elimination of the office of the presidency from the political system altogether or making the office unelectable and unaccountable.

It goes without saying that holding elections is a basic condition for building a legitimate and democratic Palestinian political system. It should be reminded that nine years have already passed since the electoral terms of the president and the Palestinian Legislative Council (PLC) have expired (back in January 2010). Moreover, holding elections is now mandated by the December 2018 decision of the Constitutional Court which called for the dissolution of the PLC. By doing so, that decision deprived the political system of its ability to transition democratically if and when the office of the presidency becomes vacant while simultaneously terminating the only collective political institution that unified the West Bank and the Gaza Strip.

It should also be remembered that the right of the citizens to elect their representatives, in addition to being a constitutional right, provides a way out of the current political crisis in which the institutions of the Palestinian political system suffer from a diminished legitimacy. One can no longer make claims based on the outcome of elections that took place thirteen years ago. Elections are also essential as a way out of the current constitutional crisis regarding the term of the PLC which has now extended to thirteen years. Holding elections bring back legitimacy and accountability to all the political institutions, protect the judiciary from outside interferences, widen the space for liberties and human rights, and assures the independent and pluralistic nature of civil society.

On top of all that, holding election at this time poses an additional challenge to the Palestinian leadership as it comes at highly complicated conditions in the relationship with the Israeli occupation and in the stalemate in the efforts to reunify the West Bank and the Gaza Strip. The purpose of this brief is to explore the various options Palestinians have in this regard and the impact of each of these options on the future of the political system and the entire Palestinian Authority (PA). The brief explores the prospects for holding elections and the positions of the various relevant players. The goal of the brief is to offer recommendations to the PA that allows the exploitation of this opportunity in a manner that might assist in restoring unity and legitimacy to the Palestinian political system.

### Three options for holding elections vs. the status quo

Four options are currently being debated regarding the upcoming elections. The first calls for holding simultaneous presidential and parliamentary elections in both the West Bank and the Gaza Strip; the second calls for legislative elections only in the two Palestinian areas; the third calls for holding legislative elections only and only in the West Bank, and the fourth argues in favor of not holding any elections at this time. The first two options require Hamas' approval, as well as the approval of the Israeli government if elections are to take place in post offices under Israeli control in East Jerusalem in accordance with the 1995 interim terms. The third option requires Israeli approval, for East Jerusalem participation. The fourth option maintains the current status quo in which the public has no ability to bring the existing authority to accountability.

#### *Option #1: Hold simultaneous legislative and presidential elections in the West Bank and the Gaza Strip*

It is certain that all factions and political parties will support the holding of legislative and presidential election and will be very critical of any actor, especially Hamas, who might impede such elections, particularly if guarantees are given regarding the free and fair nature of these elections. This option is also supported by the overwhelming majority (72%) of the Palestinian public according to a March 2019 PSR poll. Support for this option is higher in the Gaza Strip (83%) compared to the West Bank (65%). Moreover, two-thirds of the public want Hamas to participate in these elections and to allow them to take place in the Gaza Strip.

The most valuable advantage of this option is that it renews the legitimacy to all the public institutions of the political system and forces them to reunify the Palestinians by launching a dialogue inside the elected institutions, particularly the PLC, on the best means to address the split and its consequences.

#### *Option #2: Hold legislative but not presidential elections:*

As evident in the appointment letter to the designated prime minister, president Mahmoud Abbas, and Fatah behind him, wish to hold legislative elections only. Article two of the appointment letter states that the task of the new government is to "take the required measures, as quickly as possible, to hold legislative elections in the southern and northern governorates of the homeland, including East Jerusalem, in accordance with the rules of the Basic Law and other relevant laws." By contrast, Hamas believes that it is essential to hold both parliamentary and presidential election simultaneously. In a statement issued by Dr. Khalil al-Hayyah, member of the Hamas' Political Bureau, after his meeting with head of the Central Elections Commission (CEC), Hamas indicated that it is "ready to participate in presidential and legislative elections." The founding statement by the Palestinian Democratic Coalition, which includes the Popular Front for the Liberation of Palestine, the Democratic Front for the Liberation of Palestine, the Peoples' Party, Fida, al Mubadara, and some independents, requested the holding of "comprehensive elections," meaning presidential and legislative, for the PA as well as for the PLO parliament, the Palestinian National Council.

Despite the strong public opposition to this option, standing at 70% in the Gaza Strip and 55% in the West Bank (according to PSR's March 2019 poll), a large majority favors Hamas' participation in such elections and wants (64% in the West Bank and 51% in the Gaza Strip) it to allow them in the Gaza Strip. About 41% of the public indicate willingness to participate in such election while 54% indicate unwillingness to participate if the elections are legislative only.

It is certain that Hamas will prevent the holding of such elections in the Gaza Strip. According to Dr. al Hayyah, "Hamas has rejected president Abbas' position which, as conveyed to us by CEC, want to hold legislative elections only." A majority of the public (53%) believes that Hamas will not allow such elections in the Gaza Strip. If such elections are to take place, they will not be truly competitive which contradicts the need to "insure political pluralism," as requested by Abbas' appointment letter to Shtayyeh. However, Hamas' position might change at a later stage, particularly if president Abbas and Fatah provide assurances that presidential elections will take place later, within six months to a year.

It should be emphasized that the failure to hold presidential elections can mean one of two things: it is either that some are seeking to abolish the office of the presidency altogether or alternatively make the office unaccountable, not subject to election. If abolished, the office holder would be content being the president of the state or the chairman of the PLO Executive Committee, both unelected in general elections by the Palestinian citizens, and both are nonexistent in the Basic Law. If the office is not subject to election, it means it requires no electoral legitimacy. But this is a flagrant violation of the Basic Law and could in fact threaten the existence of the Basic Law itself, annulling it in the same way the PLC was dissolved. This is not farfetched. Here is a realistic scenario for how this could be done. Because, when appointing Shtayyeh, Abbas used his two titles, as the chairman of the PLO Executive Committee and as president of the state of Palestine, but not his title as president of the PA. Someone, taking the case to the High Court, might challenge the appointment of the designated prime minister on the ground that it violates the Basic Law, which mandates that the appointment must be made by the president of the PA. If, as expected, the case were to go to the Constitutional Court, that court might declare the Basic Law irrelevant on the ground that Palestine is now a state, unconstrained by the Oslo agreement or even by the Basic Law.

Despite all that, holding legislative elections in the West Bank and the Gaza Strip would restore to the Palestinian public its right to elect its representatives in the PLC and restore some balance in the political system. The new PLC will have a renewed legitimacy and, in the meanwhile, the office of the presidency will have little legitimacy left. If Hamas participates in these elections, the prospects for reunification would improve significantly.

#### *Option #3: Holding legislative elections in the West Bank but not in the Gaza Strip*

If Hamas refuses to allow legislative elections in the Gaza Strip, they might end up taking place in the West Bank only. West Bank PLC-only elections will face significant opposition from most factions. Naturally, Hamas will not participate and will view such elections as the means to deprive it of its current legitimacy. Islamic Jihad would also boycott the elections as would other major PLO factions, the PFLP and the DFLP, viewing them as a further threat to the unity of the Palestinian people. About three quarters (74%) of the public is opposed to this option, with 83% in the Gaza Strip and 68% in the West Bank. Moreover, only 29% say they would participate in such elections while 62% say they will not participate. Nonetheless, 50% of the public believes that if such elections were to take place, the resulting PLC, having members from both the West Bank and the Gaza Strip, will be seen as representing both areas while only 34% believe that it will be seen as representing the West Bank only.

Clearly, the non-participation of the Gazan voters in these elections and the limited turnout will make the elections partial and will deprive the PLC of its popular legitimacy. However, the new body will still be able to constrain the executive authority, put an end to its interference in the work of other public institutions, and provide a smooth transition when the office of the presidency becomes vacant.

#### *Option #4: No elections*

In this option, the status quo prevails because constrains beyond the control of the PA, such as an Israeli determination to prevent elections in Jerusalem or impede them in area C of the West Bank, mandate postponing them. Similarly, without Hamas' consent, no elections can take place in the Gaza Strip. Also, groups within Fatah and other factions might be content with postponing elections for fear they might perpetuate disunity. Yet, only 13% of the Palestinian public are in favor of postponing the elections.

The main problem with this option is that it perpetuates authoritarianism and provides the office of the presidency with unlimited power without being accountable to any elected institution. Moreover, it provides no answer to the current constitutional vacuum when the office of the presidency becomes vacant while the PLC is dissolved thereby making the process of succession unsafe. The current disunity will continue as long as Palestinian citizens are denied the opportunity to take part in ending it by electing their representatives. In this option, Palestinian citizens are denied their constitutional right to vote, a right stipulated in the Basic Law.

## Three Challenges confront Palestinian elections

In holding elections, three challenges confront the Palestinian leadership:

First, obtaining an Israeli approval for holding the elections in principle, so that East Jerusalemites can participate, might not be an easy matter. Such approval is unlikely to be forthcoming before the holding of the April 9 Israeli elections. Abbas might be interested in waiting until after these elections before requesting Israeli cooperation. In the meanwhile, he is allowing the CEC to consult with the various relevant actors. The decision of the Constitutional Court gave him six months to hold Palestinian legislative elections.

Second, obtaining Hamas' approval, to participate and allow elections in the Gaza Strip, might not an easy matter as well. Hamas' approval might be forthcoming if elections are for both, the presidency and the PLC. But most likely it will not allow elections in the Gaza Strip or participate in them if restricted to the PLC or without guarantees that presidential elections will soon follow. Such a position might impede efforts to hold the elections and undermine efforts to restore unity.

Third, reaching an agreement between Fatah and Hamas on the electoral system is also not easy. The debate in 2005 was settled in favor of a fifty-fifty mix of two systems: a majoritarian and a proportional representation. Hamas today believes that this mixed system serves its interests while Fatah and Abbas believe that the proportional representation is the one that serves theirs. Indeed, a fully proportional representation is the one that was decreed by Abbas, as law number 1, in 2007. To overcome this third challenge, it will be essential to abandon the tendency to aspire to win an overwhelming majority and instead aspire to partnerships and coalition building. Adopting a proportional representation system serves the goal of coalition building. In this case, the entire country can serve as one electoral district, or alternatively maintain the current districts while applying the same proportional representation in each. A third possibility would see the application of the proportional representation system in a mixed manner, this time with half the seats elected in a nation-wide district and the other half in the various electoral districts.

## Recommendations

The Palestinian leadership can turn the holding of elections into an opportunity to end disunity and ten years of failed reconciliation by moving the unification efforts to the parliamentary dome. It can also turn it into an opportunity to restore legitimacy to the political system and to achieve a balance between the various political institutions through the popular mandate in accordance with the terms of the Basic Law which specifies the social contract between the citizens and the rulers as well as the constitutional timeframe for this popular mandate. Elections can also provide an opportunity to unify the efforts to better confront the American and Israeli plans to undermine Palestinian interests.

The first three options explored above emphasize the need to respect the right of the Palestinian public and its wish to hold elections. All three also provide a solution to the constitutional crisis that currently impedes a smooth succession and restore a needed balance to the political system by constraining the unlimited authority of the executive. It goes without saying that the first option, holding simultaneous presidential and legislative elections, provides an ideal solution to end disunity, insures participation of all factions, and insures holding them in both areas of the West Bank and the Gaza Strip thereby achieving the greatest popular participation.

Option two, holding legislative elections in both the West Bank and the Gaza Strip, provides an opportunity to insure a fair and free elections. If an agreement can be reached on holding presidential elections soon after the holding of the legislative elections, it might be possible to bring Hamas on-board while insuring the widest possible participation of all factions. The third option does not facilitate the restoration of unity, and might in fact deepen the current split, but it does remove the veto over holding elections, allow voters to choose their representatives, and restore a balance among PA institutions. It also provides a solution to the problem of succession.

To implement any of these three options, the following steps, or most of them, must be taken:

First, the Palestinian president must announce the date for holding elections. CEC has already concluded its consultations and therefore the date should respect the time period stipulated by the Constitutional Court.

Second, an agreement needs to be reached on the electoral system: proportional representation or a district-based majority system. A proportional representation system allows the participation of all factions making it possible for all or most to be represented in the PLC in accordance with their proportional size in the Palestinian society. One can apply this proportional representation system so that the entire country would serve as a single electoral unit or alternatively it can be applied at the district level thereby allowing the participation of independent factions with local and district-based interests.

Third, the PA government and de facto authority in the Gaza Strip, as well as Fatah and Hamas, must provide guarantees that the elections will be fair and free and that they will respect and accept their outcomes.

Fourth, CEC must undertake the necessary preparations that provide critically needed credibility to the electoral process and enhances its integrity and transparency with the presence of international observers who enjoy the confidence and trust of the various Palestinian factions, such as the UN or any Palestinian, Arab, Islamic or foreign organizations.

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