

ACCESS TO JUSTICE FOR CHILDREN: OCCUPIED PALESTINIAN TERRITORY¹

This report was produced by DLA Piper in November 2014 but may have been subsequently edited by Child Rights International Network (CRIN). CRIN takes full responsibility for any errors or inaccuracies in the report.

I. What is the legal status of the Convention on the Rights of the Child (CRC)?²

A. What is the status of the CRC and other relevant ratified international instruments in the national legal system?

The Palestinian Basic Law requires the Palestinian Authority to “*work without delay to become a party to regional and international declarations and covenants that protect human rights*”,³ but does not clarify the status of international treaties within national law.

Palestine has been a non-member observer State at the United Nations since November 2012 and is therefore able to join international conventions.⁴ On 2 April 2014, the State of Palestine⁵ acceded to the CRC and the Optional Protocol to the CRC on the Involvement of Children in Armed Conflict.⁶ States must compile their first report two years after acceding to the Convention; as such, the first report from the OPT will be due in 2016.

B. Does the CRC take precedence over national law?

It is unclear what the formal hierarchy of laws is in the OPT, please see part V for additional information on the legal system of the OPT.

C. Has the CRC been incorporated into national law?

¹ This report focuses on the Occupied Palestinian Territories (OPT). In addressing the legal system in place in the OPT and the implications for access to justice for Palestinian children, the report will also address the Israeli military justice system that is in place in the West Bank, though this system of law is under the jurisdiction of Israel. Please see section V for more information on the legal system in the OPT.

² Responses to the questions in this report are largely based on information contained in the PNA and UNICEF reports, they do not reflect the personal views of DLA Piper or the author. This report is further qualified by the fact that in the Occupied Palestinian Territory (OPT) there does not appear to be a comprehensive formal system of reporting cases, in relation to children’s rights or otherwise, and organising up-to-date applicable laws. The Palestinian National Authority Report on the Implementation of the Convention on the Rights of the Child in the Occupied Palestinian Territory, available at: http://www.savethechildren.org.uk/sites/default/files/docs/OPT_PNA_CRC_Report_English_1.pdf; and the UNICEF report of 2010 on the Situation of Palestinian Children in the Occupied Palestinian Territory, Jordan, Syria and Lebanon, available at: http://www.unicef.org/oPt/PALESTINIAN_SITAN-final.pdf.

³ Palestinian Basic Law, Article 10.

⁴ Further information regarding the United Nations General Assembly’s vote to grant Palestine non-member observer State status available at:

<http://www.un.org/apps/news/story.asp?NewsID=43640#.VMZeeDX1GIM>.

⁵ Please note, generally the term Occupied Palestinian Territories is used throughout this report to collectively refer to the West Bank, Gaza Strip and East Jerusalem, but here the term Palestine is used, as international treaties are formally signed and ratified with the UN by the “State of Palestine”.

⁶ Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, available at: <http://www.ohchr.org/EN/ProfessionalInterest/Pages/OPACCRC.aspx>.

The CRC has not been incorporated into national law, though the PNA has enacted legislation which provides for a number of the principles enshrined in the CRC. In particular, Article 29 of the Amended Basic Law 2003⁷ confirms child welfare as a national duty, and the Palestinian Child Law 2004 (PCL) addresses a number aspects of the law applicable to children.⁸

D. Can the CRC be directly enforced in the courts?

It has not been possible to find any example of the CRC being directly enforced in Palestinian courts. In enforcing children's rights, however, domestic courts have reportedly been encouraged to consider the CRC and to apply international human rights instruments in proceedings, whether or not these have been raised or cited by the parties involved.⁹

The civil and criminal courts in the OPT are bound by national legislation which has implemented some of the provisions of the CRC, such as those in the Palestinian Child Law. In contrast, religious courts which, pursuant to the Basic Law, consider personal and religious issues, are not required to apply laws which incorporate children's rights (including the PCL) in matters falling within their jurisdiction. However, in 2009, the Chief Islamic Justice reportedly addressed all Islamic religious judges in an internal memorandum in which he urged them to review and take into consideration the PCL when dealing with children's issues.¹⁰ Nonetheless, the PCL is not currently widely applied within the judicial system.¹¹

A substantial proportion of criminal and security cases arising in the West Bank are processed through the Israeli military justice system. An appeal arising from an Israeli military court is initially heard by the Military Appeal Tribunal and then the Supreme Court of Israel.¹² Israeli courts have cited the CRC in their decisions,¹³ though it is not clear whether they have done so in relation to a case originating in the military court system.

E. Are there examples of domestic courts using or applying the CRC or other relevant international instruments?

It has not been possible to find any instance of the CRC being applied in a domestic court under the jurisdiction of the Palestinian Authority or in a case arising from an Israeli military tribunal in the OPT.

⁷ The Amended Basic Law 2003 is available at:

<http://muqtafi.birzeit.edu/en/Legislation/GetLegFT.aspx?LegPath=2003&MID=14138&lnk=2>.

⁸ The Palestinian Child Law 2004 is available at (Arabic):

<http://muqtafi.birzeit.edu/pg/getleg.asp?id=14674>.

⁹ The Palestinian National Authority Report on the Implementation of the Convention on the Rights of the Child in the Occupied Palestinian Territory, page 17, paragraphs 10-11.

¹⁰ Ibid, page 19, paragraphs 19-20.

¹¹ Ibid, paragraph 18.

¹² See Foreign and Commonwealth Office, *Children in Military Custody*, June 2012, para. 39.

¹³ See for example A v. Israel [2000] Case No. 4596/98, available at: www.crin.org/node/6997 and Adalah et al v. Minister of the Interior et al [2006] H.C. 7052/03; ILDC 393 (IL 2006), available at: www.crin.org/node/6973.

II. What is the legal status of the child?

A. Can children and/or their representatives bring cases in domestic courts to challenge violations of children's rights?

Children have the right to initiate a criminal complaint but those that are below the age of fifteen must do so via a guardian, custodian or trustee in accordance with the Code of Penal Procedure Law No. 3 of 2001.¹⁴ (See part II.B below). The Public Prosecution has the exclusive right to conduct criminal prosecutions.¹⁵ Where the Public Prosecution issues an order to dismiss a case, it must notify the victim and the victim may complain to the Attorney-General about the decision. The decision of the Attorney-General is final.¹⁶

Children who are detained have a right to be brought before a court without delay,¹⁷ and under the Code of Penal Procedure must be brought before the deputy prosecutor no later than 24 hours after arrest.¹⁸

Within the religious courts system, children do not have a right to address the court during proceedings and, as such, their testimony and statements do not seem to be required when deciding cases. Furthermore, the religious courts do not appear to be subject to oversight by the judicial system. Consequently, religious judges are not required to apply the CRC, PCL or any other pertinent laws when ruling on matters which fall under their jurisdiction. However, the PNA reported that in 2009 the Chief Islamic Justice Tamimi provided a non-binding internal memorandum, circulated to all Islamic religious judges, requesting that they consider the PCL when dealing with children's issues. Although not binding, this action provides some indication that the improved justiciability of children's rights within religious courts may be possible in future. Palestine's recent accession to the CRC may further encourage and enhance the application of the CRC.¹⁹

The Independent Commission for Human Rights (ICHR) was established in 1993 by Presidential Decree and is empowered to: "*follow-up and ensure that different Palestinian laws, by-laws and regulations, and the work of various departments, agencies and institutions of the State of Palestine and the Palestine Liberation Organisation meet the requirements for safeguarding human rights*". The Basic Law requires that the ICHR be established by a law which specifies the Commission's formation, duties and jurisdiction,²⁰ but at the time of writing, such a law had not been enacted. Nonetheless, the Commission can receive complaints about human rights violations allegedly committed by civil and security authorities.

¹⁴ The Penal Procedure Law No. 3 of 2001, Articles 5 and 6, available at:

<http://muqtafi.birzeit.edu/en/Legislation/GetLegFT.aspx?LegPath=2001&MID=13854&lnk=2>.

¹⁵ Code of Penal Procedure, Article 1.

¹⁶ Code of Penal Procedure, Articles 152(6) and 153(1)-(2).

¹⁷ Basic Law, Article 12.

¹⁸ Code of Penal Procedure, Article 34.

¹⁹ PNA Report, page 19, paragraph 20.

²⁰ Basic Law, Article 31. Available at:

<http://www.palestinianbasiclaw.org/basic-law/2003-amended-basic-law>.

According to figures produced by the Commission, complaints from children related primarily to detention, protection from exploitation and abuse and protection from torture and ill-treatment.²¹

B. If so, are children of any age permitted to bring these cases by themselves in their own names/on their own behalf, or must the case be brought by or with the assistance of a representative?

Children have the right to initiate a criminal complaint but those that are below the age of fifteen must do so via a guardian, custodian or trustee in accordance with the Code of Penal Procedure.²² Where there is a conflict of interests between the victim and his or her representative, or if the victim does not have a representative, the Public Prosecution must represent the victim.²³

A civil claim must be filed with the clerk of the court meeting the requirements set out under the Law of Civil and Commercial Procedures.²⁴ No civil cases may be admitted in the courts of first instance, court appeal or court of cassation without a practicing lawyer.²⁵

Children do not appear to have the right to address religious courts and, as a result, their testimony and statements do not seem to be required when deciding cases.²⁶

Legislatures, courts of law, administrative authorities, public or private social welfare institutions must all give consideration to the best interests of the child in all actions that they take,²⁷ but this requirement does not appear to apply to the actions taken by parents when acting on behalf of their children in legal proceedings.

C. In the case of infants and young children, how would cases typically be brought?

Please refer to part II.B above.

D. Would children or their representatives be eligible to receive free or subsidised legal assistance in bringing these kinds of cases?

The Palestinian Basic Law guarantees any person who is arrested or detained the right to “contact a lawyer”, as well as the right of any person accused in a criminal case to be represented by a lawyer.²⁸ The Law of

²¹ For more information, see the website of the Independent Commission for Human Rights: <http://www.ichr.ps/en/2/3/259/Complaints-Handling-Complaints-Handling.htm>.

²² The Penal Procedure Law No. 3 of 2001, Articles 5 and 6, available at: <http://muqtafi.birzeit.edu/en/Legislation/GetLegFT.aspx?LegPath=2001&MID=13854&lnk=2>.

²³ The Penal Procedure Law No. 3 of 2001, Article 6(2).

²⁴ Law of Civil and Commercial Procedures No. 2 of 2001, Part Three, Chapter I. Available at: <http://muqtafi.birzeit.edu/en/Legislation/GetLegFT.aspx?LegPath=2001&MID=13849>.

²⁵ Law of Civil and Commercial Procedures No. 2 of 2001, Article 61.

²⁶ PNA Report, page 19, paragraph 20.

²⁷ Palestinian Child Law, Article 4(1).

²⁸ The Amended Palestinian Basic Law 2003, Articles 12 and 14 respectively, available at:

Criminal Procedure also contains guarantees concerning legal assistance, including the prosecutor's duty to notify the accused of their right to counsel.²⁹ However, this law has a number of shortcomings and Palestinian legislation does not appear to require legal representation during preliminary investigations and, as such, no legal representation will be provided in these instances. That being said, Palestinian law does allow legal representation to be brought in by the accused if they wish to do so.³⁰

The Jordanian Juvenile Reform Act of 1954,³¹ applicable in the West Bank, currently regulates juvenile justice but makes no mention of matters of legal assistance. Tentative attempts have been made to improve the current state of affairs with regard to legal aid, resulting in two significant pieces of draft legislation that would, should they be adopted into law, make legal aid more accessible to Palestinian children. The first of these, the Draft Law on Juvenile Protection (DLJP), addresses a number of issues; it aims to divert children away from the justice system, safeguard children's mental and physical well-being, avoid pre-trial detention, and promote expeditious trial processes for children.³² Should this piece of draft legislation become law, the Juvenile Reform Act 1954 will be repealed. The second significant development was the drafting of a Palestinian Legal Aid Fund by the Ministry of Justice in 2011. This independent body will *"seek to safeguard the rights of beneficiary groups to access justice by providing the service of legal aid free of charge, promoting the principle of social solidarity, raising awareness and promoting the right to access justice, embodying equality between Palestinians before the law and judiciary, and coordinating and consolidating national efforts on the level of legal aid services"*.³³ Unfortunately, this draft legislation does not appear to address any of the gaps in the DLJP or those that may be produced by it, nor does it provide specific protection for juveniles.³⁴

The Ministry of Social Affairs provides free legal aid and assistance to children accused of a criminal offence and a number of NGOs that operate within the OPT also offer free legal services to children in criminal proceedings, including the International Legal Foundation,³⁵ DCI-Palestine and Shoruq Organisation.³⁶ It is important to note that the primary focus of legal aid provision is on criminal and security cases.

<http://muqtafi.birzeit.edu/en/Legislation/GetLegFT.aspx?LegPath=2003&MID=14138>.

²⁹ Penal Procedure Law No. 3 of 2001, Article 96, available at:

<http://muqtafi.birzeit.edu/en/Legislation/GetLegFT.aspx?LegPath=2001&MID=13854&lnk=2>.

³⁰ PNA Report, page 214, paragraph 70.

³¹ [Juvenile Reform Act 1954, available at \(Arabic\):](#)

<http://muqtafi.birzeit.edu/Legislation/PDFPre.aspx?Y=1954&ID=6463>.

³² The International Legal Foundation 'Juvenile Justice in the West Bank' Report, page 23, available at:

<http://theilf.org/wp-content/uploads/2014/11/Juvenile-Justice-in-the-West-Bank.pdf>.

³³ The Draft Law on a Legal Aid Fund, published in 2012, Article 4.

³⁴ The International Legal Foundation 'Juvenile Justice in the West Bank' Report, page 24, available at:

<http://theilf.org/wp-content/uploads/2014/11/Juvenile-Justice-in-the-West-Bank.pdf>.

³⁵ Further information regarding the International Legal Foundation's operations in the West Bank is available at: <http://theilf.org/our-programs/ilf-west-bank>.

³⁶ Further information regarding the Shoruq Organisation, based in the Dheisheh Refugee Camp in the West Bank, is available at (Arabic): <http://shoruq.org>.

- E. Are there any other conditions or limits on children or chosen legal representatives bringing cases (e.g. would a child's parents or guardian have to agree to a case being brought)?

The Code of Penal Procedure Law No. 3 of 2001, which is in force in the West Bank and Gaza Strip, states that a child below the age of 15 years may not submit a complaint to a court and that such complaints may only be submitted by their parents or guardians on their behalf.³⁷ Fathers are considered to be the guardians for both boys and girls.³⁸

Additionally, pursuant to Article 1 of the Code of Penal Procedure, the right to file and conduct a penal action is vested exclusively in the Public Prosecution.

III. How can children's rights violations be challenged before national courts?

- A. If there is a potential violation of the Constitution or other principles established in domestic law, or with the CRC or other relevant ratified international/regional instruments, how can a legal challenge be brought?

The Basic, Family and Personal Status laws appear to be under the jurisdiction of religious courts.³⁹ Please see part II.A above for further information regarding the jurisdiction and approach of religious courts. Complaints may be submitted by a child complainant's parents or guardians on their behalf and it has been reported that religious courts have been encouraged to apply the Palestinian Child Law when dealing with children's issues.⁴⁰

Matters relevant to children's rights that are beyond the purview of the Family and Personal Status laws may be heard by civil courts, which are required to apply all pertinent laws.⁴¹ However, the Palestinian judicial system currently appears to lack an Administrative Court to which an individual can bring cases of rights violations perpetrated by the authorities. Until one is formed, the High Court of Justice has reportedly been delegated this jurisdiction. However, very few cases of this nature are reported to have been brought before the High Court and there does not appear to be any precedent regarding a child, or child's representative(s), seeking a remedy before the High Court of Justice for violations of their rights by the executive.⁴²

There is no ombudsperson for children in the OPT, but the Independent Commission for Human Rights (ICHR)⁴³ has been mandated by Presidential

³⁷ Code of Penal Procedure Law No. 3 of 2001, Article 6. Available at (registration required): <http://muqtafi.birzeit.edu/en/Legislation/GetLegFT.aspx?LegPath=2001&MID=13854&lnk=2>.

³⁸ PNA Report, page 47, paragraph 6.

³⁹ Ibid, page 15, paragraph 2.

⁴⁰ Ibid.

⁴¹ Ibid, page 15, paragraph 2.

⁴² Ibid, page 18, paragraph 16.

⁴³ Further information regarding the Independent Commission for Human Rights in the OPT is available

Decree to safeguard human rights.⁴⁴ No specific law concerning the ICHR appears to have been endorsed, but the ICHR's by-laws, mission statement and work plans clearly reflect that they are conducting themselves as the official ombudsman's office in the OPT and that they may be approached regarding violations of children's rights.⁴⁵

It is worth reiterating that, although there is a Basic Law, which contains rights provisions, there is no permanent Palestinian Constitution that firmly protects and guarantees human rights in the OPT.⁴⁶

B. What powers would courts have to review these violations, and what remedies could they offer?

With regard to Palestinian Authority territory, based on the limited information available, it is not clear what the courts' powers are under statute or in practice. In addition there does not appear to be a comprehensive system of reporting cases in the OPT. It is, however, more than likely that compensation is available as a minimum remedial measures in civil cases. It is worth noting that the PCL has been subject to criticism for failing to provide effective enforcement or implementation mechanisms.⁴⁷

The Israeli Supreme Court, the final court of appeal for military tribunals in the West Bank, has a broad range of powers and is capable of repealing laws, ordering the release of wrongly detained persons, and providing compensation, among other powers.⁴⁸

C. Would such a challenge have to directly involve one or more individual child victims, or is it possible to challenge a law or action without naming a specific victim?

It is not clear if it is possible to challenge a law or executive action without naming a specific victim. In accordance with the Code of Penal Procedure, the initiation of an action requires a written or oral complaint from the victim or his attorney.⁴⁹

Even though there are currently no specialised juvenile or family courthouses, measures have reportedly been taken in order to provide for confidentiality and privacy with regard to children, parents and guardians involved in such matters.⁵⁰

at: <http://www.ichr.ps/en>.

⁴⁴ PNA Report, page 36, paragraph 73.

⁴⁵ Ibid, page 36, paragraph 74.

⁴⁶ Ibid, page 18, paragraph 17.

⁴⁷ Ibid, page 17, paragraph 11.

⁴⁸ Further information on the Israeli Court System from the Ministry of Foreign Affairs available at: <http://www.mfa.gov.il/mfa/aboutisrael/state/democracy/pages/the%20judiciary-%20the%20court%20system.aspx>.

⁴⁹ PNA report, page 17, paragraph 11.

⁵⁰ Ibid, page 17, paragraph 8.

D. Is any form of collective action or group litigation possible, with or without naming individual victims?

It has not been possible to find any example of collective action or group litigation in domestic courts in the OPT.

More than one person can join a civil suit as joint complainants or defendants if the claims “*are connected or united in terms of cause and subject-matter*”.⁵¹ Similarly, if more than one action has been filed and the two actions “*are united as to cause and subject-matter*” the court may combine the actions by request of one of the parties.⁵²

E. Are non-governmental organisations permitted to file challenges to potential children's rights violations or to intervene in cases that have already been filed?

A person may only intervene in a civil case if he or she has “*a personal stake in the outcome of a case pending between two parties*”.⁵³ It is not clear whether this provision has been used to permit NGOs to join ongoing cases as intervenors.

It is not permissible for NGOs to initiate a court action on behalf of a child, but there a number of NGOs provide assistance and legal representation for children bringing legal complaints. Organisations such as Defence for Children International-Palestine (DCI-Palestine) are dedicated to the undertaking of such tasks. For instance, DCI-Palestine systematically file complaints of ill-treatment in relation to Israeli military courts and the corresponding arrest procedures and detention.

IV. Practical considerations. Please detail some of the practical issues, risks and uncertainties that might be involved in bringing a case to challenge a violation of children's rights, such as:

A. Venue. In what courts could a case be filed (e.g. civil, criminal, administrative, etc.)? What would the initial filing process entail?

Specialised juvenile courts do not appear to currently exist.⁵⁴ Religious courts are the appropriate venue should the case entail Family Law or Personal Status Law issues, as these matters are under their jurisdiction.⁵⁵ Please refer to part III.A for information regarding matters that fall outside the purview of the Family and Personal Status laws.

B. Legal aid / Court costs. Under what conditions would free or subsidised legal aid be available to child complainants or their representatives through the court system (i.e. would the case have to present an important legal question

⁵¹ Code of Civil and Commercial Procedure Law No. 2 of 2001, Article 80(1).

⁵² Code of Civil and Commercial Procedure Law No. 2 of 2001, Article 80(2).

⁵³ Code of Civil and Commercial Procedure, Law No. 2 of 2001, Article 96(2).

⁵⁴ Ibid, page 213, paragraph 62.

⁵⁵ Ibid, page 15, paragraph 2.

or demonstrate a likelihood of success)? Would child complainants or their representatives be expected to pay court costs or cover other expenses?

There is a right to limited legal aid but in practice it is often illusory. As is the case for adults, children appear to have the right to legal representation under law, but this right is often not realised. However, domestic legislation does not appear to require legal representation for misdemeanours or during preliminary investigations and, consequently, no legal representation will be provided in these instances. In such situations, the legislation does allow legal representation to be brought in by the accused if they wish to do so.⁵⁶

Please see part II.D for further information, particularly regarding draft proposals for new legislation that could potentially improve the status quo for children in the justice system but which would ultimately remain insufficient, should they become law.

Court fees are under the Regular Court Fees Act.⁵⁷ Courts are able to defer the payment of fees to a later date where a claimant is unable to afford the cost at the time a suit is initiated.⁵⁸

- C. Pro bono / Financing. If legal aid is not available, would it be possible for child complainants or their representatives to obtain legal assistance from practising lawyers on a pro bono basis, through a children's rights organisation, or under an agreement that does not require the payment of legal fees up front?

A number of NGOs are present in the OPT providing free legal services to children. See section II.E. for more information.

The Palestinian Bar Association has 'goals' defined under the Law on the organisation of the legal profession, includes the provision of pro bono legal assistance within its goals.⁵⁹ The provision of legal aid also features prominently in the organisation's strategic plan for 2015-2017.⁶⁰

- D. Timing. How soon after a violation would a case have to be brought? Are there any special provisions that allow young adults to bring cases about violations of their rights that occurred when they were children?

An allegation of a criminal offence must generally be brought within three months of the day which the victim becomes aware of the offence, unless the law provides otherwise.⁶¹

A penal action must generally be brought within ten years in relation to a

⁵⁶ Ibid, page 214.

⁵⁷ Regular Court Fees Act No. 1 of 2003, Article 2. Available at: <http://muqtafi.birzeit.edu/Legislation/GetLegFT.aspx?LegPath=2003&MID=14459>.

⁵⁸ Regular Court Fees Act No. 1 of 2003, Article 14.

⁵⁹ Law on the Organisation of the Legal Profession No. 3 of 1999, Article 12. Available at: <http://muqtafi.birzeit.edu/Legislation/getLeg.aspx?pid=46703&Ed=1>.

⁶⁰ Palestinian Bar Association, Strategic Plan, available at: <http://www.palestinebar.ps/en/349>.

⁶¹ Penal Procedure Law No. 3 of 2001, Article 5.

felony, three years in relation to a misdemeanour and one year for a contravention.⁶² Where the accused is a public functionary, the limitation period does not begin to run until the date that the alleged crime was discovered or the termination of service of the public functionary.⁶³

E. Evidence. What sort of evidence is admissible/required to prove a violation? Are there particular rules, procedures or practices for dealing with evidence that is produced or presented by children?

In civil proceedings, children under the age of 15 are considered to have the capacity to testify, though they may give evidence to the court “*for information only*” without taking an oath.⁶⁴ A similar rule applies in criminal proceedings in which a person below the age of fifteen may not take an oath and may be heard by the court for information only.⁶⁵

Within the religious court systems, it would appear that children do not have a right to address the court and that their testimony and statements are not required when taking decisions that concern them.⁶⁶

F. Resolution. How long might it take to get a decision from the court as to whether there has been a violation?

Most courts within the OPT are reported to be overcrowded and to block-book trial times. This state of affairs results in delays and reports indicate that even once a court date is set, prompt resolution of the issue is unlikely.⁶⁷ Chronic delay is widely reported in the Palestinian justice system. The International Legal Foundation has found that criminal cases in which it is involved last an average of 284 days⁶⁸ and in researching criminal cases involving children, a joint CRIN and Shoruq report found evidence of criminal cases involving children that remained unresolved after 3 years.⁶⁹ This problem is also of great concern with regard to Israeli military courts, where for Palestinian children the period between charge and trial may lawfully extend up to two years.⁷⁰

G. Appeal. What are the possibilities for appealing a decision to a higher court?

Courts have the prerogative to grant the right to appeal. Juvenile defendants in criminal cases have an automatic right of appeal to the Appeals Court

⁶² Penal Procedure Law No. 3 of 2001, Article 12(1).

⁶³ Penal Procedure Law No. 3 of 2001, Article 12(3).

⁶⁴ Law of Evidence in Civil and Commercial Matters No. 4 of 2001, Article 74. Available at: <http://muqtafi.birzeit.edu/en/Legislation/GetLegFT.aspx?LegPath=2001&MID=13858>

⁶⁵ Code of Penal Procedure, Article 83(1).

⁶⁶ Ibid, page 19, paragraph 20.

⁶⁷ Ibid, page 213, paragraph 62.

⁶⁸ International Legal Foundation, *Juvenile Justice in the West Bank: Analysis and recommendations for reform*, 2014, p. 10. Available at: <http://theilf.org/wp-content/uploads/2014/11/Juvenile-Justice-in-the-West-Bank.pdf>.

⁶⁹ CRIN and Shoruq, *Refugee Children in Conflict with the Law in Bethlehem*, 2014 p.29.

⁷⁰ DCI Palestine report on ‘Children Prosecuted in Israeli Military Courts’, available at: <http://www.dci-palestine.org/documents/children-prosecuted-israeli-military-courts-%E2%80%93-update>

following a conviction, although there is little evidence of this right to appeal being implemented in practice.⁷¹

H. Impact. What are the potential short-term and long-term impacts of a negative decision? Is there a possibility for political backlash or repercussions from a positive decision?

It has not been possible to find any example of any such repercussions or commentary on this topic. Please refer to part V for further information regarding the situation in the OPT, which has a considerable bearing on the autonomy of the PNA, as well as on the outlook and priorities of Palestinians.

I. Follow up. What other concerns or challenges might be anticipated in enforcing a positive decision?

There are concerns over the ability to enforce laws and rulings related to children as the PNA currently lacks geographic, political and legal sovereignty over large sections of the OPT and its own population.⁷²

V. Additional factors. Please list any other national laws, policies or practices you believe would be relevant to consider when contemplating legal action to challenge a violation of children's rights.

There are a multitude of underlying considerations that must be factored in when attempting to address the legal situation concerning the rights of the child in the OPT, many of which relate to the enduring Israeli occupation. In order to provide some context for the responses to the questions in this report, it is important to provide some background on the situation in the OPT.

The OPT comprises the West Bank (including East Jerusalem) and the Gaza Strip, which have been occupied by the State of Israel since 1967.⁷³ Repeated conflicts and enduring occupation have resulted in a patchwork of laws adopted from various sources, including the Ottoman Empire, the British Mandate period, Jordanian laws (specifically relating to the West Bank), Egyptian laws (specifically relating to Gaza), Israeli military orders and legislation enacted by the Palestinian National Authority (PNA). These mostly “*non-rights-based*” laws are considered to be outdated and are said to hamper the ability of the judiciary to administer children’s rights, leading to violations when children come into contact with the judicial system.⁷⁴

Respect for and enforcement of the rule of law appears to be hindered by numerous aspects that have the potential to render legislation ineffectual.⁷⁵ Although the PNA has passed the Amended Palestinian Basic Law 2003 (Basic

⁷¹ PNA Report, page 213, paragraph 63.

⁷² Ibid, page 11, paragraph 10.

⁷³ United Nations General Assembly Resolution 446 of 22 March 1979, available at: <http://unispal.un.org/UNISPAL.NSF/0/BA123CDED3EA84A5852560E50077C2DC>.

⁷⁴ PNA report, page 15, paragraph 2.

⁷⁵ Ibid, page 18, paragraph 17.

Law),⁷⁶ there is no permanent Constitution.

The PNA does not exercise sovereignty over its borders, natural resources, security and policing across the whole of its territory.⁷⁷ The responses to the questions above focus on the implementation of access to justice for children within control of the PNA. The PNA has reported that: *“The PNA has established an internal legal framework for the OPT that will be part of the anticipated Palestinian State’s law. The present legal system applies to Palestinians within the OPT but can be overridden by the occupation. Moreover, the PNA maintains police and security apparatuses that are responsible for enforcing these laws unless prevented to do so by the Israeli occupation”*.⁷⁸

The OPT consists of the West Bank, East Jerusalem and the Gaza Strip. Israel maintains military forces in the West Bank and East Jerusalem, but withdrew from the Gaza Strip in 2005. The West Bank is further divided into three categories; Area A, comprising 18 per cent of the West Bank, is under Palestinian Authority civil control and security authority; Area B, around 22 per cent of the West Bank, is under Palestinian civil administration, but Israel retains exclusive security control with limited cooperation from the PA; and Area C, comprising 60 per cent of the West Bank, is under total Israeli civil administration and security control.⁷⁹ This highlights the severe restrictions imposed upon the PNA’s autonomy and capacity to oversee the administration of the OPT.

It is important to note that the population of the West Bank is governed by two separate systems of law. Those with Israeli citizenship (Israelis living in the West Bank settlements) are governed by Israeli civilian law, while those who are not (the Palestinian population) are governed by Israeli military law, as well as Palestinian law.⁸⁰ As highlighted by B’Tselem, the Israeli Information Centre for Human Rights in the OPT, this is very much a case of different legal systems being applied to two populations living in the same area, the nationality of the individual being the determinant factor.⁸¹ They go on to confirm that: *“[t]his situation violates the principle of equality before the law, especially given the disparity between the two systems. It also violates the principle of territoriality, conventional in modern legal approaches, according to which a single system of law must apply to all persons living in the same territory.”*⁸²

⁷⁶ PNA Amended Palestinian Basic Law 2003, available at:

<http://www.palestinianbasiclaw.org/basic-law/2003-amended-basic-law>.

⁷⁷ PNA report, page 10, paragraph 5.

⁷⁸ Ibid, page 11, paragraph 9.

⁷⁹ Further information through visual representation available at:

http://www.ochaopt.org/documents/ocha_opt_area_c_map_2011_02_22.pdf.

⁸⁰ The illegal status of Israeli settlements in the West Bank was confirmed by the International Fact-Finding Mission on Israeli Settlements in the Occupied Palestinian Territory, convened by the United Nation’s Human Rights Council in 2013. Further information regarding the findings can be read in the final report which is available online:

http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session22/A-HRC-22-63_en.pdf.

⁸¹ B’Tselem analysis of the dual system of law in the OPT, ‘Settler Violence: Lack of Accountability’, available at: http://www.btselem.org/settler_violence/dual_legal_system.

⁸² Ibid.

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