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JOINT STATEMENT REGARDING

HUMAN RIGHTS AND PALESTINIAN ELECTIONS

The Palestinian elections, to be held on 20 January 1996, are unprecedented. Palestinians living in the Occupied Palestinian Territories will elect a Council and President that will constitute the legislative and executive leadership of the Palestinian National Authority (PNA). These elections have a special importance as the elected Council will negotiate with Israel on the final settlement of the peace process.

Although the elections have been rightly regarded as a momentous event, the elections take place within a context that has produced scepticism about their ultimate role in the establishment of democracy and human rights for the Palestinian people. Israel's maintenance of an occupying force in the Occupied Territories (OTs), and the imbalance of power in Israel's favour at the negotiating table, raise several concerns about the significance and impact of the elections.

\* The elections cannot represent fulfilment of Palestinians' right to self-determination when they take place under continuing Israeli control of the OT's security, borders and economic affairs, maintained through provisions of the Declaration of Principles and subsequent interim agreements, and a significant military occupation force.

\* The elections take place against a background of continued violations of Palestinian human rights, both by Israel and partly to assuage Israeli security concerns, by the PNA.

\* The election process, established in the Israeli-Palestinian Interim Agreement on the West Bank and Gaza Strip (Taba Agreement), and further elaborated in the Palestinian Election Law (Election Law), has, largely because of Israel's dominant role in determining the process, been marked by a variety of problems that undermine the exercise by Palestinian of their human rights, and may have a significant influence on the outcome of the elections.

In the short term, the elections appear likely to be judged a success. There is a relatively high rate of voter registration, and a high turnout is anticipated for the elections. Little overt interference in the balloting is expected.

Elections however are not simply the implementation of a technical process; they must be considered in relation to the overall human rights context in which they take place. Viewed in this way, the Palestinian elections are not as free, fair and democratic as more limited surveys suggest. They take place within a framework of human rights

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more limited surveys suggest. They take place within a framework of human rights violations. Israeli authorities continue to violate Palestinians' rights. Within the autonomous areas of the OT, the PNA has clamped down heavily on opposition groups and critical voices, and promulgated laws that create an atmosphere chilling to the fundamental rights necessary to democratic processes.

Furthermore, the significance of the elections must be measured ultimately by the extent to which they result in democratic representation and accountability of elected officials. Serious concern remains that these elections do not create an accountable structure, particularly for the redress of human rights violations in the OT by Israel or the PNA. And despite the likelihood of further transfers of land, Israel will continue to retain overall control of the OT. The elections will no change this. The elected Council and Executive Authority therefore will rule over limited aspects and areas of the OT, within the context of an Israeli occupation that frustrates democratic representative government and the rights of the Palestinian people.

This pre-election statement briefly reviews the human rights situation in the lead-up to the election and the implications of the election process itself for the future of Palestinians' human rights.

### THE HUMAN RIGHTS SITUATION UP TO ELECTION DAY

Israel maintains a significant military presence in the OT. In the Gaza Strip alone, 4,000 Israeli troops are stationed at the borders, around settlements and at major crossroads. In the West Bank, Israeli military has merely redeployed from population centres, retaining control of approximately 70 percent of the land. There has, however, been a significant improvement in the most visible aspects of the human rights situation. During the 27 years of total occupation, Israeli forces killed and injured thousands of Palestinians. Following the transfer of responsibility for public order to the Palestinian police, these incidents are now an unusual occurrence.

The emphasis of the Israeli occupation has changed. The priorities are now overall security, the protection of Israel and of Israeli interests, including economic interests and the safety of Israeli settlements in the OT, through strategic military control of the Palestinian population in the West Bank and Gaza Strip. In addition to its continued illegal occupation of some 40 percent of the land in the Gaza Strip, and 70 percent in the West Bank, Israel maintains control over the OT's natural resources. Israel also seeks to protect its interests by controlling movement within the OT and across the borders.

### **Extrajudicial Killings and Torture**

Extrajudicial killings of Palestinians and the systematic use of torture by Israeli Defence Forces (IDF) and security forces, are well documented. For example, on 25 April 1995, 30 year old 'Abd al-Samed Harizat died as a direct result of torture inflicted by Israeli interrogators. The Israeli government has since publicly confirmed

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that its interrogators have used violent shaking, the method that caused Harizat's death.

IDF undercover operations continue within the Occupied Territories. On 5 January 1996, Yahia Ayyash, a Palestinian who was number one on Israel's wanted list, was assassinated by an exploding cellular phone at his home in the Gaza Strip. The killing, widely viewed as an act of the Israeli General Security Services, sparked demonstrations. Coming at the critical and sensitive time preceding elections, and shattering the relative quiet prevailing in the OT for the last 5 months, the assassination may fuel opposition to the agreements, the peace process and the PNA. Israel's closure of the West Bank and Gaza following the killing interfered with the freedom of movement necessary for the election process (see below).

Since May 1994, members of the Palestinian security forces have also been responsible for incidents of torture and ill-treatment, including deaths in detention: five in the Gaza Strip and two in the West Bank.

Palestinians have no means of redress with respect to Israeli violations of their rights. With regard to the PNA, Chairman Arafat has publicly stated that it would uphold human rights. However, the PNA has not taken adequate steps to : 1) fully investigate these occurrences or hold the individual officers implicated accountable; 2) establish rules and a system of supervision and accountability for the security forces; or 3) adhere to international standards of due process and the rights of detainees.

### Political Prisoners

Israel continues to hold approximately 3,500 Palestinian prisoners, the majority of them for political offenses, under the Military Orders in prisons inside Israel, subject to severe treatment and conditions. There are extreme limitations on visitation, including visits by the International Committee of the Red Cross. The continued detention of Palestinians violates international law. The Fourth Geneva Convention prohibits the Occupying Power from moving detainees into its own territory and requires the handing over of such prisoners with the onset of peace.

### Freedom of Movement

Israeli restrictions on the freedom of movement of Palestinian residents of the Occupied Territories go beyond entry into Israel. They also deny access between the Gaza Strip, the West Bank and East Jerusalem. The requirement of permits to travel into Israel or between the Gaza Strip and West Bank effectively curtails movement. Long delays are part of the permit system, and often after months of waiting the result is a denial. Even the most innocuous movement is affected; stuare denied access to their West Bank universities, and Gazans seeking medical treatment not available in Gaza, worshippers on pilgrimage to the holy sites of Jerusalem and those wishing to visit family and friends in the West Bank also face these problems. It can be more difficulty now to travel from Gaza to the West Bank than to travel abroad.

The effects of these restrictions on the elections is difficult to determine, they have contributed to the restrictive atmosphere that colours the pre-election period. Samiha Yousef Khalil, a candidate for President, faced harassment and unjustified delays by

Israeli forces in her travel between the West Bank and Gaza Strip, despite having all the required travel permits. On 13 January, she was detained at a military checkpoint near Latroun junction in Israel for nearly 30 minutes; on her arrival at the Gaza Strip, Israeli soldiers refused her entry for more than an hour.

In addition to the obstacles of the permit system, Israel's closure of the West Bank and Gaza Strip from 8 January to 11 January after the assassination of Yahia Ayyash, and Israel's closing of roads leading to Israeli settlements within the autonomous areas, have hindered Palestinians' freedom of movement.

## **Freedoms of Expression and Assembly**

### ***Freedom of Expression***

Since its establishment, the Palestinian National Authority has taken a number of actions that have violated the right to freedom of expression. For example, in 1994, the PNA banned distribution of "Al Nahar" newspaper in the autonomous areas because of its critical stance toward the PNA. On 25 June, the PNA adopted the Press Law, which places serious restrictions on freedom of expression for the media in the autonomous areas. The Law extensively limits what can be published or reported in a publication without authorization from the Ministry of Information. While the law has not been invoked in regard to election activities, the fact that it is legally in force is a continuing threat to freedom of expression.

The PNA has also moved to silence or intimidate its critics. During the past year, the PNA has detained without warrant high-profile individuals who have voiced dissent with respect to PNA decisions. Dr Iyad Saraj, head of the Palestinian Independent Commission on Citizens' Rights (PICCR), was detained by Palestinian police in Gaza on 7 December, following remarks he made that were critical of the PNA Attorney General. On 25 December, Maher Al-Alami, an editor at the "Al-Quds" newspaper, was arrested by the PNA's Preventive Security Service and held for six days, apparently for not publishing an article favourable to Chairman Arafat on the paper's front page. The Palestinian preventive Security Service detained Bassem 'Eid, a senior researcher with the human rights group B'Tselem and Reporteur Sans Frontier, for a 24-hour period beginning 3 January 1996; his detention is presumed to have been in connection with his role as researcher for publications criticising the PNA's human rights practices.

The Israeli Military Censor still controls the print media, including major Palestinian publications that are published in Jerusalem and circulated in the autonomous areas. This restriction on freedom of the press is of particular concern in the period leading to Palestinian elections. Israeli control over campaigning in East Jerusalem also raises serious concerns about freedom of expression in the election context (see below).

Freedom of expression, whether in the context of campaigning, registering voters, reporting on election proceedings, or simply discussing issues, is fundamental to the freedom, fairness and legitimacy of an election. Actions by Israeli authorities and the PNA have created an overall atmosphere of intolerance of dissent.

### ***Freedom of Assembly***

On 7 September 1994, the PNA Chief of Police issued an order requiring official permission from the PNA to hold political meetings and banning all unauthorised political assemblies. Two further orders, issued in September 1995, affirmed this ban and also prohibited bus companies from transporting any political groups or faction members, for any purpose without prior authorization by the Authority. The PNA invoked the decree on political assemblies in March 1995 to deny permission for a human rights seminar on the State Security Courts. While the laws have apparently not been enforced during the election campaign, they have not been cancelled, and their existence contributes to a legal climate that is hostile toward freedom of expression. For elections to be free, candidates and voters must be free to meet and exchange ideas and information without fear of legal consequences.

### **The Right of Fair Trial: Freedom from Arbitrary Arrest and Detention**

The Israeli Defence Forces in the Occupied Territories maintain the authority to enforce Israeli military orders, and the Israeli Military Courts continue to hold jurisdiction over Palestinian residents of the OT who are alleged to have violated these orders.

In order to guarantee Israeli security, Israel has pressured the PNA to employ draconian measures that violate the rights of Palestinians. Since May 1994, the PNA has arrested and detained scores of opposition group members without due process. No formal charges have been brought against the majority of those arrested, and detention was without judicial authority or scrutiny.

On 7 February 1995, the PNA established the State Security Court by decree. Trials are carried out in secret, without prior warning and at night. The authorities have failed to inform defendants of their trial dates, and have waited until trial begins to inform them of the charges against them. Defendants have not had adequate legal counsel and trials, which often have lasted less than a few hours, have lacked procedural guarantees for defendants. The court consists of three senior Palestinian military officers; only one has legal training, and his attendance is not a requirement for trial. From its establishment up to the beginning of the election campaign, the court tried 36 people, delivering sentences of between 6 months and life imprisonment. The case of a 14-year-old sentenced to 6 months in prison for conspiring to commit arson indicates that the State Security Court is hearing cases that could be handled by existing Palestinian judicial structures.

The abusive procedures of the State Security Court affect the right to liberty and security of person, the right to be free of arbitrary arrest and detention, and the right to a fair trial. The operation of this court will likely weaken standards of policing, prosecution and judicial review. The establishment and practices of the State Security Court also raise a constitutional concern that the powers of the executive authority and the security forces are excessive and the independence of the judiciary consequently weakened. Although the State Security Court has not been convened since 6 September 1995, its maintenance is not conducive to the democratic atmosphere necessary for free and fair elections.

## **THE ELECTION PROCESS**

The Taba Agreement defines the basis for the election process, including the framework for the Election Law, identifying who can vote or be a candidate and defining the monitoring activities of Palestinian and international observers. The Election Law, passed by the PNA Cabinet in December 1995, expands on the foundation set by the Taba Agreement.

However, none of the agreements between Israel and the PLO provide for future Palestinian elections. Without guarantees of future periodic and genuine elections, the current elections provide no means of holding those elected accountable for their actions.

There are a number of problems with respect to the electoral process itself:

### ***Adequacy of Time for All Phases of the Election Process***

The electoral process has been conducted in an accelerated manner that has not allowed for full Israeli redeployment from Palestinian population centres in the West Bank; adequate campaigning; proper establishment of the bodies responsible for administering elections; and fulfilment of many provisions of the ElecLaw.

### ***CentrElection Commission and Election Court of Appeal***

The Central Elections Commission (CEC) responsible for administration and supervision of the electoral process, was not established until 21 December, and the Elections Court of Appeal until 23 December, considerably after voter registration and nomination of candidates began. In their absence bodies appointed by the PNA administered the election process, but this raised concerns about their independence. The CEC was appointed without the consultations with PNA cabinet members and representatives of political parties that were designed to protect and, with other defects in the formation of the CEC, raises concern about its independence. Since its establishment, the CEC has been criticised for its failure to adhere adequately to Election Law requirements.

On 25 December 1995, the CEC appointed members of the Constituencies Commissions in the Gaza Strip without consulting with the people appointed or taking into consideration their positions in the elections. As a result, candidates for elected office were appointed to the Constituency Commissions. While the CEC replaces these members, the mistakes caused concern about the fairness and care with which the CEC has carried out its responsibilities.

### ***Voting of Security Forces Personnel***

There has been much confusion and ambiguity about arrangements for voting of members of the security forces, approximately 22,000 people. While the Election Law guarantees their right to vote, no clear arrangements had been established by the morning of 19 January, the day before the elections. The significant number of people affected by this problem, and the impact their voting could have on the outcome of

elections, makes the failure to formalise a fair and effective procedure a severe threat to free and fair elections.

### ***Local Monitoring***

The CEC did not accredit local election monitors until 16 January, very late in the election process. This violates the Election Law. Only 30 of the 72 people who applied for domestic monitoring accreditation were granted this status. This will not allow for adequate election observation by local monitors.

### ***Allocation of Constituency Seats***

The Election Law provides that the distribution of Council seats amongst constituencies must be proportional to the population in each constituency. However, distribution of seats did not follow this formula. The failure to conduct a census made accurate allocation of seats impossible. However, even based on the information in the official Electoral Register, allocation of seats was not proportional to population. Several constituencies have not been given the number of seats proportionality requires. The seats were assigned by presidential decree, not by the CEC, which was established to be an independent body responsible for such tasks. While the CEC had statistics reflecting this flawed apportionment, it did not reallocate seats.

### ***Relocation of Voting Centres***

Electoral centres were allocated and their locations made clear on voters' registration cards. However the CEC announced on 15 January, only five days before the election, that the location of many centres was being changed. This has caused concern about potential confusion on election day.

### ***Participation of Palestinians in East Jerusalem***

The Taba Agreement affirmed the right of Palestinians in east Jerusalem to participate in the election process. However, their participation is subject to Israeli controls and differs from that of Palestinians living in the Palestinian autonomous areas. East Jerusalem will have no ballot boxes, and voting will take place in five Israeli post offices, where postal employees will provide voters with the voting papers and place completed papers in receptacles.

Israeli restrictions also prevent candidates from attaching partisan election signs to their vehicles and forbid outdoor campaign rallies; these restriction do not apply to candidates elsewhere in the Occupied Territories.

Right-wing Israeli activists have posted notices in Arabic in East Jerusalem, warning residents that they will lose their permanent resident status in Israel, and the rights accompanying that status, if they vote. Israeli officials have not taken measures to clarify publicly and unequivocally that this is untrue. Also members of the Israeli Right have said they will come to the postal offices in large numbers on election day to undermine the elections. Nevertheless, despite PNA and international requests.

Israel has declined to close the postal offices for ordinary business on election day.

## CONCLUSION

The election campaign has proceeded surprisingly well. Despite laws and orders that are contrary to principles of free and fair elections, there has been little active interference in candidates' ability to campaign. Observers have noted that Palestinians appear eager to vote, and a good turnout is expected. A substantial number of candidates were nominated for office, and campaign activity has been at a high level.

However, the Occupied Palestinian Territories remain under Israeli occupation. The Declaration of Principles and the agreements signed pursuant to it have not changed this fact, but have merely provided the Palestinian National Authority with limited self-rule over limited areas of the Occupied Territories.

Thus elections, no matter how free and fair their conduct, will not reverse the pattern of human rights violations attributable directly or indirectly to Israeli occupation.

Furthermore, the lack of accountability within the PNA and the lack of mechanisms for judicial scrutiny of the PNA's actions, have allowed the PNA to act with impunity, and without adequate regard for basic liberties and human rights. The recent detention of three respected individuals who have criticised or opposed the PNA demonstrates this disregard. The PNA has adopted, and proposed for adoption, laws that will further undermine the rights and freedoms of the Palestinian people in the autonomous areas. The elections, which currently represent a one-time vote, do not provide any guarantee that human rights and the rule of law will be respected in the future.

If the elections fail to change the disturbing human rights situation in the Occupied Territories, the long-term objectives of the peace process may be damaged. Similar destabilisation may result if the elections fail to satisfy the electorate that the Council, which will conduct final negotiations with Israel, is truly representative. And if elected officials are unable to achieve rapid progress in improving the quality of life, materially as well as through establishment of the rule of law, latent opposition to the peace accords and the PNA may erupt and undermine the entire peace process.