



## **FOLLOW-UP SUBMISSION**

**Al-Haq's Comments on the Responses of the State of Palestine to  
the Committee on the Elimination of Racial Discrimination  
During its First Periodic Review on 13-14 August 2019**

### **99<sup>th</sup> SESSION**

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*Al-Haq is an independent Palestinian non-governmental human rights organisation based in Ramallah, West Bank. Established in 1979 to protect and promote human rights and the rule of law in the Occupied Palestinian Territory, the organisation holds special consultative status with the United Nations Economic and Social Council since 2000.*



Al-Haq submitted its shadow report to the ninety-ninth session of the United Nations (UN) Committee on the Elimination of Racial Discrimination (hereinafter CERD or ‘the Committee’)<sup>1</sup> with regard to its review of State of Palestine’s initial and second periodic reports (hereinafter ‘State report’),<sup>2</sup> in relation to Palestine’s compliance with the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD or ‘the Convention’),<sup>3</sup> to which the State of Palestine has acceded without reservations and according to which it must adopt appropriate measures and means, without delay, to eliminate all forms of racial discrimination. Al-Haq has followed with interest the interactive dialogue between CERD Committee members and the official delegation of the State of Palestine during the Committee’s ninety-ninth session, which took place on 13 and 14 August 2019 at the UN Office in Geneva. In light of the responses given by the delegation of the State of Palestine during the review by the Committee, Al-Haq considers it important to submit a follow-up report and hopes the Committee will consider the following observations in developing its concluding observations on the State of Palestine:

1. As mentioned in Al-Haq’s submission to the Committee, Al-Haq reaffirms the importance of and the need to examine the wider context of Israel’s prolonged occupation of the Palestinian territory since 1967, stressing that this does not absolve the State of Palestine of its obligations to fulfil the provisions of the Convention. Al-Haq also reaffirms the simultaneous applicability of international humanitarian law, in particular the law of belligerent occupation, to the situation in the Occupied Palestinian Territory (OPT), in addition to applicable norms of public international law. Al-Haq reiterates its recommendation to the Committee that this particular context should be addressed in its concluding observations on the State of Palestine, in line with the purposes of the Convention and the Committee’s General Recommendation No. 18 on the prosecution of

<sup>1</sup> Al-Haq, “Al-Haq Submission to the Committee on the Elimination of Racial Discrimination on the First Periodic Review of the State of Palestine” (13 August 2019), available at: <http://alhaq.org/advocacy/targets/united-nations/1448--qq->.

<sup>2</sup> CERD, Initial and second periodic reports submitted by the State of Palestine under Article 9 of the Convention, due in 2017, 16 October 2018, UN Doc. CERD/C/PSE/1-2.

<sup>3</sup> *International Convention on the Elimination of All Forms of Racial Discrimination* (adopted 7 March 1966, entry into force 4 January 1969) 660 UNTS 195 (hereinafter ICERD).



perpetrators of crimes against humanity, including apartheid, and the importance of ensuring impunity is brought to an end.<sup>4</sup>

2. Al-Haq is concerned by remarks made during the review of the State of Palestine by members of the Committee, concerning the jurisdiction of the State of Palestine and the territorial scope of the OPT. In particular, Al-Haq notes with grave concern remarks to the effect that:

“parts of the Palestinian territories were occupied by Israel and this created specific and serious issues vis-a-vis the Convention. There were, however, territories that were not occupied by Israel. It was therefore surprising that there was a wealth of information on the territories on which the Palestinian authorities had no effective jurisdiction, and very little information on their own practices in the other territories. What was, more precisely, the surface of the territories that were occupied by Israel and that of territories that were not?”<sup>5</sup>

Al-Haq affirms that the OPT comprises the West Bank, including East Jerusalem, and the Gaza Strip, which remain under prolonged Israeli military occupation since 1967, in line with international humanitarian law applicable in the OPT.<sup>6</sup> In particular, this position has been recognised and reaffirmed repeatedly by the international community, including by the UN Security Council,<sup>7</sup> the UN General Assembly,<sup>8</sup> the International Court of Justice

<sup>4</sup> CERD, General Recommendation No. 18 on the establishment of an international tribunal to prosecute crimes against humanity, adopted at the Committee’s forty-fourth session in 1994, contained in UN Doc. A/49/18.

<sup>5</sup> OHCHR, “Anti-Semitism and Situation of Roma and People of African Descent Raised by Experts as the Committee on Racial Discrimination Examines the Report of the State of Palestine” (14 August 2019), available at: <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=24892&LangID=E>.

<sup>6</sup> Article 42 of the Regulations Respecting the Laws and Customs of War on Land annexed to the Fourth Hague Convention of 18 October 1907 (“Hague Regulations”) provides: “[t]erritory is considered occupied when it is actually placed under the authority of the hostile army. The occupation extends only to the territory where such authority has been established and can be exercised.” The Hague Regulations constitute customary international humanitarian law and are applicable in the OPT.

<sup>7</sup> In Resolution 242 (1967), the UN Security Council called on Israel, the Occupying Power, to withdraw from “territories occupied in the recent conflict”. These territories comprise the West Bank, including East Jerusalem, the Gaza Strip, and the occupied Syrian Golan, which remain under Israel’s military occupation ever since. *See, e.g.*, UN Security Council, Resolution 242 (1967), 22 November 1967, UN Doc. S/RES/242 (1967), para. 1(i).

<sup>8</sup> In Resolution 58/292 of 6 May 2004, the UN General Assembly affirmed that “the status of the Palestinian territory occupied since 1967, including East Jerusalem, remains one of military occupation, and... that the Palestinian people have the right to self-determination and to sovereignty over their territory and that Israel, the occupying Power, has



(ICJ),<sup>9</sup> and UN treaty bodies, including CERD,<sup>10</sup> in their various reviews of Israel, the Occupying Power.

Following recognition by the UN General Assembly of Palestine as a non-member observer State in 2012,<sup>11</sup> the State of Palestine ratified a number of international conventions, including seven of the nine core international human rights law treaties, comprising ICERD. These treaties are applicable to the benefit of individuals in the territory of the State of Palestine and subject to its jurisdiction.<sup>12</sup> Notably, the jurisdiction of the State of Palestine extends to the entirety of the OPT, with the human rights treaties to which it has acceded without reservations applying throughout the territory. Nevertheless, Al-Haq recalls the position by CERD that Israel, the Occupying Power, retains effective control over the OPT.<sup>13</sup> Accordingly, while the State of Palestine's jurisdiction extends throughout its territory, it is unable to exercise its jurisdiction fully in the OPT as a result of Israel's prolonged military occupation therein.

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only the duties and obligations of an occupying Power under the Geneva Convention relative to the Protection of Civilian Persons in Time of War, of 12 August 1949 and the Regulations annexed to the Hague Convention respecting the Laws and Customs of War on Land, of 1907". *See* UN General Assembly, Resolution 58/292, 6 May 2004, UN Doc. A/RES/58/292, para. 1.

<sup>9</sup> In 2004, the ICJ, in assessing the legality of the Annexation Wall constructed by Israel, the Occupying Power, in the occupied West Bank, including in and around East Jerusalem, observed that: "[t]he territories situated between the Green Line... and the former eastern boundary of Palestine under the Mandate were occupied by Israel in 1967 during the armed conflict between Israel and Jordan. Under customary international law, these were therefore occupied territories in which Israel had the status of occupying Power. Subsequent events in these territories... have done nothing to alter this situation. All these territories (including East Jerusalem) remain occupied territories and Israel has continued to have the status of occupying Power." *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, Advisory Opinion, I.C.J. Reports 2004, p. 136, para. 78.

<sup>10</sup> *See, e.g.* CERD, Concluding Observations on Israel, 3 April 2012, UN Doc. CERD/C/ISR/CO/14-16, para. 10: "the Committee is deeply concerned at the position of the State party to the effect that the Convention does not apply to all the territories under the State party's effective control, which not only include Israel proper but also the West Bank, including East Jerusalem, the Gaza Strip and the Occupied Syrian Golan. The Committee reiterates that such a position is not in accordance with the letter and spirit of the Convention, and international law, as also affirmed by the International Court of Justice and by other international bodies."

<sup>11</sup> UN General Assembly, Resolution 67/19, 29 November 2012, UN Doc. A/RES/67/19, para. 2.

<sup>12</sup> *See, e.g.,* Article 2(1) of the International Covenant on Civil and Political Rights (ICCPR); *see also* Article 3 of the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD): "States Parties particularly condemn racial segregation and apartheid and undertake to prevent, prohibit and eradicate all practices of this nature in territories under their jurisdiction."

<sup>13</sup> CERD, Concluding Observations on Israel, 3 April 2012, UN Doc. CERD/C/ISR/CO/14-16, para. 10.



In addition, the Oslo Accords signed between the Palestine Liberation Organization (PLO) and by Israel, as Occupying Power, conferring on Israel control over certain parts of the West Bank, designated as Areas B (partial control) and C (full control), remain temporary in nature,<sup>14</sup> not exceeding five years from the signing of the Agreement on the Gaza Strip and the Jericho Area, concluded in Cairo on 4 May 1994. Moreover, under Article 53 of the Vienna Convention on the Law of Treaties, to which the State of Palestine has acceded, the Oslo Accords cannot take precedence or priority over peremptory norms of international law, including the permanent sovereignty of the Palestinian people over their natural wealth and resources, as enshrined in Common Article 1 to the International Covenant on Civil and Political Rights (ICCPR)<sup>15</sup> and the International Covenant on Economic, Social and Cultural Rights (ICESCR),<sup>16</sup> to which the State of Palestine acceded without reservations.<sup>17</sup>

3. Accordingly, Al-Haq stresses that the entirety of the territory of the State of Palestine remains under prolonged colonial Israeli military occupation and is subject to Israel's effective control, as Occupying Power, while the Oslo Accords remain of temporary nature

<sup>14</sup> The preamble of the Israeli-Palestinian Interim Agreement on the West Bank and the Gaza Strip, Washington, D.C., 28 September 1995, recognised “that the aim of the Israeli-Palestinian negotiations within the current Middle East peace process is, among other things, to establish a Palestinian Interim Self-Government Authority... for the Palestinian people in the West Bank and the Gaza Strip, for a transitional period not exceeding five years from the date of signing the Agreement on the Gaza Strip and the Jericho Area... on May 4, 1994, leading to a permanent settlement based on Security Council Resolutions 242 and 338”.

<sup>15</sup> *International Covenant on Civil and Political Rights* (adopted 16 December 1966, entry into force 23 March 1976) 999 UNTS 171 (hereinafter ICCPR).

<sup>16</sup> *International Covenant on Economic, Social and Cultural Rights* (adopted 16 December 1966, entry into force 3 January 1976) 993 UNTS 3 (hereinafter ICESCR).

<sup>17</sup> On 26 March 2009, the UN Human Rights Council adopted Resolution 10/20 on the right of the Palestinian people to self-determination, which underlined “the purposes and principles of the Charter of the United Nations, in particular the provisions of Articles 1 and 55 thereof, which affirm the right of peoples to self-determination, and reaffirm[ed] the need for the scrupulous respect of the principle of refraining in international relations from the threat or use of force”. In its resolution 10/20, the Human Rights Council reaffirmed “the inalienable, permanent and unqualified right of the Palestinian people to self-determination, including their right to live in freedom, justice and dignity and to establish their sovereign, independent, democratic and viable contiguous State”. See UN Human Rights Council, Resolution 10/20, 26 March 2009, UN Doc. A/HRC/RES/10/20, para. 1. See also, UN General Assembly, Report of Special Committee to Investigate Israeli Practices Affecting the Human Rights of the Palestinian People and Other Arabs of Occupied Territories, 9 September 2009, UN Doc. A/64/339, para. 30. In paragraph 102(c) of the same report, the UN Special Committee recommended that: “[t]he Palestinian Authority should: (i) [a]bide by the relevant provisions of human rights law and international humanitarian law; (ii) [a]im to resolve the urgent human rights and humanitarian crisis currently facing the [OPT], and to fully restore the rule of law in areas under its control.”



and cannot supersede peremptory norms of international law, including the right of Palestinian refugees to return to their homes and property, and the right of the Palestinian people to self-determination, as mandated by international law.

4. The Palestinian context knows a complex legislative legacy, resulting from successive governing systems, which remain in place in the West Bank and the Gaza Strip, including laws from the Ottoman period, laws from the British mandatory period, Jordanian laws, Egyptian laws, and Israeli military orders. These must be unified by Palestinian laws legislated by the Palestinian Legislative Council (PLC). After the establishment of the Palestinian Authority, the first general Palestinian presidential and legislative elections were organised simultaneously on 20 January 1996. The PLC took over the legislative process and unified the laws in the West Bank and the Gaza Strip for the next ten years. On 9 January 2005, the second presidential elections were held, followed, on 25 January 2006, by the second elections for the PLC. Since then, no general presidential or legislative elections have been held, in clear violation of the Palestinian Basic Law (the interim Constitution), which stipulates in Article 36 that the term of the presidency is of four years and Article 47, which provides that the term of the PLC is also of four years. Thus, the legislative process since 2007 has been carried out through laws by decree issued by the Palestinian President, which are applied in practice in the West Bank and published in the Official Gazette in the West Bank, while they are not applied in the Gaza Strip. At the same time, there are laws issued by the Parliament in Gaza, which are published in the Official Gazette in Gaza and are applied in practice in the Gaza Strip, but not enforced in the West Bank. This context has contributed to the deepening of legislative duplication in the West Bank and the Gaza Strip and has hampered the process of unifying Palestinian legislation.

The Independent Central Palestinian Election Commission has met, on several occasions, with the Palestinian President in the West Bank and with the Hamas authorities in the Gaza Strip, with both parties having expressed their readiness to hold general elections. In addition, the Independent Central Election Commission has announced its full readiness to hold general elections in the West Bank and the Gaza Strip. Yet, as of now, no presidential decree has been issued to set a date for general presidential and legislative elections, as stipulated by the law. Al-Haq recommends that the Committee include a concluding observation calling on the State of Palestine to set, without delay, a date to hold general presidential and legislative elections in the West Bank and the Gaza Strip. The concluding observation should call upon the State of Palestine to ensure a free and transparent electoral



environment to enable Palestinian citizens to exercise their constitutional and legal right to run for and to vote in presidential and legislative elections, thus contributing to a serious reform in the fragmented Palestinian political system and the restoration of democratic life in the Palestinian context.

5. Al-Haq emphasizes the importance of including a concluding observation calling on the State of Palestine to urgently submit its common core document, without delay, in accordance with the harmonized guidelines, including disaggregated information, figures, and statistics on demographic, economic, social, and cultural characteristics of Palestinian society, historical realities, the country's constitutional and legal structure, the general framework for the promotion and protection of human rights, and information on non-discrimination, equality, and effective domestic remedies for victims of human rights violations, in line with the relevant guidelines in this regard.<sup>18</sup>
6. Al-Haq recalls that racial discrimination and racial segregation are not defined in Palestinian legislation, and recommends that the Committee include a concluding observation requesting the State of Palestine to adopt, without delay, a Palestinian law to combat racial discrimination, and to develop a national strategy to combat racial discrimination, racial segregation, and apartheid, in partnership with Palestinian civil society organisations, while also adopting effective measures to ensure their implementation. In addition, the State of Palestine must be called upon to establish a national institution to facilitate the implementation of the Convention in line with its obligations outlined in the Committee's General Recommendation No. 17,<sup>19</sup> considering such an institution has not yet been created and that there is no Palestinian legislation in this regard.
7. Al-Haq affirms that the Palestinian Supreme Constitutional Court (SCC), established during the internal Palestinian division by the President, pursuant to Presidential Decree No. 57 of 2016 on the formation of the SCC and which was published in the Official Gazette on 26 April 2016, was formed in violation of the Palestinian Basic Law (the interim Constitution) and contrary to the SCC Law of 2006. In addition, Al-Haq stresses that the

<sup>18</sup> UN, Compilation of Guidelines on the Form and Content of Reports to be Submitted by States Parties to the International Human Rights Treaties, Report of the Secretary-General, 3 June 2009, UN Doc. HRI/GEN/2/Rev.6.

<sup>19</sup> CERD, General Recommendation No. 17 on the establishment of national institutions to facilitate the implementation of the Convention, adopted at the Committee's forty-second session in 1993.



decisions rendered by the SCC have been met with widespread civil society opposition in the West Bank and the Gaza Strip for violating the provisions of the Palestinian Basic Law and those of the SCC Law itself. Moreover, the reservations formulated by the SCC to the international treaties to which the State of Palestine has acceded, including this Convention, on the basis of the ‘national, religious and cultural identity of the Arab Palestinian people’,<sup>20</sup> are general and overbroad, and would strip these treaties of their object and purpose. These reservations further violate the international treaties to which the State of Palestine has acceded, in terms of the manner in which reservations must be formulated, while they are contrary to the Palestinian Basic Law (the interim Constitution) and the Law on the SCC itself, which does not grant the Court such powers. As discussed in Al-Haq’s submission, the decision by the SCC to the effect that “international treaties or conventions are not in themselves applicable in Palestine, but must gain strength by going through the formal stages required to pass specific domestic legislation to enforce them”<sup>21</sup> means that ICERD and the treaties to which the State of Palestine has acceded without reservations, are not in force in the OPT, given that they have not been promulgated by a domestic Palestinian law and because they have not been published in the Official Gazette, in accordance with the SCC’s decision. As a result, the SCC’s decisions have adopted a dualist legal model, rather than a monist model, in dealing with the treaties to which the State of Palestine has acceded, without any legal basis. As such, Al-Haq reaffirms what has been stressed in countless statements and position papers issued by Palestinian civil society organisations in the West Bank and the Gaza Strip regarding the need to repeal the decision to form the SCC, which has contributed to the deepening of the internal Palestinian division, and to reconstitute the Court in accordance with the law and through national consensus in the West Bank and the Gaza Strip.

8. Al-Haq reaffirms that the decision by the SCC, on 12 December 2018, to dissolve the PLC is contrary to the Basic Law (the interim Constitution), in particular Article 113 thereof, which clearly enshrines that:

<sup>20</sup> See paragraph 15 of Al-Haq’s submission to CERD, at: Al-Haq, “Al-Haq Submission to the Committee on the Elimination of Racial Discrimination on the First Periodic Review of the State of Palestine” (13 August 2019), available at: <http://alhaq.org/advocacy/targets/united-nations/1448--qq->.

<sup>21</sup> See paragraph 14 of Al-Haq’s submission to CERD, at: Al-Haq, “Al-Haq Submission to the Committee on the Elimination of Racial Discrimination on the First Periodic Review of the State of Palestine” (13 August 2019), available at: <http://alhaq.org/advocacy/targets/united-nations/1448--qq->.





“[t]he Palestinian Legislative Council may not be dissolved or its work hindered during a state of emergency, nor shall the provisions of this title be suspended.”<sup>22</sup>

Thus, the SCC has clearly violated the Constitution, which does not allow the dissolution of the PLC even in cases of emergency. The inactivity of the PLC, during the period of the internal division, followed by its dissolution through an unconstitutional decision rendered by the SCC, has contributed to the deepening the internal Palestinian divide. As a result, a large number of laws by decree have been issued by the Palestinian President, which are effectively implemented in the West Bank but not in the Gaza Strip, while the Parliament in Gaza has been issuing laws applied in the Gaza Strip but not in the West Bank.

9. Seven months since the unconstitutional decision by the SCC to dissolve the PLC (the legislative authority), the Palestinian President issued two laws by decree on the judiciary dated 15 July 2019, amending the Law on the Judicial Authority No. 1 of 2002 and on the formation of a Transitional High Judicial Council. Both laws by decree were published in the Official Gazette the following day. The issuance of these two laws by decree has led to the dissolution of the High Judicial Council (the supreme judicial authority), as well as the dissolution of all panels of the High Court of Justice and of the Courts of Appeals, and the automatic referral of a quarter of Palestinian judges, totalling 52 judges, to retirement. By virtue of the two laws by decree, a transitional High Judicial Council was established for the period of one year, which may be extended for an additional six months upon the request of the Transitional High Judicial Council itself and by presidential decree. The President has granted the Transitional High Judicial Council wide powers, without safeguards or standards, to restructure the Palestinian courts on all levels with the exception of the SCC and the Palestinian Sharia courts, which are not covered by the provisions of the two laws by decree. In addition, these laws by decree are only applicable in practice in the West Bank but not in the Gaza Strip. Both Al-Haq<sup>23</sup> and Palestinian human rights

<sup>22</sup> Article 113, Amended Palestinian Basic Law (2003), available at: <https://www.palestinianbasiclaw.org/basic-law/2003-amended-basic-law>.

<sup>23</sup> Al-Haq, “Executive Summary: A Legal Treatise on the Laws by Decree Amending the Law on the Judicial Authority Law and on the Formation of a Transitional High Judicial Council” (29 July 2019), available at: <http://www.alhaq.org/advocacy/topics/palestinian-violations/1443--qq->.



organisations<sup>24</sup> have stressed that the two laws by decree violate the Palestinian Basic Law (the interim Constitution) and the principles of the rule of law, the separation of powers, and of judicial independence, in addition to the tenets of good governance. Al-Haq affirms the need for serious reforms in the Palestinian political system, including the need to hold general elections in the West Bank and the Gaza Strip to uphold the principle of the rule of law, ensure respect for human dignity, improve the human rights situation, and enforce the international treaties to which the State of Palestine has acceded.

10. Al-Haq stresses that ICERD, to which the State of Palestine acceded without reservations, is not being enforced in the judgments of the Palestinian judiciary. In its dialogue with the Committee, the State of Palestine referred to two judicial decisions rendered by Palestinian courts, including the judgment of the Jenin Magistrate Court in Criminal Case No. 1065/2013 of 20 October 2014 and the judgment of the Jenin Magistrate Court in Criminal Case No. 3443/2012 of 12 October 2014, which were rendered by the same judge. Al-Haq notes that these judgments are concerned with the right to freedom of expression and the right of peaceful assembly and that the victims in these cases have not been compensated, despite being acquitted in both judgments. Moreover, Al-Haq notes that neither of these two judgments is related to racial discrimination. In addition, no cases are pending before the Palestinian courts in relation to racial discrimination or racial segregation, while there have been no cases of compensation for victims of racial discrimination or racial segregation, within the meaning of the Convention.<sup>25</sup> As for the ruling of the Palestinian Court of Cassation in Case No. 56/2014 of 4 June 2014, which was referred to by the delegation of the State of Palestine, the Court of Cassation had invoked the Convention on the Rights of the Child (CRC)<sup>26</sup> and fair trial standards following the issuance of a final judgment by a Palestinian court convicting a child in conflict with the law. Consequently, in responding to the Committee's questions on how the Convention has been incorporated into judicial rulings, the State of Palestine merely referred to a few individual judgments, which do not reflect an obligation to enforce international treaties, including the

<sup>24</sup> Al-Haq, "Position paper by Palestinian human rights organisations: The Law by Decree Amending the Law on the Judicial Authority and the Law by Decree on the Formation of a Transitional High Judicial Council" (29 July 2019), available at: <http://www.alhaq.org/advocacy/topics/palestinian-violations/1442--qq->.

<sup>25</sup> See, in this regard, paragraph 11 of this report.

<sup>26</sup> *Convention on the Rights of the Child* (adopted 20 November 1989, entry into force 2 September 1990) 1577 UNTS 3 (hereinafter CRC).



Convention, in Palestinian judicial decisions. Al-Haq recommends that the Committee include a concluding observation requesting the State of Palestine to implement its commitment, without delay, to ensure the supremacy of international conventions to which it has acceded without reservations over domestic Palestinian legislation and to enforce them in Palestinian judicial decisions and matters of justice, in fulfilment of the purposes of the Convention and to ensure effective remedies for victims of racial discrimination and racial segregation. In addition, efforts are needed to develop training programmes and ensure capacity-building within the Palestinian judiciary and justice sector on how to enforce international treaties in judicial performance and in matters of justice.

11. There is a legal obstacle preventing redress and compensation of victims of violations of the Convention and core human rights treaties to which the State of Palestine has acceded without reservations. Notably, the Government Claims Law No. 25 of 1958 and its amendments do not permit the filing of claims against the Palestinian Government and its apparatuses to compensate victims for violations committed against them. In addition, the enforcement of judicial rulings against the Government, which is exclusively set out in the abovementioned law, is not carried out through the enforcement departments of the judiciary, but requires the approval of the Palestinian Prime Minister. There are also judicial decisions concerning compensation to be paid by the Government and by Government ministries, which have not been enforced for years because they have not yet been approved by the Palestinian Prime Minister. Moreover, compensation for violations related to racial discrimination and racial segregation are not included in the “exclusive” cases of the abovementioned law and, therefore, proceedings cannot be initiated against the Government and its apparatuses in this regard. Al-Haq recommends that the Committee request the State of Palestine to review, without delay, the enacted Government Claims Law and its amendments, including through Presidential Decree No. 18 of 2014 on the amendment of the Government Claims Law No. 25 of 1958, which was published in the Official Gazette on 15 July 2014, to guarantee the right to seek reparations from the Government and its apparatuses for human rights violations in general, and for violations of racial discrimination and racial segregation in particular, including the right to effective domestic remedies for victims.
12. There is no definition of ‘discrimination against women’ in Palestinian legislation, while there is no legal provision criminalising any form of discrimination against women in Palestinian legislation. As of now, the progress made in the implementation of the



Convention on the Elimination of All Forms of Discrimination against Women (CEDAW),<sup>27</sup> to which the State of Palestine has acceded without reservations on 2 April 2014, remains largely modest. CEDAW has not been enforced in judicial rulings by civil, Sharia, and ecclesiastical courts, while the 1976 Personal Status Law, applied in the West Bank, and the 1954 Family Rights Law, applied in the Gaza Strip, have not been amended since Palestine's accession to CEDAW. Meanwhile, the legal provisions related to marriage and family relations in the Personal Status Law and the Family Rights Law involve numerous forms of discrimination against women and have not been harmonized with CEDAW, in particular in what concerns the invalidity of marriage, the lack of proof of lineage, the inability to transmit inheritance through marriage in cases of different religions in Sharia and ecclesiastical laws, in addition to the possibility of polygamy, discrimination and inequality in eligibility of marriage and divorce, provisions on inheritance and testimony, and with regard to common property, amongst other matters.<sup>28</sup>

13. The legal provisions of the Personal Status Law and the Family Rights Law permit child marriage, and Article 279 of the Penal Code No. 16 of 1960 applicable in the West Bank – which corresponds to the Penal Code No. 74 of 1936 applicable in the Gaza Strip – to which the delegation of the State of Palestine referred in its responses to the Committee's questions on child marriage, provides for a penalty of one to six months' imprisonment for anyone who marries or conducts a marriage ceremony, in any capacity whatsoever, of a girl 'who has not reached 15 years of age'. Accordingly, the marriage of a girl who has reached 15 years of age is not considered a crime and no punishment is provided for it. The Family Rights Law of 1954, applied in the Gaza Strip, provides in Article 8 that "[n]o one shall marry a boy who has not attained the age of twelve and a girl who has not attained the age of nine." As such, and in accordance with the mentioned provision, which has not yet been repealed, it is permissible to allow the marriage of a boy who has reached the age

<sup>27</sup> *Convention on the Elimination of All Forms of Discrimination against Women* (adopted 18 December 1979, entry into force 3 September 1981) 1249 UNTS 13 (hereinafter CEDAW).

<sup>28</sup> See Al-Haq, Al-Haq Submission to the Committee on the Elimination of Discrimination against Women on the First Periodic Review of the State of Palestine (2018), available at: <http://www.alhaq.org/publications/publications-index/item/al-haq-submission-to-the-committee-on-the-elimination-of-discrimination-against-women-on-the-first-periodic-review-the-state-of-palestine>. See also, Al-Haq, "Al-Haq Submits a Follow-Up Report to the Committee on the Elimination of Discrimination Against Women Following its First Review of the State of Palestine" (13 July 2018), available at: <http://www.alhaq.org/advocacy/topics/palestinian-violations/1285-al-haq-submits-a-follow-up-report-to-the-committee-on-the-elimination-of-discrimination-against-women-following-its-first-review-of-the-state-of-palestine>.



of 12 and a girl who has reached the age of nine. It is worth mentioning that the CRC, to which the State of Palestine acceded on 2 April 2014 without reservations, and the Palestinian Child Law No. 7 of 2004, which was issued by the PLC and is in force in the West Bank and the Gaza Strip, define as a child, in Article 1, “every human being below the age of eighteen years”. It should be noted that the laws issued by the PLC before the internal Palestinian division since 2007, and the disruption of the PLC and its dissolution as of then, are equally applicable in both the West Bank and the Gaza Strip, in line with the PLC’s role in unifying Palestinian legislation.

14. Al-Haq recommends that the Committee call upon the State of Palestine to ensure, without delay, the harmonization of the Personal Status Law of 1976 in the West Bank, the Family Rights Law of 1954 in the Gaza Strip, and related procedural laws to achieve full justice and effective remedies. In addition, Al-Haq recommends that the Committee call on the State of Palestine to ensure that the 1960 Penal Code, applied in the West Bank, and the 1936 Penal Code, applied in the Gaza Strip, are fully harmonized with the international treaties to which the State of Palestine has acceded without reservations, and in particular CEDAW and ICERD. This underlines the need for serious reforms in the Palestinian political system, including through the holding of general elections in the West Bank and the Gaza Strip, and the restoration of the role of the PLC, as legislative authority.
15. In what concerns the killing of women on the grounds of ‘honour’ or so-called ‘honour killings’ (the prevailing societal designation), four provisions in Palestinian penal legislation in force in the West Bank and the Gaza Strip have been amended since 2011. In particular, Article 340 of the 1960 Penal Code, applied in the West Bank, was amended by repealing the legal exemptions from punishment for murder in adultery cases in addition to the repeal of mitigating legal justifications in cases of illegal bedding (not amounting to adultery), which were repealed in accordance with Law by Decree No. 7 of 2011, published in the Official Gazette on 10 October 2010. There are no judicial cases relating to this provision. In addition, Article 98 of the Penal Code, relating to crimes committed under the influence of a severe outburst of anger, has been amended so that the perpetrator may not benefit of mitigating legal justifications if the crime is committed against a woman on the grounds of ‘honour’; this Article was amended by virtue of Law by Decree No. 10 of 2014, which was published in the Official Gazette on 15 July 2014. Moreover, Article 308 of the Penal Code, concerning the cessation of criminal prosecution and the suspension of the execution of the penalty if the perpetrator marries the woman or girl who has been



raped, was repealed in accordance with Law by Decree No. 5 of 2018, published in the Official Gazette on 25 March 2018. In the Gaza Strip, Article 18 of the 1936 Penal Code concerning the legal defence in cases of murder has also been amended, although this amendment is not related to ‘honour killings’. In contrast, Administrative Order No. 102, issued since 4 February 1950, has not been amended and is still applicable in the Gaza Strip. It grants judges the authority to use discretionary mitigating grounds in ruling over crimes, including the killing of women. Courts usually resort in these types of cases to such mitigating discretionary grounds to reduce the punishment of the offender and to commute it to the level of a minor misdemeanour. Al-Haq recommends that the Committee adopt a concluding observation calling on the State of Palestine to review, without delay, the draft Penal Code of 2011 – to which the delegation of the State of Palestine referred in its review and in its State report submitted to the Committee – in partnership with civil society, and to enact it in full compliance with the international treaties to which the State of Palestine has acceded without reservations. The Committee must further call on the State of Palestine to formulate a public policy, in partnership with civil society, to combat the killing of women, both in terms of prevention and treatment, including by reviewing curricula and teaching methods in kindergartens, schools, and universities, and to ensure their conformity with human rights principles and values, and in particular the principles of equality, non-discrimination, and respect for others.<sup>29</sup>

16. There is no definition of trafficking in persons, and there is no law combatting trafficking in persons in Palestinian legislation. A national team, headed by the Palestinian Ministry of Interior, is developing a draft law to combat and punish trafficking in persons. While this draft was completed in 2018, it is yet to be approved. The Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the UN Convention against Transnational Organized Crime,<sup>30</sup> to which the State of Palestine has acceded, expressly requires the prevention and suppression of trafficking in persons, notably women and children, in addition to the provision of protection and assistance to

<sup>29</sup> See Al-Haq, Al-Haq Submission to the Committee on the Elimination of Discrimination against Women on the First Periodic Review of the State of Palestine (2018), available at: <http://www.alhaq.org/publications/publications-index/item/al-haq-submission-to-the-committee-on-the-elimination-of-discrimination-against-women-on-the-first-periodic-review-the-state-of-palestine>.

<sup>30</sup> *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime* (adopted 15 November 2000, entry into force 25 December 2003) 2237 UNTS 319.



victims of trafficking in persons and ensuring full respect for their human rights. Moreover, the Protocol requires States Parties to take legislative measures to criminalise trafficking in persons and to protect victims of trafficking. Al-Haq recommends that the Committee adopt a concluding observation requesting the State of Palestine to enact, without delay, a law against trafficking in persons in accordance with the treaties and protocols to which it has acceded, and to enforce such measures at the level of Palestinian judicial decisions. The State of Palestine should also be called upon to train and build the capacity of justice institutions in this regard and to develop a public and participatory policy with effective implementation measures and tools and to disseminate disaggregated statistical data on cases of trafficking in persons.

17. In the Palestinian legislative system, there is no law in force on legal aid. A draft law on legal aid has been on the agenda of the Palestinian Council of Ministers since 2011 and is yet to be adopted. Al-Haq recommends that the Committee urge the State of Palestine to discuss and approve, without delay, the draft law on legal aid, to include marginalised groups in the process, and to establish a legal aid fund. The enactment of the draft law on legal aid in addition to the creation of a legal aid fund constitute important measures towards achieving full justice and protection, especially amongst marginalised groups, in fulfilment of the purposes of the treaties to which the State of Palestine has acceded, including ICERD. The State of Palestine must also adopt a public, transparent, and participatory policy with civil society in this regard.

18. There are four perpetrators of violations of the right to the freedom of expression in the Palestinian context. These perpetrators include the Israeli occupying authorities, which violate the rights to freedom of opinion and expression in addition to Palestinians' digital rights in various and systematic forms, acting in particular through the Israeli Ministry of Strategic Affairs and the Cybercrimes Unit created by the Israeli Government to carry out surveillance over Palestinians' digital activity. In addition, there are bills in the Israeli Parliament which, if adopted, would result in violations of the right to freedom of expression and digital rights. Notably, there is a bill in the Israeli Parliament seeking to prohibit and punish the filming of Israeli occupying soldiers during their military service and a so-called 'Facebook Bill' seeking to moderate social media content. Moreover,



Palestinians are also targets of racist hate speech and incitement on social media.<sup>31</sup> In addition to violations by the Israeli occupying authorities in the OPT, Palestinians also face various violations of their right to freedom of expression and digital rights at the hands of the Palestinian Authority in the West Bank and the Hamas authorities in the Gaza Strip, particularly through the Law by Decree on Cybercrimes, applied in the West Bank, and the Law on the Misuse of Technology, applied in the Gaza Strip.<sup>32</sup> Al-Haq and Palestinian human rights organisations in the West Bank and the Gaza Strip have documented arbitrary arrests and detentions of Palestinians on the basis of these laws. Finally, the fourth party perpetrating violations of the right to freedom of expression and digital rights in the OPT includes corporations, such as Facebook, which in May 2019, closed down dozens of social media pages of Palestinian journalists, human rights defenders, and activists, in violation of international law and human rights standards.

19. Al-Haq recommends that the Committee adopt a final concluding observation requesting the State of Palestine to amend, without delay, the Law by Decree on Cybercrimes in the West Bank and the Law on the Misuse of Technology in the Gaza Strip, and to work towards the adoption of a law on the right of access to information, in partnership with civil society. Such amendments would contribute to ensuring respect for the right to freedom of expression and digital rights, and prohibiting racist hate speech and racial discrimination, in line with the purposes of the Convention and the Committee's General Recommendation No. 35.<sup>33</sup> Accordingly, this will contribute to ensuring respect for the obligations of the State of Palestine under the international treaties to which it has acceded, and will require the adoption of public and transparent democratic policies and practices in this regard.

<sup>31</sup> See, for example, Al-Haq, "Al-Haq Participates in the 8th Annual Summit on Human Rights in the Digital Age" (20 June 2019), available at: <http://www.alhaq.org/advocacy/topics/civil-and-social-rights/1423--qq->. See also, 7amleh – The Arab Center for the Advancement of Social Media, "The Index of Racism and Incitement in Israeli Social Media 2018: An inciting post against Palestinians every 66 seconds" (11 March 2019), available at: <https://7amleh.org/2019/03/11/the-index-of-racism-and-incitement-in-israeli-social-media-2018-an-inciting-post-against-palestinians-every-66-seconds/>.

<sup>32</sup> See Al-Haq, Measures Taken by Al-Haq to Counter the Law by Decree on Cybercrimes (2018), available at: <http://www.alhaq.org/publications/publications-index/item/measures-taken-by-al-haq-to-counter-the-law-by-decree-on-cybercrimes>.

<sup>33</sup> CERD, General Recommendation No. 35 on combating racist hate speech, adopted by the Committee at its eighty-third session, 26 September 2013, UN Doc. CERD/C/GC/35.