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Palestinian Presidential Election Legal Claims Resolution Monitoring Workshop

Arkan Project

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LIST OF ACRONYMS

CAS	Civic Action Strategies
CEC	Central Election Commission
CRP	Claims Resolution Process
CV	Curriculum Vitae
DEC	District Election Commission
EAC	Election Appeals Court
PA	Palestinian Authority
PBA	Palestinian Bar Association
PLC	Palestinian Legislative Council
PSC	Polling Station
USAID	United States Agency for International Development

EXECUTIVE SUMMARY

Chemonics International subcontracted to Civic Action Strategies, a civil society strengthening and democracy development firm, design and implementation of a training program for Palestinian lawyers to help them observe the legal election complaints process – including complaint filing, adjudication and appeal of legal claims – that might arise out of the January 9, 2005 Palestinian presidential elections (the “Project”). Civic Action Strategies’ international expert conducted the election complaint process monitoring training (“Workshop”) in Ramallah, with a video link to Gaza City, on January 7, 2005. Civic Action Strategies’ expert also designed and developed election complaint process monitoring forms, in conjunction with the Chemonics Rule of Law project staff.

The Project initiated the interest and participation of Palestinian lawyers in the topic, and the ground was laid for a more serious claims observation program for the July 2005 Palestinian Legislative Council (PLC) elections. Further, the Project revealed serious problems with the legislative framework for Palestinian elections, local interest in pursuing election claims advocacy and legal reform, and justification for the United States to support these activities in order to assist in the development of the rule of law in Palestine.

Among the recommendations that stem from the Project are suggested consideration for supporting a legal advisory, educational or advocacy program to address problems in the Palestinian election laws, as well as the development of an election Claims Resolution Process Observation Program for the PLC elections scheduled for July.

I. BACKGROUND

A. Engagement and Preparation

Civic Action Strategies (CAS), a civil society strengthening and democracy development firm, was retained by the prime contractor, Chemonics International, for the purpose of designing and conducting a program to train Palestinian attorneys to observe the legal process of election claims filing, adjudication, appeal and resolution (the Claims Resolution Process [CRP]). This training was to be conducted prior to and in connection with the Palestinian presidential elections, scheduled for January 9, 2005 in Jerusalem, the West Bank, and the Gaza Strip (the Project). CAS and Chemonics collaborated on a scope of work, which USAID subsequently approved on December 30, 2004. (See Exhibit A.) On the same day, Chemonics and USAID approved CAS international expert Theodore C. Jonas, an attorney experienced in international election observation, the training of local observers, and advising local attorneys on the filing and pursuit of election claims, to conduct the training and carry out other activities pursuant to the scope of work. (See Exhibit B for Mr. Jonas's CV.)

B. The Project

The Project sought to introduce an audience of Palestinian lawyers especially those working in civil society organizations to the importance of the election CRP and the concept of engaging in trial monitor-like observation of any such process arising out of the Presidential elections. While ordinary election observers, both local and international, tend to report on violations that occur in the pre-election period and on election day, it is the resolution of claims – by precinct commissions, district election commissions, the national central election commission, and the courts—which determines what, if anything, will be done about those violations. It is therefore crucial to an assessment of the fairness of elections that the CRP be monitored, because it is only this process which will actually produce a remedy to any serious election violations that occur.

While election monitoring is a long-practiced and understood activity, and monitoring of criminal trials with important political and human rights implications is similarly well-established, the monitoring of the administrative and judicial processes by which election claims are heard, adjudicated, appealed and resolved is surprisingly new and unexplored, despite its importance to the validity of elections and the building of democracy under the rule of law.

II. PALESTINIAN LAW REGARDING THE CLAIMS RESOLUTION PROCESS FOR PRESIDENTIAL ELECTIONS

A. Overview of Governing Laws, Normative Acts, and Practices

The CRP for Presidential Elections is chiefly governed by the Election Law (Law No. 13 of 1995). The Law has been amended twice, by Law No. 16 of 1995 and Law No. 4 of 2004. Neither of these amendments contain provisions directly relevant to the CRP. However, the latter amendment contains a major change to the Elections Law, allowing voters to vote on the basis of their registration data in the “Civil Registry” in addition to the Voters Registry that was created specially for this election.¹

The Election Law authorizes the Central Election Commission (CEC), which consists of nine² members appointed by the President of the Palestinian Authority (PA), to adopt regulations and make other decisions for the purpose of implementing the Law. The CEC, however, has adopted only a few implementing regulations, none of which is directly relevant to the CRP or to the conduct of polling and counting, although they are relevant to the status and conduct of election observers. The following regulations are available on-line from the CEC web-site (www.pal-cec.org)³:

- Registration of Voters for Presidential and Legislative Elections
- Registration of Partisan Entities
- Accreditation of International Observers
- Accreditation of Local Observers
- Annex to previous two Bylaws, Code of Conduct for Local and International Observers
- Accreditation of Partisan Entities’ and Independent Candidates’ Agents (Observers)
- Annex to previous Bylaw, Code of Conduct for Agents (Observers) of Partisan Entities and Independent Candidates⁴

¹ Allowing voting on the basis of the Civil Registry, which is notoriously inaccurate and may be duplicative of the Voters Registry, made it impossible for the Palestinian Central Election Commission (CEC) to verify the number of voters eligible to participate in the January 9 Presidential elections (estimates ranged from approximately 1.1 million to 1.8 million), and therefore impossible to say, immediately after the elections, what had been the level of voter participation. The last minute introduction by the Palestinian Legislative Council (PLC), through adoption of Law No. 4, of a parallel voting and precinct system on the basis of the Civil Registry generated a great deal of resistance from the CEC and criticism from international monitoring organizations. (See, e.g., Pre-Election Assessment, National Democratic Institute for International Affairs, December 22, 2004; Preliminary Report, NDI Observer Mission, January 10, 2005; both can be found at www.ndi.org).

² According to Presidential Decree Number 15 of 2002.

³ All registration bylaws drafted by the CEC have to be approved by the government in accordance with election law. These bylaws currently have no numbers because they have not yet been approved by the Prime Minister.

⁴ It is unclear from the English versions of these regulations whether they have actually been adopted by the CEC. They all contain blanks where the Bylaw number and date of adoption should be inscribed. One Bylaw is explicitly called a “draft.” According to Article 107, these regulations should be approved by the Palestinian Authority, and then published in the Palestinian Official Gazette to attain legal status.

Despite the virtual absence of implementing regulations under the law, the CEC issued a “Polling and Counting Manual” to be used by precinct (polling station) officials on election day (the “Manual”). The Manual provides practical instructions on how to conduct polling and counting (and some information on the handling of claims, as discussed further below), filling in procedural details that the Election Law lacks. The Manual does not, however, have the legal status of a regulation because it was never formally adopted by the CEC.

In addition to the foregoing, the President of the PA has issued a number of Presidential Decrees pertaining to the Election Law and the conduct of elections. Several of these deal with housekeeping matters, such as the appointment of members to the CEC and the Election Appeals Court. Others are significantly more substantive, pertaining to the allocation of PLC seats per constituency (district) in the Palestinian territories. None of the decrees, however, pertain to the CRP. (See www.pal-cec.org for copies of the decrees.)

B. Procedures for Filing, Adjudicating, Deciding, and Appealing Claims

1. Overview

The Palestinian territories are divided into 16 geographical constituencies, or districts, each with its own District Election Commission (DEC). Each DEC is responsible for a large number of voting precincts (polling stations or PSCs) within its district. Each DEC has five members, appointed by the CEC. Each PSC has four members, nominated by its corresponding DEC and approved by the CEC.

As in many other national election laws, the Palestinian election CRP is handled first and foremost by the election commissions, at the precinct (PSC), district (DEC) and national (CEC) levels. With one exception, any election-related claim must be filed first in a PSC and adjudicated by the CEC before an appeal may be made to any court.⁵ Therefore, just as human rights trial monitoring would be incomplete if the monitoring focused only on the court of appeal and ignored the administrative (eg. military) tribunals or courts of first instance which issued the judgments being appealed, so too would monitoring of the elections CRP be incomplete if it ignored the filing and adjudication of claims in the election commissions.

To take the most graphic illustration of this principle the recent Palestinian Presidential election, Palestinian attorneys filed a claim in the Election Appeals Court (EAC) against the CEC’s election-day decision to extend voting hours and to allow voters to vote in precincts in which they were not registered. The EAC dismissed the claim without considering the merits because the claimants failed to file the claim first in the CEC. The EAC would not hear the case without a written decision of the CEC from which the appeal to the EAC was being taken. A separate

⁵ The exception is that the Election Law gives the Ministry of Interior the authority to register political entities (parties) participating in the elections during the pre-election period. The CEC then registers candidates of parties that have been registered by the Ministry. The Election Law does not say what recourse a political party has if the Ministry denies its application for registration. Palestinian lawyers at the Workshop expressed the opinion that any such denial would be appealed to the regular Supreme Court, under the general rules for appeals (claims) against the decisions of state bodies.

group of claimants subsequently filed the same claim in the CEC, seeking a written decision which could be appealed to the EAC. The substance and procedural progress of this claim, which is the most important and serious challenge to the validity of the elections, simply cannot be monitored without observing both the proceedings in the CEC and the appeal to the EAC.

The scope of work for the Project was agreed to only in the last few days before the election, so the observation effort of necessity focused on the filing of claims on election day and thereafter: claims that would relate only to the voting and counting procedures. We therefore were unable to observe the procedures for filing claims in the pre-election period relating to such issues as denial of registration of voters, candidates or parties. The Election Law sets forth special procedures for the handling of pre-election claims pertaining to these issues. Any future election claims monitoring project should begin in the pre-election period because, as with election observation in general, observation of pre-election conditions, here the CRP, is essential to a holistic understanding of the fairness of the elections.

2. Eligible Claimants

The Election Law implies that claims pertaining to voting and counting may be filed only by candidate and party representatives and candidate and party agents (observers). (See Elections Law, Articles 30.2(h), 78.5, 84.4 and 86.3.) The law therefore does not recognize the right of voters or independent local observers to file claims regarding violations occurring during voting or counting.

The law recognizes the right of voters to file claims only during the pre-election period, with respect to denial of registration of the voter by his or her PSC. The voter may appeal the PSC's decision against the voter's claim for registration directly to the CEC, but no further.⁶ See Elections Law, Articles 17-18. The CEC's decision on the matter is final, underscoring again the importance of observing the CRP in the commissions. Denials of registration of voters cannot be appealed to the courts, so if monitoring of the CRP were limited to courts, then resolution of this type of claim could not be witnessed at all.

3. Polling Stations

Candidate and party representatives and agents (Claimants) must file claims related to voting and counting in the first instance in the PSC where the violation occurred. (See Elections Law, Articles 24.11, 30.2(h), and 78.5.) The Manual for PSC workers provides a claim form and procedures for accepting claims (Exhibit C). The presiding officer of the PSC performs two important and substantive functions in taking the claim: first, he records his opinion of whether the alleged violation affected the "balloting results" at the station, and second, he takes down the names and opinions on the claim of three witnesses. The former is important because it will affect the subsequent deliberations on the claim by the DEC and the DEC's recommendation to the CEC on disposition of the claim. The recording of witnesses at the PSC is likewise important because these three persons are likely to be presumed by the DEC, the CEC, and the EAC, in

⁶ Articles 17, 18 contradict with article 107 in this respect. Article 107 gives any person the right to appeal any decision the CEC takes.

their subsequent deliberations on the claim, to be the most credible witnesses. These bodies may be reluctant to hear other witnesses who present themselves for the first time when those bodies are considering the claim.

When the counting at the precinct is completed, the PSC sends the completed claim forms to its corresponding DEC along with the ballot papers and the protocol containing the voting and ballot accounting tallies. (See Election Law, Article 81.6.)

4. District Election Commissions

The Election Law tasks each DEC with conducting serious deliberations, open to accredited observers, on the claims that the DEC receives from the PSCs in its district. Each DEC “hears” the parties who filed claims and “adopts a decision on each filed claim.” (Elections Law, Article 84.4.) If, on the basis of the claims or otherwise, a DEC determines that there were irregularities in one or more polling stations in its district that will affect the “final results of the elections and the allocation of seats in that constituency,” it recommends to the CEC the calling of new elections in such polling stations. (Election Law, Article 84.5.) Thus, the recording of the opinions of PSC presiding officers on claim forms regarding whether violations affected the balloting results in their respective precincts have great significance when the corresponding DEC considers those claims and recommends to the CEC whether voting must be re-conducted in the district. Similarly, a recommendation by a DEC to the CEC regarding whether the elections must be re-conducted in the district based on the violations alleged in claims, or otherwise found, will carry weight in the CEC’s subsequent consideration of that claim (although the law does not state how much weight, or deference, the DEC is to give to the PSC’s findings, or the CEC is to give to the DEC’s findings and recommendation).

The DEC procedures outlined in the preceding paragraph raise the following questions:

- Will a DEC consider and adopt a decision on every claim filed, even if the claimant does not appear, or only on those claims for which the claimants appear to argue their cases?
- It is unclear whether in a presidential election a DEC is to consider whether the “irregularities” affected the “final results” nationally or just in that constituency (district). Only the latter is logical, since the DEC has no way of knowing, before final national results are known (which is when it considers claims) whether irregularities in one or more precincts in its district affected the results nationally, but it is certainly in a position to know whether they affected the results in the district.
- The language of the statute indicates that a DEC may detect irregularities sua sponte – on its own power – even if no claims were filed regarding such irregularities, and recommend corrective action to the CEC on that basis. Whether this is true needs to be confirmed by observation.

5. Central Election Commission

The CEC adjudicates appeals taken from PSCs and DEC's.⁷ The Election Law provides that the CEC is to conduct a "scrutiny," open to accredited candidate and party representatives and observers (agents) and to local and international observers, within five days after the election, in which it considers the DEC's decisions on claims and hears the claimants. As noted above with respect to DEC's, it is unclear whether the CEC will review a DEC's decision on a claim if the claimant does not appear. In a presidential election, if the CEC "detects important irregularities in the conduct of the election at one or more polling stations which could affect...the final results of the election for the position of President...it shall call for new elections in that or those polling stations, to be held within 10 days." (Election Law, Article 86.5.)

Note that the standard for ordering a remedy (the re-conduct of voting in precincts where violations occurred) in a presidential election is that the violations must have affected the final results of the election. In other words, the violations must have been sufficiently serious and widespread that a different candidate would have won if the violations had not occurred. This is a high standard to meet (the same standard, incidentally, which applies in the United States).⁸

6. Election Appeals Court

Claimants may appeal decisions of the CEC to the EAC within two days from publication of the final results of the election. (See Election Law, Article 87.1.) The Election Law is confusing, however in stating two other time periods for the filing of appeals from CEC decisions (i) within *three* days of *issuance* of the CEC decision on the claim (Article 25.1) and (ii) within two days from the date on which the parties receive *notice* of the CEC decision on the claim (Article 36.1).

⁷ The reference to appeals taken from PSCs to the CEC is in Article 24.10 of the Election Law, and likely is meant to apply only to appeals taken by voters from decisions of PSCs denying registration. As to claims regarding alleged violations in voting and counting on election day, the law is clear elsewhere that these go from PSCs to DEC's before coming to the CEC.

⁸ The January 9, 2005 Palestinian Presidential election provides an example of this standard in action. Some 46 Palestinian election officials, including senior staff of the CEC, resigned (then withdrew their resignation a day after meeting with the CEC according to Rami El Hamdallah, CEC General Secretary) following the elections on the grounds that they had been pressured and physically threatened by forces supporting Mahmoud Abbas to extend the voting period by two hours and to allow persons to vote in precincts in which they were not registered. These violations are the subject of the claim in the CEC and appeal to the EAC discussed above. The resigning officials admitted that the violations did not affect the outcome: Abbas would have won anyway. One hopes nonetheless that the EAC will at least criticize the violations, even if it can order no remedy, which would have the effect of embarrassing the persons responsible for the violations and lend support to the sanctity of the law. Note that if Palestine had a turnout requirement, such as a 50% threshold of eligible voter participation for the elections to be deemed valid, as many countries (but not the United States) do, then the violations would likely have been outcome-determinative and therefore justified the remedy of ordering a re-holding of the elections. Anecdotal information indicates that the turnout may have been less than 50% in any case (it depends on how many eligible voters were on the Civil Registry, something that nobody knows at present) and even more likely would have been less than 50% if the voting hours had not been extended or the place-of-voting rules liberalized in alleged violation of the law. For more information, please see Hanna Naser, al-sa'atayn al-akheiratayn min al-intikhabat (the last two hours of the elections), AlQuds, on January 24, 2005, available online at <http://www.alquds.com/inside.php?opt=1&id=15017>, (Arabic).

Palestinian attorneys in our Workshop offered various explanations for these inconsistencies, but the consensus was that the law was unclear and needs to be amended for clarification.

The EAC consists of five judges appointed by the President of the PA. Each judge must meet all the requirements to be a judge in an ordinary court and have ten years judicial experience. The court has two offices, one in Ramallah and one in Gaza, a staff, may fix its headquarters (“seat”) in any of the major cities in the Palestinian territories, and may hold sessions in locations other than its official seat, where the events under adjudication occurred, for the convenience of the parties. (See Election Law Articles 31-33.)

The Law specifies no procedures for the EAC, except that (i) it must decide each appeal within five days of the filing of the appeal, and (ii) the proceedings are to be undertaken with the “seriousness and speed” demanded by the subject matter of its jurisdiction. Postponements may not be for more than 24 hours, and only at the request of the defense (i.e., the CEC or lower commissions). A claimant (appellant) must be represented by an attorney.

III. THE WORKSHOP

A. Logistics and Materials

The workshop for Palestinian attorneys, “Monitoring the Adjudication and Resolution of Election Claims,” took place in Ramallah and Gaza City on January 7, 2005, from 8:30 am to 4:30 pm. The Supporting Rule of Law Reform Project, *Arkan*, staff in the two cities took care of logistical arrangements and inviting participants. With respect to logistics, they arranged for two simultaneous translators and the necessary equipment in Ramallah, a video link to Gaza City, the production and distribution of training materials, and lunch for the participants at the Workshop sites. The training materials consisted of: the Election Law; the CEC’s Manual for Precinct Officials; and, draft checklists for observation of the CRP in PSCs, DECs, the CEC, and the EAC. The Workshop agenda and the checklists were designed and drafted by Civic Action Strategies’ international expert, Mr. Jonas, with input from the *Arkan* staff. (Exhibit D.)

B. Participants

The participants in the Workshop were the following:

Ramallah

Name	Organization
Shaher Al Aroory	Lawyer
AlaEddin Al Bakri	Lawyer
Nasser Al Rayyes	Law in the Service of Man (Al Haq)
Melvina Khoury	Jerusalem Center for Legal Aid & Counseling
Maen Deis	Palestinian Independent Commission for Citizen's Rights
Majed Al Aroory	Palestinian Independent Commission for Citizen's Rights
Ibrahim Barghouthy	Director, Palestinian Center for the Independence of the Judiciary and the Legal Profession (MUSSAWA)
Khalil Rifa'y	Lawyer
Jamal Khatib	Head, Legal Unit, Palestinian Legislative Council

Gaza

Name	Organization
Ghada Ghoul	Gaza Center for Rights and Law
Adnan Al Hajjar	Al Mizan Center for Human Rights
Aneesa Sha'ban	The Palestinian Democracy and Conflict Resolution Center
Rafeek Abu Dalfa	Palestinian Independent Commission for Citizen's Rights
Subhiah Juma'a	Palestinian Independent Commission for Citizen's Rights
Wassim Abu Rass	Lawyer
Anwar Abu Sharh	Lawyer/ Coalition for Palestinian Rights
Adnan Abu Mussa	Director, The Palestinian Associations for Legal Sciences
Yousef Abu Jidian	Head of Gaza Office, Tamkeen Project
Fareed Hamdan	Tamkeen Project

Most of the attorney participants were mature practitioners, and some had extensive knowledge and experience in the election claims field. The *Arkan* staff intentionally recruited participants who would be able to contribute to the discussion and learning process, as well as attorneys who might use the knowledge and materials obtained at the Workshop to observe the CRP, and train and encourage other members of their organizations to do so.

C. Session-by-Session Summary and Analysis of Workshop

1. Welcoming Remarks and Introductions

Arkan's Chief of Party, Mustafa Mari, welcomed the participants and introduced the topic of the Workshop, explaining the basic purpose as education in observation of the CRP, as opposed to education in how to pursue claims and appeals. All of the participants in Gaza and Ramallah, the *Arkan* staff in both places, and the Workshop leaders introduced themselves.

2. Overview of the Voting and Counting Process of the Election

The purpose of this session was to be sure that the participants had a basic understanding of the voting and counting process in the PSCs, the DEC and the CEC, which forms the backdrop for any claims that would be filed. We chose Mr. Fareed Hamdan of the Tamkeen Project to lead this session, because of his experience in training local election observers on the topics of voting and counting procedures. The session was conducted in Arabic, with simultaneous translation only for Mr. Jonas. Mr. Hamdan made some introductory remarks, and then asked the participants in Ramallah to take a few minutes to read Chapter 6 of the Election Law dealing with voting procedures and the participants in Gaza to take a few minutes to read Chapter 7 of the Law dealing with counting procedures, and for the two groups to then reconvene and report to each other on what they saw as the issues likely to generate claims.

After reviewing Chapter 6 and discussing it, the Ramallah group reported on the following issues:

- The total power of the CEC to appoint DEC and PSC members lacks transparency and accountability; the names of proposed candidates should at least be published in advance in the official Gazette, so the public has an opportunity to object to any who may be unqualified, convicted of crimes or otherwise unfit.
- While the use of indelible ink to mark voters is an important safeguard against multiple voting, some people find it humiliating, and the procedure is not foreseen under the law or any formally adopted regulation.
- Requiring PSC staff to work from 6:00 am when they have to prepare the precinct for opening to after midnight, when the counting is done and they complete delivery of results to their DEC, is unreasonable and leads to mistakes because of exhaustion. The government in the past has failed to deliver on promises of food and transportation for such poll workers.⁹ PSCs should have two committees that work in

⁹ Mr. Jonas and Khalil Ansara of the *Arkan* staff spent election night in the Jerusalem DEC for the purpose of observing its consideration of claims. They witnessed a near riot by precinct workers from Jerusalem district polling

shifts, one during the day to open the poll and conduct the voting, and a second that closes the poll and conducts the counting. Other members of the Ramallah group, however, criticized this proposal on the grounds that the transition to a second committee would create confusion and opportunities for fraud.

- Assisted voting (where a person incapable of voting on his or her own needs help because of illiteracy or a physical handicap) is subject to abuse. Sometimes interested persons assist the voters and direct them how to vote.
- In prior elections the time for voting (polling station hours) was arbitrarily extended, on the basis of no consistent principle, in some precincts and not in others. The law allows only those in the queue to vote after the time for closing of polls at 7:00 pm.¹⁰
- In prior elections the number of polling stations, and the number of booths in the polling stations, has been inadequate, leading to long lines and voters going home without voting.¹¹
- PSCs need to ensure that all observers have a clear view of the opening of the ballot box for counting.
- Although the Law provides that security personnel may not be inside the polling stations unless invited in by the PSC presiding officer for cause, this rule is routinely violated by plainclothes armed men entering PSCs. They may be PA security or affiliated with parties or candidates. The effect is to intimidate voters.

After reviewing Chapter 7 and discussing it, the Gaza group reported on the following issues:

- All observers should be allowed to observe the vote and the count.¹²
- All observers should abide by the Code of Conduct that applies to them.

stations who had been promised food and transportation home by the PA, neither of which had been provided. After some tense moments and harsh exchanges, the DEC managed to arrange for transportation home for the workers.

¹⁰ The CEC decided in these elections, in the middle of election day, to extend voting hours by two hours at all precincts across Palestine. The justification offered (and still posted on the CEC website) was that Israeli interference at checkpoints was obstructing voter movement. The extension of voting hours, which is not clearly authorized under the Law, is the subject of legal challenges by Palestinian organizations, and prompted the resignation of 42 Palestinian election officials, who stated that they were pressured to extend the voting hours by supporters of Mr. Abbas who wanted to see a higher turnout and therefore a bigger political mandate for him in victory. The officials who resigned deny the official reason offered by the CEC (Israeli interference) for the extension of voting hours, and international observers similarly stated that, except in Jerusalem, the Israelis did not significantly interfere with voter access to the polls. Dr. Khashan of *Arkan* observed in five polling stations in Ramallah that clerks had to buy their own food. Some of them did not eat before 5 pm.

¹¹ In fact this was not a problem in the current election, due to relatively low turnout.

¹² The Election Law provides for this.

- Observers should be allowed to see the ballot papers and observe the filling out of protocols.¹³
- Observers must be allowed to check the ballot accounting process.¹⁴

After these presentations Mr. Hamdan described the importance of the CRP. He mentioned a particular case where, several years ago, the CEC refused to conduct a by-election to fill a vacant seat in Gaza. An appeal was taken to the EAC and the EAC ordered the CEC to conduct the by-election. Under pressure from the PA the CEC refused to carry out the EAC's order. The case illustrates the importance of monitoring the CRP: the claimant obtained an order by the EAC against the authorities, but the authorities refused to enforce it and suffered no consequences. Consistent observation and reporting can raise public awareness, and criticism, of such lawlessness in the elections process.

3. Overview of the Claim Filing, Adjudication and Appeal Process; Administrative and Judicial Remedies for Violations.

Dr. Ali Khashan of *Arkan* made the presentation and led the discussion in this session. The session was conducted in Arabic, with simultaneous translation only for Mr. Jonas.

Dr. Khashan focused his presentation on criticism of the legal framework for the conduct of elections. The first problem is the absence of a Constitutional Court in Palestine. Without a Constitutional Court, there is no proper forum for the resolution of conflicts between the Election Law and implementing regulations or for the resolution of legal issues arising out of the conflicting provisions and ambiguities of the Election Law.¹⁵ Indeed, election-related claims are of sufficient importance that they should be heard in an independent Constitutional Court, not in a special court created by the executive authorities. The EAC is not independent. It is not proper to focus solely on the procedures for the resolution of claims and appeals, when those procedures are integrated into a biased legal framework. The executive authority is hegemonic in Palestine, and there is valid concern that selection of judge for the EAC can be used for achieving political ends. Therefore the claim resolution procedures, even if properly followed under the law, cannot be said to produce completely "fair" results. The selection of EAC members should be attributed to the Judiciary.

The PA has been slipshod in adopting laws, rules and procedures for the elections and in following them. Presidential decrees appointing judges to the EAC have not been published. Two days before the election, no one can say who the chief judge (President) of the EAC is.

¹³ The Election Law provides for this, and in the PSC and DEC where Mr. Jonas and Mr. Ansara observed counting, observers were able to see each ballot paper and the filling out of protocols.

¹⁴ See previous footnote.

¹⁵ Some participants responded that such claims may be adjudicated in the ordinary civil courts and do not have to be adjudicated by a Constitutional Court.

In a recent case regarding the registration of Fatah and other PLO political parties, the EAC merely recited the decision of the Ministry of Interior as the basis for its rejection of an appeal. The decision showed that the EAC does not exercise a court's power of judicial review. It relied on the Ministry's decision without reviewing it or analyzing it for correctness and legality.

There was discussion among the participants regarding the foregoing points.

4. Principles of Observing the Claims Resolution Process

The purpose of this session was (i) to highlight the principles of observing the CRP, as opposed to participating in the CRP as advocates, and (ii) to discuss the importance of this activity. The session was led by Mr. Jonas in English with simultaneous translation in Arabic for the participants.

Mr. Jonas presented two examples of the election CRP to illustrate its importance: the 2000 U.S. presidential elections and the 2004 Ukrainian presidential runoff. In the first case, claims by the Democratic candidate, Albert Gore, of outcome-determinative improprieties and irregularities were pursued in the Florida state and federal courts. The remedy sought was a re-count of the Florida votes. Ultimately, the U.S. Supreme Court overruled the highest court of the State of Florida on a question of Florida law, something nearly unprecedented in the history of the U.S. Supreme Court and contrary to its established precedent for handling state law questions, to deny the relief sought by Mr. Gore. The U.S. Supreme Court's decision effectively confirmed the narrow victory of George W. Bush in Florida and therefore his victory as President.

In Ukraine, claims by Mr. Yushenko's supporters of irregularities and improprieties in the presidential runoff, pursued through the courts, led ultimately to a Ukrainian Supreme Court order to re-conduct the runoff. In both cases it was the pursuit of observed violations in the courts that changed, or confirmed, the outcome of the election. It is only the CRP that can lead ultimately to legal remedies, or the denial of those remedies, for observed violations. Therefore, it is important to monitor how administrative bodies and courts handle those claims and appeals, because this is the process that can ultimately decide the outcome of the election. Whether the courts handle such cases fairly and honestly is a major test of the strength of the rule of law in a country. Many legal scholars, both liberal and conservative, would say that the Ukrainian Supreme Court passed that test with a higher score than the U.S. Supreme Court. This gives cause for hope regarding the ability of courts in developing countries to act against the interests of established state authorities when considering election questions.

Addressing the participants, Mr. Jonas stated that the purpose of the observation exercise is to use their observations to analyze objectively the procedure by which the election commissions and the EAC actually handle claims, and to contribute that analysis to an assessment of the fairness and legality of the claims procedure as actually applied. Legal observers are not there to be advocates for any claimant, to file claims themselves, or to give their opinions to election officials or judges about the process. There are other lawyers who will be doing that, on behalf of candidates and parties. Mr. Jonas explained that the legal observers should not intervene in any way in the commissions' or the EAC's handling of claims.

To be a legal observer in the Polling Station, District Election, or Central Election Commissions, one has to be accredited by the CEC.¹⁶ Therefore, legal observers should consider themselves bound by the CEC's Code of Conduct for Local and International Observers (see the CEC website at www.pal-cec.org; Annex A to 2004 By-Laws on Accreditation of Local and International Observers). It would be advisable to follow the same principles as an observer in the EAC, even though strictly speaking the Code of Conduct does not apply in that context.

Other requirements of the Code of Conduct are:

- To act in a politically neutral way.
- Not to be engaged in the elections on behalf of any party or candidate (can't wear party or candidate logos or badges; can't be an active party member).
- To be comprehensive in one's observation of the process (here, the CRP).
- The Code of Conduct and the accreditation regulation forbid observers to make individual public statements about the elections; one can only make such statements on behalf of an organization that was accredited for observing the elections, such as an NGO. As a government regulation, this is a very questionable restriction on free speech: it has no place in a law or regulation. It is a standard part of the code of conduct for an observing organization – as a condition to one's serving as a monitor -- but not in a government regulation. Likely the rule was cut and pasted it from the Code of Conduct of an international organization, such as the UN or the OSCE, without thinking whether it was proper as a government rule.
- The methodology one uses as an observer should be transparent. The checklists we have drafted for observation of the CRP meet this criterion.
- To be accurate (truthful) in one's observations, and to cite sources of information for anything one reports but doesn't actually observe.
- To respect the election laws and procedures and state and election authorities; to obey orders, requests and instructions from election officials (but note them on the checklist).
- Wear the official observer's accreditation badge visibly, and show identification upon request of competent authorities.
- Any election observation report (including, presumably, one covering the CRP, if based at least partly on observation in the commissions) shall be issued within two months of the elections, and a copy provided to the CEC. (This provision is also a questionable restriction on freedom of speech).
- An observer cannot ask for or record the name of a voter.

¹⁶ EAC proceedings, however, are open to the public without restriction or accreditation requirements.

The Code of Conduct, and the Election Law, also recognizes certain rights for observers, including:

- To observe all phases of the electoral process; to have unimpeded access to polling and counting centers (but keep distance and don't interfere). This is a very important right, and one the observer should be prepared to refer to if challenged.
- To contact the CEC and obtain information in response to inquiries; the CEC is required to respond.
- To issue institutional reports, and make institutional statements. (Note that this "institutional" requirement is problematic for the present audience, because it was not accredited as a group that may issue a report; accordingly, any report will have to be issued in the name of participants' respective organizations, and then only if such organizations were accredited by the CEC for election observation.)

5. Where do we Observe Precinct Commissions, District Commissions, Central Election Commission and Election Appeals Court.

The purpose of this session was to address the need of legal observers to observe the claim filing and recording process in the PSCs, and the claim consideration process in the DEC and the CEC, as well as observing the claim appeal process in the EAC. Mr. Jonas led the session, the major part of which was an outline and explanation of the CRP as set forth in Section II.B of this Report. The participants quickly agreed that observation of the CRP in the PSCs, DEC and the CEC was as important, if not more so, than observation of appeals to the EAC. The two cannot be separated. Although there was some concern among the Workshop organizers that the audience would be bored by a "lecture" on the CRP, the opposite was true. The audience was extremely attentive, clearly interested in the "nuts and bolts" of the legal process, and there was serious discussion of the unclear and contradictory points in the law (see Section II.B above).

6. Discussion of the Draft Checklists

With the groundwork of the subject fully laid out, the participants were ready to discuss the draft CRP observation checklists. The general consensus was that the draft checklists were well-done and useful, but needed to be adapted more to local law and realities. The discussion was lively and participants in Ramallah and Gaza made constructive comments and suggested changes.

7. Discussion of Plans to Observe the Claims Resolution Process

Following the discussion of the draft Checklists, it was clear that the best way to proceed was to collapse the last two sessions of the Workshop into one session and to allow the audience to have a serious discussion amongst them in Arabic, moderated by the *Arkan* staff, about how they wanted to proceed. The best possible outcome of this discussion, although not a realistic one under the circumstances, was that the audience members from accredited observer organizations would agree to coordinate among themselves on legal observation of the Claims Resolution Process, planning deployment of their members to commissions and the EAC and the drafting of

reports on their observations.¹⁷ The worst possible outcome was that they would decide that the exercise was not worthwhile, and they would have no interest in using the checklists to observe the CRP. This outcome also seemed unlikely given the level of interest and commitment the audience members had shown by their participation in the Workshop throughout the day. The result, in fact, was something “right down the middle” of the two possibilities. The audience members agreed that (i) Dr. Ali Khashan should make the agreed changes to the checklists in Arabic and re-circulate them to the audience members by e-mail and fax on Saturday, January 8, (ii) he should receive and incorporate, according to his judgment, any further comments and changes; (iii) he should then distribute final versions to the audience members, (iv) several audience members expressed a definite interest in using the checklists and distributing them to the members of their organizations to observe the CRP on election day and thereafter and (v) these organizations would prepare reports on their observations. The *Arkan* staff asked the audience members to stay in touch with the project regarding their progress, and to provide *Arkan* with copies of their reports.

D. Evaluation of the Workshop

Arkan staff distributed evaluations to the participants after the Workshop and, as of this writing, are in the process of collecting the responses. (Annex B is a summary report on the evaluation forms filled out by the Participants.)

Our impression of the Workshop was that it was highly successful in its planning and execution, especially in light of the short notice that CAS and the *Arkan* staff had to carry it out. The attendance was good and the participants’ high quality. They represented a good sampling of the legal NGO community and were known to have diverse political backgrounds. The Palestinian Bar Association (PBA) sent two representatives to workshop and this represents interest of PBA in this subject. The presence of representatives of the official human rights ombudsman (Human Rights Commission) and the PLC, as well as two attorneys in Ramallah and Gaza respectively with experience litigating election claims cases, contributed to the quality of the discussion and the air of importance of the Workshop.

Arkan staff’s success in logistics – translating written materials into Arabic, preparing the training material packages, arranging for excellent professional interpreters and the necessary technical facilities as well as a tasty, well-catered lunch, grasping the content of the program quickly so that they could recruit the participants and assist in the moderation of discussions, and following up with participants to be sure they got final checklists and evaluation forms – was remarkable given the short notice they had and the other demands on their time.

The subject matter, agenda, topics of discussion, checklists, and mix of participants all appeared to work extremely well. The audience was sufficiently interested to stay all day (one person left in the early afternoon because of another commitment), listened attentively and actively to the “lecture” components of the Workshop and participated enthusiastically in the discussions. If we

¹⁷ Under the Palestinian election observer regulations the audience could not have agreed on the issuance of one report, because as a group they were not an accredited observer organization. Accordingly the only option was for each accredited organization represented at the Workshop to issue its own report on observation of the CRP, or to incorporate such a report into their own general election observation reports.

had any problem it was not with boredom of participants, but rather with controlling their enthusiasm to speak and keeping the program “on track.” We believe that in the end the right balance was drawn between letting the audience members speak and move the Workshop in the direction that they thought important while at the same time keeping it generally on the topics and the schedule planned. The result – that some audience members agreed to use the checklists in their election observation efforts and report on it – was the best that could have been achieved under the circumstances. Far more work with their respective organizations in advance of the Workshop would have been necessary to develop, in conjunction with the Workshop, a coordinated plan for legal observation of the CRP. We do believe, however, that this Workshop successfully laid the groundwork for planning and carrying out such a legal observation program for the PLC elections scheduled for July.

IV. MONITORING THE CLAIM RESOLUTION PROCESS

On election day Mr. Jonas, Dr. Ali, and Khalil Ansara visited 15 precincts (PSCs) in the Ramallah, Al Bireh, and Bir Zeit regions to observe filing of claims. They interviewed the presiding officers in each PSC and found one claims had been filed in each of two precincts in the Ramallah district. In one of these precincts the presiding officer described the complaint, stated the official claim form had been used, and that there had been no witnesses to the alleged violation (campaign activity in the vicinity of the precinct). We did not see the claim form. In the other precinct, the presiding officer showed us the claim form which was properly filled out, including the recording of witnesses and the presiding officer's opinion that the alleged violation did not affect the outcome of the vote. The violation alleged was the presence and interference of police in the precinct. Both presiding officers in the two precincts said would forward the claim forms to the Ramallah DEC, as required by the law.

Mr. Jonas and Mr. Ansara visited another PSC, in the Jerusalem district, at the time of poll closing at 9:00 pm, for the purpose of seeing how any claims that had been filed would be handled. No claims had been filed at that PSC. It was not possible to visit another PSC during the counting period after 9:00 pm, because pursuant to the law PSC officials are not to allow any persons to enter the precinct after 9:00 pm, when the counting begins (observers who are already present in the precinct may stay, but no new ones may enter).

Following the completion of the count in this PSC, Mr. Jonas and Mr. Ansara visited the Jerusalem DEC to see what, if anything, it would do with the claims it received from PSCs on election night. As anticipated, the DEC was occupied with collecting, registering and tallying results from the PSCs in its district to review claims that evening. The DEC staff were still counting ballots from the six Jerusalem post office precincts in the presence of local and international observers when Mr. Jonas and Mr. Ansara left the DEC at approximately 3:00 am. The Chairman of the DEC, Mr. Al-Bakri, told Mr. Ansara that he would not begin reviewing claims until the next day (Monday), and Mr. Ansara should call him to follow up. By the time Mr. Ansara contacted Mr. Al-Bakri, he had already made a determination that the claims received from PSCs in his district were "not serious" and had forwarded them on to the CEC.

Prior to Mr. Jonas' departure, neither the CEC nor the EAC had commenced consideration of claims or appeals. Mr. Jonas asked *Arkan* staff to observe the CEC's and EAC's consideration of claims and appeals going forward, and to follow up with the Workshop participants on their observation activities on election day. Upon request from *Arkan*, CEC committed itself to inform *Arkan* about the time and date of the complaint scrutiny, but failed to do so.

Upon *Arkan's* request, a letter was received from the Executive Director of the CEC with regard to complaints lodged in relation to the presidential elections. A copy of the final report was attached to the letter. This report provides answers to *Arkan's* inquiries, stating that the CEC has reviewed notes and complaints lodged, as received from local elections committees in all precincts, and they have been approved "as is." The majority of these complaints were against illegal campaigning on the elections day by representatives of candidates or from precinct staff. No claims were lodged against the counting process. *Arkan* has requested that the CEC inform them of the date and time set for CEC's review of election complaints with no response received to date.

V. PROBLEMS WITH THE PALESTINIAN ELECTIONS LEGAL FRAMEWORK

Our preparation and implementation of the Project, including discussions with Palestinian attorneys at the Workshop, highlighted a number of weaknesses, ambiguities and problems in the legislative framework governing elections in Palestine. These include:

(1) Validity of the Election Law: Some Palestinian attorneys question the validity of the Election Law on the grounds that it has never been ratified by the PLC, the law-making body of the PA. Of necessity the Law was adopted in December 1995 by the President of the PA, Yasser Arafat, before the PLC was created, to govern the election of the PLC and the President of the PA. While recognizing the necessity of the Law having been issued as a presidential decree in 1995, before the legislative body existed, some Palestinian attorneys maintain that the Election Law should have been ratified by the PLC once the PLC came into existence in 1996. The lack of clear legislative legitimacy behind the Election Law may be a factor in encouraging ad hoc rule-making by the President and the CEC regarding elections.

(2) Paucity of Election Regulations: The CEC has never adopted a unified set of regulations for implementation of the Election Law. It is unclear whether even the few spotty regulations published on the CEC's web-site were actually adopted by the CEC, or are just drafts.

Like most statutes anywhere, the Palestinian Election Law is general. Elections require attention to numerous procedural details that are normally set forth in regulations. The Election Law explicitly anticipates the adoption of implementing regulations on matters such as specifications for ballot boxes, polling booths and result protocols, but such regulations have never been adopted. To fill this gap, the CEC issued the Polling and Counting Manual shortly before election day for use by PSC officials. But the Manual was never formally adopted as a set of regulations, and for that reason it is questionable whether precinct officials were bound to follow it. Moreover, any attorney seeking to challenge a voting or counting practice detailed in the Manual (but not contained in the Election Law or any implementing regulation) would be in murky legal territory: courts in developing civil law countries are known for a kind of opportunistic formalism, and they might dismiss a legal challenge to a Manual-based practice on the grounds that the Manual-based practice was never made law, and therefore there is nothing to challenge. This of course would be an illogical result -- it is the very nature of the Manual-based practice that is the problem. But formalism sometimes prevails over substance in developing civil law systems, especially if state interests are involved, and therefore the lack of formally adopted regulations to implement the Election Law is something that may ironically make it harder for attorneys to challenge polling and counting procedures.

(3) Lack of Judicial Procedures for the EAC: The lack of detailed procedures for EAC proceedings is a glaring omission in the Palestinian laws governing the election CRP. The Election Law clearly requires speedy disposition of appeals – faster than the usual civil court procedures would allow – but does not specify how the EAC is supposed to truncate the process while still meeting minimum requirements of due process. The lack of written procedures leaves the court room to truncate the usual civil procedures (as it must do pursuant to the Election Law) in a manner that may prejudice one party or another. Written procedures would ensure that the public interest in minimum standards of fairness and due process (i.e., the rule of law) are not completely sacrificed to the public interest in a speedy resolution of election appeals.

(4) Control of Election Commissions by Incumbent Political Forces: The CEC has nine members, all appointed by the President. While the Election Law requires that the commissioners be “members of the Palestinian judiciary, outstanding academics, or lawyers, with reputable professional and career experience,” the fact that all are appointed by the President increases the likelihood that the Commission will reflect a bias for incumbent political forces. The power of the President to appoint all CEC members expresses itself down the chain of command through DEC to PSCs. Each DEC has five members, appointed by the CEC, and each PSC has four members, nominated by its corresponding DEC and approved by the CEC. This political bias could be mitigated by utilizing different appointment mechanisms for the CEC, such as allowing political parties to appoint a number of CEC members proportional to the vote that the parties received in the last prior legislative elections, or by allowing different branches of government – the President, the PLC and the Supreme Court – to appoint an equal number of CEC members. A CEC so comprised would be more reliably objective, or at least balanced, in its appointment of DEC and PSC commissioners, and the commissions at every level would likely be more objective and balanced in their resolution of election-related claims.

(5) Control of the EAC by Incumbent Political Forces: The five judges on the EAC are all appointed by the President of the PA. The vesting in the President of the sole power to appoint EAC judges manifests the same bias in favor of incumbent political forces seen in the method for appointing members of the CEC, DECs and PSCs. More democratic methods of appointment would include requiring that the President’s nominees be confirmed by the PLC, or giving the Judicial Council the power to nominate or confirm EAC judges.

(6) Denial of Rights of Claim and Appeal to Voters and Local Observers: The law does not recognize the right of voters or independent local observers to file claims regarding violations occurring during voting or counting, which is a major deviation from international fair election standards and a denial of simple due process. Because a voter’s interests are injured by fraud or misconduct in the polling or counting at the precinct where he or she votes, such a voter should have standing under commonly recognized legal norms to file a claim.

In addition, although a voter does have the right to file a claim in the pre-election period regarding denial of the voter’s registration by the PSC, the voter has no right to appeal this decision to a court. Final appeal may be had only from the PSC to the CEC. The lack of a right of appeal to a court of law from the decision of an administrative body (the CEC) contradicts commonly accepted due process norms, as well as basic laws of Palestine (according to the Palestinian lawyers at the Workshop). A citizen is normally entitled to appeal any decision of a state executive authority affecting his or her rights or interests to a neutral court of law.

VI. RECOMMENDATIONS

1. The legal framework for conducting elections in the Palestinian territories contains serious flaws described in this Report, including:

- (a) the failure of the PLC to ratify the Election Law;
- (b) the absence of implementing regulations on a number of important matters under the Election Law;
- (c) the absence of rules of procedure for the EAC;
- (d) internal inconsistencies in the Election Law;
- (e) the ultimate control of the President of the PA (and therefore incumbent political forces) over the appointment of election officials at every level (CEC, DEC and PSCs) and of EAC judges; and,
- (f) the denial of the right to file claims to voters and neutral local observers.

We believe USAID should consider supporting a legal advisory, educational or advocacy program to address these problems in the Palestinian election laws.

2. Based on the results of this Project, we believe that it would be worthwhile to explore further with *Arkan* and Palestinian legal NGOs the development of an election CRP Observation Program for the PLC elections scheduled for July. The PLC elections will be much more complex and contentious than the presidential election just conducted. More complex simply by virtue of the fact that there will be 88 races with multiple candidates for each, rather than one race with seven candidates, and more contentious because of the number of candidates and the inherently more competitive and personal nature of local legislative races covering geographically small constituencies. These factors are likely to combine to produce a far greater number of claims, many which will be potentially outcome-determinative in any of the 16 geographical constituencies.

A program for preliminary exploration of a claims observation project for the PLC elections and the development of such a project might proceed as follows:

- (a) *Arkan* staff follow up with participants from the January 7, 2005 program to find out what claims observation activities they carried out and to collect their reports. If they carried out claims observation activities would they be interested in developing a better-planned and more serious effort for the PLC elections? If they did not, why, and would they be interested or not in trying again for the PLC elections?
- (b) Based on the feedback from the *Arkan* staff, a CAS international expert returns to the Palestinian territories for a visit of up to two weeks, at least two months before the PLC elections to: (i) develop the dialogue with the above organizations regarding planning a legal observation effort for the PLC elections; (ii) open a dialogue with the Palestine Bar Association (“PBA”) to gauge its interest in participating in (x) advice, educational or

advocacy activities related to election law reform as described in Section V.1, and (y) a claims observation program for the PLC elections; (iii) meet with other potentially interested legal NGOs and representatives of the media to familiarize them with the claims observation concept and collect their feedback on it and (iv) meet with PA authorities including representatives of the permanent CEC, the judges of the EAC, the PLC and the executive authorities to familiarize them with the claims observation concept and collect their feedback on it. Based on the results of the foregoing meetings, bring representatives of interested observer organizations together for a workshop to discuss the modalities of their cooperation, possibly through a coalition, in implementing a claims observation program for the PLC elections and to develop a strategy and work plan for the program.

(c) If the previous activity is successful and the participant organizations maintain their interest in pursuing the claims observation program, a CAS international expert returns for a one week visit to assist them in the planning and coordination of their efforts. Another purpose of this visit would be to ensure that the NGOs are prepared to monitor the *pre-election* claims process, pertaining to disputes regarding the registration of candidates and parties, voters and other preliminary conditions for the conduct of the elections.

(d) Again following on the foregoing activity, a CAS international expert would return for a final visit one week before election day to assist the NGOs in the planning and coordination of their program for the observation of claims and disputes resolution arising out of and following from the voting and counting. A CAS international expert would remain in Palestine for at least one week after election day to assist the NGOs in observation of the consideration of claims and appeals by the DEC, the CEC and the EAC and in the preparation of their observation reports. The CAS international expert would also work with the groups on publicizing their reports (e.g. through a press conference) and using them for legal education and advocacy so that they have maximum impact in strengthening the rule of law in Palestine.

ANNEX 1
SCOPE OF WORK

Section A. Background, Scope of Work, Deliverables and Deliverables Schedule

A.1. Background

Elections are complicated endeavors. Logistically very complicated, they are also legally difficult. They must be conducted according to rules that are not widely or well known and often within very short time limitations. These rules are subject to significant interpretation (e.g., did the words exchanged at a polling station rise to the level of intimidation; or did the ballot handling procedure used at a polling station amount to fraud) that has important bearing on decisions that must be made quickly.

The January 9, 2005 elections to choose a new President for the Palestinian Authority are widely expected to be a watershed event with significant voter turnout as well as impressive international and regional attention. Under the authority and responsibility of the Ministry of Local Government and the Higher Committee for Local Elections, municipal elections are slated to begin in the West Bank on December 23, 2004 and in the Gaza Strip on January 27, 2005. Subsequent rounds of elections, both parliamentary (also under the CEC) and municipal, are expected during the first six months of 2005. These elections will occur pursuant to a newly amended election law (passed by the Palestinian Legislative Council and signed by the acting president of the Palestinian Authority on December 1, 2004). The municipal elections are being conducted by the Ministry of Local Government and the associated Higher Committee for Local Elections (HCLE), a structure that has been criticized by some members of the local and international community.

In response to the series of Palestinian elections scheduled for December through mid 2005, Palestinian organizations have begun preparing for a variety of roles in these elections, from campaigning to administration to monitoring. Most notably, many civil society organizations are preparing to take an active role in election monitoring, forming a network of organizations to supply a pool of trained observers. As many as 10,000 domestic election observers (not including international missions and news media) are expected to be registered and mobilized. In addition, on November 24, 2004, the Interim President of the Palestinian Authority, pursuant to the elections law, created a court for Elections Appeals. The court, if timely constituted, will consist of five judges chosen from judges serving in 'ordinary' Palestinian courts. It will have jurisdiction to review appeals against decisions of the Central Elections Commission, and any other decisions as stipulated by law. The law provides for very short time limits by which appeals have to be brought before the Court, and for the Court to decide on such appeals.

The combination of a closely scrutinized election, unprecedented numbers of monitors, a new election appellate body with untested rules, regulations, and procedures, and a recently amended election law contains the potential for complications. The possibility of legal challenges is increased. Just as an election must be monitored to ensure it is free and fair, so too must any challenges to that election be conducted pursuant to rules and regulations and standards that are public and appropriate. Election monitors help ensure free and fair elections by their presence and observation and, just as trial monitors do in high profile litigations or prosecutions, so too can legal professionals monitor a post election appeals process to ensure that legal processes are fair, transparent, and impartial. To ensure high quality work product, those monitoring legal process must be legal professionals, but must be trained in the standards (both international and local) applicable to an election as well as to a fair legal proceeding. The preparation of such legal monitors is not a new endeavor – legal development organizations (such as the American Bar Association) as well as advocacy groups (such as Human Rights Watch) have been training and fielding trial monitors to observe trial procedures in other countries and report on their compliance with international standards.

USAID's Support for Rule of Law Reform project is a three year project dedicated to providing assistance to strengthen legal education, promote the rule of law, and foster public trust in the legal system in Palestine. The three-year project works with law faculties, civil society organizations, and professional groups across the West Bank and Gaza. The ROL project proposes to assist in reducing confusion and complications that may arise from the application of a new law in a charged and rapidly moving environment by the election appeals court, which recently had new judges appointed to it. The ROL project intends to train a cadre of qualified Palestinian legal experts in elections and the nonpartisan, impartial nature of role of election monitoring as it might apply to an election appellate procedure. It is expected that these individuals will come from human rights and legal professional organizations likely to monitor post-election legal proceedings.

Election appeals monitoring is relatively novel and requires a unique combination of skills. The ROL project will field an elections expert with experience in post conflict elections processes and appeals to work with project staff [I think this is me -- TJ], and possibly in conjunction with election observer training efforts of the Tamkeen civil society project. Backstopping this expert and the ROL project field team will be two attorneys experienced in post conflict societies. One is also an election expert with civil society and monitor training experience. The other is a former litigator of highly public and closely watched cases with legal professional overseas development experience. Together, these local and international experts will develop and provide an appropriate training to a small group of Palestinian legal experts. To maximize the training's effects, experts will, with input from trainees, develop a checklist of the most important procedures and appropriate observation forms related to international standards to be followed to ensure a fair and transparent process. The project will publicize this checklist and other informational material via local media.

A.2. Scope of Work

It is the purpose of this subcontract to develop and conduct training for Palestinian legal professionals in the new election law, election observation issues, and its appeal procedures so that these professionals might impartially and professionally monitor any election appeals process that may ensue following the January 9th elections.

Under this SOW, the Subcontractor will undertake and complete the following specific tasks:

1. Outline the content of a one-day, election training program designed to develop legal professionals capable of monitoring and reporting on application of elections appeal procedures in a professional, nonpartisan and impartial fashion. The Subcontractor will deliver the outline to the Supporting Rule of Law Reform project for review and comment. The Supporting Rule of Law Reform project may request modifications to the outline before it is finalized.
2. Working closely with Supporting Rule of Law Reform project staff, and possibly with CSO representatives involved in the election observation organization, and Palestinian and expatriate experts, develop all necessary materials, in English, for the election legal expert training program. While the rest of the team will be required to provide input and draft sections of the materials package, the Subcontractor will have ultimate responsibility for completing the deliverable.
3. Lead a one-day workshop using the outline and materials developed in Tasks 1 and 2. The Subcontractor will be assisted by one or more Palestinian consultants and or ROL staff who will assist in design and leading of sessions directly related to Palestinian election laws, and the procedures for filing an election complaint. The Supporting for Rule of Law Reform project will develop criteria for selection of attending trainees. Supporting Rule of Law Reform project staff will provide all logistics and translation necessary for the workshops, which may be conducted in

partnership with the Palestinian Bar Association and possibly other CSOs. As currently planned, the training workshops are planned to occur in Ramallah.

4. Develop and deliver an outline of the final report for the activities conducted under this SOW.
5. Draft a final report on the workshops, with the final version of workshop materials, evaluations of participants, and an evaluation of the program as a whole. The report should also include recommendations. The report will be reviewed by Supporting Rule of Law Reform project prior to acceptance and the project may request modifications.
6. Work with workshop participants and Supporting Rule of Law Reform project staff to develop election appeal procedures checklist and observation forms to assist monitors to observe the complaints process.

The Supporting Rule of Law Reform project may request other related tasks of the consultant, depending on how the development of the political situation throughout December and January. Such tasks may include assistance to the Palestinian consultants as they plan training of additional numbers of lawyers, should there be enough demand. Additional level of effort (LOE) is allocated below for this purpose.

A.3. Deliverables

The Subcontractor will deliver the following to complete the assignment (as described above under “Tasks”):

1. Outline of the one-day workshop, due within two days of commencement of the assignment. Final versions of each outline are due shortly after receiving comments from the Supporting Rule of Law Reform project on the initial outlines.
2. Materials for the one-day workshop as appropriate. If necessary, modifications to the materials are due shortly after receiving comments from the Supporting Rule of Law Reform project.
3. Facilitation of the one-day training session to be organized and scheduled by the Supporting Rule of Law Reform project.
4. Facilitation of the development of election appeals checklist and observation forms at the one-day training workshop, for possible dissemination by the Supporting Rule of Law Reform project.
5. Draft and final versions of a report on the activities conducted under this SOW, with recommendations. Draft report is due within four days of completion of the workshop. Final report is due by 22 January 2005

A.4. Deliverables Schedule

Chemonics reserves the right to adjust the dates below as needed based on participants’ schedules, the political/security situation, and other issues that may arise.

- Preparation of materials should begin on or about 30 December 2004;
- Delivery of workshops in the West Bank will occur on or before 7 January 2005;
- Completion of the election appeals checklist and observation forms will occur at the January 7 training workshop, with ongoing revision thereafter up to the final report deadline;
- Completion of the final report is expected by 22 January 2005.

Chemonics reserves the unilateral right to terminate this fixed price Subcontract at any time, paying for all deliverables completed at the time of termination, and a pro-rata share of any deliverable in progress, in accordance with FAR Clause 52.249-4 "Termination for Convenience of the Government (Services) (Short Form) (April 1984)," which is incorporated by reference in Section L herein.

Changes in the scope of work above may be ordered by Chemonics pursuant to the Federal Acquisition Regulation (FAR) clause 52.243-1, entitled, Changes, which is incorporated by reference in Section L herein.

Should the political and security situation in the West Bank or Gaza necessitate a change in the Subcontractor's Scope of Work, Chemonics reserves the right to adjust payment to the Subcontractor accordingly.

ANNEX 2
CV OF CIVIC ACTION STRATEGIES INTERNATIONAL EXPERT
THEODORE C. JONAS

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Ted Jonas is an experienced attorney and elections and legislative process expert. Prior to attending law school, Mr. Jonas served three years as a legislative aide in the U.S. House of Representatives. His legal career includes serving a prestigious clerkship for the 11th Circuit Court of Appeals and working for the major U.S. law firm, King & Spalding. For six years from 1994 to 2000, Mr. Jonas lived and worked in the Republic of Georgia, serving first as an advisor to the Georgian Parliament under the auspices of the National Democratic Institute for International Affairs (“NDI”) and subsequently as one of the founding partners of GCG Law Office (now Ernst & Young’s “EY Law”), then and now the leading law firm in Georgia representing foreign investors and international financial institutions. During Mr. Jonas’s work for NDI, he led the effort to found a citizen election monitoring organization, initially only for the 1995 Georgian presidential and parliamentary elections; his roles included training local trainers and monitors in the election observation and complaint filing process nationwide. The organization, today called the International Foundation for Fair Elections and Democracy, is the only nationwide civic and democracy association in Georgia and played the key role in successfully challenging and overturning the results of the November 2003 Parliamentary elections in Georgia. Mr. Jonas has served as an international observer in numerous elections in Armenia and Georgia between 1995 and 2003.

EDUCATION J.D., Law, Cornell University, Ithaca, NY 1991.
B.A., History, Cornell University, Ithaca, NY 1984.

PROFESSIONAL HISTORY

2004 - present Principal, The Jonas Law Firm, PLLC. Founder of law firm specializing in international business transactions, corporate and energy matters, and foreign investment dispute resolution.

1999- 2004 Of Counsel Attorney, Baker and Botts, LLP. Represented clients in international M&A, private equity funds, joint ventures and energy projects. Practice also included international dispute resolution and bankruptcy matters.

1996-1999 Partner, GCG Law Office (now Ernst & Young), Tbilisi, Republic of Georgia. Founded and led multi-fold growth in leading local law firm. Practice included corporate, project development (major infrastructure projects such as ports and pipelines), privatizations, and advice on tax, litigation, labor and environmental matters. Clients ranged from major multinationals to NGOs. Handled all aspects of client representation, document drafting and negotiation, business development, client relations, firm management and associate training.

- 1994-1996** Parliamentary Specialist, National Democratic Institute, Tbilisi, Republic of Georgia. Designed and implemented training programs for Parliament, the press and political parties during tumultuous post-civil war period. Participated in parliamentary work on important public legislation, including the first post-Soviet Constitution and elections and local government laws. Organized nationwide civic movement to monitor presidential and parliamentary elections. Designed and conducted election monitoring training program, including education in the election law and polling procedures, observation rules and monitoring techniques..
- 1991-1994** Attorney, various positions. Handled commercial litigation matters for leading law firms in the southeastern U.S. Served as law clerk for a federal appellate judge, performing legal research, case decision and opinion drafting.
- 1986-1988** Legislative Assistant, U.S. Representatives Gerry Sikorski (D-MN). Handled committee work for active member of Energy and Commerce Committee, focusing on environment, energy and transportation issues. Drafted speeches, floor and committee statements and legislative language. Extensive dealings with constituents, lobbyists and Members of Congress.
- 1985-1986** Legislative Assistant, U.S. Representatives Lane Evans (D-IL). Advised Congressman on budget, tax, labor, trade and foreign affairs issues. Drafted legislative advice memoranda and speeches, handled constituent mail. Extensive dealings with constituents, lobbyists and Members of Congress.
- LANGUAGES** French and Georgian.
- PERSONAL** U.S. citizen.

ANNEX 3
ELECTIONS CLAIM FORM



WRITTEN COMPLAINT/REMARK BY REPRESENTATIVE/OBSERVER

ELECTORAL DISTRICT POLLING CENTER CENTER NO. STATION NO.

1. TO BE COMPLETED BY REPRESENTATIVE/OBSERVER

- REP./OBSERVER NAME _____ • CANDIDATE/FACTION/OBSERVER _____
- ADDRESS _____ TEL: _____ • COMPLAINT DATE: _____
- REP./COMMUNICATION COORD. _____ • TIME OF COMPLAINT _____

• COMPLAINT/REMARK SUBJECT:

• COMPLAINT/REMARK REASONS:

REP./OBSERVER SIGNATURE _____

- DOES THE COMPLAINT/REMARK AFFECT BALLOTING RESULTS AT THE STATION?
 AFFECTS GREATLY AFFECTS SLIGHTLY DOES NOT AFFECT OTHER

COMPLAINT/REMARK WITNESSES:

1. NAME: _____
OPINION AGREE WITH REP./OBSERVER
2. NAME: _____
OPINION AGREE WITH REP./OBSERVER
3. NAME: _____
OPINION AGREE WITH REP./OBSERVER

- TEL: _____
 AGREE WITH PRESIDING OFFICER
- TEL: _____
 AGREE WITH PRESIDING OFFICER
- TEL: _____
 AGREE WITH PRESIDING OFFICER

- 1. TO BE COMPLETED BY STATION PRESIDING OFFICER**
- RESPONSE TO COMPLAINT/REMARK AND HANDLING MECHANISM

STATION PRESIDING OFFICER'S SIGNATURE _____

NOTES:

ANNEX 4
WORKSHOP AGENDA

Lawyers' Workshop

Monitoring the Adjudication and Resolution of Election Claims

Friday, January 7, 2005

Location: Tamkeen Offices in Ramallah and Gaza
[Addresses]

Time: 8:30 am - 4:30 pm (with break for noon prayers and lunch)

Historic elections will be conducted on January 9, 2005 to choose the successor to President Arafat. Seven candidates are participating in the elections. There will be thousands of local and international observers. The Election Law (Law No. 13 of 1995) sets forth procedures for the filing of claims by voters, observers, candidates, their representatives and political parties, regarding violations of the law during the pre-election period and on election day. While ordinary election observers, both local and international, tend to report on violations that occur in the pre-election period and on election day, it is the resolution of claims – by the Polling Station Commissions, the District Election Commissions, the Central Election Commission and the Election Appeals Court – that will determine what, if anything, will be done about those violations. It is therefore crucial to an assessment of the fairness of elections that the claim adjudication and resolution process be monitored, because it is only this process which will actually produce a remedy to any serious violations that occur.

While election monitoring is a long-practiced and understood activity, and monitoring of criminal trials with important political and human rights implications is similarly well-established, the monitoring of the administrative and judicial processes by which election claims are heard, adjudicated, appealed and resolved is surprisingly new and unexplored, despite its importance to the validity of elections and the building of democracy under the rule of law. We are inviting you to be a part of a ground-breaking exploration of this issue, and an effort to implement, for the first time anywhere that we are aware of, a lawyers' monitoring effort aimed specifically at the fairness of the election claims adjudication process here in Palestine. The lessons we learn can be applied both to future Palestinian elections and to other countries seeking to build and improve upon their democratic and legal processes.

The Workshop

The workshop will be led by Mr. Theodore Jonas, an American attorney experienced in international election observation, election observer training, and advising local attorneys on the filing and pursuit of election claims, Dr. Ali Khashan, Legal Education Component Leader, Supporting Rule of Law Project, and Mr. Farid Hamdan, democratic empowerment expert, Tamkeen Project, Gaza City.

8:30 - 9:00	Registration and Coffee
9:00 - 9:15	Welcoming remarks and introductions
9:15 - 10:00	Overview of the voting and counting process of the election
10:00 - 10:45	Overview of the claim filing, adjudication and appeal process; administrative and judicial remedies for violations.
10:45 – 11:25	Principles of observing the claim resolution process
11:25 – 12:20	Break for Noon Prayers
12:20 – 1:00	Lunch
1:00 – 1:30	Where do we observe (Part I)? Precinct Commissions, District Commissions, Central Election Commission and Election Appeals Court
1:30 – 2:45	What do we observe? Discussion of draft checklist for observing claim resolution process at commissions and court.
2:45 – 3:00	Break
3:00 – 3:30	Where do we observe (Part II): Legal observers' deployment plan
3:30 – 4:30	What do we do with the results of our observation? Discussion of a lawyers' report on the election claims adjudication process.

ANNEX 5
CHECKLIST

Legal Observer Checklist

Observation of Claim Resolution in Commissions (PSCs, DEC's and CEC)

Name of Observer: _____

Organizational Affiliation (if any): _____

Polling Station:

Location and Number: _____

District Election Commission

Location and Number: _____

Central Election Commission: Yes ____ No ____

Composition of the Commission:

Chairman (name): _____

Secretary (name): _____

Members (names): _____

Number of Commissioners present during hearing of claim (or place checks to names of ones above who were present): _____

Claims:

Did you observe the filing of any claims? Yes ____ No ____ If yes, how many? _____

Claim No. 1:

Who filed the claim (name of person, if possible, and specify whether voter, candidate representative, party representative, candidate agent, party agent, local observer, international observer): _____

Was the claim being filed in the first instance, or was it an appeal (in a District Commission or the Central Election Commission only) of an earlier adjudication? If an appeal, from what body?

Briefly describe the nature of the claim, including the specific violation alleged: _____

Describe the procedure followed for the filing of the claim (also, specify whether a claim form was used): _____

Did you witness a hearing and adjudication of the claim? Yes _____ No _____

If you did not witness hearing and adjudication of the claim, did the commission state when such hearing and adjudication would occur? _____

If you did witness hearing and adjudication of the claim:

(a) Who was present at the hearing (besides the commission members and the claimant)? Were any persons denied entry to the hearing? _____

(b) Was the claimant represented by an attorney? Yes _____ No _____

(c) Was the claimant given an opportunity to explain his or her claim? _____

(d) Did the claimant desire to offer written evidence or witnesses? If so, what kind of evidence or type of witnesses? Did the Commission receive such written evidence and/or listen to the testimony of witnesses? _____

(e) Did the Commission or any other persons respond to (defend against) the claim? If so, did they offer evidence or witnesses? What kind, etc? _____

(f) Did the Commission members ask questions of the of the claimant and witnesses? What kinds of questions? _____

(g) Did the parties question each other's witnesses (cross-examination)? _____

(h) Were the parties given an equal opportunity to present claims and defenses and supporting evidence or witnesses? Please explain your answer. _____

(i) Did the Commission make a decision on the claim and announce it? Was the decision issued, or to be issued, in writing? What was the decision (include the remedy announced)? _____

(j) If the Commission did not announce a decision on the claim, did it state when it would do so?

(k) If the claim was denied, did the claimant indicate an intention to appeal, and if so, to what body? _____

(l) Based on your observations, did the Commission follow the procedure under the election law and other relevant law (eg., civil or administrative procedures code) for hearing and deciding on the claim? Please explain your answer, including the law on which you base your answer.

(m) Regardless of whether the Commission followed the procedures under the law (or if you believe the law is too vague to have given the Commission any law to follow) and based on your observations, was the procedure used fair to the claimant and the defense? Please explain your answer. _____
