



## Submission by Human Rights Watch to the Committee on the Rights of the Child on the State of Palestine

*83<sup>rd</sup> pre-sessional working group, 2019*

This submission focuses on the arbitrary arrest, detention, and abuse of children; personal status laws; child marriage; children born out of wedlock; and the protection of education during armed conflict. It relates to articles 7, 8, 9, 28, 37, 38, 39 and 40 of the Convention on the Rights of the Child. It proposes issues and questions that Committee members may wish to raise with the government.

### 1. Introduction

Palestine acceded to the UN Convention on the Rights of the Child in April 2014 without reservations or declarations. The State of Palestine has ratified two of the Optional Protocols to the CRC (OP on Sale of Children and OP on Children in Armed Conflict), however they have not ratified that Optional Protocol on a communications procedure, which is an important accountability mechanism.<sup>1</sup>

We note that this is the Committee's first review of the State of Palestine. With that in mind we urge the Committee to make clear that following ratification the CRC treaty applies throughout the territory of the State of Palestine. We also urge the Committee in its review to consider the current reality of governmental authority in this territory, including the Palestinian Authority (PA), Hamas in Gaza, and Israel as the occupying power, and apply the Convention in a way that maximizes its use to protect the rights of children throughout the territory of the State of Palestine. For the purposes of this submission in assessing the State of Palestine's compliance with obligations under

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<sup>1</sup> Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, adopted May 25, 2000, G.A. Resolution 54/263, Annex I, 54 U.N. GAOR Supp. (no.49) at 7, U.N. Doc. A/54/49, vol. III (2000), entered into force February 12, 2002. Palestine ratified on April 7, 2014.

Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, adopted May 25, 2000, G.A. Resolution A/RES/54/263, entered into force on 18 January 2002. Palestine ratified on December 29, 2017.

the Convention, we review the record of the PA in parts of the West Bank under its control and the de facto Hamas-led government in Gaza.

In 1995, the Oslo Accords between Israel and the PA, divided the West Bank (excluding East Jerusalem) into three administrative areas – A, B, and C. The PA has civil and administrative control over Area A, and civil control over Area B. Israeli military retains exclusive control over Area C, constituting about 60 percent of the West Bank. Israel applies Israeli civil law in East Jerusalem, though it remains occupied territory under international law. In 2005, Israel unilaterally disengaged from the Gaza Strip. However, Israel still controls most of Gaza’s crossings, territorial waters, and airspace, the movement of people and goods, and the population registry, among other things, and, as such, still retains effective control over Gaza.

We urge the Committee to carefully consider the severe impact of the ongoing Israeli occupation of Palestinian territory since 1967, including the illegal annexation of East Jerusalem and closure of the Gaza Strip since 2007. Systematic abuses associated with Israel’s 51-year occupation, fundamentally undermine the rights of Palestinian children in the West Bank and Gaza.<sup>2</sup>

Laws in the West Bank and the Gaza include a combination of unified laws promulgated by the Palestinian Legislative Council (PLC) and ratified by the president. If no unified law has been issued, existing Jordanian, Egyptian, and former British Mandate laws still apply. The Jordanian Penal Code No. (16) of 1960 (“1960 Penal Code”) and the Jordanian Personal Status Law (“JPSL”) No. (16) of 1976 are enforced in the West Bank, while the British Mandate Criminal Code Ordinance No. (74) of 1936 and the Egyptian Family Rights Law (“EFRL”) No. (303) of 1954 are enforced in Gaza. For Christians, there are a separate set of codified family laws as promulgated by the particular sect to which they belong. In addition, the Israeli army applies military law and local law that applied when it occupied the West Bank in 1967.

Since the full PLC has not convened since 2006, the Palestinian president has issued presidential decrees in accordance with article 43 of the Basic Law until the PLC reconvenes and can review all such legislation. Some presidential decrees have included amendments to Gaza’s laws, but Hamas, as the de facto authority there, has not applied them and instead issued separate decrees.

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<sup>2</sup> Human Rights Watch, “Human Rights Watch Submission to the CEDAW Committee of Israel’s Periodic Report 68th Session,” October 2017, <https://www.hrw.org/news/2017/10/10/human-rights-watch-submission-cedaw-committee-israels-periodic-report-68th-session>; UN Women, Technical Report, “International Accountability Mechanisms: Palestinian Women Living Under Occupation,” 2016, <http://palestine.unwomen.org/en/digital-library/publications/2017/03/legal-accountability> (accessed June 5, 2018).

## Mistreatment and Abuse of Children (articles 9, 37, and 40)

Both the Palestinian Authority (PA) in the West Bank and Hamas authorities in Gaza routinely taunt, threaten, place in solitary confinement, beat, lash, and whip the feet of detainees, and torture them, as Human Rights Watch has documented.<sup>3</sup>

The most common tactic used by both authorities is positional abuse, or *shabeh*, which can amount to torture when it constitutes deliberate infliction of severe harm. While the PA and Hamas both deny using *shabeh*, scores of adult detainees as well as several children detainees told Human Rights Watch that officers placed them in painful stress positions for many hours at a time, using a mix of techniques that often left little or no trace on the body. In the West Bank, the Intelligence Services, Preventive Security, and Joint Security Committee often practice *shabeh* at their detention facilities in Jericho; in Gaza, the primary perpetrator is the Internal Security agency. In addition, Defense for Children International-Palestine documented 23 instances where PA forces used physical violence against children in the first half of 2018, from among 82 arrests of children during this period.<sup>4</sup> According to DCI-P, the agencies that carried out these arrests included the Intelligence Services, among others.

PA security forces operate in coordination with the Israeli army. Human Rights Watch's research has found that many Palestinians in the West Bank have been detained at different times by both PA security forces and the Israeli army, often based on similar sets of allegations.

The Israeli army also routinely violates the rights of children in the territory of the state of Palestine. As of January 31, 2019, Israel was detaining 209 Palestinian children from Gaza and the West Bank, including East Jerusalem, 46 of whom are under the age of 16, many of whom it charged with throwing stones, a crime that is punishable under Israeli military law by up to 20 years in prison.

Israel denied Palestinian children arrested and detained in the West Bank legal protections granted to Israeli children, including settlers. Israeli military courts in the West Bank in 2015 denied bail in 72 percent of cases involving Palestinian children,

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<sup>3</sup> Human Rights Watch, *Two Authorities, One Way, Zero Dissent: Arbitrary Arrest & Torture Under the Palestinian Authority & Hamas*, October 23, 2018, <https://www.hrw.org/report/2018/10/23/two-authorities-one-way-zero-dissent/arbitrary-arrest-and-torture-under>

<sup>4</sup> "Palestinian forces detained 22 children using improper procedures in first half of 2018," *DCI Palestine*, November 14, 2018, <https://www.dci-palestine.org/palestinian-forces-detained-22-children-using-improper-procedures-in-first-half-of-2018>

whereas Israeli civil courts,<sup>5</sup> with jurisdiction over Israeli children, including settlers, denied bail in only 17.9% of cases.<sup>6</sup> A 2013 UNICEF report found that almost all Palestinian children plead guilty because they would otherwise be subjected to lengthy pretrial detention, and entering a guilty plea “is the quickest way to be released.”<sup>7</sup> Palestinian children are not interviewed by a probation officer, who seeks alternatives to detention, as are Israeli children. Israeli law, which is applied to Israeli children, specifies a statute of limitations of one year for throwing objects toward a person or property, whereas it is two years under military law, as applied to Palestinian children. Palestinian children from the West Bank, not including East Jerusalem, are tried in Israeli juvenile military courts that, according to official figures obtained by the organization Military Court Watch, had a conviction rate of at least 95 percent in 2015, the last year for which data is available.<sup>8</sup>

Human Rights Watch research has found that Israeli security forces routinely interrogate children without a guardian or lawyer present, use unnecessary force against children during arrest, which often takes place in the middle of the night,<sup>9</sup> and physically abuse them in custody.<sup>10</sup> UNICEF in its 2013 report said that the “the ill-treatment of children who come in contact with the military detention system appears to be widespread, systematic and institutionalized throughout the process.”<sup>11</sup> Criminal defense lawyers have told Human Rights Watch that such abuse remains endemic.

These practices appear to violate some of the core principles of the convention that provide special protections for detained children, including requirements to arrest or detain a child only as a last resort and to take precautions to ensure that children are not compelled to confess guilt.

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<sup>5</sup> “Military Authority Releases Arrest Data For 2015,” *Military Court Watch*, April 27, 2017, <http://www.militarycourtwatch.org/page.php?id=fefvg6U0GLa931029AaCtJu925We>

<sup>6</sup> Military Court Watch input on OHCHR Report on protecting the rights of the child in humanitarian situations, *Military Court Watch*, September 7, 2017,

<https://www.ohchr.org/Documents/Issues/Children/HumanitarianSituations/MilitaryCourtWatch.docx>

<sup>7</sup> “Children in Israeli Military Detention: Observations and Recommendations,” *UNICEF*, February 2013, [https://www.unicef.org/oPt/UNICEF\\_oPt\\_Children\\_in\\_Israeli\\_Military\\_Detention\\_Observations\\_and\\_Recommendations\\_-\\_6\\_March\\_2013.pdf](https://www.unicef.org/oPt/UNICEF_oPt_Children_in_Israeli_Military_Detention_Observations_and_Recommendations_-_6_March_2013.pdf)

<sup>8</sup> “Military Authority Releases Arrest Data For 2015,” *Military Court Watch*, April 27, 2017, <http://www.militarycourtwatch.org/page.php?id=fefvg6U0GLa931029AaCtJu925We>

<sup>9</sup> “Comparative graph - Issues of concern,” *Military Court Watch*, March 13, 2019,

<http://www.militarycourtwatch.org/page.php?id=MmNuAkpGrsa613395AWw2b0OpT3K>

<sup>10</sup> “Palestine: Israeli Police Abusing Detained Children,” Human Rights Watch news release, April 11, 2016, <https://www.hrw.org/news/2016/04/11/palestine-israeli-police-abusing-detained-children>

<sup>11</sup> “Children in Israeli Military Detention,” *UNICEF*,

[https://www.unicef.org/oPt/UNICEF\\_oPt\\_Children\\_in\\_Israeli\\_Military\\_Detention\\_Observations\\_and\\_Recommendations\\_-\\_6\\_March\\_2013.pdf](https://www.unicef.org/oPt/UNICEF_oPt_Children_in_Israeli_Military_Detention_Observations_and_Recommendations_-_6_March_2013.pdf)

In January 2018, lawyers for the Palestinian girl Ahed Tamimi, aged 16 years old at the time, who had been detained the prior month for slapping a soldier, raised these arguments in an attempt to secure her release on bail. The military judge denied the request, saying that he “did not think the articles of the Convention on the Rights of the Child should be viewed as absolute.” Tamimi agreed to a plea deal, in which she served an eight-month sentence.

While it is Israel that undertook such measures, they nonetheless trigger obligations for the State of Palestine. The CRC not only obligates Palestine to respect children’s rights itself, but Article 2 calls on it to affirmatively take steps to protect those rights from infringement by foreign states, such as Israel, when possible.

The existence of positive obligations does not depend on the exercise of effective control by the State of Palestine. The Israeli occupation does not negate Palestinian jurisdiction under Article 2, but rather focuses its scope on the positive obligations specified in Article 2. The State of Palestine must endeavour to take all appropriate measures in its power and in accordance with international law to continue to guarantee the enjoyment of rights and freedoms guaranteed by the CRC. Appropriate measures can be of diplomatic, economic or juridical nature, and can be addressed either to other States or to international organizations.

While the Israeli army often carries out arrests itself in its capacity as the occupying power, it engages in close security coordination with PA forces. That security coordination has remained largely constant irrespective of the level of abuse of Israeli forces on the ground. In 2014, Palestinian president Mahmoud Abbas said, “security coordination is sacred and will continue whether we agree or disagree on policy.”<sup>12</sup> Palestinian officials have not indicated that they have leveraged their bilateral security relationship in any way to address the abuse of kids in detention.

*We encourage the Committee to pose the following questions to the State of Palestine:*

- How many arrests of children have Palestinian security forces carried out since January 2016?
- How many children are currently in detention?
- How many cases have been opened into allegations of torture or other ill-treatment against children since January 2016? What were the results of such

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<sup>12</sup> عباس: التنسيق الأمني مقدس وسيستمر سواء اختلفنا في السياسة أو إتفقنا [video clip, YouTube, https://www.youtube.com/watch?v=DFrCcj588MI](https://www.youtube.com/watch?v=DFrCcj588MI) (accessed March 14, 2019).

investigations? Please provide details relating to prosecutions and convictions of any officials.

- What training and information is provided to security officers to ensure that children are not subject to torture or other ill-treatment including *shabeh*?
- What is the status of the State of Palestine's implementation of the Optional Protocol to the Convention Against Torture?
- In how many cases since January 2016 have Palestinian authorities handed over Palestinian children to the Israeli military and for what offences? Do Palestinian authorities provide assistance to the Israeli army that facilitates the arrest of Palestinian kids? Has the state of Palestine ever sought assurances about their treatment in detention, including access to their lawyers or families?

*Human Rights Watch recommends that the Committee that it call upon the State of Palestine to:*

- Cease the use of *shabeh* on children and publicly pledge that this tactic will not be used, and that any official who uses *shabeh* against children will be prosecuted;
- Investigate, in a thorough, impartial and timely manner, all credible allegations of mistreatment and torture by law enforcement officials, regardless of rank;
- Prosecute members of the security forces against whom there is evidence of criminal responsibility for torture, including command responsibility, ensuring that all perpetrators of serious human rights abuses are brought to justice regardless of rank or political affiliation
- Empower a governmental body — consistent with the national preventive mechanism provided in the Optional Protocol to the Convention Against Torture — staffed by independent professionals to make unannounced inspections of known and suspected detention sites, formal and informal, investigate complaints of abuse by the security services, prosecute these complaints in civilian court, and maintain a publicly available record of complaints received, investigations, and outcomes.
- Cease handing over Palestinian children to the Israeli military as long there remains a real risk of systematic abuse of children in detention.

**Personal Status Laws & Children (articles 7, 8 and 9)**

The 2004 Law on the Palestinian Child provides that the state, including the courts, should take the best interests of the child into account in all its actions.<sup>13</sup> But the Islamic personal status laws, currently in force in the West Bank and Gaza, do not make the best interests of the child the primary concern when determining which parent the child should live with and which guardianship rights each parent should have.

In cases of divorce, children are automatically required to live with their mothers until they reach a certain age when they are required to live with their father, unless a judge extends the residence with their mother for the benefit of the child. In the West Bank, children are required to live with their mother until the age of 9 for boys and for girls until they are 11 years of age.<sup>14</sup> The child can be automatically removed from living with the mother if she remarries, but not from the father if he remarries.<sup>15</sup> In Gaza, girls live with their mother until they reach nine, and boys until they reach seven years.<sup>16</sup> These discriminatory restrictions can result in a scenario in which a child remains living with one parent, even where their best interest may be best served by living with the other.

Under the laws in force in both the West Bank and Gaza, fathers solely retain all guardianship rights even when the child is officially living with the mother. Where the father is absent or deceased, guardianship of his children passes to the paternal grandfather, and then other male relatives in a prescribed order. In March 2018, the Council of Ministers in the West Bank issued a decision to allow women whose children live with them to open bank accounts for them, transfer them to different schools, and apply for their passports.<sup>17</sup> However, as this decision did not change the rule that fathers retain guardianship rights, women whose children live with them still face a number of obstacles. A woman is not allowed to manage her child's inheritance if her husband dies. Instead, a male relative from the deceased husband's family will take over the management of the child's inheritance, which can affect child maintenance. As a guardian, a father can withdraw money from a child's bank account opened by the mother even if the child lives with the mother, but a mother cannot do the same if the child lives with the father.<sup>18</sup> In the West Bank, a woman needs the

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<sup>13</sup> Palestinian Child Law No. (7) of 2004, art. 4, <http://muqtafi.birzeit.edu/pg/getleg.asp?id=14674> (accessed June 5, 2018).

<sup>14</sup> Jordanian Personal Status Law No. (16) of 1976, art. 161.

<sup>15</sup> Jordanian Personal Status Law No. (16) of 1976, art. 156.

<sup>16</sup> Article 118, Egyptian Family Rights Law ("EFRL") No. (303) of 1954

<sup>17</sup> "Video: Hamdallah announces a package of measure for women," Maan News Agency, March 5, 2018, <http://www.maannews.net/Content.aspx?id=941467> (accessed June 5, 2018).

<sup>18</sup> Human Rights Watch interview with Sabah Salameh, coordinator of the Muntada Forum to Combat Violence against Women—representing a coalition of 17 non-governmental organizations, Ramallah, April 11, 2018.

permission of her child's guardian (usually the father) if she wishes to travel abroad with her child.<sup>19</sup> These regulations not only discriminate against women, but risk undermining the best interest of the child.

*We encourage the Committee to pose the following question to the State of Palestine:*

- What steps are the authorities taking to amend current personal status laws to ensure that, in all actions involving children, including determining guardianship and where a child should live, the best interest of the child is the primary consideration?

*Human Rights Watch recommends that the Committee that it call upon the State of Palestine to:*

- Amend current personal status laws to ensure that, in all actions involving children, including determining guardianship and where a child should live, the best interest of the child is the primary consideration.

#### **Child Marriage (article 4)**

The Palestinian Child Law of 2004 sets the age of majority at 18.<sup>20</sup> However, the Jordanian Personal Status Law No. 16 of 1976 ("JPSL"), enforced in the West Bank, provides that a girl may be married at 14.5 years old and a boy at 15.5. The Egyptian Family Rights Law No. 303 of 1954, enforced in Gaza, sets the age of marriage at 18 for a male and 17 for a female. Sharia court judges in both the West Bank and Gaza also have the right to allow the marriage of a child younger than the legal minimum if they believe it is in the best interest of the child.

According to the Palestinian Central Bureau of Statistics (PCBS), in 2017, child marriage reached 20 percent among females and one percent among males of the total married population in Palestine.<sup>21</sup>

Girls and women in many countries around the world have told Human Rights Watch that marrying early meant that they lost control over their lives, including the ability to

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<sup>19</sup> Jordanian Personal Status Law No. (16) of 1976, art. 166.

<sup>20</sup> Palestinian Child Law No. (7) of 2004, art. 1.

<sup>21</sup> "H.E. Ms. Awad, Highlights the Situation of the Palestinian Women on the Eve of the International Women's Day," *Palestinian Central Bureau Statistics*, March 8, 2019, <http://www.pcbs.gov.ps/post.aspx?lang=en&ItemID=3406>

decide whether and when to bear children, that it had cut short their education, and that it made them more vulnerable to domestic violence.<sup>22</sup>

*We encourage the Committee to pose the following question to the State of Palestine:*

- What steps are the authorities taking to raise the minimum age of marriage to 18 and to combat the practice of child marriage?

*Human Rights Watch recommends to the Committee that it call upon the State of Palestine to:*

- Raise the minimum age of marriage to 18.

### **Children Born Out of Wedlock (articles 7 and 8)**

Palestinian authorities require a marriage certificate for women to give birth in a hospital and to register births. In the West Bank, where pregnant woman outside of wedlock approach the hospital, the hospital will refer the case to the Ministry of Social Development.<sup>23</sup> If the mother states that she wants to keep the child, then the Ministry assesses her social and economic capability, and the safety of both the child and the mother, before allowing her to keep the child. If she does not meet the criteria, then the child is sent to a state-run care institution from which the child can be taken into foster care by a family.

Children born out of wedlock are provided names (first, middle, and surname) by the state but are not given a full family name. They are not allowed to take an existing family name, including their mother's or that of their foster family, and the mother's name and ID number is noted in the child's registration documents. The lack of a family name exposes the children, and the mothers who keep their children, to stigma, and can limit a child's inheritance rights. Some 27 children born out of wedlock were in the Social Development Ministry's care in the West Bank as of April 2018, according to the Palestinian non-governmental organization Women's Centre for Legal Aid and Counselling (WCLAC). In Gaza, authorities add the name *mawla* (meaning "in custody of") to the child's name before their given surname instead of "bin" (meaning 'son of' in Arabic). Adoption is not permitted in Palestine.

*We encourage the Committee to pose the following question to the State of Palestine:*

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<sup>22</sup> See <https://www.hrw.org/topic/womens-rights/child-marriage>

<sup>23</sup> Cabinet Decision No. 10 of 2015 on Foster Family Procedures.

- Are the authorities considering or are taking steps to allow women to give birth in a hospital and register their children without requiring a marriage certificate, allow them to register their children under a family name of their choice, and ensure that children do not suffer discrimination due to the parents' marital status?

*Human Rights Watch recommends that the Committee call upon the State of Palestine to:*

- Allow women to give birth in a hospital and register their children without requiring a marriage certificate, allow them to register their children under a family name of their choice, and ensure that children do not suffer discrimination due to the parents' marital status.

### **The Protection of Education During Armed Conflict (article 28)**

Human Rights Watch has documented attacks on Palestinian schools by Israeli forces and settlers, the military use of Palestinian schools by Israeli forces, and the unlawful demolition of Palestinian schools by Israeli forces.<sup>24</sup>

The UN Security Council reported that in Gaza during July 2014, unspecified parties used three schools operated by the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA) to store weaponry: Gaza Beach Elementary Co-educational "B" School, Jabalya Elementary "C" and Ayyobiya Boys School (considered one school), and Nuseirat Preparatory Coeducational "B" School.<sup>25</sup> The UN found weaponry at all three schools, as well as military plans written on chalkboards and boards used as beds at the Nuseirat Preparatory Coeducational "B" School.<sup>26</sup> On March 11, 2015, armed Palestinians forcibly entered Balata Boys School in the West Bank, took over, and demanded that students evacuate.<sup>27</sup>

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<sup>24</sup> Submission by Human Rights Watch to the Committee on Economic, Social and Cultural Rights on Israel, 64th pre-sessional, January 28, 2019, available at <https://www.hrw.org/news/2019/01/28/submission-human-rights-watch-committee-economic-social-and-cultural-rights-israel>; Human Rights Watch, World Report 2017, "Israel/Palestine," (2017); "Israel: Army Demolishing West Bank Schools," Human Rights Watch news release, April 25, 2018; "Israel: In-Depth Look at Gaza School Attacks: 45 People, Including 17 Children, Killed in 3 Attacks," September 11, 2014, <https://www.hrw.org/news/2014/09/11/israel-depth-look-gaza-school-attacks>; Global Coalition to Protect Education from Attack, "Lessons in War 2015: Military Use of Schools and Universities during Armed Conflict," May 2015, p. 23.

<sup>25</sup> UN Security Council, "Letter dated 27 April 2015," S/2015/286, Annex, paras.1h,1j, 60.

<sup>26</sup> UN Security Council, "Letter dated 27 April 2015," S/2015/286, Annex, paras. 49-82.

<sup>27</sup> Unicef, "Annual CAAC Bulletin – First Quarter of 2015," p. 4; see also Global Coalition to Protect Education from Attack, "Israel/Palestine" in "Education Under Attack: 2018."

Palestine has endorsed the Safe Schools Declaration<sup>28</sup> and the *Guidelines for Protecting Schools and Universities from Military Use during Armed Conflict*,<sup>29</sup> which aim to better protect schools and universities from attack and use by any military or armed groups for military purposes, and to minimize the negative impact that armed conflict has on students' safety and education.

*We encourage the Committee to pose the following question to the State of Palestine:*

- What steps have the authorities taken to implement its commitments to protect schools from military use, and to continue access to education even during times of armed conflict?

*Human Rights Watch recommends that the Committee:*

- Congratulate the State of Palestine for endorsing the Safe Schools Declaration, and request details on steps taken to implement its commitments to protect schools from military use, and to continue access to education even during times of armed conflict.

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<sup>28</sup> Safe Schools Declaration, May 28, 2015,

[https://www.regjeringen.no/globalassets/departementene/ud/vedlegg/utvikling/safe\\_schools\\_declaration.pdf](https://www.regjeringen.no/globalassets/departementene/ud/vedlegg/utvikling/safe_schools_declaration.pdf) (accessed November 6, 2018).

<sup>29</sup> Guidelines for Protecting Schools and Universities from Military Use during Armed Conflict, March 18, 2014, [http://protectingeducation.org/sites/default/files/documents/guidelines\\_en.pdf](http://protectingeducation.org/sites/default/files/documents/guidelines_en.pdf) (accessed November 6, 2018).