

**To: Committee On The Elimination Of Racial Discrimination**

**From: Independent Commission for Human Rights ICHR. (NHRIs)**

**April 2019**

**Palestine**

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| cid:image001.png@01D4CD06.CAEA0820  **Profile of the Independent Commission for Human Rights**  As the Palestinian national human rights institution, the Independent Commission for Human Rights (ICHR) is a full member of the International Coordinating Committee of National Human Rights Institutions (ICC).  On 30 September 1993, the ICHR was established in accordance with a Presidential Decree promulgated by the President of the Palestinian National Authority/Chairman of the Executive Committee of the Palestine Liberation Organisation. The Decree was subsequently published under number 95/1995 in the Palestinian Official Gazette in 1995.  According to the Presidential Decree, the functions and responsibilities of the ICHR are outlined as follows: “To monitor and ensure that requirements for safeguarding human rights are fulfilled by various Palestinian laws, bylaws and regulations, as well as by functions of various departments, agencies and institutions of the State of Palestine and the Palestine Liberation Organisation.” The Decree tasks the ICHR with drafting its own bylaws in a manner that ensures the Commission’s independence and effectiveness. The ICHR commenced its activities in early 1994. The first ICHR Commissioner General was Dr. Hanan Ashrawi, who initiated and spearheaded establishment of the ICHR.  Article 31 of the Palestinian Amended Basic Law of 2003 provides that “[a]n independent Commission for Human Rights shall be established by law, which shall specify its formation, duties and jurisdiction. The Commission shall submit its reports to the President of the National Authority and the Palestinian Legislative Council.” Despite the fact that the law has not yet been approved or passed, the ICHR clearly operates on the basis of the 1994 Presidential Decree until such time the ICHR Law is endorsed.  In its capacity as the national human rights institution and Ombudsman office, the ICHR monitors and ensures that requirements for safeguarding human rights, including equality and non-discrimination, are fulfilled by various Palestinian laws, bylaws and regulations, as well as by functions of various Palestinian departments, agencies and institutions. The ICHR scope of work extends to address human rights violations, handle complaints of human rights abuses committed against citizens by official authorities, promote legal literacy, and monitor national legislation and policies, ensuring consistence with international human rights standards.  Communication Person: Khadija Zahran. Director of Monitoring Policies & National Legislations Department. E-mail. [khadeja@ichr.ps](mailto:khadeja@ichr.ps) |

**Written Statement by the Independent Commission for Human Rights on the initial and second periodic reports submitted by the State of Palestine under the International Convention on the Elimination of Racial Discrimination to the UN Committee on the Elimination of Racial Discrimination**

**Legal value of the Convention in the legal system**

Paragraph 20 of the State of Palestine’s report refers to the declaratory judgement rendered by the Supreme Constitutional Court (SCC) in Case No. 4 of 2017 dated 12 March 2018, regarding the legal status of international treaties in the Palestinian legal system. The SCC decision affirms that “[i]international conventions take precedence over domestic legislation whereby the norms of such conventions acquire superior force to domestic legislation, in keeping with the national, religious and cultural identity of the Palestinian Arab people.” The Court decision was made in the absence of an explicit constitutional or legal provision, which demonstrates the legal force of international conventions in Palestine. Along this vein, many questions and concerns can be raised about the SCC decision. Does the SCC decision imply that, in the Palestinian legal system, precedence of international treaties over domestic legislation, including impacts of treaty implementation, is dependent on how consistent these treaties are with the national, religious and cultural identity of the Palestinian people? What is meant by the national, religious and cultural identity? Can this identity be clearly defined? Is this identity agreed to by Palestinian society from across the spectrum? Does the SCC decision imply reservations to provisions of international treaties, including the Convention? Paragraph 1 of the report indicates that the State of Palestine acceded to core human rights treaties, including this Convention, “without entering any reservations to its articles.” How can such a restriction impact the implementation of provisions of the Convention and the possibility of invoking it before national courts?

**Implementation of the Convention in the Gaza Strip and Area C**

The State of Palestine’s report does not refer to a primary obligation of the Palestinian government, namely, the status of implementation of the provisions of the Convention in the entire Palestinian territory. While the Gaza Strip is under the *de facto* authority of Hamas, Israel retains full security and administrative control over Area C. Therefore, the provisions of both domestic legislation and the Convention cannot be enforced in both areas. The State of Palestine’s report does outline any measures or intentions, ensuring that the provisions of the Convention will be implemented in all parts of the State of Palestine.

**Information on groups protected under the Convention within the borders of the State of Palestine**

1. Paragraph 23 of the State of Palestine’s report indicates there are no accurate or comprehensive statistics on groups protected under the Convention at the national level, a situation attributable to a number of factors. Although there is merit in having statistics to recognise groups protected under the Convention within the boards of the State party, and despite the fact that it admits the importance of these statistics, the report does not lay out any practical measures taken by the State of Palestine with a view to providing statistics and information on protected groups. For example, it is not indicated that the Palestinian Central Bureau of Statistics (PCBS) is assigned to conduct surveys, including statistics and information on protected groups in particular, or at least collect information on these groups in the context of providing general statistics.
2. In 2018, the PCBS released the Population, Housing and Establishments Census, 2017. The census provides many indicators and statistics on the Palestinian population in the West Bank and Gaza Strip. On the other hand, the census does not present any statistics or indicators of groups protected under the Convention, enjoyment of public rights and freedoms, and non-discrimination in the enjoyment and exercise of these rights and freedoms.
3. Paragraph 25(a-g) of the State of Palestine’s report refers to groups protected under the Convention. At the same time, Paragraph 162(b) of the report lists other groups protected under the Convention. In the section on “Current demographic indicators of groups protected under the Convention within the borders of the State of Palestine”, the report does not mention these groups, namely, the Baha’is, Turkmens, Druze, Assyrians, Bosniaks, Circassians, and Kurds. Furthermore, the report is silent on other groups protected under the Convention, including the Jibbalis and dark-skinned people other than those of African ancestry. Why does the report not list these groups together with those mentioned in Paragraph 25? All these groups enjoy protection under the provisions of the Convention.
4. Paragraph 25(a-g) of the State of Palestine’s report refers to groups protected under the Convention and provides a descriptive presentation of a set of rights enshrined in Article 5 of the Convention. However, the report does not present an assessment of the situation of economic, social, cultural, civil and political rights of these groups. Do these groups enjoy their rights and freedoms as guaranteed under the constitution and law, while at the same time their descent does not play any role in derogating from or denying these rights and freedoms? What is the situation of services delivered to these groups? How capable are these groups of accessing services? What obstacles do they face? What elaborate measures can the government take to improve access to all rights for these protected groups?

**Definition of racial discrimination**

Paragraph 27 of the State of Palestine’s report lists several definitions of racial discrimination under domestic laws in force within the borders of the State of Palestine, most notably the Basic Law and Declaration of Independence. It should be noted that these definitions are short and inconsistent with Article 1 of the Convention. The Basic Law does not prohibit discrimination based on descent or national or ethnic origin. This is also the case of the Declaration of Independence. In this context, in consistence with the definition of Article 1 of the Convention, what legislative measures has the State of Palestine taken to provide a comprehensive definition of racial discrimination under Palestinian domestic legislation?

**Faithful implementation of the Convention**

Paragraph 33(a) of the State of Palestine’s report cites the Presidential Decree No. 8 of 1998 on the Strengthening of National Unity and Prevention of Incitement, which prohibits incitement to “acts of racial discrimination”, including racial discrimination practised by the State and its institutions. Paragraph 49 of the report also lists a number of legal texts, which aim at eliminating incitement to racial hatred, violence, and organisations that propagate racial discrimination. Although these provisions constitute an implementation of Article 2 of the Convention, according to significant information provided to the ICHR, the reality shows that these legal texts are used to tighten the grip on and prosecute political opponents. To this effect, a question can be addressed to the State of Palestine about the use of these provisions in an unfaithful manner. What actions and measures has the State of Palestine taken to ensure faithful implementation of the Convention on the ground?

**Israeli violations**

On more than one occasion, the State of Palestine’s report highlights Israeli racist measures against Palestinian citizens, including the groups protected under the Convention, and consequent abuses of various rights of these groups. However, the report does not outline the measures taken by the State of Palestine to alleviate the impact of Israeli racist measures on protected groups.

**Compounded discrimination**

The State of Palestine’s report does not refer to any manifestations of compounded (multiple) discrimination, which might have emerged, or has been practised, within the borders of the State of Palestine. The report does not address the status of women within protected groups. It does not show that if women’s rights have been derogated from or denied just because they are women and members of a group protected under the Convention. This is also the case of persons with disabilities.

**Temporary special measures**

Paragraph 79 of the State of Palestine’s report indicates that the State of Palestine reserved a seat for the Samaritan community in the first Palestinian Legislative Council of 1996. (This measure was no longer in place under the 2005 Law on General Elections and 2007 Law by Decree on General Elections). Still, the report does not outline any temporary special measures taken by the State of Palestine to ensure the adequate advancement of some groups protected under the Convention. These groups are in genuine need for protection, which may be temporarily necessary to safeguard equal enjoyment of human rights and fundamental freedoms. In this context, questions can be raised about the reason for cancelling this temporary special measure, which the Samaritans had in 1996. Why do not groups protected under the Convention have access to such a temporary special measure? Why cannot groups protected under the Convention be given this, and other, temporary special measures once again?