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تتمتع الحق بصفة استشارية لدى المجلس الاقتصادي والاجتماعي في الأمم المتحدة
NGO in Consultative Status with the Economic and Social Council of the United Nations



Al-Haq's Main Recommendations to the Committee on the Rights of the Child on the First Review of the State of Palestine

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In this paper, Al-Haq presents its main recommendations provided by Al-Haq submission to the Committee on the Rights of the Child (herein and after as the Committee) on the first periodic review of the State of Palestine (herein and after as the State), with some updates made to the mentioned submission. Al-Haq remains positive that the following recommendations may be considered with value and use for the constructive dialogue between the Committee and the State, for Al-Haq meeting with the Committee members of the task force, as well as the Committee's concluding observations on the first periodic review of the state.

- **Reforming the Palestinian Political System and Calling for General Elections**

The State should take serious and effective measures towards reforming the Palestinian political system that has been suffering from great deterioration, both in the West Bank and the Gaza Strip. In addition, the state should take measures to end the political division, and unify the Palestinian political system, through a clear and timely framed plan, with transparent implementation measures, and effective civil society participation.

It is also necessary that a presidential decree is issued calling for simultaneous legislative and presidential elections, in the West Bank and the Gaza Strip, in accordance with the Election Law by Decree No. 1 of 2007 provisions, to which all Palestinian political parties including Hamas and Fatah movements, have agreed on in writing, since December 2019. Besides to the Palestinian president Mahmoud Abbas's mentions in multiple occasions, including at the United Nations, about his willingness for calling for general elections, to which the Palestinian Central Elections Commission has expressed its readiness for conducting.

It should be noted that conducting the mentioned elections has been delayed for many years, in violation of the amended Palestinian Basic Law and Elections Law by Decree, which has continuously denied the Palestinian people, particularly the youth, their constitutional and democratic right to political participation and to practise their right of freely choosing their representatives, throughout these many years. This requires working without delay for issuing a presidential decree calling for elections and providing the suitable democratic environment for such elections as well as respecting their results, in addition to maintaining the elections regularity according to the law.

- **Unifying and Reforming the Judicial System**

The state should work sincerely to end the deterioration of the judicial power through reform as well as unification between the West Bank and the Gaza Strip. This comes in addition to the need for promoting the constitutional principles and values, including the rule of law, the separation of powers and the independence of the judiciary. It is a necessity to halt the executive power and its



apparatus from interfering in the Judiciary and the justice sector, which include both the Constitutional and the Regular Judiciary, as well as the personal status related judiciary, to which is highly connected with the fulfilment of the rights enshrined in the international treaties the State has acceded, including the Convention on the Rights of the Child (herein and after as the Convention).

- **Publishing the Convention in the Palestinian Official Gazette**

The state should ensure the supremacy of the international core human rights treaties to which the state has acceded without reservations, over the Palestinian national legislations, in respect and fulfilment of its duties under these treaties. The Palestinian Supreme Constitutional Court (herein and after as the SCC) receives wide objections from the Palestinian civil society; in the West Bank and the Gaza Strip, regarding its establishment, the decisions it has issued, and its failure in safeguarding and protecting the amended Palestinian Basic Law, and constitutional rights and values.

According to the SCC decisions No. 4 for the year 2017 and No. 5 for the year 2017, the treaties the state has acceded to are invalid until today. In addition, the SCC has put general reservations to the treaties acceded under loose titles (national, religious, and cultural identity of the Arabic Palestinian people) which led to impeding the substance of these treaties.

Moreover, within these decisions, the SCC stipulated that International treaties have to pass through the same formal procedural stages required for the enactment of internal laws; meaning that publishing is not sufficient for the treaties to enter into force, where treaties should be adopted by an internal law to grant its enforcement. This violates the provisions of the amended Basic Law and the Supreme Constitutional Court Law No. 3 for the year 2006 and its amendments. Thus, it is important to stress the need for comprehensive reforms in the Palestinian judiciary including the SCC, and the necessity for the state to respect its duty under the treaties in regard to the supremacy of the treaties over internal legislations.

It is worth noting that both the Committee on the Elimination of Discrimination against Women (CEDAW), and the Committee on the Elimination of Racial Discrimination (CERD) have expressed their concerns over these mentioned SCC decisions within their concluding observations made regarding the committees' first review over the relevant conventions in 2018, and 2019 respectively.

- **Adopting a Child Rights-Based Approach in Enforcing the Convention**

The State should work, without delay, to adopt a comprehensive unified rights-based approach for the fulfilment of the Convention, as well as establishing a national database concerning the



Convention, covering the West Bank and the Gaza Strip, while clearly connecting this approach with the general budget (resources and financial allocations), along with the sustainable development goals and ensure the transparent and effective participation of the civil society, including children, at all stages relevant to legislations and public policies. In addition to clarifying complementary roles and responsibilities, a time frame and implementation mechanisms to ensure the wellness and effectiveness of its application on the ground, and to ensure that this approach is subject to continuous evaluation, at its all stages.

- **Institutionalizing and Activating the role of Harmonization Committee with the International Treaties**

The state has to institutionalize, and ensure the effective role of the harmonization committee, which was formed by the Palestinian Council of Ministers in 2017. Where this should ensure the establishment of professional and transparent basis and standards, as well as effective participation of the Palestinian civil society in the membership of the Committee, and ensure that all legislations or draft laws, without exceptions, are submitted to the Committee for harmonization with international treaties, before the legislations are issued, as well as setting a clear-cut plan, and a time-frame for harmonizing the legislations or draft laws on which the Harmonization Committee operates; in line with the rights contained in the Convention.

The State should expedite the discussion and adoption of the draft penal code, the draft personal status code, and the draft law on the family protection from violence, and set a timetable for its completion in fulfilment of the concluding observations of The Committee on the Elimination of Discrimination against Women (herein and after as CEDAW) on the first review of the State in 2018; Setting a time-frame for the completion of the draft Penal Code, the draft Personal Status law and the draft law on the family protection from violence. The State should also expedite the review of the law by decree on raising the marriageable age issued on 3 November 2019 for violating the provisions of the Convention on the Elimination of All Forms of Discrimination against Women and the provisions of the Convention as well as to ensure that such Palestinian legislations are fully in line with international treaties and standards and the provisions of the Convention.

The state should fully harmonize the law by decree on Cybercrimes No. 10 of 2018 in line with international human rights and standards, particularly that it is still in violation of the right to freedom of opinion and expression, digital rights, the right to privacy, as well as the right to access information. In addition to the need to ensure the guarantees of a fair trial, including for children. This has been stressed by the Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression, Mr. David Kaye, in his legal memorandum sent to the Palestinian Government on 16 August 2017, where he stated that all necessary steps must be taken

to ensure that the law by decree on cybercrimes is in full conformity with international conventions and standards, to which Al-Haq's submission to the Committee refers to.

- **Arbitrary Detention of Children and Human Rights Defenders**

The state should work without delay to criminalize, prosecute and hold accountable, any member of the Palestinian security apparatuses, law enforcement officials, or governors, who conduct, take part in, or engage in the commanding of the arrest, search, and detention of the people with an intention of suppression or by any other method such as , denial of their freedom of movement without a judicial order. Summoning and/or detaining in its different methods, without a judicial order, is a systematic violation according to article 11 of the Palestinian Basic Law prohibiting the arrest, search, detention, and restriction of movement unless with a judicial order. In addition, these arbitrary procedures are constitutional crimes under article 32 of the Palestinian Basic Law, and require accountability and redress for victims.

Al-Haq submission to the Committee on the first Review of the State indicated that since 2014 (the date of accession to the Convention), and until the end of 2019, tens of violations against human rights defenders, including children, have been documented. Violations ranged from arbitrary detention to repeated summoning of citizens by the security services through phone calls or memoranda issued by the security services. In addition to the detention on governors' capacity, which stands in a clear violation of article 11, and a constitutional crime in violation of article 32 of the amended Basic Law, which requires accountability and redress for victims.

This pattern of violations coincides with another pattern preventing lawyers' presence with and representation of the suspects including children, in the preliminary investigations/ inference before they're brought before the General Prosecution in criminal cases, thereby denying them a fundamental guarantee to fair trial in the pre-trial stage. Consequently, these systematic patterns require the state to act without delay to fully prohibit such violations, hold perpetrators accountable for their actions, and ensure reparations for the victims.

- **Custody and the Best Interests of the Child**

The State of Palestine shall establish clear principles and criteria for assessing the best interests of the child in all procedures and decisions relative to the child, including the issue of child custody. The best interest of the child should not be linked to the age of the child only, as done in the contexts of the Palestinian legislations and practice. However, the best interest of the child should be evaluated on a case by case basis, and in light of the circumstances and conditions relevant to each case. Such evaluation should also include the personal characteristics of the child in terms of age, sex, maturity, experience, disability, and the social and cultural situation they're living in, as well



as the relationship between the child and his/her family, or with alternative care providers, and the level of safety of the surrounding environment, among other circumstances, which shall all be in line with the convention and the general comments issued by the Committee.

- **Domestic and Societal Violence against Children**

The state should act, without delay, to develop a participatory national strategy to end societal violence, including violence against children, women and persons with disabilities. This strategy should be linked to the general budget and sustainable development, and ensuring the effective participation of youth, children and vulnerable groups, at all its stages. In addition, the state must ensure a clear and effective implementation mechanisms on the ground and ongoing evaluation. The state should also work to repeal article 62 of the Penal Code No.16 for the year 1960 and its amendments, valid within the West Bank, which considers corporal punishment of children by their parents permitted, stating that: “[T]he act authorized by law is not considered a crime: (1) that the law permits (a) Disciplinary measures inflicted on children by their parents as permitted by public custom...”. Noting that the draft new penal code, and the draft law on the protection of family from violence are still drafts for 10 years, and 5 years respectively, in light of the continuous absence of the Legislative Council, and harmonization and fulfilment of the treaties.

- **Alternative Care Institutions and Child Justice**

The State should act without delay to address the problems and obstacles that limit the capacity of "Dar Al-Amal for Observation and Social Welfare" to rehabilitate and provide full care for children. In particular, the substantial lack of the financial resources of Dar Al-Amal House, the bureaucratic complications it faces that adversely impact the services and care delivered for children. Where the state should enable Dar Al-Amal House to open branches in all West Bank governorates and grant it the financial and administrative independence to ensure that it fully delivers its role. The State should also work without delay for providing the full and equal care to children in the Gaza Strip.

The state should also allocate the financial resources needed for Dar Al-Amal to ensure the fulfilment of the Law by Decree on the Protection of the Juveniles No. 4 for the year 2016, and provide separate buildings for juveniles that consider their best interests, a database covering the West Bank and the Gaza Strip, public prosecution members and judges specialized for juvenile cases only, who work on juvenile cases only, allowing them their full attention. In addition to the importance of providing a litigation environment that considers the privacy and confidentiality of juveniles' cases, and provide an adequate number of trained child protection councillors, to ensure the regularity, efficiency and effectiveness of procedures, and achieving effective justice for children.



- **Rights of Persons with Disabilities**

The State should act without delay to develop a rights-based national plan to promote, protect and ensure the persons with disabilities full and equal realization of all human rights, and ensure the due regard for the women and children with disabilities. Where persons with disabilities, especially children and women should have an effective role at all stages of the plan; in preparing, implementing, following up and assessing. Where additionally, the state should provide the financial resources necessary for the fulfilment of these rights.

After more than 20 years on the adoption of Law No. 4 for the year 1999 on the Rights of Persons with Disabilities, and its executive regulations of 2004, the gap between the legislation and practice on the ground remains very wide. The approach dealing with persons with disabilities continues to be more of a relief than of a right-based one. The realization of the rights of persons with disabilities, including children, is highly affected by the absence of budgets and financial allocations for ensuring the enjoyment of their full rights.

The State shall conduct serious periodic and sudden monitoring for persons with disabilities, shelters, which suffer from neglect, poor services and include various types of violence affecting persons with disabilities within. This comes in light of the absence of serious oversight, and accountability for violations within these shelters. Moreover, there is a need that persons with disabilities, including children, are empowered with their full rights at the level of health, diagnostic, rehabilitation and health insurance services.

The state should also work to establish the special Financial Fund for Persons with Disabilities, as set in article 12 of the Executive Regulations of 2004, in compliance with the rule of law, in addition for the importance in of insuring the financial resources for persons with disabilities. The draft law on the Rights of Persons with Disabilities of 2019 continues to suffer serious problems that require tackling; consisting of the absence of persons with disabilities effective participation in drafting, discussing, and revising the draft law, before its adoption. In addition to the lack of independence of the Supreme Council for the Rights of Persons with Disabilities contained in the draft, which provides the executive authority's clear control over it. As well as the absence of penal provisions guaranteeing accountability and equity in this draft, in the event of violations of the rights of persons with disabilities, including children.

The state should provide clarifications regarding its failure to respond to the demands of the persons with disabilities, who conducted an open sit-in at the Palestinian Legislative Council on 22 July 2018, which lasted for a few consecutive days, calling for free and transparent elections



for the Palestinian General Union of People with Disabilities as a representative body for persons with disabilities. This has forced persons with disabilities to sleep on the Legislative Council's ground in difficult circumstances at the time. However, elections at the level of the general conference of the Union have not been held until this day, in clear violation of their right to freely choose their representatives, despite the expiration of the existing Union, which has been controlled by the executive authority for years.

- **The Right to Child Registration Upon Birth**

Al-Haq recommends the Committee to call upon the state to act immediately and without delay to enforce the provisions of article 7 of the Convention, regarding the child's right to registration, name, nationality, and to know and be cared for by, his or her parents, all immediately after birth.

- **Protecting Children from Exploitation**

The State of Palestine should present a clear and unified plan, within timeframes and implementation mechanisms to combat the phenomenon of disguised child begging in the West Bank and the Gaza Strip, to guarantee the protection of child victims from exploitation in its different means, ensure care and protection of their rights given at the Convention.

- **Family Unifications in Occupied East Jerusalem**

Al-Haq recommends the Committee to call on the State of Palestine to outline the measures taken to protect and to promote the civil, political, economic, social, and cultural rights of Palestinian children and their families in Jerusalem, providing quantitative and qualitative data and indicators. In addition to stating the independent financial allocations from the public budget placed for protecting and promoting the rights of Palestinian children in Jerusalem and ensuring their enjoyment of the rights guaranteed for them in the Convention. This should be provided in light of Palestinian Capital Law No. 4 for the year 2002 specifically within its article (3), issued by the Palestinian Legislative Council, stipulating that "a special share of the public budget shall be allocated annually for the city of Jerusalem, with clarifying the programs and plans encouraging public and private investment in the city, while development area (A) remains a special priority".

- **Lifting the Blockade and the Sanctions Imposed on the Gaza Strip**

The state should demonstrate the detailed measures and practical procedures it has taken to ensure the implementation of the Convention in the Gaza Strip, as well as the recommendations of the UN Commission of Inquiry on the 2018 protests in the Occupied Palestinian Territory, in particular with regard to lifting the blockade imposed on the Gaza Strip for years, with immediate effect, in realization of the Convention provisions in the Gaza Strip. In addition, the state should

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work without delay to lift the financial sanctions it has imposed over the Gaza Strip, since April 2017, which has led to serious repercussions on the civilian population, including children and their families, within the disastrous situation in the Strip. This should take into consideration, and as a priority, the United Nations multiple mentions that the Gaza Strip is no longer inhabitable for the human living.