

## INTERNATIONAL EDUCATIONAL AND CULTURAL OBLIGATIONS OF PALESTINE

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**Abstract:** *Substantial legislation relating to education and culture in Palestine stems from past periods; most legislative enactments have been adopted before the International Covenant on Economic, Social and Cultural Rights to which Palestine became a state party, on 1 April 2014. This paper surveys the educational and cultural rights guaranteed under the legal system in Palestine and examines whether Palestine would be in a position to realize these rights for its inhabitants and towards the international community. In light of the absence of statutes that comprehensively regulate the educational and cultural rights in the country, and notwithstanding that certain aspects of the applicable law happened to be compatible with international human rights standards, Palestine needs to undertake systematic modernization process in this connection.*

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**Key words:** *Palestine membership in UNESCO, right to education, cultural rights, primary education, higher education, cultural heritage, intellectual property.*

### Introduction

Upon its admission, as a state, to the United Nations Educational, Scientific and Cultural Organization (UNESCO) on 31 October 2011,<sup>1</sup> Palestine would enjoy and be obliged to carry out all rights and duties like any state, at least for the purpose of educational, scientific and cultural matters. The rights of Palestine include, *inter alia*, participation in the UNESCO forums including the power to vote. As a member of

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<sup>1</sup> UNESCOMPRESS, *General Conference admits Palestine as UNESCO Member State* (Paris: UNESCO, 31 October 2011).

this United Nations (UN) agency Palestine would become eligible to sign and ratify certain international conventions that are open to members of UN specialized agencies, such as the International Covenant on Economic, Social, and Cultural Rights ('ICESCR' or 'Covenant') of 16 December 1966.<sup>2</sup> Article 26(1) of ICESCR provides that the 'present Covenant is open for signature by any State Member of the United Nations or *member of any of its specialized agencies*. . .' (emphasis added).<sup>3</sup> After Palestine's recognition as a *state* by the UN General Assembly on 29 November 2012,<sup>4</sup> doubts on its membership in other agencies and treaties have been removed.<sup>5</sup> Indeed, on 1 April 2014, Palestinian President Mahmoud Abbas signed the ICESCR, beside other international treaties related to human rights, international humanitarian law, and so on. And, thereafter, Palestine has become a State Party to this instrument.

As a sign of their significance, educational and cultural rights have been incorporated in the Universal Declaration of Human Rights adopted by the UN General Assembly on 10 December 1948.<sup>6</sup> On education, Article 26 of the Declaration stated:

‘1. Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory. Technical and professional education shall be made generally available and higher education shall be equally accessible to all on the basis of merit.

2. Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. It shall promote understanding, tolerance and friendship among all nations, racial or religious

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<sup>2</sup> 933 *United Nations Treaty Series* (UNTS) 3 (1977).

<sup>3</sup> Agreement between the United Nations and the United Nations Educational, Scientific and Cultural Organization, Approved by the General Conference on 6 December 1946 and by the General Assembly of the United Nations on 14 December 1946; UNESCO, *Manual of the General Conference* (Paris: UNESCO, 2002), p. 147, article 1. This article states: 'The United Nations recognizes the United Nations Educational, Scientific and Cultural Organization (UNESCO) as a *specialized agency* responsible for taking such action as may be appropriate under its basic instrument for the accomplishment of the purposes set forth therein' (emphasis added).

<sup>4</sup> Resolution 67/19.

<sup>5</sup> See Basheer Al-Zoughbi, 'The *de jure* State of Palestine under Belligerent Occupation: Application for Admission to the United Nations,' in Mutaz M. Qafisheh, ed., *Palestine Membership in the United Nations: Legal and Practical Implications* (Newcastle: Cambridge Scholars, 2013), pp. 162-185.

<sup>6</sup> UN Doc. A/811 (1948).

groups, and shall further the activities of the United Nations for the maintenance of peace.

3. Parents have a prior right to choose the kind of education that shall be given to their children.’

On cultural rights, article 27 of the Declaration added:

‘1. Everyone has the right freely to participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits.

2. Everyone has the right to the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author.’

It is generally agreed that the rights set out in the Universal Declaration are of customary nature, or at least of moral character, that should be legally or ethically safeguarded by all states regardless of their membership in the UN or other organizations, or whether being party to given treaties.<sup>7</sup> The ICESCR has translated the Declaration principles into binding rules. Given their common language regarding educational and cultural rights, both the Declaration and the Covenant are interrelated and one could not imagine observing the first while ignoring the other.<sup>8</sup>

This paper surveys the educational and cultural rights enshrined in the current legal system in Palestine and examines whether this country is in a position to realize these two sets of rights for its inhabitants and towards the international community, represented by member states of UNESCO and state parties to ICESCR.<sup>9</sup> We assume here that Palestine is interested in joining the ICESCR in principle, particularly as

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<sup>7</sup> Hurst Hannum, ‘The Status of the Universal Declaration of Human Rights in National and International Law,’ 25 *Georgia Journal of International and Comparative Law* 287 (1996); Egon Schwelb, ‘The Influence of the Universal Declaration of Human Rights on International and National Law,’ 53 *American Society of International Law Proceedings* 217 (1959); and H. Lauterpacht, ‘The Universal Declaration of Human Rights,’ 25 *British Year Book of International Law* 354 (1948).

<sup>8</sup> Jovan Muncan, ‘Economic and Social Rights in the Universal Declaration of Human Rights,’ 31 *Zbornik Radova* 15 (1997).

<sup>9</sup> Philip Alston, ‘The United Nations’ Specialized Agencies and Implementation of the International Covenant on Economic, Social, and Cultural Rights,’ 18 *Columbia Journal of Transnational Law* 79 (1979).

article 10(2) of the Amended Palestinian Basic Law of 2003 on 18 March 2003,<sup>10</sup> which forms the current constitution of the country, plainly stated that that the Palestinians would ‘work without delay towards joining international human rights instruments.’

Educational and cultural rights are dealt with together here because both areas of state activity/obligations are interconnected and both fall under the thematic mandate of the UNESCO. This paper argues that if interested in becoming a UNESCO *active member state*, Palestine is required to systematically reform its educational and cultural policies and institutions. Legislation is the starting point for such reform.

The paper is divided into two sections. The first looks at the educational rights as regularized by the enforced legislation in both the West Bank and the Gaza Strip, the territory of the projected State of Palestine. And the second surveys the applicable legislation in the same territory that relates to cultural life. Articles 13-15 of the Covenant would be used as a reference point for analysing domestic legislation.

## **I. Right to Education**

Article 13 of the Covenant deals with the right to education, which should be realized by states through institutional measures adopted, *inter alia*, by legislation. It states:

1. The States Parties to the present Covenant recognize the right of everyone to education. They agree that education shall be directed to the full development of the human personality and the sense of its dignity, and shall strengthen the respect for human rights and fundamental freedoms. They further agree that education shall enable all persons to participate effectively in a free society, promote understanding, tolerance and friendship among all nations and all racial, ethnic or religious groups, and further the activities of the United Nations for the maintenance of peace.
2. The States Parties to the present Covenant recognize that, with a view to achieving the full realization of this right:

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<sup>10</sup> Palestine Gazette, Special Edition, 19 March 2004, p. 5. Hereinafter referred to as ‘Basic Law.’

- (a) Primary education shall be compulsory and available free to all;
- (b) Secondary education in its different forms, including technical and vocational secondary education, shall be made generally available and accessible to all by every appropriate means, and in particular by the progressive introduction of free education;
- (c) Higher education shall be made equally accessible to all, on the basis of capacity, by every appropriate means, and in particular by the progressive introduction of free education;
- (d) Fundamental education shall be encouraged or intensified as far as possible for those persons who have not received or completed the whole period of their primary education;
- (e) The development of a system of schools at all levels shall be actively pursued, an adequate fellowship system shall be established, and the material conditions of teaching staff shall be continuously improved.

3. The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to choose for their children schools, other than those established by the public authorities, which conform to such minimum educational standards as may be laid down or approved by the State and to ensure the religious and moral education of their children in conformity with their own convictions.

4. No part of this article shall be construed so as to interfere with the liberty of individuals and bodies to establish and direct educational institutions, subject always to the observance of the principles set forth in paragraph I of this article and to the requirement that the education given in such institutions shall conform to such minimum standards as may be laid down by the State.’

While the general recognition of the right to education is set out in Paragraph 1 of this article,<sup>11</sup> the subsequent paragraphs stipulate concrete measures that should be taken by states with regard to ‘primary education,’ ‘secondary education,’ ‘higher

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<sup>11</sup> This paragraph resembles article 26(2) of the Universal Declaration.

education,' actions to eradicate illiteracy, and policies pertaining to the systems of fellowships, continuous education and private schools.<sup>12</sup>

Article 24 of the 2003 Palestinian Basic Law embraces most of these measures by stipulating:

'1. Every citizen shall have the right to education. Education shall be compulsory until at least the end of the basic level. Education shall be free in public schools and institutions.

2. The [Palestinian] National Authority shall supervise all levels of education and its institutions, and shall strive to upgrade the educational system.

3. The law shall guarantee the independence of universities, institutes of higher education, and scientific research centers in a manner that guarantees the freedom of scientific research as well as literary, artistic and cultural creativity. The National Authority shall encourage and support such creativity.

4. Private schools and educational institutions shall comply with the curriculum approved by the National Authority and shall be subject to its supervision.'<sup>13</sup>

Most of the applicable legislation in Palestine concerning education is inherited from past periods. The older laws are chiefly comprised of the British-enacted Education Ordinance of 2 January 1933<sup>14</sup> in the Gaza Strip, and the Jordanian-issued Education Law No. 16 of 11 May 1964<sup>15</sup> in the West Bank. These two instruments draw the

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<sup>12</sup> See, in general, Fons Coomans, 'Justiciability of the Right to Education,' 2 *Erasmus Law Review* 427 (2009); Kishore Singh, 'The Right to Education: International Legal Obligations,' 1 *International Journal for Education Law and Policy* 103 (2005); Katarina Tomasevski, 'Has the Right to Education a Future within the United Nations - A Behind-the-Scene Account by the Special Rapporteur on the Right to Education 1998-2004,' 5 *Human Rights Law Review* 205 (2005); Katrien Beeckman, 'Measuring the Implementation of the Right to Education: Educational versus Human Rights Indicators,' 12 *International Journal of Children's Rights* 71 (2004); and Manfred Nowak, 'The Right to Education - Its Meaning, Significance and Limitations,' 9 *Netherlands Quarterly of Human Rights* 418 (1991).

<sup>13</sup> Cf. Ingo Richter, 'The Right to Education as a Constitutional Right,' 5 *International Journal for Education Law and Policy* 5 (2009); and William F. Foster Gayle Pinheiro, 'Constitutional Protection of the Right to an Education,' 11 *Dalhousie Law Journal*, 757 (1988).

<sup>14</sup> Robert Harry Drayton, ed., *The Laws of Palestine in Force on the 31st Day of December 1933* (London: Waterlow and Sons, 1934), p. 693.

<sup>15</sup> Jordan Official Gazette No. 1763, 26 May 1964, p. 720.

framework for the educational system in Palestine. A number of additional enactments complement these laws with respect to specific areas of education, for instance the Curricula and Textbooks Law No. 19 of 16 May 1963.<sup>16</sup> These pieces of legislation were enacted before the evolution of international human rights law, including the adoption of the ICESCR. By this fact alone, it can *prima facie* be concluded that the applicable law does not take into consideration international standards relating to education as set forth in the Covenant.

However, upon a closer reading of such instruments, it emerges that a number of the provisions embedded therein are compatible with international standards. Such provisions include the adoption of an educational philosophy comparable to that required by article 13(1) of the ICESCR: ‘development of human personality and the sense of its dignity,’ ‘protecting fundamental freedoms,’ ‘participating effectively in a free society,’ ‘promoting understanding, tolerance and friendship among all nations.’<sup>17</sup> The applicable provisions also lay down the foundations for private, non-governmental and religious schools;<sup>18</sup> adopt a basic system for continuous education;<sup>19</sup> and embrace an ‘adequate fellowship system.’<sup>20</sup> Lastly, it included articles that encourage fundamental education ‘for those persons who have not received or completed the entire period of primary education,’ (i.e. illiterate people).<sup>21</sup>

With a few exceptions—chiefly in the field of higher education and vocational training, as it will be apparent shortly—Palestinian authorities tried to upgrade the education system using the executive orders and practical actions rather than parliamentary enactments. Administrative decisions cover various areas of education,

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<sup>16</sup> *Ibid.*, No. 1688, 30 March 1964, p. 614.

<sup>17</sup> Education Law of 1964, articles 3 and 4.

<sup>18</sup> Education Ordinance of 1933, articles 4 and 5; Education Law of 1964, articles 59-77.

<sup>19</sup> Education Law of 1964, article 24.

<sup>20</sup> *Ibid.*, articles 100-109.

<sup>21</sup> *Ibid.*, articles 110 and 111.

such as the restructuring of the Ministry of Education,<sup>22</sup> decisions on the construction of school buildings,<sup>23</sup> fellowships,<sup>24</sup> and scientific research.<sup>25</sup>

Higher education was comprehensively regulated upon the adoption of Higher Education Law No. 11 of 2 November 1998.<sup>26</sup> This law recognizes the right to higher education for all as a matter of principle.<sup>27</sup> It further accords universities and research institutions independence from the government and recognizes a separate judicial personality for each university.<sup>28</sup> It also grants the Ministry of Higher Education the power to monitor higher education institutions with view to ensuring a unified system for all Palestinian universities.<sup>29</sup> While dividing higher educational institutions into governmental,<sup>30</sup> non-governmental (or not-for-profit),<sup>31</sup> and private institutions,<sup>32</sup> the law defines the various academic degrees/diplomas (e.g. bachelor, master, doctorate) and the duration of the teaching period for each degree.<sup>33</sup> This law gives the Ministry of Higher Education the power to license new educational institutions,<sup>34</sup> and to accredit new academic programmes.<sup>35</sup> Lastly, the law prescribes rules relating to the administration of higher educational institutions.<sup>36</sup>

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<sup>22</sup> Decision of the Council of Ministers No. 67 of 27 June 2006 on the Restructuring of the Ministry of Education, Palestine Gazette No. 68, 7 March 2007, p. 114.

<sup>23</sup> Decision of the Council of Ministers No. 1 of 4 January 2005 the Provision of Needs for Public Education including School Buildings, Palestine Gazette, No. 55, 27 June 2005, p. 190.

<sup>24</sup> Presidential Decree No. 162 of 10 August 2010, Palestine Gazette No. 88, 10 December 2010, p. 58; and Presidential Decision No. 4 of 20 February 2005, Palestine Gazette No. 54, 23 April 2005, p. 61.

<sup>25</sup> Decision of the Council of Ministers No. 125 of 6 September 2005 on the Allocation of Annual Budget for the Council of Scientific Research, Palestine Gazette No. 63, 27 April 2006, p. 635.

<sup>26</sup> Palestine Gazette No. 27, 8 December 1998, p. 28.

<sup>27</sup> Article 2.

<sup>28</sup> Articles 3 and 7.

<sup>29</sup> Articles 5-6 and 19.

<sup>30</sup> Article 14. A separate regulation for governmental universities has also been adopted. Palestine Gazette No. 83, 1 November 2009, p. 75.

<sup>31</sup> Article 15.

<sup>32</sup> Article 16.

<sup>33</sup> Article 20.

<sup>34</sup> Article 17.

<sup>35</sup> Article 18.

<sup>36</sup> Articles 11-16.

By and large, the Higher Education Law, formalizes the situation of Palestinian universities in existence since the nineteen-seventies, where the non-governmental sector led the institutes of higher education under Israeli occupation.<sup>37</sup> While it generally conforms to article 13, paragraph 2(c), of the ICESCR, the aforementioned law fails to lay the ground for, or even to mention, ‘the progressive introduction of free education.’<sup>38</sup>

Labour Law No. 7 of 30 April 2000,<sup>39</sup> which applies in Gaza and the West Bank, lays the foundations for vocational and technical education.<sup>40</sup> According to this law, the purpose of vocational education is ‘to guide workers towards available work and training opportunities that suit their skills, preferences and capabilities’ and ‘to produce workers for the development needs, enabling them to acquire sustainable skills.’<sup>41</sup> This law vested the Ministry of Labour with the power of formulating vocational policies in coordination with other ministries in order to train youth for market-oriented careers.<sup>42</sup> Conditions governing vocational education centres, which are either directly run by the Ministry or by private employers, are laid down.<sup>43</sup> Regulations established procedures to enrol candidates in vocational and technical programmes, including conditions of enrolment, application procedures, and the rights of trainees.<sup>44</sup> A licensing system for private employers to conduct vocational

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<sup>37</sup> See Gabi Baramki, *Peaceful Resistance: Building a Palestinian University under Occupation* (London: Pluto Press, 2010). More generally, see Alta Schwartz, ‘The Leadership Role of Palestinian Non-Governmental Organizations: Managing Chaos, Creating Civil Society,’ 2 *International Journal of Civil Society Law* 63 (2004); Khalil Nakhleh, ‘Non-Governmental Organizations and Palestine: The Politics of Money,’ 2 *Journal of Refugee Studies* 113 (1989).

<sup>38</sup> But the system of fellowships discussed above might bridge this gap.

<sup>39</sup> Palestine Gazette No. 39, 25 November 2001, p. 7.

<sup>40</sup> For detailed analysis of Palestinian labour law in the light of international standards, see Mutaz Qafisheh, ‘The Interplay between International Human Rights and Labour Rights in Palestine,’ 9 *Journal of Islamic State Practice in International Law* 121 (2013).

<sup>41</sup> Article 18.

<sup>42</sup> Articles 19-20.

<sup>43</sup> Article 22.

<sup>44</sup> Decision of Council of Ministers No. 145 of 24 May 2004 on the Implementation of the Regulation Relative to Vocational and Technical Training, Palestine Gazette No. 53, 28 February 2005, p. 235; and Decision of the Council of Ministers No. 169 of 12 July 2004 concerning the Regulation of Vocational Instructions and Training, Palestine Gazette No. 53, 28 February 2005, p. 286.

education under the Ministry's supervision was put in place.<sup>45</sup> In effect, technical education has been integrated at the school and university levels. Technical schools (for electricians, car mechanics, or decorators, among others) grant students the secondary school certificate (*tawjihi* or *baccalaureate*), which normally consists of three years of education after the compulsory nine-year of basic education, are run by the Ministry of Education like other schools. Technical universities, such as Palestine Polytechnic University, which graduates students with either a two-year diploma or a four- or five- year bachelor degrees, are supervised by the Ministry of Higher Education as the case of other universities. The existence of such vocational and technical systems brings Palestine into harmony with article 6(2) of the Covenant that requires states to adopt 'technical and vocational guidance and training programmes, policies and techniques.'<sup>46</sup>

The education system has been advanced in practice well beyond existing legal texts in the country. With the exception of higher education and vocational training, the system lacks a coherent legal framework.<sup>47</sup> For example, the law prescribes that primary education shall be compulsory for nine years.<sup>48</sup> It adds that secondary education should be optional and has to run for three years.<sup>49</sup> In practice, primary education lasts for ten years and secondary education for two. The law requires the Ministry of Education to hold a formal examination and to grant an official state-run diploma at the end of compulsory education,<sup>50</sup> such an examination and diploma no longer exist. There are certain contradictions between the law and the situation on the ground; while the Basic Law, like international standards, requires that primary

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<sup>45</sup> Decision of the Council of Ministers No. 168 of 12 July 2004 concerning the Regulation of the Conditions and Procedures of the Licensing of Private Vocational Training Institutions, Palestine Gazette No. 53, 28 February 2005, p. 283.

<sup>46</sup> *Cf.* Convention concerning Vocational Guidance and Vocational Training in the Development of Human Resources of 23 June 1973; International Labour Organization (ILO) Convention No. 142.

<sup>47</sup> Rules relating to schools might be found in various laws, including Child Law No. 7 of 15 August 2004 (Palestine Gazette No. 52, 18 January 2005, p. 13), articles 37-41; Public Health Law No. 20 of 27 December 2004 (Palestine Gazette No. 54, 23 April 2004, p. 14), article 38; Rights of People with Disabilities Law No. 4 of 9 August 1999 (Palestine Gazette No. 30, 10 October 1999, p. 36), articles 6 and 14; and Environment Law No. 7 of 28 December 1999 (Palestine Gazette No. 32, 29 February 2000, p. 38), article 4.

<sup>48</sup> Education Law of 1964, articles 8 and 10.

<sup>49</sup> *Ibid.*, article 16.

<sup>50</sup> *Ibid.*, article 55.

education to be free,<sup>51</sup> schools do charge students. The last point is adduced, for instance, from the Council of Ministers Decision No. 80 of 25 July 2006 on the Reduction of Fees at Governmental Schools,<sup>52</sup> and Council of Ministers Decision No. 96 of 10 September 2007 on the Exemption of the Students of Poor Families and Whose Father Unemployed from School Fees.<sup>53</sup> Such decisions show, by implication, that students who do not belong to these categories should pay fees.

Palestine needs at least to codify and update its educational legal system in the form of a law, covering philosophy, institutions, schools, curricula, personnel, etc. Such codification can be derived from the executive orders or internal instructions currently existing at educational institutions.<sup>54</sup> The country needs to unify its educational system between the Gaza Strip and the West Bank; the 1964 law in the West Bank is over twenty years more developed than the 1933 law that is still enforced in Gaza. And both laws are below international standards.

The new educational system ought to fill in the gaps that are still missing in light of Article 13 of ICESCR, including the establishment of an effective inspection mechanism to ensure that education at the elementary/basic education level is free for all children and to punish anyone who ignores the compulsory nature of elementary education, such as those who cause school drop-out, including parents and employers.

These objectives can be achieved, for example, by formulating the plan of action on primary education based on Article 14 of the ICESCR as elaborated by General Comment No. 11 of 10 May 1999 issued by the UN Committee on Economic, Social and Cultural Rights (CESCR).<sup>55</sup> Palestine also needs to consider new global developments on the right to education, such as the International Convention on the

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<sup>51</sup> *Ibid.*, article 11.

<sup>52</sup> Palestine Gazette No. 68, 17 March 2007, p. 127.

<sup>53</sup> *Ibid.*, No. 77, 9 October 2008, p. 156.

<sup>54</sup> By looking at the various instructions, such as the system of diploma accreditation, posted on the website of the Ministry of Education (<http://www.mohe.gov.ps>), one can find no legal basis for the Ministry's work other than the internal instructions.

<sup>55</sup> CESCR, General comment No. 11: 'Plans of action for primary education' of 10 May 1999, UN Doc. HRI/GEN/1/Rev.7 of 12 May 2004 ('Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies'), p. 60, paras. 6 and 7.

Rights of the Child of 20 November 1989.<sup>56</sup> It should integrate human rights education into school curricula,<sup>57</sup> and adopt ‘specific references to gender equality and respect for the environment.’<sup>58</sup> Learning from experiences of other states and seeking technical assistance from specialized international organizations, such as UNESCO and the United Nations Office of the High Commissioner for Human Rights, are particularly relevant techniques for Palestine in this field.<sup>59</sup>

## II. Cultural Rights

Article 15 of the ICESCR deals with the cultural rights in the following terms:

‘1. The States Parties to the present Covenant recognize the right of everyone:

(a) To take part in cultural life;

(b) To enjoy the benefits of scientific progress and its applications;

(c) To benefit from the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author.

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<sup>56</sup> 1577 UNTS 3 (1990), article 29(1).

<sup>57</sup> CESCR, General Comment No. 13: ‘The right to education’ of 8 December 1999, UN Doc. HRI/GEN/1/Rev.7, *op. cit.*, p. 71, para. 5.

<sup>58</sup> *Ibid.* See Richard Pierre Claude, ‘The Right to Education and Human Rights Education,’ 2 *International Journal on Human Rights* 37 (2005); C. Raj Kumar, ‘International Human Rights Perspectives on the Fundamental Right to Education - Integration of Human Rights and Human Development in the Indian Constitution,’ 12 *Tulane Journal of International and Comparative Law* 237 (2004); and Douglas Hodgson, ‘The International Human Right to Education and Education concerning Human Rights,’ 4 *International Journal of Children’s Rights* 237 (1996).

<sup>59</sup> *Cf.* Serges Kamga and Djoyou Alain, ‘Realising the Right to Primary Education in Cameroon,’ 11 *African Human Rights Law Journal* 171 (2011); Nino Rukhadze, ‘Some Aspects of Protection of Right to Education in Georgia,’ 6 *International Journal for Education Law and Policy* 51 (2010); Doron Isaacs, ‘Realising the Right to Education in South Africa: Lessons from the United States of America,’ 26 *South African Journal on Human Rights* 356 (2010); Minmin Fan, ‘The Right to Higher Education in China for Students with Physical Disabilities,’ 6 *International Journal for Education Law and Policy* 73 (2010); Gregory M. Dickinson, ‘The Right to Education in Canada: A Difficult Beast to Tame,’ 1 *International Journal for Education Law and Policy* 47 (2005); E.J. Ryan, ‘Failing the System - Enforcing the Right to Education in New Zealand,’ 35 *Victoria University of Wellington Law Review* 735 (2004); and Roger J.R. Levesque, ‘The Right to Education in the United States: Beyond the Limits of the Lore and Lure of Law,’ 4 *Annual Survey of International and Comparative Law* 205 (1997).

2. The steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall include those necessary for the conservation, the development and the diffusion of science and culture.

3. The States Parties to the present Covenant undertake to respect the freedom indispensable for scientific research and creative activity.

4. The States Parties to the present Covenant recognize the benefits to be derived from the encouragement and development of international contacts and co-operation in the scientific and cultural fields.’

To assess the compatibility of the applicable legislation in Palestine with this article, the legislation on various aspects of cultural issues that set out the framework for the country’s cultural legal system must be reviewed. Additionally, legislation relating to scientific research and intellectual property requires thorough examination.

By surveying existing legislation, one can find no single law addressing culture or the protection of cultural life in Palestine. Equally, there are no enactments that restrict cultural activities. At the secondary legislation level, one can find a number of executive orders that protect culture. For instance, the establishment of the Ministry of Culture and assigning it, by Council of Ministers Decision No. 227 of 7 September 2004 on the Ministry of Culture Structure,<sup>60</sup> a range of functions reflects a recognized importance attached to cultural issues. This Decision vests the Ministry with the mandate to preserve popular arts, to facilitate the establishment of cultural centres, sponsor artistic initiatives and events involving women and youth, and promote openness towards other cultures by participation in global festivals and exhibitions, and signing cultural agreements with other states.<sup>61</sup> The Decision includes provisions for folklore, poetry, singing, handmade industries, historical manuscripts, translation, music, fine arts and cultural heritage. It lays down substantive rules that can normally be found in parliamentary statutes.

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<sup>60</sup> Palestine Gazette No. 58, 8 September 2005, p. 103.

<sup>61</sup> Article 2.

Other executive legislation confirms this official position towards the advancement of cultural life in the country. Such legislation relates to support of theatre,<sup>62</sup> the merger of a number of institutions (i.e. ‘Palestinian Poetry House,’ ‘National Libraries House,’ ‘Higher Council for Educational, Culture and Science’) with the Ministry of Culture,<sup>63</sup> and the establishment of independent artistic institutions.<sup>64</sup>

Similarly, legislation inherited from past periods protects cultural heritage, such as the Antiquities Ordinance of 31 December 1929,<sup>65</sup> the Palestine Archaeological Museum Rules of 29 November 1937<sup>66</sup> (both are officially enforced in the Gaza Strip at present), and Antiquities Law No. 51 1966,<sup>67</sup> which is applicable in the West Bank.

Although the legal system in Palestine does not contradict Article 15, paragraph 1(a), of the ICESCR as it complies with the obligation of ‘abstention’ or ‘non-interference with the exercise of cultural practices and with access to cultural goods and services,’ as specified by the CESCR’s Comment No. 21, which established the ‘[r]ight of everyone to take part in cultural life.’<sup>68</sup> However, Palestine still needs to take proactive measures to improve its culture-related legislation. The desired legislation should not only respect cultural rights, but also protect such rights and oblige the government to fulfil the rights by establishing museums, libraries, theatres, cinemas, monuments, heritage sites, and parks as well as by organizing cultural events and to facilitate learning from, and interaction with other cultures within the country and abroad, teach and open access to ‘cultural goods,’ such as history, music, poetry, traditions, folklore, traditional cooking, dancing, literature, language, and science.<sup>69</sup> The legislation should also guarantee access to these cultural installations and goods by

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<sup>62</sup> Decision of the Council of Ministers No. 95 of 12 July 2005 on the Affiliation of the Palestinian Children’s Theatre to the Ministry of Culture, Palestine Gazette No. 63, 27 April 2006, p. 580.

<sup>63</sup> Decision of the Council of Ministers No. 124 of 11 September 2006 on the Merger of Artistic Institutions to the Ministry of Culture, Palestine Gazette No. 69, 27 April 2007, p. 189.

<sup>64</sup> Presidential Decree No. 5 of 3 April 2011 concerning the Establishment of *Alashekeen* Group for Arts and Culture [National Songs], Palestine Gazette No. 91, 10 October 2011, p. 19.

<sup>65</sup> Drayton, *op. cit.*, p. 30.

<sup>66</sup> Palestine Gazette, Supplement 2, No. 742, 9 December 1937, p. 1509.

<sup>67</sup> Jordan Official Gazette No. 1936, 16 July 1966, p. 1,327.

<sup>68</sup> UN Doc. E/C.12/GC/21, 21 December 2009, para. 6.

<sup>69</sup> Paras. 52-54 and 66-70.

the poor, children, women, people with special needs, minorities, and communities living in rural areas and deprived urban neighbourhoods.<sup>70</sup>

Pursuant to its recent membership in UNESCO, Palestine awaits a systematic reformation process to meet its international obligations as set forth in the cultural treaties it accepted. As a turning point, on 8 December 2011, Palestine ratified the Convention concerning the Protection of the World Cultural and Natural Heritage of 16 November 1972,<sup>71</sup> leading to its entry into force for Palestine on 8 March 2012.<sup>72</sup> The State simultaneously became party to additional three global instruments: Convention on the Protection and Promotion of the Diversity of Cultural Expressions of 20 October 2005,<sup>73</sup> the Convention for the Safeguarding of the Intangible Cultural Heritage of 17 October 2003,<sup>74</sup> and the Convention on the Protection of the Underwater Cultural Heritage of 2 November 2001.<sup>75</sup> This date marks the first time in history whereby Palestine, as a state, joins multilateral global treaties of any type. On 22 March 2012, Palestine ratified another two instruments: the Convention for the Protection of Cultural Property in the Event of Armed Conflict of 14 May 1954,<sup>76</sup> and the Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property of 14 November 1970.<sup>77</sup> Other UNESCO instruments are now open for Palestine include treaties on diverse areas, such as copyrights,<sup>78</sup> the protection of phonograms,<sup>79</sup> non-discrimination in education,<sup>80</sup> and the international exchange and circulation of publications of

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<sup>70</sup> Laura-Maria Craciunean, 'The Role of UN Committee for Economic, Social and Cultural Rights' General Comment No. 21/2009 in Clarifying the Content of the Right to Take Part in Cultural Life,' *ACTA Universitatis Lucian Blaga* 228 (2011).

<sup>71</sup> 1037 UNTS 151 (1977).

<sup>72</sup> UNESCO's Office of International Standards and Legal Affairs, 'Ratification by Palestine of the Convention concerning the Protection of the World Cultural and Natural Heritage' (Paris, 16 January 2012).

<sup>73</sup> UNESCO Doc. CLT-2005/CONVENTION DIVERSITE-CULT REV.2.

<sup>74</sup> 2368 UNTS 3 (2007).

<sup>75</sup> 41 *International Legal Materials* 40 (2002).

<sup>76</sup> 249 UNTS 240 (1956).

<sup>77</sup> 1037 UNTS 151 (1977).

<sup>78</sup> Universal Copyright Convention of 24 July 1971; 943 UNTS 178 (1974).

<sup>79</sup> International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations of 26 October 1961; 496 UNST 43 (1964).

<sup>80</sup> Convention against Discrimination in Education of 14 December 1960; 429 UNTS 93 (1962).

educational, scientific and cultural materials.<sup>81</sup> The application of these treaties requires a series of legislative enactments to execute them at the national level, including by legislation that establishes relevant institutions, allocates resources, and sets penalties for those who violate such instruments.

The freedom of ‘scientific research and creative activity,’ as required by article 15(3) of the ICESCR, cited above, is recognized in principle by Article 24(3) of the Palestinian Basic Law of 2003, which stipulated that the ‘law shall guarantee the independence of . . . scientific research centres in a manner that ensures the freedom of scientific research as well as literary, artistic and cultural creativity.’

In concrete terms, the 1998 Higher Education Law recognized scientific research as an objective of higher education.<sup>82</sup> The law established the Council of Scientific Research,<sup>83</sup> and laid down foundations for the independence and licensing of research institutions.<sup>84</sup> Further Palestinian legislation attached significance to scientific research by, for example, allocating funds for such research by public and private institutions.<sup>85</sup> Agriculture Law No. 2 of 5 August of 2003<sup>86</sup> exempted agriculture scientific institutions from tax.<sup>87</sup> Press and Publication Law No. 9 of 25 June 1995<sup>88</sup> excluded scientific institutions from censorship measures that apply to imported publications.<sup>89</sup> Although judges are banned from expressing their views on judgments issued by other courts, an exception was made for the purpose of scientific research.<sup>90</sup>

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<sup>81</sup> Agreement for Facilitating the International Circulation of Visual and Auditory Materials of an Educational, Scientific and Cultural character of 10 December 1948; 197 UNTS 3 (1954).

<sup>82</sup> Article 4.

<sup>83</sup> Article 22.

<sup>84</sup> Articles 3 and 23-25.

<sup>85</sup> Banks Law No. 2 of 31 May 2002, Palestine Gazette No. 41, 6 June 2002, p. 5, article 31(4) (the possibility of allocating up to 2% of the banks’ profit to scientific research); and Decision of the Council of Ministers No. 125 of 6 September 2005 on the Allocation of an Annual Financial Sum for the Council of Scientific Research, Palestine Gazette No. 63, 27 April 2006, p. 635.

<sup>86</sup> Palestine Gazette No. 47, 30 October 2003, p. 23.

<sup>87</sup> Article 40.

<sup>88</sup> Palestine Gazette No. 6, 26 August 1995, p. 11.

<sup>89</sup> Article 38.

<sup>90</sup> Decision of the High Judicial Council No. 3 of 10 May 2006 concerning the Judicial Code of Conduct, Palestine Gazette No. 67, 19 October 2006, p. 75, article 35.

Various executive orders have adopted legal foundations for specialized research bodies on sectors such as agriculture,<sup>91</sup> health,<sup>92</sup> water,<sup>93</sup> statistics<sup>94</sup> and sports.<sup>95</sup>

Despite guaranteeing the freedom of expression as a matter of principle,<sup>96</sup> the aforementioned Publication Law of 1995 restricts the freedom of publishing.<sup>97</sup> This law imposes requirements including a series of governmental approvals that one should obtain, such as approval for any ‘foreign finance’ without specifying the meaning of this term,<sup>98</sup> the obligation of any seller to notify the Ministry of Information two weeks before importing periodicals,<sup>99</sup> the duty to acquire permits for the selling of any publication,<sup>100</sup> and the necessity for universities and research institutions to acquire personal approval from the Minister for importing ‘forbidden materials.’<sup>101</sup> It prescribes strict penalties for so-called ‘publishing crimes.’<sup>102</sup>

The protection of moral and material rights of authors as established in Article 15, paragraph 1(c), of the Covenant has long been recognized in Palestine. The extension of the British Copyright Act of 16 December 1911 as early as 21 March 1924 marked

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<sup>91</sup> Decision of the Council of Ministers No. 111 of 3 August 2004 on the Regulation of the Palestinian National Centre for Agricultural Research, Palestine Gazette No. 52, 18 January 2005, p. 254.

<sup>92</sup> Higher Health Advisory Council Regulation No. 21 of 23 February 1966, Jordan Official Gazette No. 1908, 17 March 1966, p. 420, article 4.

<sup>93</sup> Bylaws of the Palestinian Water Authority No. 66 of 5 June 1997, Palestine Gazette No. 18, 4 August 1997, p. 34, article 9(B)(3).

<sup>94</sup> Decision of the Council of Ministers No. 198 of 1 November 2004 on the Formation of the Advisory Council of Official Statistics, Palestine Gazette No. 54, 23 April 2005, p. 116.

<sup>95</sup> Sports Decree-Law No. 11 of 1 December 2008, Palestine Gazette No. 79, 9 February 2009, p. 10, article 4(10).

<sup>96</sup> E.g. article 2 (right to express ‘opinion freely by speaking, writing, filming and painting’), article 4 (freedom of political parties, non-governmental organizations, newspapers), and article 5 (right to own publishing institutions).

<sup>97</sup> This ‘law’ was enacted by the Palestinian President Yaser Arafat before the reestablishment of the Palestinian Parliament, which was elected in January 1996. Hence, the ‘law’ constitutes rather an executive decree, not a parliamentary enactment. On the history of legislation in Palestine before and after the legislative elections, see Mutaz Qafisheh, ‘Legislative Process in Palestine,’ *International Judicial Monitor*, Washington DC, 2013.

<sup>98</sup> Article 9.

<sup>99</sup> Articles 34-35.

<sup>100</sup> Article 36.

<sup>101</sup> Article 38.

<sup>102</sup> Articles 44-48.

the beginning of legal protection for authors' rights in Palestine.<sup>103</sup> The Act, which is still applicable in both the Gaza Strip and the West Bank, protects various rights pertaining to literature, music, drama and 'artistic works'<sup>104</sup> such as books, novels, maps, charts, engineering drawings, oil paintings, cartoons, animations, movie direction, statues, photos, carvings, songs, inscriptions, dance tunes and plays.<sup>105</sup> Such protection includes publishing or re-publishing, lecturing, performing, translating, recording, broadcasting, playing in the cinema or the theatre,<sup>106</sup> selling, renting, distributing, granting as a gift or in the form of a will and passing rights to heirs.<sup>107</sup>

A number of instruments specifically protect trademarks, commercial names, brands, symbols and industrial designs. Among these are the Patents and Designs Ordinance of 1 January 1925,<sup>108</sup> the Trademarks Ordinance of 21 November 1938,<sup>109</sup> and the Registration of Business Names Ordinance of 24 May 1935<sup>110</sup> in Gaza; as well as Patents and Designs Law No. 22 of 1953,<sup>111</sup> Trademarks Law No. 33 of 25 May 1952,<sup>112</sup> and Business Names Law No. 30 of 5 January 1953<sup>113</sup> in the West Bank.

These instruments, notably the 1911 Copyright Act, meet the basic requirements of Article 15, paragraph 1(c), of the Covenant, as defined by the CESCR's General Comment No. 17 of 25 November 2005, which codifies the 'right of everyone to benefit from the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he or she is the author.'<sup>114</sup> This Comment, *inter alia*, obliges states to adopt 'legislation and regulations, as well as

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<sup>103</sup> Drayton, *op. cit.*, p. 3204. The text of the Copyright Act of 1911 itself can be found in *ibid.*, p. 3169.

<sup>104</sup> Article 1(1).

<sup>105</sup> Article 35.

<sup>106</sup> Article 1(2).

<sup>107</sup> Articles 2 and 5.

<sup>108</sup> Drayton, *op. cit.*, p. 1233.

<sup>109</sup> Palestine Gazette, Supplement 1, No. 843, 24 November 1938, p. 156.

<sup>110</sup> *Ibid.*, No. 514, 27 May 1935, p. 175.

<sup>111</sup> Enacted on 30 December 1952, Jordan Official Gazette No. 1131, 17 January 1953, p. 491.

<sup>112</sup> *Ibid.*, No. 1110, 1 June 1952, p. 243.

<sup>113</sup> *Ibid.*, No. 1131, 17 January 1953, p. 522.

<sup>114</sup> UN Doc. E/C.12/GC/17, 12 January 2006.

effective administrative, judicial or other appropriate remedies, for the protection of the moral and material interests of authors.’<sup>115</sup>

However, the enactment dating back more than a century needs modernizing in order account for subsequent developments at the Palestinian and global levels, not only human rights developments, but also the need for consistency between the applicable law of the Gaza Strip with that enforced in the West Bank, and the necessity to ensure equal treatment, and non-discrimination, of copyright holders in these two parts of the country.<sup>116</sup> The law likewise should be updated to reflect electronic and digital developments,<sup>117</sup> to protect cross-border copyrights, and to lay the foundations for bilateral and multilateral intellectual property treaties, such as those adopted under the auspices of the UNESCO (see above) as well as the World Intellectual Property Organization (WIPO) in the fields of industrial property and design, artistic works, copyright, patents, trademarks, phonograms and new varieties of plants.<sup>118</sup>

These desired legislative enactments may fall under the obligation of the state to ‘fulfil’ its authors’ rights. Such fulfilment requires states ‘to adopt appropriate legislative, administrative, budgetary, judicial, promotional and other measures towards the full realization of Article 15, paragraph 1(c).’<sup>119</sup> Obviously, the launching of legislative reform in the light of this section could pave the way for Palestine to become a member of the WIPO, another UN agency, and to become party to its series of treaties, as well as to learn from the Organization’s technical expertise in the field of intellectual property.<sup>120</sup>

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<sup>115</sup> *Ibid.*, para. 18.

<sup>116</sup> *Cf. ibid.*, paras. 19-21: ‘Non-discrimination and equal treatment.’

<sup>117</sup> *Ibid.*, para. 31: ‘States parties must prevent the unauthorized use of scientific, literary and artistic productions that are easily accessible or reproducible through modern communication and reproduction technologies, e.g. by establishing systems of collective administration of authors’ rights or by adopting legislation requiring users to inform authors of any use made of their productions and to remunerate them adequately.’

<sup>118</sup> *WIPO Intellectual Property Handbook* (Geneva: WIPO, 2008), pp. 241-363. In this connection, CESCR’s General Comment No. 17, *op. cit.*, para. 49, stated that ‘States parties may obtain guidance on . . . the right to the protection of the moral and material interests of the author, from the World Intellectual Property Organization (WIPO), the United Nations Educational, Scientific and Cultural Organization (UNESCO).’ See also CESCR’s General Comment No. 17, *op. cit.*, paras. 56-57.

<sup>119</sup> *Ibid.*, para. 28. See also paras. 34, 39, 44-45 and 47-48.

<sup>120</sup> *Cf. Lea Shaver and Caterina Sganga, ‘The Right to Take Part in Cultural Life: On Copyright and Human Rights,’ 27 Wisconsin International Law Journal 637 (2010).*

## **Conclusion**

Substantial legislation relating to educational and cultural rights in Palestine stems from past periods and was developed well before the adoption of the International Covenant on Economic, Social and Cultural Rights. Thus far, Palestine has done little to update and reform the legal aspects relating to educational rights and cultural life. Palestine mainly issued executive orders to activate the older laws.

Palestine did not take proactive measure to advance its educational and cultural systems. In the absence of legislation that comprehensively regulate the educational and cultural rights, and notwithstanding that certain aspects of the domestic law happened to be compatible with international standards such as the compulsory primary education and the protection of certain aspects of intellectual property, Palestine needs to launch a systematic modernization process in this area. Such a process is required now more than ever, notably upon the admission of Palestine as a state to the UNESCO in 2011, its recognition as a state by the United Nations General Assembly in 2012, its ratification of a series of cultural heritage conventions in 2013, and its accession to the International Covenant on Economic, Social and Cultural Rights in 2014. As a member of international organizations and a party to international treaties, Palestine must discharge its duties stemming therefrom.