

**To: CRC 83 Pre-Sessional Working Group (03 Jun 2019 - 07 Jun 2019)**

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

**Statement by the Independent Commission for Human Rights on the Initial report submitted by the State of Palestine to the United Nations Committee on the Rights of the Child**

**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 Global Alliance of National Human Rights Institutions (GANRI). On 30 September 1993, the ICHR was established in accordance with a Presidential Decree promulgated by the late President Yasser Arafat. 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 President 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. Having been approved by the Palestinian Legislative Council (PLC) in 1997, later, the Palestinian Basic Law was promulgated and published in the Palestinian Official Gazette in 2002. Article 31 of the Basic Law 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 based on 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 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 the Executive branch of government, promote legal literacy, and monitor national legislation and policies, ensuring consistence with international human rights standards. |

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**Common core document**

1. The State of Palestine acceded to the Convention on the Rights of the Child (hereinafter the “Convention”) in April 2014. In its initial report to the Committee on the Rights of the Child (CRC), the State of Palestine does not enclose the common core document. The ICHR is, therefore, unaware of the official efforts made in the course of developing common core document.
2. The information reported in the initial report of the State of Palestine does not cover all relevant topics, which must have been included in line with the guidelines on a common core document.

**Below is a presentation of key topics of the common core document, which are not entirely and/or adequately covered by the initial report, submitted by the State of Palestine to the CRC.**

**General measures of implementation**

The Committee for Alignment of National Legislation Contrary, referred to Paragraph 16 of the initial report, has not played its role in harmonising national legislation with the provisions of international human rights conventions, particularly the Convention.

The initial report does not address the actions adopted by the State of Palestine to implement the measures, plans and strategies, described in Paragraphs 25-30.

In relation to data collection (Paragraphs 38-42), the initial report does not elaborate on government plans to upgrade and develop a national databank to access disaggregated and comprehensive information in consistence with the Convention.

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

1. Titled “General measures of implementation”, Paragraphs 14, 15 and 23 of the initial report state that the State of Palestine has passed extensive national legislation, which contributes to promoting and safeguarding fundamental human rights of all citizens, including children. This reflects the State of Palestine’s responsibility and duty to provide comprehensive care and protection to children. The body of legislation includes the Jordanian Juvenile Law No. 16 of 1954, which was in force in the West Bank, and Law on Juvenile Offenders No. 2 of 1937, which was operative in the Gaza Strip. The State of Palestine also promulgated the Palestinian Law by Decree on the Protection of Juveniles, published in the Official Gazette in March 2016. The Law on the Enforcement of Family Court Rulings No. 17 of 2016 also provides for executing decisions rendered by family courts in cases involving families and children. However, after the internal Palestinian political divide took place in 2007, not all laws by decrees issued forth by the West Bank-based Palestinian government are applicable in the Gaza Strip. These include the Law by Decree on the Protection of Juveniles. Meantime, the Law on Juvenile Offenders No. 2 of 1937 continues to be in force in the Gaza Strip. The State of Palestine’s initial report does not make clear whether the Palestinian government can apply UN human rights conventions to the Gaza Strip, effectively under control of the *de facto* authority of Hamas. Formed in July 2014, the Palestinian Government of National Consensus and all subsequent reshuffles, could not effectively exercise control over, administer or govern the Gaza Strip. As a result, enforcement of international laws, resolutions and conventions, to which the Palestinian government is committed, has been practically obstructed in Gaza. This is also the case of the prospects for applying international conventions to Area C in the West Bank, which is under full control of the Israeli occupying authorities.
2. The State of Palestine’s initial report does not refer to actions and measures, which reflect efforts made by the Palestinian government to ensure implementation of the Convention to the Gaza Strip and Area C.

**Lack of a legal framework for incorporating the Convention into the Palestinian legal system**

1. Paragraphs 19, 20 and 21 of the State of Palestine’s initial report emphasise the significant development associated with the legal value of international conventions, highlighting their superiority to domestic legislation. Contrary to the Supreme Constitutional Court’s interpretation, however, this development has not been translated into a formula, which provides the needed mechanisms for incorporating international conventions into the domestic legal system. Approved by the national legal framework, the legislative mechanism has not been applied to these conventions. International conventions have neither been published in the Palestinian Official Gazette nor has have they been made public.
2. The initial report does not make clear whether any measures or actions have been taken by the Palestinian government and/or judicial bodies to implement international conventions and invoke relevant provisions before national courts. According to the ICHR monitoring, the official position suggests a vague approach to adopting measures, which would ensure the enforcement of international human rights conventions on the domestic judicial system of Palestine.
3. Paragraph 36 of the State of Palestine’s initial report refers to establishment of the National Council for Children (NCC) as a national mechanism that aims at proposing public strategies and policies to provide care and protection to children. However, the NCC does not exist nor does its role have any impact.
4. The initial report does not make reference to the transformation of the Ministry of Social Affairs into the Ministry of Social Development (MoSD) in line with international obligations, approved by the State of Palestine upon signing relevant conventions. This conversion favourably reflects on the Ministry’s objectives, programmes and policies.
5. In the context of reviewing obstacles and challenges, Paragraph 37 of the initial report does not describe the impact of Israel’s siege on the Gaza Strip and consequences of frequent and daily attacks of the Israeli occupying forces, resulting in large-scale violations of the rights of children, including their right to life.

1. The initial report does not outline the budgetary resources dedicated to children within the MoSD budget line items, nor does not indicate the percentage of budget appropriations for the protection and care of the rights of children. The budget section provides a general overview of budget line items, which in part cover children. Budget allocations are not linked to national strategies and international cooperation with a view to assessing how international cooperation supports national strategies on the rights of children, prospects of implementation, and guarantee of children’s rights.

**Definition of the child**

Paragraphs 98-112 of the initial report provide a detailed account of disparities and inconsistencies among laws in force in the State of Palestine. Aspects of incompatibility include legal minimum age of the child and ensuing responsibilities. In particular, the report addresses the age of legal capacity, compulsory education age, working age, age for giving testimony, marriageable age, age of criminal liability, age of becoming eligible for business, and narcotic drug and alcohol use. On the other hand, the initial report does not present the actions and policies adopted by the government to remove legislative inconsistencies and ensure compliance with the provisions of the Convention, with a particular focus on the age of legal capacity, which gives rise to binding legal norms based on the principle of obligations and liabilities.

Continued enforcement of the foregoing pieces of legislation, especially outdated and inconsistent legal provisions with the Convention, and failure to bring them in line with human rights standards negatively impacts protection and safeguards of children’s rights.

**General principles**

**Right to non-discrimination**

Addressing non-discrimination against children, paragraphs 113 and 115 of the State of Palestine’s initial report are clearly anomalous. Article 115 admits that discrimination is in favour of male children, who are given the right to choose custody with either one of their parents. On the other hand, female children are forced to be in the custody of their male guardians. If she refuses to do so, a female child risks losing her maintenance.

**Child marriage**

Family laws allow child marriage. According to the Jordanian Personal Status Law No. 16 of 1976 in force in the West Bank, to be eligible for marriage, the male should be 16 years of age and the female 15 years of age. Issued by the Egyptian Administration of the Gaza Strip in 1954, the Family Rights Law permits female child marriage, providing that the marriageable age is 17 years and over. However, Articles 6, 7 and 8 of the Family Rights Law provide a serious exception, whereby the judge is allowed to marry a female child who is over nine years and the boy over 12 years of age. Article 6 provides that “[i]f the adolescent who has not completed eighteen years of age claims maturity, the judge shall be entitled to allow him be married in the event he is of an enduring physique”. Article 7 states: “If the female adolescent who has not completed seventeen years of age claims maturity, the judge shall be entitled to allow her be married in the event he is of an enduring physique”. Article 8 prescribes that “[m]o person may marry the male minor who has not completed twelve years of age or the female minor who has not completed nine years of age.”

Continued enforcement of the laws above is in violation of children’s rights. Children are married in disregard of the age set forth by the Palestinian Child Law. These laws also involve discrimination on the basis of gender, allowing female children to be married at a younger age than male children. This is contingent on the judge’s consideration of the child’s physique and appearance.

The State of Palestine’s initial report does not refer to continued discrimination, which involves male guardianship over females as a condition of marriage, particularly in relation to children. Both the Jordanian Personal Status Law and Egyptian Family Rights Law provide that male guardianship over females is a condition precedent of marriage. On the other hand, these Laws do not prescribe guardianship over males. This discrimination is based on gender. According to the Family Rights Law in force in the Gaza Strip, a female child between 15 and 18 years of age can be married upon the judge’s consent if her physical appearance indicates that she can endure marriage. Article 7 of the Personal Status Law goes even further, providing that “[t]he conclusion of the contract with a woman who has not completed eighteen years of age shall be prevented in case her fiancé is more than twenty years older than she is except after the judge verifies her consent and choice and that her interest is established therein.”

**Right to life, survival and development**

Between 2015 and 2018, the ICHR monitored a total of 194 child deaths, including 49 in 2015, 50 in 2016, 46 in 2017, and 49 in 2018. These comprised 27 incidents of death in unknown circumstances, 112 as a result of failure to comply with public safety measures, 20 in family feuds, 5 due to unexploded ordnances or explosive devices, 7 during interrogation by the Public Prosecution, 1 in a place of detention, 10 as a consequence of abuse of arms by citizens, and 6 as a result of medical malpractice. The ICHR does not have access to adequate information on measures taken by relevant authorities to hold violators to account, ensure that victims obtain redress, and provide reparations.

1. **Suicide**

Particularly Paragraph 138 of the initial report submitted by the State of Palestine to the CRC does not provide an account of suicides among children during the reporting period. In 2016-2017, the ICHR monitored three suicides by children in the Gaza Strip. The ICHR also published a reference paper on the high incidence of suicide among children in the Gaza Strip between 2015 and 2017. Additionally, the State of Palestine’s initial report does not provide a review of government policies and procedures to identify the reasons behind increasing suicides in general, and among children in particular.

1. **Child deaths resulting from failure to implement public safety measures as well as occupational safety and health standards in workplaces**

The initial report is silent on the results of investigation into the complaints, which the Ministry of Labour (MoL) received on exploitative child labour and the actions taken by the Ministry in response to these violations.

The report does not address child deaths that resulted from failure to implement occupational safety and health standards in workplaces. Between 2014 and 2017, the ICHR monitored nine deaths caused by failure to comply with occupational safety and health standards. In the informal business sector and household enterprises, child deaths comprised the majority of death incidents among children. Most household enterprises are beyond the formal control of the MoL. Although legislation and instructions on occupational safety and health standards in children’s environment are in place, employers do not comply with these regulations on the ground. The government does not provide adequate control to ensure compliance these standards, leading to a high incidence of child deaths. The government has not adopted policies or measures, which would integrate informal employment into government control. According to the ICHR estimations, children have been injured because of failure to implement occupational safety and health standards. However, statistical data are not available either from official authorities or employers. (Given the importance of this issue, the ICHR published a special report, titled *The Establishments of Death: Analytical Report on Death Resulting from Failure to Comply with Occupational Safety and Health Standards in Workplaces 2014-2018*).

1. **Extrajudicial killing of Palestinian children by the Israeli occupying forces**

The State of Palestine’s initial report does not provide a separate account of statistics on children killed and injured during the wars launched by Israel on the Gaza Strip. These violations were associated with Israel’s offensive, which targeted civilians and civilian objects.

**Civil rights and freedoms**

**Rights to freedom of association and peaceful assembly**

The initial report submitted by the State of Palestine to the CRC does not go through the obstacles to promoting children’s right to freedom of association. It does not outline policies approved by the government to enable children to exercise their right to freedom of association.

**Disability, basic health services and care**

**Children with disabilities**

The initial report omits any reference to the deterioration in the enjoyment of the rights to enjoy a dignified life by children with disabilities, including their right to a decent standard of living. The report is silent on the service procurement policy, social security allocations, and social protection of children with disabilities. (Although it addresses service procurement, the report fails to mention that this policy is inapplicable in the Gaza Strip).

The report does not go over school dropout rates because of disability or children who are not enrolled in schools because of their disabilities or other obstructive environmental causes.

**Education, leisure and cultural activities**

**Right to education**

1. The report does not address constrained government spending on education, particularly in the Gaza Strip. Government schools are affected by a major crisis, especially in the number of teachers and budget allocations. The shortage of teachers in various disciplines is close to 800. More than 70 percent of Gaza schools operate on a double shift basis because the Government of National Consensus has refused to employ teachers in the Gaza Strip for the third year in a row. A crisis has been caused by short operating expenses earmarked to government schools because the government has failed to transfer these amounts to the Gaza-based offices of the Ministry of Education and Higher Education (MoEHE). As a result, schools had to cover relevant operating expenses by income generated from school cafeterias, tuition fees, and some donations. This income meets the minimum needs of government schools. Cash donations of approximately NIS 1 million were received from students. In 2016, the Gaza-based government supported the education budget with NIS 136,000.
2. Government kindergartens continue to be at bottom low, only comprising 1.3 percent of all kindergartens. This inadequate number of kindergartens of the MoEHE is in conflict with the principles of availability and accessibility. The State should seek to increase the number of government kindergartens in line with an educational programme, which suits this category of children both in form and content. The programme should be culturally appropriate, fulfilling required criteria to achieve goals of the education process. Acceptability is a key component of the education system.

**Special protection measures**

**Child labour**

1. In 2017, employed children in the age group of 10-17 years comprised 3.4 percent, including 4.6 percent in the West Bank and 1.7 percent in the Gaza Strip. Having reported to the MoL, the ICHR unveiled poor government policies and measures to reduce child labour and eliminate child employment in the 10-15 age group. According to the provisions of Article 93 of the Palestinian Labour Law, it is prohibited to employ children before they attain 15 years of age. The Decision of the Minister of Labour No. 1 of 2004 prohibits the employment of children in dangerous work, hazardous industries or labour that is harmful to health. However, this prohibition only applies to children in 15-18 age group. The decision provides for compliance with the obligation not to expose children to dangerous vocations unsuited to their age.
2. Many children are employed in both simple and complex occupations, which are inappropriate for their age. Some children work to provide for their family needs. Child labour is associated with the poor economic situation in the occupied Palestinian territory. It is a cause of school dropouts and impacts the opportunity available for children to pursue their education and enjoy the fundamental rights enshrined in international conventions. A serious commitment is required to address this phenomenon. Legal controls prescribed by Article 93 of the Palestinian Labour Law and Article 14 of the Amended Palestinian Child Law need to be enforced.
3. The initial report submitted by the State of Palestine to the CRC makes reference to the National Committee on Child Labour. Established by Decision No. 80 of 2013, this committee does not play any role, however. It remains purely theoretical and does not technically exist.

**Children in conflict with the law**

The initial report of the State of Palestine does not provide an account of the abuses of children in conflict with the law. Paragraph 448 of the report only shows how children charged with legal violations are arrested using methods that are different from those applicable to adult persons. Between 2015 and 2018, the ICHR monitored 192 violations of fair trial guarantees, including disrespect of the rights of inmates and arbitrary detention. The ICHR also documented 362 violations of children’s right to physical safety, including from physical or moral assault, torture and threats during detention, and cruel, inhuman and degrading treatment. In addition, the report fails to mention any government measures or actions to hold persons responsible for reported violations to account.

**Children’s complaints**

The initial report submitted by the State of Palestine to the CRC does not make reference to violations against children. There is no mention in the report to the patterns of complaints the ICHR received between 2015 and 2018. During this period, 864 complaints pertaining to children’s rights were filed to the ICHR, including 260 in 2015, 230 in 2016, and 204 in 2017, and 152 in 2018. These complaints revolved around the following patterns of violations: right to childcare, protection from violence and abuse outside the family, and protection of children in conflict with the law. Protection involves fair trial guarantees, provision of shelters and care centres, right to physical safety, including from physical or moral assault, torture and threats during detention, and cruel, inhuman and degrading treatment. Additionally, the initial report does not present the measures and approaches to putting an end to these violations. In the context of commitment to accountability standards enshrined in the Convention, the report should have laid out the actions implemented to hold persons who abused children’s rights to account.