

**“SHAMS” center issues a report on death penalty in Palestine of 2016
Palestinian courts inflicts (20) death sentences**

Human Rights and Democracy Media Center “SHAMS” issued a detailed report on the state of capital punishment in the occupied Palestinian territories of 2016. The center mentioned that combating death penalty is based on its strategic and executive plan, which is originally grounded on international treaties that emphasize the right to life. Such as article (3) of the Universal Declaration of Human Rights, article (6) of the International Covenant on Civil and Political Rights, and Second Optional Protocol annexed to International Covenant on Civil and Political Rights. In addition to protocol (6) annexed to the European Convention on the Human Rights and Fundamental Freedoms, and Protocol (13) annexed to the European Convention. “SHAMS” center also depends on the Palestinian Basic Law and the Palestinian National Plan for Human Rights.

Background

The Palestinian Authority PNA was formed in 1994 as an interim body pursuant to the Palestinian – Israeli Transitional Agreement to control the civilian issues for Palestinians in the West Bank and Gaza Strip. Inter-alia the controlling authority should identify the legal framework and principles under which will outline the kin of the relationship with the Palestinian community. In this regard, PNA in its interim constitution of 1997 and its amended copy of 2003 put emphasis that it will spare no effort to signing and accession to international and regional treaties to protect human rights and respect universal conventions on human rights. However, death penalty has been implemented and applied in contradiction with international standards.

In 1994, the late president Yasser Arafat, who was the head of the Executive Committee of the Palestinian Liberation Organization PLO, and Palestinian National Authority PNA issued a decree no. (1) Of 1994. To keep adhering to laws and regulation which came into force before 5/6/1967 in the Palestinian territories before occupying the West Bank and Gaza Strip by Israel.

Twenty death sentences were issued in 2016

“SHAMS” center mentioned that death sentences were issued in an alarming rate in 2016, and sentences were issued collectively. In the first half of 2016, Palestinian Military and Civil courts inflicted death sentences upon three civilians, and endorsed another two sentences before military courts in less than two weeks. Additionally, for the first time the on October 5th of 2016 Court of First Instance in Khan Younis inflicted death by handing upon (Nahla Abu Anza) who was accused of murdering her husband (Rabi Abu Anza 36 years old). It is worth mentioning that the citizen Rabi Abu Anza was found killed near Atsmouna settlement to the south of Khan Younis on January 30th of 2016. So, the number of death sentences issued only in 2016 until November 27th is twenty ones.

Four death sentences were implemented in 2016

“SHAMS” center clarified that 4 death sentences were implemented in 2016 against citizens in Gaza Strip. On February 7th of 2016, Izz-Edden Alqassam brigades, executed one of its field officers who is Mahmoud Rushdi Eshteivy, following the charge of “ethical breaches” as described. Furthermore, Ministry of Interior and the National Security of Gaza Strip executed three citizens on the early morning of May 31st of 2016, accused with murders inside the court of Gaza Central Jail “Alkateeba” to the west of Gaza Strip. Citizens are (A.Sh 43 years old) a military officer living in Khan Younis, who was executed by firing squad. And the citizen (M.A 28 years old) living in Rafah city who was executed by Hanging, and the citizen (Y.Sh 38 years old) who was executed by Hanging.

Implementing death penalty in the occupied Palestinian territories by:

1. Palestinian National Authority PNA:

since the inception of the Palestinian National Authority in 1994 until 27/11/2016, (PNA) inflicted (184) death penalties upon citizens accused of different crimes (some crimes are pertaining to national security). It is worth noting that (30) sentences were inflicted in the West Bank, while (154) ones were inflicted in Gaza Strip among which, (96) sentences were inflicted only in 2007. In addition, the Palestinian Authority implemented (35) death penalties (33) ones in the Gaza Strip and (2) in the West Bank. And among penalties issued in Gaza Strip, (22) ones were executed only in 2007 extra-judicially without the ratification of the Palestinian president.

2. Armed groups:

Usually, armed groups which are affiliated with some Palestinian factions, implement death sentences against its members. On February 7th of 2016 HAMAS executed one of its members who is Mahmoud Rushdi Eshteiwy, following the charge of “ethical breaches” as described. Also, armed groups executed 25 individuals on August 22nd and 23rd of 2014 known as (hanging necks) issued by Izz-Edden Alqassam Brigades, affiliated with HAMAS, due to espionage with the occupation as they mentioned. In addition to tens of citizens who were executed individually. Executions of such groups are not implemented according to fair trials guarantees and the interrogations are confidential. Usually, courts and executions are implemented rapidly in the field by covered people. Causes of such executions are doubtful and vary due to factional, family or political enemies’ disputes.

(74) Capital crimes in Palestine

“SHAMS” Center explains that legal system in Palestine is considered as a combination of inconsistent legislations which penalize death sentence. Such legislations are not originally Palestinian except the Revolutionary Penal Law no. (5) Of 1979 as the following:

- 1) British Mandate Penal Law no. (74) Of 1936. It includes (15) capital crimes.
- 2) Jordanian Penal Law of (16) of 1960. It includes (16) capital crimes.
- 3) Fireworks Law no. (23) OF 1963 penalizes by death sentence “anyone who used fireworks for the purpose of terrify or harming citizens or properties, either resulted in damage or not”.
- 4) Revolutionary Penal Code no. (5) of 1979 (ratified by the PLO and applied currently on the affiliated members of the Palestinian security institution). It includes (42) capital crimes.

Problem

“SHAMS” center puts emphasis in the report that capital punishment is irreversible, it doesn’t deter crimes or perpetrators. The center added that combating death penalty in Palestine is originated from the belief that capital punishment is linked with different obstacles represented in:

1. Continuous implementation of death penalty in Palestine: theoretically, Palestine has acceded to international conventions and treaties on human rights. On April 1st of 2014, Palestine has acceded to (15) treaties, and on December 31st also acceded to another (20) treaties. But, Palestinian legislations haven’t been matched yet in

accordance with international legislations on the ground, while death penalty is applied in Palestine.

2. **Capital punishment in Palestine is influenced by the attitudes of the public opinion.** There is a social misunderstanding and a noticeable support to the death penalty. While the critical point is that supporters who call for implementing the capital punishment include lawyers, physicians, engineers, university lecturers and decision-makers.
3. **The poor and marginalized people are the ones penalized by the capital punishment:** in all cases where death penalty were inflicted upon poor and less advantaged people, who have no money to assign advocates to defend them, or to pay for reconciliation with victims' family.
4. **Death sentences issued by military courts and field (revolutionary) courts:** so far, Palestinian civilians are prosecuted before military courts which breaks the constitutions, laws and international treaties which all support citizens' right to be prosecuted by civil judges.

Implementing death penalty contradicts with the Palestinian Basic Law and related laws.

1. "SHAMS" Center in its report clarified that implementing death penalty contradicts with the Palestinian Basic Law and related laws. Article (30) of the Palestinian Basic Law stipulates:
 - a. Submitting a case to court is a protected and guaranteed right for all people. Each Palestinian shall have the right to seek redress in the judicial system. Litigation procedures shall be organized by law to guarantee prompt settlement of cases.
 - b. Laws may not contain any provisions that provide immunity to any administrative decision or action or against judicial review.
 - c. Judicial error shall result in a remedy by the National Authority. Conditions and methods of such remedy shall be regulated by law.

Consequently, prosecuting civilians before military judiciary is a constitutional breach. While article (109) of the Palestinian Basic Law grants the Palestinian president the right to sign, ratify or to reject. As well as articles (408) and (409) of Criminal Procedures Law no. 3 of 2001, stipulate that death sentences shall not be implemented without ratification of the present of the state.

Dates and events

“SHAMS” center added that 2016 witnessed considerable events and could be regarded as precedents. On May 18th reconciliation’s men and tribal representatives have met Mr. Ismail Hania, deputy of the Head of Political Office for Hamas to call for executing 13 citizens. On May 25th, authorities in Gaza Strip represented by members of Hamas in the PLC ratified implementing death sentences which have been recently inflicted upon 13 citizens instead of the president. It is worth noting that endorsing the PLC members of Reform & Change affiliated with Hamas, indicates a permission for willful killing and breaks the Palestinian Basic Law, and the Criminal Procedures law no. 3 of 2001. In the early morning of May 31st three citizens in Gaza Strip were executed. On October 26th, it was announced in Ramallah governorate to establish the Palestinian Coalition against Death Penalty.

Recommendations:

At the end of the report, Human Rights and Democracy Media Center “SHAMS” strongly recommended the abolition of death penalty from Palestinian legislations, and matching with related international treaties. In addition to sing the Second Optional Protocol annexed to the International Covenant on Civil and Political Rights of 1989 regarding the abolition of death penalty. Farther, “SHAMS” center appeals to the Palestinian president Mahmoud Abbas not to ratify death sentences, and to employ his constitutional powers to cancel the capital punishment. And to activate the role of Palestinian Coalition against Death Penalty, to enhance collaboration and coordination between local, regional and international civil society organizations. represented by (Palestinian Coalition against Death Penalty, Arabic Coalition against Death Penalty and World Coalition against Death Penalty).