



**AL-HAQ SUBMISSION TO THE COMMITTEE  
ON THE ELIMINATION OF RACIAL  
DISCRIMINATION ON THE FIRST PERIODIC  
REVIEW OF THE STATE OF PALESTINE**

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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.*

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## Summary

1. In examining the State of Palestine's initial and second periodic reports (hereinafter 'State report' or 'the report'),<sup>1</sup> submitted to the ninety-ninth session of the Committee on the Elimination of Racial Discrimination (hereinafter CERD or 'the Committee'), Al-Haq affirms the importance of examining the broader context of Israel's prolonged occupation of the Palestinian territory since 1967. At the same time, Al-Haq stresses that this context does not absolve the State of Palestine of its obligation to give effect to the provisions and purposes of the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD or 'the Convention'),<sup>2</sup> to which it has acceded without reservations. In assessing the obligations of the State of Palestine under the Convention, the Committee should consider 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 urges the Committee to consider the conclusions of the 2017 report by the United Nations (UN) Economic and Social Commission for Western Asia (ESCWA), which concluded that Israel has established an apartheid regime over Palestinians, based on the strategic fragmentation of the Palestinian people.<sup>3</sup> In addition, Al-Haq calls on the Committee to examine the State of Palestine's report in light of Israel's widespread and systematic human rights violations committed against Palestinians, including policies and practices of racial discrimination and segregation, constituting the crime of apartheid.
2. The State of Palestine has not submitted its report on time, nor has it submitted its common core document to the UN treaty bodies. In addition, there is a rift in the Palestinian political system and amongst public authorities, which negatively affects the ability of the State of Palestine to enforce the Convention and its purposes without delay. ICERD, as well as the other core human rights treaties to which the State of Palestine has acceded without reservations, has not entered into force in the OPT in what concerns the decisions of the

<sup>1</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>2</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).

<sup>3</sup> ESCWA, *Israeli Practices towards the Palestinian People and the Question of Apartheid, Palestine and the Israeli Occupation*, Issue No. 1, 15 March 2017, UN Doc. E/ESCWA/ECRI/2017/1.



Palestinian Supreme Constitutional Court. No national institution has been established to facilitate the implementation of the Convention and its purposes in Palestine, in accordance with the Committee's general recommendations. The State of Palestine must work without delay to enact a Palestinian law to combat racial discrimination, guided by the Model Law Against Racial Discrimination, which forms part of the UN's efforts to combat racism and racial discrimination. This Model Law is deemed important as a reference document, especially in providing definitions, general principles, and measures, which may be addressed by national legislation to combat racial discrimination, including in relation to crimes, penalties, and all issues related to the protection of victims of racial discrimination, and the provision of effective remedies to victims. Al-Haq stresses the need to work without delay to adopt a national Palestinian strategy to combat racial discrimination, racial segregation, and apartheid, in partnership with all segments of Palestinian civil society. There is also a need to establish effective mechanisms to ensure the Convention's proper implementation on the ground, with clear and complementary roles and responsibilities in the implementation process. The strategy must continuously be reviewed, developed, and integrated in school curricula and university courses. A media plan should also be developed to widely promote the strategy. In addition, training programmes are needed for capacity-building in both the public and private sectors, in order to effectively contribute to the elimination of all forms of racial discrimination, racial segregation, and apartheid, and to promote human rights education within Palestinian society.

## 1. Introduction

3. Al-Haq submits this report to the ninety-ninth session of CERD, presenting Al-Haq's evaluation of the initial and second periodic reports submitted by the State of Palestine,<sup>4</sup> and its commitment to the implementation of ICERD, to which Palestine acceded on 2 April 2014 without reservations. In addition, Al-Haq's report evaluates the extent to which the State of Palestine has fulfilled its obligations under the Convention, by adopting appropriate measures and means, both legislative and non-legislative, and without delay, towards eliminating racial discrimination in all its forms.
4. Israel's prolonged occupation of the Palestinian territory, comprising the West Bank, including East Jerusalem, and the Gaza Strip, since 1967, remains a major obstacle towards

<sup>4</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.



eliminating racial discrimination and ending policies and practices of racial segregation and apartheid in the OPT. As an integral part of the context in which the State of Palestine operates, the Committee must consider the extent to which the State of Palestine is able to protect the occupied Palestinian population from racial discrimination at the hands of the Israeli occupying authorities, in light of Israel's prolonged occupation of the Palestinian territory and institutionalised impunity for widespread and systematic human rights violations committed against Palestinians.

5. Examining the wider context of Israel's prolonged occupation is not meant to absolve the State of Palestine of its obligations to respect, protect, and fulfil the rights of Palestinians within its territory and subject to its jurisdiction, in accordance with the international human rights treaties to which the State of Palestine has acceded without reservations in addition to relevant international standards. Instead, the importance of examining the context of Israel's prolonged occupation stems from the concurrent applicability of international human rights treaties ratified by Israel, the Occupying Power, and by the State of Palestine, which are applicable in the OPT, including ICERD.
6. Moreover, when assessing compliance by the State of Palestine with ICERD, the Committee must consider the simultaneous applicability of international humanitarian law, in particular the law of belligerent occupation, to the situation in the OPT, in addition to the relevant norms of public international law. In particular, the Committee must consider the illegality of Israeli settlements in the OPT under international law,<sup>5</sup> the illegality of the Annexation Wall built in the West Bank, including in and around occupied East Jerusalem,<sup>6</sup> the inadmissibility of the acquisition of territory by war,<sup>7</sup> and the prohibitions on annexation and colonisation of occupied territory.<sup>8</sup>
7. While the State of Palestine remains under prolonged and colonial Israeli military occupation, in violation of international law, the Israeli occupying authorities continue to

<sup>5</sup> See, e.g., UN Security Council, Resolution 2334 (2016), 23 December 2016, UN Doc. S/RES/2334 (2016), para. 1.

<sup>6</sup> *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, Advisory Opinion, I.C.J. Reports 2004, p. 136, para. 142.

<sup>7</sup> See, e.g., UN Security Council, Resolution 242 (1967), 22 November 1967, UN Doc. S/RES/242 (1967), second preambular paragraph.

<sup>8</sup> Articles 47 and 49, *Convention (IV) relative to the Protection of Civilian Persons in Time of War*, Geneva, 12 August 1949 (hereinafter 'Fourth Geneva Convention').



deny Palestinians their inalienable rights of return to their homes and properties, and to self-determination, including permanent sovereignty over natural wealth and resources. The Israeli occupying authorities have established a systematic regime of racial domination and oppression over Palestinians, through the strategic fragmentation of the Palestinian people, as found by the 2017 ESCWA report on Israeli Practices towards the Palestinian People and the Question of Apartheid. The 2017 ESCWA report, which offered comparisons with the apartheid regime in South Africa, highlighted the fragmentation of Palestinians into four areas as the principal method by which Israel maintains its systematic regime of racial domination and oppression over the Palestinian people as a whole.<sup>9</sup>

8. The apartheid regime established by the Israeli occupying authorities, and the racial discrimination it entails, affects the various civil, political, economic, social, and cultural rights and the lives of Palestinians in the OPT, as affirmed by the Committee in its concluding observations on Israel. In particular, Israel, the Occupying Power, has established two separate judicial systems in the OPT for Israeli settlers in Israeli settlements that have been established in the OPT in violation of International law. Palestinians residing under Israel's prolonged occupation face policies and practices of racial segregation and may not equally use public roads and infrastructure, such as in the Old City of Hebron, while they are denied access to basic services and natural resources, including water, which are owed to the protected Palestinian population. Further, Israel's regime of racial domination and oppression over Palestinians is embodied in a complex set of restrictions on the Palestinians' right to freedom of movement, including as a result of the construction of the Annexation Wall, in violation of international law,<sup>10</sup> dozens of Israeli military checkpoints, separate roads for Israeli settlers and for Palestinians, and a permit regime imposed solely on the occupied Palestinian population.<sup>11</sup> In addition, Israel's policies have included the isolation of East Jerusalem from the rest of the West Bank, its judaisation and colonisation, the continued illegal settlement construction by successive Israeli Governments, in addition to policies and practices of collective punishment throughout the OPT, including the closure imposed by Israel, the Occupying

<sup>9</sup> ESCWA, Israeli Practices towards the Palestinian People and the Question of Apartheid, Palestine and the Israeli Occupation, Issue No. 1, 15 March 2017, UN Doc. E/ESCWA/ECRI/2017/1.

<sup>10</sup> *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, Advisory Opinion, I.C.J. Reports 2004, p. 136, para. 142.

<sup>11</sup> CERD, Concluding Observations on Israel, 9 March 2012, UN Doc. CERD/C/ISR/CO/14-16, para. 24.



Power, on some two million Palestinians in the occupied Gaza Strip, for years. Al-Haq recommends that these issues be addressed in the Committee's discussion with the delegation of the State of Palestine and in the Committee's concluding observations on the first review of the State of Palestine, to ensure mechanisms and procedures are put in place to effectively contribute to the suppression and dismantling of Israel's racial segregation and apartheid regime over the Palestinian people.

9. The question of refugeehood, which is linked to the Palestinian Nakba of 1948, and is intrinsically related to the right of return of Palestinian refugees and the right to self-determination of the Palestinian people, is an important aspect of the Convention within the Palestinian context and should be emphasized in the Committee's discussion with the delegation of the State of Palestine. In particular, emphasis should be placed on fulfilling the Committee's General Recommendation No. 22 of 1996, which affirmed the right of refugees and displaced persons to return to their homes of origin under conditions of safety, and stressed the obligation of States parties to the Convention to have restored to them property of which they were deprived in the course of the conflict, and to be compensated appropriately for any such property that cannot be restored to them, with any commitments or statements relating to such property made under duress being null and void.<sup>12</sup> In addition, the Committee's General Recommendation No. 23 of 1997 on the rights of indigenous peoples<sup>13</sup> and General Recommendation No. 21 of 1996 on the right to self-determination<sup>14</sup> must also be highlighted, while the Committee's concluding observations on Israel in 1987, 1992, 1998, and 2007 addressing the right of Palestinian refugees to return and the right of Palestinians to self-determination, must be realised.
10. The State of Palestine has not submitted its common core document contrary to the harmonized guidelines on reporting under the international human rights treaties. The common core document in addition to the initial and second periodic reports submitted by the State of Palestine to the Committee form an integral part of the State party's reports,

<sup>12</sup> CERD, General Recommendation No. 22 on Article 5 and refugees and displaced persons, adopted by the Committee at its forty-ninth session in 1996, contained in UN Doc. A/51/18, para. 2.

<sup>13</sup> CERD, General Recommendation No. 23 on indigenous peoples, adopted by the Committee at its fifty-first session in 1997, contained in UN Doc. A/52/18.

<sup>14</sup> CERD, General Recommendation No. 21 on the right to self-determination, adopted by the Committee at its forty-eighth session in 1996, contained in UN Doc. A/51/18.



which should contain sufficient information to ensure the Committee can form a comprehensive understanding of the extent to which the State has fulfilled its obligations under the Convention.<sup>15</sup> The common core document must include information on the reporting State, including the demographic, economic, social, and cultural characteristics of the State as well as its constitutional, political, and legal structures. In addition, the common core document must include the legal framework for the protection and promotion of human rights at the national level, and further human rights-related information, including in relation to the principles of equality and non-discrimination, and the right to an effective remedy.<sup>16</sup> Al-Haq recommends that CERD call on the State of Palestine to submit without delay its common core document in compliance with the harmonized guidelines on the form and content of State parties' reports and the Committee's General Recommendation No. 32, which:

“confirms and amplifies the guidance provided to States parties in the Harmonized guidelines on reporting under the international human rights treaties, including guidelines on a common core document and treaty-specific documents (HRI/MC/2006/3) and the Guidelines for the CERD-specific document to be submitted by States parties under article 9, paragraph 1, of the Convention (CERD/C/2007/1).”<sup>17</sup>

11. The State of Palestine did not submit its report on time, with the Committee having received Palestine's initial and second periodic reports on 21 March 2018, contrary to Article 9 of the Convention, which requires the submission of reports within one year of the entry into force of the Convention, and every two years thereafter. Al-Haq recommends that the Committee remind the State of Palestine to submit its reports in a timely manner in accordance with Article 9 of the Convention and the Committee's General Recommendation No. 6 of 1982 on overdue reports.<sup>18</sup>

<sup>15</sup> See UN Doc. HRI/GEN/2/ Rev.6, para. 24.

<sup>16</sup> See UN Doc. HRI/GEN/2/ Rev.6, paras. 31-59.

<sup>17</sup> CERD, General Recommendation No. 32, The meaning and scope of special measures in the International Convention on the Elimination of All Forms of Racial Discrimination, adopted by the Committee at its seventy-fifth session, 24 September 2009, para. 36.

<sup>18</sup> CERD, General Recommendation No. 6 on overdue reports, adopted at the Committee's twenty-fifth session in 1982, contained in UN Doc. A/37/18.





12. Regarding the internal Palestinian context, there is a rift in the Palestinian political system, with the internal division continuing since 2007, which negatively affects legislation, policy, and practice in the West Bank and Gaza Strip. The Palestinian Legislative Council (the Parliament) was suspended during the years of the division and was recently dissolved by an unconstitutional decision rendered by the Supreme Constitutional Court, on 12 December 2018. Further, the laws by decree issued by the Palestinian President during the absence of the Parliament are applied in the West Bank but not in the Gaza Strip, while the laws issued by the Parliament in Gaza are applied in Gaza but not in the West Bank. In addition, the constitutional four-year mandate of the Palestinian President and of the Palestinian Legislative Council, according to Articles 36 and 47 of the 2003 Amended Palestinian Basic Law and its amendments, have long expired, while no general, presidential and legislative elections have yet taken place. In addition, the Palestinian judiciary, especially in the recent period, has been in a state of deterioration, which negatively affects the enforcement of the State of Palestine's obligations under the Convention at both the legislative and practical levels. Al-Haq recommends that the Committee call upon the State of Palestine to undertake serious reforms in its political system and to hold general democratic elections, thereby strengthening efforts by the State of Palestine to implement its obligations under the Convention and the Convention's purposes, without delay, in the West Bank and Gaza Strip.
13. In its concluding observations on the initial report of the State of Palestine, the UN Committee on the Elimination of Discrimination against Women (CEDAW), stressed, inter alia, "the crucial role of the legislative power in ensuring the full implementation of the Convention",<sup>19</sup> and "invite[d] the State party to take all appropriate measures to urgently convene the Palestinian Legislative Council and ensure that the Council, in line with its mandate, takes the necessary steps regarding the implementation of the present concluding observations between now and the submission of the next periodic report."<sup>20</sup>
14. The Convention, as well as further core human rights treaties to which the State of Palestine has acceded without reservations, has not entered into force in the OPT in what concerns the decisions of the Palestinian Supreme Constitutional Court. This was affirmed, on 12

<sup>19</sup> CEDAW, Concluding observations on the initial report of the State of Palestine, 25 July 2018, UN Doc. CEDAW/C/PSE/CO/1, para. 8.

<sup>20</sup> *Ibid.*



March 2018, by the Supreme Constitutional Court in Decision No. 5 of 2017, when the Court was presented with a constitutional interpretation concerning Article 10 of the 2003 Amended Palestinian Basic Law and its amendments, stipulating that “[b]asic human rights and liberties shall be protected and respected” and that “[t]he Palestinian National Authority shall work without delay to become a party to regional and international declarations and covenants that protect human rights.” In its decision, the Court adopted the principle of dualism and ruled 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.” However, since the Convention has not been promulgated in domestic Palestinian legislation or published in the Official Gazette, it has not entered into force in the OPT in what concerns the decisions of the Supreme Constitutional Court. The abovementioned decision of the Supreme Constitutional Court is unconstitutional and has no basis in the 2003 Amended Palestinian Basic Law and its amendments. The Supreme Constitutional Court was established unconstitutionally, and it has unconstitutionally dissolved the Palestinian Legislative Council on 12 December 2018. The Court’s formation and the decisions it has rendered, including its decision to dissolve the Palestinian Legislative Council, have been met with considerable opposition from Palestinian civil society organisations, who have called for the dissolution of the Supreme Constitutional Court and the holding of general elections.

<sup>21</sup> In addition, Palestinian civil society organisations have also called for serious reforms in the Palestinian judiciary and the justice sector.<sup>22</sup>

15. On 19 November 2017, the Palestinian Supreme Constitutional Court issued Decision No. 4 of 2017, in which it decided on “the supremacy of international instruments over domestic legislation, in line with the national, religious, and cultural identity of the Arab Palestinian people.” The Supreme Constitutional Court formulated general and overbroad reservations, based on the so-called ‘national, religious and cultural identity of the Arab Palestinian people’, to international conventions to which the State of Palestine acceded

<sup>21</sup> Al-Haq, “Position Paper by Palestinian Civil Society Organizations and the Independent Commission for Human Rights on the Decision by the Supreme Constitutional Court to Dissolve the Palestinian Legislative Council and to Call for Legislative Elections” (27 December 2018), available at: <http://www.alhaq.org/advocacy/topics/palestinian-violations/1338--qq->.

<sup>22</sup> Al-Haq, “Position paper by Palestinian human rights organizations: 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->.



without reservations, in violation of the Palestinian Basic Law and of the 2006 Law on the Supreme Constitutional Court and its amendments, which do not grant the Court such powers. The decision further violated the obligations of the State of Palestine under ICERD and the other core human rights treaties to which it has acceded, without reservations. In its concluding observations on the initial report of the State of Palestine, CEDAW stressed, inter alia, in relation to the legal status of the Convention on the Elimination of All Forms of Discrimination against Women in the OPT, that:

“[t]he Committee commends the State party for ratifying the Convention without reservations. It notes that, in accordance with the interpretation of the Supreme Constitutional Court, in its decision No. 4 (2017) of 19 November 2017, that international treaties acceded to by the State party take precedence over national legislation, the provisions of the Convention must be incorporated into national law. The Committee is concerned, however, that the Convention has not been published in the Official Gazette in order to make it applicable in the State party. It is also concerned about the interpretation of the Supreme Constitutional Court, in its above-mentioned decision, that international conventions take precedence over national law only insofar as they are consistent with the national, religious and cultural identity of the Palestinian people”.<sup>23</sup>

Al-Haq recommends that the Committee discuss these important issues related to the entry into force and the implementation of the Convention with the delegation of the State of Palestine and that it issue concluding observations in relation to the Palestinian Supreme Constitutional Court, the dissolution of the Palestinian Legislative Council, and the continued deterioration in the Palestinian Judiciary, which have negative repercussions on the State of Palestine’s obligations, and which should be addressed in a way that promotes the implementation of Palestine’s obligations under the Convention.

16. The introduction of the report submitted by the State of Palestine, under the heading “[c]urrent demographic indicators of groups protected under the Convention within the borders of the State of Palestine”, indicates that there are no accurate or comprehensive

<sup>23</sup> CEDAW, Concluding observations on the initial report of the State of Palestine, 25 July 2018, UN Doc. CEDAW/C/PSE/CO/1, para. 12.



statistics on the groups protected by the Convention at the national level.<sup>24</sup> Al-Haq recommends that the Committee call on the State of Palestine to act without delay, to set a timeframe for the completion of these indicators and to show progress, as well as to ensure that these indicators are regularly updated, and to provide information on the ways in which individuals are identified as belonging to a specific race or ethnic group or groups, while taking into consideration the relevant provisions of the Convention and the Committee's general recommendations in this regard.

## 2. Article 1

17. There is no definition of racial discrimination in Palestinian legislation, while there is no specific legal provision to punish racial discrimination. More generally, there is also no definition of discrimination in Palestinian legislation, and no specific legal provision imposing a penalty for discrimination. However, discrimination is prohibited under Article 9 of the 2003 Palestinian Basic Law and its amendments (the interim constitution), which stipulates that: "Palestinians shall be equal before the law and the judiciary, without distinction based upon race, sex, color, religion, political views or disability."<sup>25</sup> Moreover, Article 32 of the Basic Law considers any violation of human rights and freedoms a crime, which may not be subject to any statute of limitations, and which requires reparations by the Palestinian Authority. This applies to discrimination in general, although no specific penalty for discrimination was enshrined. In this regard, Article 32 of the Basic Law provides that:

"[a]ny violation of any personal freedom, of the sanctity of the private life of human beings, or of any of the rights or liberties that have been guaranteed by law or by this Basic Law shall be considered a crime. Criminal and civil cases resulting from such violations may not be subject to any statute of limitations. The National Authority shall guarantee a fair remedy to those who suffer from such damage."<sup>26</sup>

<sup>24</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, para. 23.

<sup>25</sup> Article 9, Amended Palestinian Basic Law (2003), available at: <https://www.palestinianbasiclaw.org/basic-law/2003-amended-basic-law>.

<sup>26</sup> *Ibid.*, Article 32.



Al-Haq recommends that the Committee call on the State of Palestine to include a definition of racial discrimination in its legislation consistent with the definition contained in Article 1 of the Convention, and to impose a deterrent penalty against it, in line with the Committee's General Recommendation No. 8 of 1990 concerning the interpretation and application of Article 1, paragraphs 1 and 4 of the Convention related to identification with a particular racial or ethnic group,<sup>27</sup> in addition to General Recommendation No. 14 of 1993 on Article 1, paragraph 1, of the Convention,<sup>28</sup> General Recommendation No. 24 of 1999 concerning Article 1 of the Convention,<sup>29</sup> and General Recommendation No. 29 on Article 1, paragraph 1, of the Convention (descent).<sup>30</sup>

18. Paragraph 27(d) of the State of Palestine's report to the Committee states that the draft Palestinian Penal Code of 2011 criminalizes acts of discrimination in Article 546 and punishes them with imprisonment and a fine. Al-Haq would like to clarify that the draft Penal Code of 2011 referred to in the State report remains a draft as of this moment and has not been approved or published in the Official Gazette. As such, the draft is not binding. Moreover, the penalty listed in the abovementioned provision of the draft law relates to discrimination in general and not to racial discrimination, which it punishes by imprisonment of a period not exceeding two years and with a fine not exceeding 1,000 Jordanian Dinars (JOD) or with either of the two penalties (imprisonment or fine). As such, the penalty is not a deterrent, especially considering that it punishes acts of discrimination with a term of imprisonment "for a period not exceeding two years" while it does not set a minimum penalty in such cases. In reference to Article 76 of the draft Penal Code of 2011, the provision stipulates that the minimum penalty for imprisonment is 24 hours and the minimum fine is 5 JOD, unless the law provides otherwise. As such, the penalties for imprisonment and fines are not a deterrent in the draft Penal Code of 2011. Al-Haq recommends that the Committee call on the State of Palestine to exert efforts and set a time

<sup>27</sup> CERD, General Recommendation No. 8 on the Interpretation and Application of Article 1, Paragraphs 1 and 4 of the Convention related to Identification with a Particular Racial or Ethnic Group, adopted at the Committee's thirty-eighth session on 22 August 1990, contained in UN Doc. A/45/18.

<sup>28</sup> CERD, General Recommendation No. 14 on article 1, paragraph 1, of the Convention, adopted at the Committee's forty-second session in 1993, contained in document A/48/18.

<sup>29</sup> CERD, General Recommendation No. 24 concerning Article 1 of the Convention, adopted at the Committee's fifty-fifth session in 1999, contained in document A/54/18, Annex V.

<sup>30</sup> CERD, General Recommendation No. 29 on article 1, paragraph 1, of the Convention (Descent), adopted at the Committee's sixty-first session in 2002.



frame for the adoption of the Palestinian Penal Code, which remains a draft since 2011, while ensuring its conformity with the Convention and other international treaties to which the State of Palestine has acceded. The Palestinian Penal Code must include criminal penalties to deter against acts of racial discrimination, racial segregation, and apartheid proportional to the gravity of such acts.

19. The State report submitted by the State of Palestine provides, in paragraph 31, that:

“the State of Palestine has taken positive measures to protect its most marginalized citizens, in particular victims of violations resulting from the occupation; citizens living in the seam zones next to the annexation, expansion and apartheid wall, in areas alongside illegal colonial settlements, in border areas, and in East Jerusalem; and victims of the aggression against the Gaza Strip. The measures concerned are legitimate, necessary and in conformity with the principles of the Convention... Examples of the measures taken include the Community Resilience and Development Programme for East Jerusalem and Area C, which is run through a ministerial committee responsible for administering the Community Infrastructure Development Programme; and the establishment of a higher ministerial committee for the reconstruction of Gaza, which formulated the National Early Recovery and Reconstruction Plan for Gaza”.<sup>31</sup>

Al-Haq notes that the protection measures referred to by the State of Palestine as such are very general, and believes that it is difficult to build indicators around such measures. Accordingly, Al-Haq recommends that the Committee call on the State of Palestine to provide details on the nature of these measures, to indicate the progress made in addition to failures, their causes, and how they have been addressed. In addition, Al-Haq recommends that the Committee request statistics and disaggregated tables in relation to such measures, and stress the importance of a participatory Palestinian strategy in this regard, clarify its features, objectives, and impact, and the resources allocated to it in the public budget, in order to assess the effectiveness and efficiency of the measures taken. The reports issued by the State of Palestine must include information on the ways in which individuals are identified as being members of a particular racial or ethnic group or groups,

<sup>31</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, para. 31.



as recommended by the Committee in General Recommendation No. 8 concerning the interpretation and application of Article 1, paragraphs 1 and 4 of the Convention.<sup>32</sup>

### 3. Article 2

20. The report submitted by the State of Palestine to CERD refers to the efforts led by the State of Palestine to enforce the Convention, to engage in no act or practice of racial discrimination, and to prohibit and refrain from the sponsorship of such acts at the policy and legislative levels.<sup>33</sup> Yet, the National Policy Agenda (2017-2022), as approved by the Government, fails to include any specific policy on combatting racial discrimination, racial segregation, and apartheid. In addition, the part citing legislation in the State of Palestine's report is general and overbroad. In fact, the State of Palestine has not adopted any legislation addressing racial discrimination, racial segregation, and apartheid nor have any mechanisms to eliminate such practices been put in place in the State party. There are also no statistics or disaggregated data in this regard. In the State report, Palestine provided no case studies to highlight the State's efforts to prohibit racial discrimination, racial segregation, and apartheid. Instead, the report merely lists general legal provisions while failing to address the situation on the ground, which would require the State party to provide detailed and disaggregated information and data on racial discrimination, including in relation to gender and the situation of Palestinian women and girls affected by discrimination in various forms and contexts.

21. The State of Palestine has not established a national institution to facilitate the implementation of the Convention contrary to its obligations, as set out in the Committee's 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.<sup>34</sup> In General Recommendation No. 17, the Committee emphasized the need to

<sup>32</sup> CERD, General Recommendation No. 8 on the Interpretation and Application of Article 1, Paragraphs 1 and 4 of the Convention related to Identification with a Particular Racial or Ethnic Group, adopted at the Committee's thirty-eighth session on 22 August 1990, contained in UN Doc. A/45/18.

<sup>33</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, paras. 32 et seq.

<sup>34</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.



strengthen the implementation of the Convention, and in this regard recommended that States parties:

“establish national commissions or other appropriate bodies... to serve, inter alia, the following purposes:

- (a) To promote respect for the enjoyment of human rights without any discrimination, as expressly set out in article 5 of the International Convention on the Elimination of All Forms of Racial Discrimination;
- (b) To review government policy towards protection against racial discrimination;
- (c) To monitor legislative compliance with the provisions of the Convention;
- (d) To educate the public about the obligations of States parties under the Convention;
- (e) To assist the Government in the preparation of reports submitted to the Committee on the Elimination of Racial Discrimination”.<sup>35</sup>

Al-Haq recommends that the Committee call on the State of Palestine to work towards establishing, without delay, a national institution to facilitate the implementation of the Convention and to promote the Convention’s purposes.

22. The report submitted by the State of Palestine further provides in paragraph 36, in relation to measures adopted to review Government policies and legislation to eliminate racial discrimination,<sup>36</sup> that Palestine has established the Commission for the Harmonization of Legislation with International Conventions (hereinafter ‘Harmonization Commission’), in implementing its obligations under CERD’s General Recommendation No. 17. Al-Haq notes that the Harmonization Commission, which was established by a Council of Ministers decision in 2017, has not been created to “facilitate the implementation of the Convention”, as required by General Recommendation No. 17, but instead was established to harmonize Palestinian legislation more generally with the international treaties to which the State of Palestine has acceded. In addition, the Harmonization Commission has not

<sup>35</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, para. 1.

<sup>36</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, para. 36.





discussed any of the “purposes” highlighted by General Recommendation No. 17, as indicated above, while its meetings are irregular and most of the Commission’s members are members of the Government. Moreover, the Commission has limited and unbalanced civil society representation, while those representatives of civil society in the Commission have no voting rights. In addition, numerous laws by decree are adopted and published in the Official Gazette without being discussed in the Harmonization Commission, within the context of the continued absence of the Palestinian Legislative Council (the Parliament). Al-Haq has repeatedly called for balanced civil society representation in the Harmonization Commission, and for the adoption of professional standards for membership therein. Al-Haq affirms the importance of restoring the constitutional role of the Palestinian Legislative Council in the implementation of the Convention in the West Bank and the Gaza Strip, to strengthen the role of the Harmonization Commission, and to establish a national institution to facilitate the implementation of the Convention and to promote and achieve its purposes.

23. In paragraph 37, the State report indicates that the Non-Governmental Organisations (NGO) Affairs Commission was established by Presidential Decree No. 11 of 2012, aiming to coordinate the work of all Palestinian and international NGOs with that of official authorities within the State of Palestine,<sup>37</sup> in a manner that provides an open and accessible environment to enable NGOs, including those working towards combatting discrimination and promoting mutual understanding, to operate freely and publicly. Al-Haq affirms that the abovementioned Presidential Decree establishing the NGO Affairs Commission, which was issued by the Palestinian President on 15 December 2012, is unconstitutional, as highlighted in Al-Haq’s position paper at the time.<sup>38</sup> In addition, nothing has been done by the NGO Affairs Commission to facilitate the implementation of the Convention, to combat racial discrimination, or to promote mutual understanding in this regard.

<sup>37</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, para. 37.

<sup>38</sup> See Al-Haq, “Al-Haq: The Decree Establishing the NGO Affairs Commission is Unconstitutional and Infringes upon the Powers of the Government” [Arabic] (22 January 2013), available at: [http://www.alhaq.org/arabic/index.php?option=com\\_content&view=article&id=624:2013-01-22-14-16-11&catid=83:2012-05-09-07-28-16&Itemid=198](http://www.alhaq.org/arabic/index.php?option=com_content&view=article&id=624:2013-01-22-14-16-11&catid=83:2012-05-09-07-28-16&Itemid=198).



24. On 3 January 2019, the Palestinian Council of Ministers issued Decision No. (6/235/17/CM/RH) of 2019 in relation to leasing property to Palestinians holding Israeli identity documents. According to the decision:

“1. Anyone wishing to rent property to a Palestinian with an Israeli identity card must obtain the approval of the Local Authority to which the property belongs. If the property is outside the boundaries of the Local Authority’s structural plan, the landlord must obtain the approval of the Local Government Directorate to which the property belongs.

2. The General Intelligence Service and the Preventive Security Service shall undertake the necessary security search procedures for such persons wishing to lease property and submit a recommendation within two weeks from the date of submission of the application.

3. The Local Authority and/or the Local Government Directorate are authorized to grant the required permissions based on the recommendations of the competent security services.”

The decision, as issued by the Palestinian Council of Ministers, is unconstitutional and involves discrimination amongst Palestinians, targeting Palestinian citizens of Israel and Palestinians with permanent residency status in East Jerusalem who hold Israeli identity documents, while it does not affect Palestinians with different documentation. In addition, the decision violates the provisions of Article 9 of the Amended Palestinian Basic Law of 2003 and its amendments (the interim constitution), which clearly affirms that Palestinians are equal before the law and the judiciary without distinction.

25. Al-Haq recommends that the Committee call on the State of Palestine to act without delay to annul Decision No. (6/235/17/CM/RH) by the Council of Ministers of 3 January 2019 in relation to leasing property to Palestinians holding Israeli identity documents, for violating the Basic Law and the purposes of the Convention. Al-Haq further recommends that the Committee call on the State of Palestine to review the Law on the Lease and Sale of Immovable Property to Foreigners No. 40 of 1953 and its amendments, without delay, upon which the abovementioned decision issued by the Council of Ministers is based. Al-Haq urges the Committee to call on the State of Palestine to review the procedures followed in line with the Law on the Lease and Sale of Immovable Property to Foreigners, which



has been in force in Palestine since Jordanian rule, and which requires obtaining the approval of the security services and of the Council of Ministers for the sale and rent of immovable property (real estate). In particular, the procedures impose numerous complications and obstacles for Palestinian citizens of Israel and Palestinians with permanent residency status in East Jerusalem, while it does not affect other Palestinians, thereby violating the Palestinian Basic Law, the purposes of the Convention, and the principles of equality and non-discrimination.

#### 4. Article 3

26. The main obstacle towards eliminating all forms of racial discrimination in the OPT is Israel's establishment of an institutionalised regime of systematic racial oppression and domination over the Palestinian people on both sides of the Green Line, as refugees, and in exile, amounting to the crime of apartheid within the meaning of Article 7(2)(h) of the Rome Statute of the International Criminal Court (hereinafter 'Rome Statute') and giving rise to individual criminal responsibility under Article 7(1)(j) of the Rome Statute.<sup>39</sup>

27. In particular, Al-Haq recalls that in 2012, CERD urged Israel, the Occupying Power, to "take immediate measures to prohibit and eradicate" policies and practices of racial segregation and apartheid, which "severely and disproportionately affect the Palestinian population" in the OPT, in violation of Article 3 of ICERD.<sup>40</sup> In 2014, the UN Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, Mr. Richard Falk, argued that "[i]t seems incontestable that Israeli measures do divide the population of the Occupied Palestinian Territory along racial lines, create separate reserves for Palestinians and expropriate their land."<sup>41</sup> Moreover, in 2017, the Office of the Prosecutor of the International Criminal Court indicated that, within the context of its preliminary examination into the situation in Palestine since 13 June 2014, it has "received information regarding the purported establishment of an institutionalised

<sup>39</sup> Articles 7(1)(j) and 7(2)(h), *Rome Statute of the International Criminal Court* (adopted 17 July 1998, entry into force 1 July 2002) 2187 UNTS 3 (hereinafter 'Rome Statute').

<sup>40</sup> CERD, Concluding Observations on Israel, 9 March 2012, UN Doc. CERD/C/ISR/CO/14-16, para. 24.

<sup>41</sup> UN Human Rights Council, Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, Richard Falk, 13 January 2014, UN Doc. A/HRC/25/67, para. 71.



regime of systematic discrimination that allegedly deprives Palestinians of a number of their fundamental human rights.”<sup>42</sup>

28. Critically, in March 2017, the UN Economic and Social Commission for Western Asia (ESCWA) published a report, which concluded that Israel has established an apartheid regime over the Palestinian people.<sup>43</sup> The ESCWA report highlighted the strategic fragmentation of the Palestinian people as the principal method by which Israel maintains its systematic regime of racial domination and oppression over Palestinians, who have been divided into four different domains, including: Palestinian citizens of Israel, Palestinians with permanent residency status in occupied East Jerusalem, Palestinians, including refugees, subject to Israeli military law in the West Bank and the Gaza Strip, and Palestinian refugees and exiles living outside territory under Israel’s control but whose return to their homes and property Israel continues to preclude.<sup>44</sup>
29. Al-Haq emphasizes that Israel’s policies and practices of racial segregation and apartheid over the Palestinian people cannot be understood solely within the confines of the territorial boundaries of the OPT, as they extend to Palestinians on both sides of the Green Line and beyond as a matter of State policy. In particular, a focus on the OPT alone, without regard for Israel’s institutionalised racial discrimination against Palestinians, as citizens of Israel, and persistent denial to allow Palestinian refugees and exiles to return to their homes and property, will only serve to entrench the fragmentation of the Palestinian people, as a tool of apartheid. Accordingly, Al-Haq urges the Committee to consider the conclusions of the 2017 ESCWA report in its first periodic review of the State of Palestine under ICERD, in addition to carefully considering the context of Israel’s widespread and systematic human rights violations committed against the Palestinian people, which amount to the crime of apartheid.
30. As one of the most serious crimes of international concern within the meaning of Article 1 of the Rome Statute, the crime of apartheid constitutes a crime against humanity punishable

<sup>42</sup> Office of the Prosecutor of the International Criminal Court, Report on Preliminary Examination Activities 2017 (4 December 2017), para. 63.

<sup>43</sup> ESCWA, Israeli Practices towards the Palestinian People and the Question of Apartheid, Palestine and the Israeli Occupation, Issue No. 1, 15 March 2017, UN Doc. E/ESCWA/ECRI/2017/1.

<sup>44</sup> ESCWA, Israeli Practices towards the Palestinian People and the Question of Apartheid, Palestine and the Israeli Occupation, Issue No. 1, 15 March 2017, UN Doc. E/ESCWA/ECRI/2017/1, pp. 3-4.



at the International Criminal Court. Yet, the jurisdiction of the Court is based on the principle of complementarity, with the role of the International Criminal Court complementing that of the domestic judiciary in combating, eliminating, and punishing the crime of apartheid in order to achieve justice and reparations for victims, as required by ICERD, the International Convention on the Suppression and Punishment of the Crime of Apartheid,<sup>45</sup> and the Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity,<sup>46</sup> to which the State of Palestine has acceded. Yet, despite the accession by the State of Palestine to the Rome Statute on 2 January 2015 and the opening by the Office of the Prosecutor, on 16 January 2015, of a preliminary examination into the situation in Palestine since 13 June 2014, no Palestinian law has been adopted to address international crimes, including in what concerns racial discrimination, racial segregation, and apartheid, while there are no punitive provisions in Palestine's existing penal laws addressing international crimes and commensurate with their gravity.

31. Al-Haq recommends that the Committee call on the State of Palestine to indicate the measures it has taken at the legislative and other levels to suppress and punish the crime of apartheid without delay, and to elaborate a participatory national strategy within established timeframes to reflect progress in this regard. Al-Haq stresses the importance of restoring the role of the Palestinian Legislative Council and its constitutional powers to legislate and to carry out its oversight functions over the Palestinian Government to ensure the completion of legislation and public policies in this regard and their implementation in the West Bank and Gaza Strip, in addition to the important role played by civil society organisations.

## 5. Article 4

32. The report submitted by the State of Palestine referred, in relation to the measures designed to eradicate incitement to racial hatred and violence,<sup>47</sup> to Palestinian criminal legislation not concerned with racial hatred and the purposes of the Convention, instead violating the

<sup>45</sup> *International Convention on the Suppression and Punishment of the Crime of Apartheid* (adopted 30 November 1973, entry into force 18 July 1976) 1015 UNTS 243.

<sup>46</sup> *Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes Against Humanity* (adopted 26 November 1968, entry into force 11 November 1970) 754 UNTS 73.

<sup>47</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, paras. 50 et seq.



right to freedom of expression and requiring amendment. Al-Haq affirms that Palestinian legislation such as the Penal Code, the Press and Publications Law, and the Law by Decree on Cybercrimes, include numerous legal provisions that violate international standards on the right to freedom of expression. In this regard, Al-Haq emphasizes the importance of the Committee's General Recommendation No. 35 on combating racist hate speech, in which the Committee recommended:

“that the criminalization of forms of racist expression should be reserved for serious cases, to be proven beyond reasonable doubt, while less serious cases should be addressed by means other than criminal law, taking into account, inter alia, the nature and extent of the impact on targeted persons and groups. The application of criminal sanctions should be governed by principles of legality, proportionality and necessity.”<sup>48</sup>

In addition, the Committee observed with concern:

“that broad or vague restrictions on freedom of speech have been used to the detriment of groups protected by the Convention. States parties should formulate restrictions on speech with sufficient precision, according to the standards in the Convention as elaborated in the present recommendation. The Committee stresses that measures to monitor and combat racist speech should not be used as a pretext to curtail expressions of protest at injustice, social discontent or opposition.”<sup>49</sup>

33. Al-Haq and Palestinian human rights organisations have documented numerous cases of arbitrary arrests of journalists, human rights defenders, and university students, on the basis of their exercise of the right to freedom of expression. In addition, human rights organisations have recorded the blocking of media websites, which remain blocked as of this moment, and other violations of the right to freedom of expression. In carrying out these violations, general and overbroad penal legal provisions violating international standards have been used, including those contained in the Penal Code, the Press and Publications Law, and the Law by Decree on Cybercrimes. These include offences related to libel and slander (Articles 188 and 189 of the Penal Code), insulting the President

<sup>48</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, para. 12.

<sup>49</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, para. 20.



(Article 195 of the Penal Code), and inciting discord (Article 150 of the Penal Code), in addition to the penal provisions contained in the Press and Publications Law and the Cybercrimes Law by Decree. Notably, Al-Haq stresses that the Palestinian journalists Naila Khalil and Rami Samara continue to stand trial before the Palestinian judiciary based on the Law by Decree on Cybercrimes, and on the basis of their journalistic work.

34. Al-Haq notes that the Cybercrimes Law by Decree of 2017, as referred to in the State of Palestine's report,<sup>50</sup> has been "repealed" and replaced by the Law by Decree on Cybercrimes No. 10 of 2018, which was published in the Palestinian Official Gazette on 3 May 2018 and is currently in force. Al-Haq published its comments on Palestinian legislation related to cybercrimes, which violate international human rights standards, and in particular the right to freedom of expression, the right to privacy, and the right of access to information. Al-Haq also sent two communications to the UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Mr. David Kaye, who sent a communication to the Palestinian Government dated 16 August 2017 in this regard, in line with his mandate.<sup>51</sup>

35. Al-Haq recommends that the Committee call on the State of Palestine to amend without delay its legislation in conformity with the purposes of the Convention and its obligations under the core human rights treaties to which it has acceded without reservations, including under the International Covenant on Civil and Political Rights (ICCPR)<sup>52</sup> to respect and to ensure respect for the right to freedom of expression, the right to privacy, and the right of access to information, noting that there is no Palestinian law guaranteeing the right of access to information. The State of Palestine must also abide by the Committee's General Recommendation No. 35,<sup>53</sup> and adopt and pursue a public policy and practice in compliance with its international obligations in this regard.

<sup>50</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, para. 50(f).

<sup>51</sup> See Dr. Isam Abdeen, Measures Taken by Al-Haq to Counter the Law by Decree on Cybercrimes (Al-Haq, 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>52</sup> *International Covenant on Civil and Political Rights* (adopted 16 December 1966, entry into force 23 March 1976) 999 UNTS 171 (hereinafter ICCPR).

<sup>53</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.



## 6. Article 5

36. Palestine's State report outlines a number of provisions in Palestinian legislation on civil, political, economic, social, and cultural rights, including those related to the right to a fair trial and due process guarantees, the right to equal treatment before the courts and all other bodies administering justice, in addition to the right to vote and to stand for elections, the right to participate in Government and in the management of public affairs on all levels, the right of equal access to public office, the right to freedom of expression, the right to freedom of peaceful assembly and of association, the right to form and to join trade unions, and other rights falling within the scope of Article 5 of the Convention.<sup>54</sup> However, the State of Palestine failed to abide by the harmonized guidelines on reporting to the UN treaty bodies, and the guidelines specific to the Convention, which require reports to shed light on the situation on the ground, including by presenting indicators, statistical data, and disaggregated tables on progress made in practice.

37. The information provided by the State of Palestine on Article 5 of the Convention merely included a list of provisions in Palestinian legislation, and overlooked State practice in this regard. Amongst other things, the State report overlooked the end of the constitutional term of the Palestinian President and of the Palestinian Legislative Council for years and the failure to hold general presidential and legislative elections, denying Palestinian citizens the right to vote and to stand for elections. In addition, the State report ignored the continuing deterioration in the Palestinian judiciary and the justice system, and violations of the right to freedom of expression and the right to peaceful assembly. The reports also overlooked the amendments to the Law on Charitable Associations regulating the work of NGOs, which violate the right to form associations, in addition to further draft laws by decree and some practices moving in the same direction. The State report also omits that appointment in the civil service requires prior security clearance, which involves discrimination on the basis of opinions and political affiliation. Moreover, the State of Palestine's report fails to address legislation and decisions issued by the Palestinian High Court of Justice, which violate the right to form trade unions, the right to strike, and practices on the ground violating these rights. The State report further ignores the legal and practical difficulties that prevent citizens from enjoying the right to form political parties,

<sup>54</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, paras. 60 et seq.





while it disregards Sharia and ecclesiastical laws that place many obstacles before the enjoyment of the right to inheritance, amongst other rights. Finally, the State report fails to provide information on the ways in which individuals are identified as belonging to a particular racial or ethnic group or groups, in the light of the provisions of the Convention and the Committee's General Recommendation in this regard.<sup>55</sup>

38. With regard to economic, social, and cultural rights, the State party report provides that:

“The State of Palestine seeks to take appropriate measures for guaranteeing employment, without discrimination, as follows:

- (a) The National Development Plan 2014–2016 states that the Palestinian Government is undertaking efforts in the area of economic development and employment with a view to “guaranteeing the right to decent work and the right to a dignified life for all citizens”;
- (b) The National Policy Agenda 2017–2022 states that, in the light of the continuing colonization of Palestine, economic policy must strike a balance between the immediate provision of job opportunities as an urgent requirement and laying the foundations of an independent national economy.”<sup>56</sup>

Al-Haq recommends that the Committee ask the State of Palestine to indicate the progress made in practice in this regard, to provide disaggregated information, figures, and statistical data on the right of citizens to decent work and decent living, and to provide indicators of poverty and unemployment in the State of Palestine. The State must also show what efforts the Government has taken to combat poverty and unemployment, and what progress has been achieved in this regard. It should also indicate the resources allocated to it in the public budget, and the efforts made by the Government to establish an independent national economy. In particular, Al-Haq recalls the Committee's General Recommendation No. 8 concerning the interpretation and application of Article 1, paragraphs 1 and 4 of the Convention related to identification with a particular racial or ethnic group on the need to

<sup>55</sup> CERD, General Recommendation No. 8 on the Interpretation and Application of Article 1, Paragraphs 1 and 4 of the Convention related to Identification with a Particular Racial or Ethnic Group, adopted at the Committee's thirty-eighth session on 22 August 1990, contained in UN Doc. A/45/18.

<sup>56</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, para. 118.



provide information on the ways in which individuals are identified as being members of a particular racial or ethnic group or groups.<sup>57</sup> General Recommendation No. 29 on Article 1, paragraph 1, of the Convention (descent),<sup>58</sup> and further relevant general recommendations issued by the Committee should also be considered.

39. The State report further notes, with regard to economic, social, and cultural rights, that:

“The State of Palestine has adopted the following strategies to promote the right to housing and strengthen the resilience of the population in the Palestinian territory:

- (a) The National Development Plan 2014-2016 stipulated that one of the strategic objectives of the infrastructure sector is to provide adequate and affordable housing, allow access to public services, and meet the needs of all citizens. Measures to that end include promoting the development of an urban environment and a comprehensive infrastructure in the light of socioeconomic shifts; expanding housing and urban construction in areas threatened with confiscation, especially in East Jerusalem and Area C; providing the financial and legal support needed to assist Jerusalemites and strengthen their resilience in the face of the demolition policies systematically pursued by the occupation authorities in East Jerusalem; and endeavouring to provide financial facilities for housing projects for Jerusalemites;
- (b) The National Policy Goals 2017-2022 affirm, in national priority 10, the importance of promoting the resilience of communities through expanding their access to clean water and sanitation, reliable energy and affordable housing.”<sup>59</sup>

Al-Haq recommends that the Committee ask the State of Palestine to indicate the progress made in practice in this regard and to provide disaggregated information, figures, and statistical data showing what has been done to ensure that Palestinian citizens are able to

<sup>57</sup> CERD, General Recommendation No. 8 on the Interpretation and Application of Article 1, Paragraphs 1 and 4 of the Convention related to Identification with a Particular Racial or Ethnic Group, adopted at the Committee’s thirty-eighth session on 22 August 1990, contained in UN Doc. A/45/18.

<sup>58</sup> CERD, General Recommendation No. 29 on article 1, paragraph 1, of the Convention (Descent), adopted at the Committee’s sixty-first session in 2002.

<sup>59</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, para. 126.



enjoy their right to adequate housing, in particular in Jerusalem, Area C of the West Bank, and amongst Palestinian Bedouin communities, and to indicate the resources allocated thereto in the Palestinian public budget. Information should take into account the Committee's General Recommendation No. 8 on identification of individuals as being members of a particular racial or ethnic group or groups,<sup>60</sup> and General Recommendation No. 29 on descent, in addition to other relevant recommendations issued by the Committee.

40. Al-Haq recommends that the Committee ask the State of Palestine to indicate the progress made in practice to realise the purposes of Article 5 of the Convention, which must be read in light of other core human rights treaties, and to provide disaggregated information, figures, data, and tables reflecting its commitment in practice in this regard.

## 7. Article 6

41. Under Article 6, in relation to domestic remedies for acts of racial discrimination, the role of Palestinian courts, and judicial guarantees for victims of racial discrimination,<sup>61</sup> the State of Palestine's report merely refers to a series of Palestinian laws, including general provisions contained in the Palestinian Penal Procedure Law No. 3 of 2001, the Law on the Formation of Regular Courts No. 5 of 2001, the Law on the Supreme Constitutional Court No. 3 of 2006, the Law of Service in the Palestinian Security Forces No. 8 of 2005, the Palestinian Labour Law No. 7 of 2000, and the Regulation on Complaints No. 8 of 2016, adopted by the Palestinian Council of Ministers and applied within Government departments, in addition to further Palestinian legislation. In turn, the State report generally omits mention of how these laws are reflected in practice on the ground, in terms of challenges and achievements made, supported by disaggregated data, figures, and tables, to make it possible to examine the reality on the ground and to measure the progress achieved.

42. There are serious challenges, in the Palestinian context, relating to the status of international treaties to which the State of Palestine has acceded, including the Convention, within the Palestinian legislative system, and the process of their incorporation into judicial

<sup>60</sup> CERD, General Recommendation No. 8 on the Interpretation and Application of Article 1, Paragraphs 1 and 4 of the Convention related to Identification with a Particular Racial or Ethnic Group, adopted at the Committee's thirty-eighth session on 22 August 1990, contained in UN Doc. A/45/18.

<sup>61</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, paras. 144-150 and 151-154.



rulings issued by the Palestinian courts. These challenges have increased with the continued absence of the Palestinian Legislative Council and its legislative and oversight role, as well as with the deterioration in the Palestinian judiciary. Additional complications result from the broad reservations formulated by the Supreme Constitutional Court through its decisions relative to the status of international treaties to which the State of Palestine has acceded within the Palestinian legislative system.

43. Al-Haq recommends that the Committee issue concluding observations determining the supremacy of international treaties to which the State of Palestine has acceded, without reservations, over domestic Palestinian legislation, in line with the obligations assumed by the State of Palestine through its accession to those treaties, including the Convention. Al-Haq also recommends that the State of Palestine set a time frame to indicate the progress made in relation to enforcing the Convention at the domestic Palestinian level, leading to the incorporation of the Convention into Palestinian judicial decisions. Emphasis should be paid to the importance of training and capacity-building for the judiciary and Palestinian justice institutions on how to engage with the Convention in judicial rulings. In this regard, Al-Haq notes the importance of the Committee's General Recommendation No. 31, on the prevention of racial discrimination in the administration and functioning of the criminal justice system, which emphasises that:

“States parties should pay the greatest attention to the following possible indicators of racial discrimination:

- (a) The number and percentage of persons belonging to the groups... who are victims of aggression or other offences, especially when they are committed by police officers or other State officials;
- (b) The absence or small number of complaints, prosecutions and convictions relating to acts of racial discrimination in the country. Such a statistic should not be viewed as necessarily positive, contrary to the belief of some States...”<sup>62</sup>

44. Al-Haq recommends that Committee request the State of Palestine to work without delay to enact a Palestinian law to combat racial discrimination, guided by the Model Law

<sup>62</sup> CERD, General Recommendation No. 31 on the prevention of racial discrimination in the administration and functioning of the criminal justice system, adopted by the Committee at its sixty-fifth session in 2005, paras. 1(a) and (b).



Against Racial Discrimination, which came as part of the UN's efforts since the Third Decade to Combat Racism and Racial Discrimination (1993-2003). In particular, the Model Law constitutes an important reference document, especially in providing definitions, general principles, and measures, which may be addressed by national legislation to combat racial discrimination, including in relation to crimes, penalties, and all issues related to the protection of victims of racial discrimination and the provision of effective remedies to victims.

## 8. Article 7

45. In what concerns education, cultural activities, and media to promote tolerance and combat racism in the State of Palestine, the State report limits itself to referring to a number of general provisions contained in Palestinian legislation, in addition to policies of a general nature.<sup>63</sup> These include the Law on Higher Education No. 11 of 1998, the Law by Decree on Public Education No. 8 of 2017, the Palestinian Academic Curriculum Plan of 1998, and the Council of Ministers Decision No. 227 of 2004 on the Development of Palestinian Culture, Development Plans, and the Palestinian National Policy Agenda. In turn, the State report overlooks the practice on the ground, in terms of challenges and achievements supported by disaggregated data, figures, and tables to examine the situation on the ground and to measure the progress achieved.
46. Al-Haq recommends that the Committee request the State of Palestine to adopt a national Palestinian strategy to combat racial discrimination, racial segregation, and apartheid, in partnership with all segments of Palestinian civil society. There is also a need to establish effective mechanisms to ensure the Convention's proper implementation on the ground, with clear and complementary roles and responsibilities in the implementation process. The strategy must continuously be reviewed, developed, and integrated in school curricula and university courses. A media plan should also be developed to widely promote the strategy. In addition, training programmes are needed for capacity-building in both the public and private sectors, in order to effectively contribute to the elimination of all forms of racial discrimination, racial segregation, and apartheid, and to promote human rights education within Palestinian society.

<sup>63</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, paras. 156-162.