

Education and challenges in Palestine. (Gendered impact within Women, Peace and Security).

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The right to education is an internationally protected right under international law and an integral part of the international law foundation. In the case of Palestine, education has always been a challenge like every aspect of Palestinian lives. Frequent closures of cities, hundreds of military checkpoints and the construction of the annexation wall prevents thousands of students and teachers from reaching their schools and universities. Palestinian students are regularly subjected to intimidation, assault and arbitrary arrest by Israeli soldiers, many schools have been closed down, raided and attacked by military orders, making it harder for them to practice and pursue their education freely and fulfil their potential.

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The continuing Israeli occupation significantly impedes education in the Occupied Palestinian Territory (OPT). As noted by the UN Special Rapporteur on the Right to Education: “military occupations are another appreciable curb on the human right to education, the most egregious example being the Israeli-Palestinian conflict.” There is substantial evidence that Israel is failing in its duties under international human rights and humanitarian law with regard to education. In this research; the researcher will focus mainly on the challenges that women face in practicing their right to education and the definition of the right to education under international law; with a focus on the effect of the Israeli occupation and the Palestinian authorities' funding and quality for education concluded with an overall impact of these aspects on the right to education in Palestine and the role of international law in protecting this right.

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The right to education has been recognized in a number of international and regional legal instruments: treaties (conventions, covenants, charters) and also in general comments, recommendations, declarations, United Nations resolutions and frameworks for action. The Universal Declaration of Human Rights (UDHR), adopted in 1948, states in Article 26: 'Everyone has the right to education. Since

then, the right to education has been reaffirmed in various international treaties including:

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- UNESCO Convention against Discrimination in Education (1960)
- International Covenant on the Elimination of All Forms of Racial Discrimination (1965)
- International Covenant on Economic Social and Cultural Rights (1966)
- Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) (1979)
- Convention on the Rights of the Child (1989)
- International Convention on the Protection of the Rights of All Migrant Workers and Members of their families (1990)
- Convention on the Rights of Persons with Disabilities (2006).

The right to education has also been recognized in ILO Conventions and international humanitarian law, as well as in regional treaties. International human rights law guarantees the right to education. The Universal Declaration on Human Rights adopted in 1948, proclaims in Article 26: “everyone has the right to education. The right to education is legally guaranteed for all without any discrimination, states have the obligation to protect, respect, and fulfil the right to education and there are ways to hold states accountable for violations or deprivations of the right to education”. **Article 26 must be read along with Article 2 UDHR, which sets out the principle of non-discrimination:** [E]veryone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty.

The principle of non-discrimination and equality is a general principle of international human rights law which is essential to the exercise of and enjoyment of all human rights, including the right to education. It is also enshrined in the Charter of the United Nations, the ICESCR and the ICCPR,⁸ as well as all the major international human rights treaties. Furthermore, the Committee on Economic, Social and Cultural Rights (CESCR) has commented on the principle of non-discrimination, underlining that it is an “immediate and cross-cutting obligation” for States parties to the ICESCR. As a result, States’ constitutions and other legal and policy texts must not contain any form of discrimination, and States must also ensure that non-discrimination is applied in practice. The principle of non-discrimination and equality is particularly important for the realization of the right to education. Indeed, before the right to education was even adopted in the Covenants, a specific treaty was adopted to prohibit discrimination in education

The right to education under international law encompasses both entitlements and freedoms, including the¹:

- right to free and compulsory primary education.
- right to available and accessible secondary education.
- right to equal access to higher education.
- right to fundamental education for those who have not received or completed primary education.
- right to quality education both in public and private schools.
- freedom of parents to choose schools for their children which are in conformity with their religious and moral convictions.
- freedom of individuals and bodies to establish and direct education institutions in conformity with minimum standards established by the state.
- academic freedom of teachers and students.

¹ Right to education, “understanding education as a right”.

The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) (1979) mentioned the right to education under article 10: -

Article 10 States Parties shall take all appropriate measures to eliminate discrimination against women in order to ensure to them equal rights with men in the field of education and in particular to ensure, on a basis of equality of men and women:

(a) The same conditions for career and vocational guidance, for access to studies and for the achievement of diplomas in educational establishments of all categories in rural as well as in urban areas; this equality shall be ensured in pre-school, general, technical, professional and higher technical education, as well as in all types of vocational training;

(b) Access to the same curricula, the same examinations, teaching staff with qualifications of the same standard and school premises and equipment of the same quality;

(c) The elimination of any stereotyped concept of the roles of men and women at all levels and in all forms of education by encouraging coeducation and other types of education which will help to achieve this aim and, in particular, by the revision of textbooks and school programmes and the adaptation of teaching methods;

(d) The same opportunities to benefit from scholarships and other study grants;

(e) The same opportunities for access to programmes of continuing education, including adult and functional literacy programmes, particularly those aimed at reducing, at the earliest possible time, any gap in education existing between men and women;

(f) The reduction of female student drop-out rates and the organization of programmes for girls and women who have left school prematurely;

(g) The same Opportunities to participate actively in sports and physical education;

(h) Access to specific educational information to help to ensure the health and well-being of families, including information and advice on family planning.

The International Covenant on Economic, Social and Cultural Rights (ICESCR) devotes two articles to the right to education, articles 13 and 14. Article 13, the longest provision in the Covenant, is the most wide-ranging and comprehensive

article on the right to education in international human rights law. The general comment 13, adopted by the committee on Economic, Social and Cultural rights provide interpretation and clarification of Article 13 of the International Covenant on Economic, Social and Cultural rights.

Article 13 (2): The right to receive an education - some general remarks

- While the precise and appropriate application of the terms will depend upon the conditions prevailing in a particular State party, education in all its forms and at all levels shall exhibit the following interrelated and essential features:

(a) Availability - functioning educational institutions and programmes have to be available in sufficient quantity within the jurisdiction of the State party. What they require to function depends upon numerous factors, including the developmental context within which they operate; for example, all institutions and programmes are likely to require buildings or other protection from the elements, sanitation facilities for both sexes, safe drinking water, trained teachers receiving domestically competitive salaries, teaching materials, and so on; while some will also require facilities such as a library, computer facilities and information technology.

(b) Accessibility - educational institutions and programmes have to be accessible to everyone, without discrimination, within the jurisdiction of the State party. Accessibility has three overlapping dimensions:

(i) Non-discrimination - education must be accessible to all, especially the most vulnerable groups, in law and fact, without discrimination on any of the prohibited grounds (see paras. 31-37 on non-discrimination);

(ii) Physical accessibility - education has to be within safe physical reach, either by attendance at some reasonably convenient geographic location (e.g. a neighbourhood school) or via modern technology (e.g. access to a “distance learning” programme);

(iii) Economic accessibility - education has to be affordable to all. This dimension of accessibility is subject to the differential wording of article 13 (2) in relation to

primary, secondary and higher education: whereas primary education shall be available “free to all”, States parties are required to progressively introduce free secondary and higher education;

(c) Acceptability - the form and substance of education, including curricula and teaching methods, have to be acceptable (e.g. relevant, culturally appropriate and of good quality) to students and, in appropriate cases, parents; this is subject to the educational objectives required by article 13 (1) and such minimum educational standards as may be approved by the State (see art. 13 (3) and (4));

(d) Adaptability - education has to be flexible so it can adapt to the needs of changing societies and communities and respond to the needs of students within their diverse social and cultural settings. When considering the appropriate application of these “interrelated and essential features” the best interests of the student shall be a primary consideration.

II. STATES PARTIES' OBLIGATIONS AND VIOLATIONS

General legal obligations:-

43. While the Covenant provides for progressive realization and acknowledges the constraints due to the limits of available resources, it also imposes on States parties various obligations which are of immediate effect. States parties have immediate obligations in relation to the right to education, such as the “guarantee” that the right “will be exercised without discrimination of any kind” (art.2 (2)) and the obligation “to take steps” (art. 2 (1)) towards the full realization of article 13. Such steps must be “deliberate, concrete and targeted” towards the full realization of the right to education.

44. The realization of the right to education over time, that is “progressively”, should not be interpreted as depriving States parties’ obligations of all meaningful content.

Progressive realization means that States parties have a specific and continuing obligation “to move as expeditiously and effectively as possible” towards the full realization of article 13.

46. The right to education, like all human rights, imposes three types or levels of obligations on States parties: the obligations to respect, protect and fulfil. In turn, the obligation to fulfil incorporates both an obligation to facilitate and an obligation to provide.

47. The obligation to respect requires States parties to avoid measures that hinder or prevent the enjoyment of the right to education. The obligation to protect requires States parties to take measures that prevent third parties from interfering with the enjoyment of the right to education. The obligation to fulfil (facilitate) requires States to take positive measures that enable and assist individuals and communities to enjoy the right to education.

Finally, States parties have an obligation to fulfil (provide) the right to education. As a general rule, States parties are obliged to fulfil (provide) a specific right in the Covenant when an individual or group is unable, for reasons beyond their control, to realize the right themselves by the means at their disposal. However, the extent of this obligation is always subject to the text of the Covenant.

Violations

59. By way of illustration, violations of article 13 include: the introduction or failure to repeal legislation which discriminates against individuals or groups, on any of the prohibited grounds, in the field of education; the failure to take measures which address de facto educational discrimination; the use of curricula inconsistent with the educational objectives set out in article 13 (1); the failure to maintain a transparent and effective system to monitor conformity with article 13 (1); the failure to introduce, as a matter of priority, primary education which is compulsory and available free to all; the failure to take “deliberate, concrete and targeted” measures towards the progressive realization of secondary, higher and fundamental education in accordance with article 13 (2) (b)-(d); the prohibition of private educational

institutions; the failure to ensure private educational institutions conform to the “minimum educational standards” required by article 13 (3) and (4); the denial of academic freedom of staff and students; the closure of educational institutions in times of political tension in non-conformity with article 4.

Article 50 of the Fourth Geneva Convention (1949) states: "The Occupying Power shall, with the cooperation of the national and local authorities, facilitate the proper working of all institutions devoted to the care and education of children." Israel is therefore obligated to ensure the orderly operation of the educational institutions in the territories.

ICL prohibits persecution as a crime against humanity in the treaty statutes of the ad hoc tribunals as well as the ICC. The Rome Statute defines persecution as the “intentional and severe deprivation of fundamental rights contrary to international law by reason of the identity of the group or collectively”. Unlike other expressions of the crime, the Rome Statute also requires that persecution be committed in connection with another crime or at least one inhumane act. Although untested, it is possible that the intentional and severe deprivation or prevention of education of a particular group can, if the other elements of the crime are fulfilled, constitute persecution. **In order for the deprivation of education to amount to a crime against humanity under the Rome Statute, it must meet the following criteria:**

- education must be defined as a “fundamental right”;
- its deprivation must be intentional and severe. Further, it must be contrary to international law, and not, for example, consistent with limitations permitted by IHRL;
- the denial of education of a particular group must on discriminatory grounds: based on a group’s political, racial, national, ethnic, cultural, religious, or gender identity (or other grounds universally recognized by international law, potentially including disability);
- the deprivation of education must be part of a widespread or systematic attack directed against any civilian population or in connection with any other act prohibited by the Rome Statute; and

- the perpetrator or perpetrators of this deprivation knew it was part of a widespread or systemic attack.

International criminal jurisprudence has so far recognized examples of persecution including murder, imprisonment, deportation and other related conduct. However, persecution can include other conduct that “severely deprives political, civil, economic or social rights”. In particular, the International Criminal Tribunal for the Former Yugoslavia “ICTY” has recognized that the exclusion of members of an ethnic or religious group from educational institutions can potentially constitute persecution under the ICTY Statute, even though it was not specifically listed as an example therein. This demonstrates the potential protection that the crime of persecution offers to ensuring education in situations of insecurity and armed conflict.²

The right of children to receive an education belongs to this category of rights which are irrevocable under any claim or pretext. Historically, peoples and states that prevented children from exercising their right to education have been viewed as barbaric. Humanity having recognized, in the lengthy course of the formation of civilization, that children have the right to education - that is, that education is no mere favor conferred by parents, states, churches, or whoever implements the right - considers all those who infringe this right to be acting inhumanely. Categorically, such behavior is no different from any other abridgement of human rights.

The Right to Education in Palestine

Since the start of the Intifada in 1987, the Israeli authorities have closed down the majority of the education institutions in different areas under occupation for extended periods. The education system has also suffered from strikes and from clashes with the Israeli occupation forces have forcibly entered schools, sometimes opening fire; many students and teachers have been arrested, killed, or physically injured.

For decades Israel has been violating Palestinians' right to education through numerous education-related incidents, such as attacks or threats of attacks on

² British Institute of International and Comparative law, (Protecting Education in Insecurity and Armed Conflict).

schools, delays at checkpoints, military presence at school entrances, closed military areas in addition to the use of live ammunition and tear gas in and around schools, school search, confiscation of education items, detention of students and school staff, settler related violence, or school demolitions and stop-work orders³. Israel's measures prevent the development of the Palestinian educational system. Not at once, Israel was held accountable for its violation of the Palestinian right to education or any violation.

These violations play a huge role in creating obstacles to Palestinians' education, making it hard for them to have quality education and to enjoy their right safely. These violations affect Palestinian women the most with a consideration that the Palestinian society is a patriarchal society that may stand in the face of women education if they may face such obstacles and violations. Even though these violations affect the life and education of Palestinians and especially women; the percentage of educated women in Palestine is remarkable and one of the highest around the world with a 99.6% in 2020 for completion of different educational levels (elementary education, secondary education, upper/senior secondary education) and according to data of 2019-2020, the net enrollment ratio in the elementary stage increased for 98.4%⁴.

One of many measures Israel undertakes is the demolition and closure of schools, especially in the South Hebron Hills area. Since the start of 2021, Israel has demolished 1,032 Palestinian-owned structures across the occupied West Bank. The list includes homes, schools, shops and farming facilities. The UN Office for the Coordination of Humanitarian Affairs has said that Israeli demolitions have displaced 1,347 Palestinians in that period⁵. Usually, the “reason” behind the demolishing in Area C is building without a permit which is nearly impossible to be issued in Area C.

One of these schools is located in the Bedouin village Abu Nuwar, where 670 Palestinians live in tents and sheet-metal shacks. The only school in the village was

³ We World, “Education under attack in the occupied Palestinian territory”, July 2020.

⁴ Palestinian central bureau of statistics.

⁵ Middle East Monitor, “Israel to demolish EU-funded school in occupied West Bank”, February 2022.

partially demolished for the sixth time since 2016. The 26 children study in a local community center and barbershop.

One of the most targeted villages is “Burin”. Burin is home to about 3000 Palestinian and is surrounded by two illegal settlements, an illegal outpost, and a military base. The only school in Burin sits at the entrance of the village and is attended by about 300 boys and girls. The school is often on the frontline of settler and soldier raids on the village. According to Middle East Eye interview with an activist from Burin, “Every week there are at least two or three attacks, from both settlers and soldiers. “The settlers will come down from the mountain and try to break the school windows and attack teachers and students with rocks. Sometimes they even shoot live bullets”.⁶

Masafer Yatta area of the Hebron hills, 210 Palestinian children living in a cluster of 12 small villages face daily challenges getting to class in an active military training zone. There are only three schools in the entire area, and most of the communities do not have access to school buses, forcing kids to walk several kilometers to and from school, any busses secured for children were often stopped and turned around by Israeli forces in addition, during active training periods, soldiers will close certain areas leading to the school for up to 10 days, leaving teachers and children sitting at home until the army reopens the area. Recently Israel's court paves way for the eviction of over 2000 Palestinians from Masafer Yatta which will lead to the displacement of thousands of Bedouin Palestinians and cause a severe effect on education. According to the Palestinian ministry of education report in 2021; 26,808 students and 1,029 teachers were either prevented from getting to school or faced long delays at checkpoints, resulting in "35,895 classes wasted".

Even though human rights are inherent to all human beings, they cannot be given or taken away. Israel slips Palestinians of their basic human rights on a daily basis even the simplest ones including their right to education. In many cases many Palestinian women stop their education in the early stages because of the obstacles that they

⁶ Middle East Eye, “Tear gas and terror: A Palestinian education under occupation”, July 2018.

face, many women do not feel safe going to school or college for many days and sometimes years. The lost feeling of safety that every Palestinian feel prevent many from pursuing their passion, many dreams were killed because of these violations. These challenges do not affect only the lives and rights of the people affected; they have a huge effect on the social and economic aspects too and it leads to early dropouts from school.

According to a report published by MIFTAH; the Palestinian Ministry of Higher Education and Scientific Research spending in 2020-2021 on education is (3.140.7) Millions ILS from (16.120.3) Millions ILS annual budget, meaning overall (19.5%) of the overall annual budget. Meaning that the spending from the side and the budget provided by the Palestinian authority for education are very low compared to the needs and the development that the education sector in Palestine needs. Many Palestinian villages do not have more than one school in the whole village and that leaves a lot of students to go to another village which adds to transportation expenses. On the other side; In 2021 the youth unemployment rates reached 40% in the West Bank and 62% in Gaza and about half a million children in Palestine need humanitarian assistance to access quality education. The high rates of unemployment leave no choice to many Palestinian than to dropout from school and in many cases go to work inside the green line or in settlements. Despite the impact of conflict on education, very low levels of humanitarian funding are provided for education. This prevents the education sector from responding swiftly to needs after periods of intense conflict – including responding to the effects of attacks on education and restoring schooling

Children and women are the vast majority of those adversely affected by the occupation and in the reaffirming of the implementation of international humanitarian law and human rights law that protect the rights of women and girls during and after conflict. These two majorities require a special lens that can provide detailed protection and recognition; after many movements towards creating this lens for the protection of women and children; the women, peace and security (“WPS”) agenda was formally initiated by the united nations security council (UNSCR) 1325 resolution in 2000, that was the first landmark resolution on women, peace and security that addresses the impact of war on women and the importance of women’s full and equal participation in conflict resolution, peacebuilding,

peacekeeping, humanitarian response and in post-conflict reconstruction. The resolution also calls for special measures to protect women and girls from conflict-related sexual violence and outlines gender-related responsibilities of the United Nations in different political and programmatic areas⁷. The 1325 United Nations Security Council Resolution has four pillars: - protection, prevention, participation and relief and recovery.

When we talk about any aspect of Palestinian lives there is a cycle of connection between every aspect of the obstacles that women face in practicing their right to education from the Israeli occupation, the quality and funding from the Palestinian authorities to the education sector and the high rates of unemployment leaves too many social, economic, psychological effects. The 1325 UNSCR main purpose is to provide the four pillars (protection, prevention, participation and relief and recovery) to women and children. In the case of Palestine, it is strongly believable according to the reality and data provided that the 1325 UNSCR is not fulfilling its obligations towards Palestinian women and children and this falls on the state parties. It should provide protection to women and women are not being protected in any aspect of their lives including in pursuing their education, it should provide prevention from assaults and harassment but on the other side women are facing harassment from the Israeli soldiers and settlers on a daily basis, it should provide participation for women but they can't participate in decision making if they can't pursue their education freely and enjoy their basic human rights, it should provide relief and recovery and I don't even think we are in this stage because women are still facing these violations on the day to day life and in every moment of their lives. Many women lives are being slipped because of these violations on every side, especially in the educational sector. The state parties of the 1325 UNSCR and the International bodies and community must hold Israel accountable of the continuous commitment of Human rights violations which amount to crimes against humanity, of which is the right of education to women and girls; Violence against women in all its forms is a source of grave concern that threatens women education and future potential. Children experience distress, fear and intimidation when going to and from school in high-risk areas, often having to pass through checkpoints or walk-through settlements. Constant exposure to soldiers and settlers' violence in addition to the

⁷ S/RES/1325. Security Council Resolution on women and peace and security

mentality that women have that they need to protect themselves when they go to school should be stopped and it won't stop without action from every international body.

Challenges that Palestinian women and girls face to exercise their education rights under military occupation, they are exposed to violent and terrorist attacks due to settlement expansion, forceful displacement, mobility restrictions imposed by Israeli occupation forces.

At the end, education is not a privilege that is asked for, it is a human right and human rights are inherent to all human beings, they cannot be given or taken away. Education is a sacred right that is protected in every international convention and under international law. Israel is committing human rights violations towards every aspect of Palestinian lives, under the eye of the international community and the world, the Israeli occupation is violating its obligations towards the Palestinian making their lives miserable by every aspect.

The violations towards education and specially regarding Palestinian women by the Israeli authorities is a gender-based violence that is directed against women because she is a woman and it affects women disproportionately and according to the 1325 UNSCR, the party states should protect women from all kinds of violence against women, including by prosecuting those responsible for violations of international law. The application of women, peace and security agenda that is supposed to protect women rights and prevent a violation towards it is not serving it required obligations towards empowering Palestinian women rights and protecting it, day by day women rights are descend more and more and in my opinion, even though 1325 UNSCR is created and centered towards the protection of women in times of conflict, the women in Palestine are still facing many obstacles and restrictions, it is crystal clear to any eye that the Israeli occupation have no respect to the international law, conventions and resolutions related to the protection of human rights and it's failing its obligations, therefore it's time to stop calling for respect and start calling for an end to the lifelong impunity and accountability.