



مركز إعلام حقوق الإنسان والديمقراطية «شمس»  
Human Rights & Democracy Media Center «SHAMS»

**Consultative Member of the United Nations Economic and Social Council (ECOSOC)**

**Member of the World Coalition against the Death Penalty**

**Member of the Arab Coalition Against the Death Penalty**

**Secretary of the Palestinian Coalition Against the Death Penalty**

# **The State of the Death Penalty in the Palestinian Territories**

## **Fifth Annual Report covering the year of 2020**

**2020**

## Introduction

Article (3) of the Universal Declaration of Human Rights states that: “Everyone has the right to life, liberty and security of person.” On the 1<sup>st</sup> of April 2014, Palestine acceded to a number of international agreements including the International Covenant on Civil and Political Rights, which states in Article (6) that “Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.”

Later and on the 6<sup>th</sup> of June 2018, Palestine acceded to the Second Optional Protocol of the International Covenant on Civil and Political Rights, which aims to abolish the death penalty. Article (1) of the Protocol states that:

“1. No one within the jurisdiction of a State Party to the present Protocol shall be executed.

2. Each State Party shall take all necessary measures to abolish the death penalty within its jurisdiction.”

But this accession did not lead to any actual, concrete changes in the state of the death penalty in Palestine. Furthermore, the local legislations were never aligned with it, nor was it published in the state’s official Gazette.

The Human Rights and Democracy Media Center “**SHAMS**” issues its 5<sup>th</sup> annual report on the state of the death penalty in Palestine for the year 2020. Every year, this report monitors the state and changes occurring to the death penalty in Palestine within the center’s ongoing efforts to exert pressure for the full abolition of the death penalty and document developments related to it.

## The state of the death penalty in Palestine

**- At the level of the judicial authority:** Palestinian courts in the Gaza Strip still issue death sentences in extremely large numbers when taking into account the overall number of the population. Since the establishment of the Palestinian Authority, Palestinian courts have issued 233 death sentences, 203 of which were in Gaza and 30 in the West Bank. The death penalty has been practically cancelled in the West Bank because the president refused to approve issued death sentences. It nonetheless remains at the level of legislations there. On the other hand, it exists in full effect at the legislative and judicial levels in the Gaza Strip.

In the year 2007, courts in the Gaza Strip issued 119 death sentences. In 2018, the very year in which Palestine acceded to the Second Protocol, they issued 15 death sentences, 11 of which were issued after the accession. The issuance of these sentences continued to take place in the Strip and has taken on a periodic character. It is worth mentioning that these rulings contain numerous other violations that have to do with constitutional procedures and guarantees of justice

### **- At the level of practices:**

Law enforcement agencies affiliated with Hamas in the Gaza Strip have continued implementing death penalties against defendants accused of various crimes. The implementation of these sentences contains flawed procedures and is in direct contradiction to Article (3) of the Code of Criminal Procedure Law No. (3) of the year 2001, which sets the approval of the president as a condition for carrying out death sentences and is consistent in text and spirit with Article (109) of the Palestinian Basic Law. This requirement did not curb the implementation of the death penalties. Ever since it took control over the Strip, Hamas considered the approval of the president as a formal step that can be skipped despite the fact that such an approach is gravely consequential to citizens' right to life.

Ever since, the security forces resumed their implementation of death sentences. They even committed more dangerous violations in the process, including field executions without a judicial order and without any legal context. Since the year 2007, 30 death sentences have been carried out.

### **- At the level of legislations**

The Palestinian legal system inherited a set of contradictory and heterogeneous Ottoman, British, Jordanian, Egyptian, and Israeli laws, a multiplicity that promotes legal arbitrariness and impedes the establishment of a unified legal system and a real Palestinian sovereignty. The majority of these laws and regulations are old and incompatible with the spirit of modernity and renewal. In addition, there exists only one Palestinian law that allows for the death penalty, which is the Revolutionary Penal Code No. 5/1979. The following laws are still in effect:

- The British Mandate Penal Code No. 74/1936 in the Gaza Strip, which makes (15) different crimes punishable by death.
- The Jordanian Penal Code No. 16/1960 in the West Bank. It makes (16) different crimes punishable by death.
- The amended Jordanian Fireworks Law No. 23/1963. It makes one crime punishable by death.
- The Revolutionary Penal Code No. 5/1979, which was passed by the PLO and is still in effect for employees of the security establishment. This code makes (45) different crimes punishable by death.

We must make a reference to the Interpretive Resolution No. 02/2018 issued by the Supreme Constitutional Court in response to the Request for Interpretation No. (4) of the Judicial Year No. (3). This resolution granted the military judiciary widespread and unprecedented powers that shifted the scope of its work from special cases and circumstances to regular, every-day cases. It placed civil police under the mandate of military judiciary and granted the military judiciary the power to prosecute civilians in so-called "offenses that compromise internal and external national security," which paved the way for the future issuance of more death sentences against civilians in military courts in the same year within which Palestine joined the optional Protocol <sup>1</sup>

---

<sup>1</sup> The resolution also granted military judiciary the power to look into and resolve disputes that occur between individuals at least one of whom is from the military establishment. The disputes need not be connected to or occur while the military-personnel

## Figures and statistics

- 1- Gaza Strip courts issued (17) death sentences in the year 2020.
- 2- Since the establishment of the National Palestinian Authority in the year 1994 and until 31/12/2020, (233) death sentence were issued: (203) in the Gaza Strip and (30) in the West Bank.
- 3- (41) death sentences have been actually implemented since the establishment of the Palestinian Authority: (39) in the Gaza Strip and (2) in the West Bank.
- 4 – In the year 2007 alone, (119) death penalties were issued in the Gaza Strip.
- 5 – Since Hamas took control of the Gaza Strip, (28) death sentences have been implemented without the president's approval and hence in violation of the law. Out of those, (6) were implemented in the year 2017, the largest count in a single year since Hamas' control over the Strip began in 2007.
- 6 – The number of death sentences issued in the year 2018 after Palestine's accession to the Second Optional Protocol of the International Covenant on Civil and Political Rights was (14) sentences.
- 7 – The first death penalty to be implemented after the establishment of the Palestinian Authority took place on 30/8/1998 in the Gaza Strip.

## The accession to the Second Protocol of the International Covenant on Civil and Political Rights did not stop death penalties

The accession did not stop the issuance of death penalties even after 2 years. Despite the importance and positive nature of this accession, it did not nonetheless materialize at the level of application and within the structural, legislative, and judicial arenas. The Palestinian national legislations were not subsequently aligned with the Protocol. The Protocol is yet to be published in the official Gazette to make it binding, and Palestinian courts resumed their issuance of death penalties. For example, courts in the Gaza Strip issued (14) death sentences after Palestine deposited its instrument of accession to the Second Protocol of the International Covenant on Civil and Political Rights on 6/6/2018 in a clear violation of Palestine's international obligations stipulated in the Protocol.

---

involved is on the job and can be the result of any interaction at any time. In addition, the dispute need not strictly be between two personnel members within the security establishment. One of the dispute sides can be a civilian and the case can still be subjected to military judiciary. The resolution also ruled, in contradiction with the governing principles of the Constitutional Court, that the Police Decree Law is unconstitutional, which violates the Palestinian Basic Law, international agreements, and other constitutional courts' jurisprudence in this regard .

## Red-taped cases

The High Judicial Council in the Gaza Strip issued a series of decisions to regulate the work of ordinary courts during the exceptional circumstances brought forth by the coronavirus pandemic. Among these decisions was Decision No. 11/2020, in which the Council announced that it would resume working on "red-taped" cases. In cooperation with the Palestinian Bar Association, these cases would be legally required to stick to a timetable that dictates a period at the end of which they must be finished.

The death penalty is one where the guarantees of a fair trial are often unmet because once a mistake is committed in the ruling, it is not retractable. Connecting this fact to red-taped cases, a reasonable degree of concern arises regarding the availability of guarantees of a fair trial to defendants especially in cases that attract a powerful reaction from the public opinion.

After the announcement of this policy, the issuance of death penalties accelerated in the Gaza Strip particularly after the public prosecution office also announced that it was actively interested in public opinion cases, which seemed to foreshadow future vengeful procedures committed by a major component of the justice system against defendants in appeasement to familial and social pressures.

### Justifications for opposing the death penalty

It is undisputable that the death penalty is a dangerous punishment because it violates the right to life and commits the very act otherwise called "crime of murder." The right to life is not granted by any party, and hence no one has the right to take it away or deprive others of it. The punishment also violates guarantees of justice because it cannot possibly be retracted once it is implemented. What possible compensation could be given in exchange for the life of a defendant who turns out to have been innocent all long?

This form of punishment also violates the right to humane and dignified treatment and Palestine's obligations as per its accession to the Protocol Against Torture on 31/12/2017 because the time period extending from the moment the death sentence is issued until the actual implementation constitutes a form of psychological torture and inhumane and degrading treatment because it is accompanied with immense pressure and fear that dominates and even paralyzes the psyche of the defendant. The punishment also births negative ramifications on the defendant's family and possible children who in most cases lose the family's breadwinner and are left with economic responsibilities that exceed their capacities. They are often socially stigmatized as a result and cannot find organizations that provide the psychological support they need after the sentence is issued or implemented. In most cases, the main justification provided in support of the death penalty is its capacity to deter future criminals, but this claim has been refuted by recent studies that show the crimes are continuously committed and even at greater rates in countries where the death penalty is applied.

"SHAMS" Center's opposition to the death penalty stems from various points, including:

#### **- Implementation of the death penalty violates the right to life:**

The right to life is the most sacred and loftiest of all human rights, and the death penalty is the only form of punishment that cannot be reversed if the defendant is later discovered to be innocent. The

conditions for the achievement of complete justice are difficult in the most stable of circumstances and when justice institutions uphold the utmost standards of competency and transparency, so one can only imagine how difficult it is to achieve justice in a case that involves the death sentence in light of the tough circumstances experienced by the Palestinian society and its official organizations.

**- The implementation of the death penalty violates the Basic Law and the entire national legislation system:**

Article (10) of the Palestinian Basic Law states the obligation to fully respect human rights and fundamental freedoms, including necessarily the right to life. The same article ordered the Palestinian Authority to hastily work to join all regional and international agreements, declarations, and conventions that protect human rights. Article (109) stipulates that "the death sentence issued by any court is not implemented without approval from the president of the Palestinian National Authority." Since the Palestinian president has refused to approve any death sentence since the year 2005 for humanitarian reasons, all implemented death sentences ever since are therefore illegal and constitute crimes of extra-legal murder and their perpetrators must be held accountable. The judiciary that issued these death sentences also broke the law because the president's approval is a fundamental condition for the implementation of these sentences. (28) death sentences have been implemented in the Gaza Strip since the year 2007, all of which violate Palestinian legislations including Articles(408) and (409) of the Code of Criminal Procedure.

**- Implementation of the death penalty violates Palestine's international obligations**

After Palestine's accession to (35) international agreements in the year 2014 and (7) more agreements in the year (2018) including the 1989 Second Optional Protocol of the International Covenant on Civil and Political Rights which aims to abolish the death penalty, the continuous implementation of death sentences is a violation of Palestine's international commitments.

**- The cultural frameworks that lead to the crimes (punished by the death) are not addressed**

The justification championed by who those who support the death penalty is the punishment's ability to achieve public deterrence. Despite the persistence of this view, studies and international statistical data continuously prove its invalidity and show that the exact opposite is true in practice. They demonstrate that countries that dispensed with the death penalty and constructed successful rehabilitation programs are now amongst the world's crime-free nations. Any observer of the Palestinian scene can easily notice that crimes are on the rise despite the issuance and implementation of the death penalty, which in fact is a common trend in all countries that apply the death penalty in their judicial systems.

The reason why crimes take place is the existence of a social environment that leads to the spread of crimes and the emergence of criminal characteristics. When criminals in such environments arise, there is no point in killing them and turning the judiciary into a vehicle for vengeance. The purpose of all punishments is the achievement of rehabilitation and re-integration into society, so the judiciary's priority should lie in the eradication of poverty, marginalization, violence, and all other circumstances that lead citizens to commit crimes. This does not in any way mean that

criminals must be immune from deserved punishments, but these punishments must at least be humane. The number of United Nations member states that decided officially to abolish the death penalty or abandon its implementation has reached (170) out of (193) states overall<sup>2</sup>.

**- The death penalty does not achieve justice to the victims' families and harms the executed defendants' children:**

We in "SHAMS" acknowledge that families that lost loved ones in crimes of murder have the right to obtain justice and we support them in doing so. Our principled stance against the death penalty does not stem from an undermining of the seriousness of crimes or a desire to allow perpetrators to evade justice. At the same time, we point out the lack of evidence supporting the claim that victims' families are often satisfied with death penalties being given to defendants accused of killing their members. It is better for these families to investigate the truth fully and prosecute all of those involved in the crime rather than turning a single person into a scapegoat. Death penalties are often also issued to defendants as a form of social bribe meant to appease victims' families rather than investigate the true origins of the crime at hand.

The death penalty deprives children of the defendant from psychological, economic, and social entitlements that are lost with the death of their parent, which constitutes a violation of the principle of personal punishment and is further exacerbated by the lack of Palestinian organizations that provide support for this group and the subsequent social stigma attached onto them.

**- Victims of poverty and marginalization are themselves victims of the death penalty in Palestine**

In all the issued death sentences, all the defendants were poor, marginalized, and from economically inferior social classes. This phenomenon is attributed to two reasons. First, the environments where such individuals reside push them to commit crimes because of the difficult economic challenges they endure. The second reason is that these individuals do not have the financial means to hire competent attorneys to represent them or settle their differences financially with the victims' families.

Furthermore, the idea that a perpetrator must be subjected to the same crime he/she subjected his/her victims to is odd. Rapists are not punished by being raped, nor are thieves stolen from as a form of deterrence. In the same spirit, justice institutions must endeavor to achieve justice, not replicate the same behavior exhibited by criminals against them.

---

<sup>2</sup> According to the Secretary General's report, which was presented to the Human Rights Council on the World Day Against the Death Penalty on 14/10/2018. The number is (142) states according to Amnesty International.

### **- The continuous issuance of death sentences through military courts and field (revolutionary) courts**

Rights of civilians and their entitlement to guarantees of a fair trial are still under attack in military courts. Military courts in Gaza have issued (8) sentences against civilians. The same danger exists in the West Bank through the Interpretive Resolution No. 02/2018 issued by the Supreme Constitutional Court in response to the Request for Interpretation No. (4) of the Judicial Year No. (3), which has already been mentioned.<sup>3</sup>

## **Recommendations**

- The positive step initiated with the accession the Optional Second Protocol which calls for the abolition of the death sentence must continue by aligning national laws with it and the rest of international agreements and conventions to which Palestine has acceded, abolishing the death penalty in Palestinian legislations, and publishing the Second Protocol in the official Gazette.

- Decisions must be issued to reduce all issued death sentences to life sentences.

- Work must be done to reform the judicial authority and justice institutions in order to increase guarantees of justice and fair trials in all courts.

- Perpetual discussion about the death penalty must be stimulated in all cultural, social, and religious spheres in order to allow the culture to re-think this punishment and correct false perceptions regarding the relationship between the death penalty and public and private deterrence.

- The death penalty must be publicly discussed in traditional and modern media platforms (social media for example) and media campaigns must be launched at various levels to establish a public opinion that opposes the death penalty.

- Human rights organizations must intensify their efforts to organize anti-death-penalty activities. Efforts to monitor the work of justice institutions including courts must be increased, and coordination and collaboration with relevant regional and international organizations must be promoted, all to protect the right to life.

---

<sup>3</sup> See page (3) of this report



### A table of death sentences that were issued in the year 2020

#	Name	Age (years)	Address	Charge	Date of the sentence	Court	Notes
1	A.T	39	Rafah	Convicted of the murder of the citizen Yasser Suhail Hamdan Badawi (23 years old) from Rafah	2020/2/5	Khan Younis Court of First Instance	This was the first death sentence to be issued out of Gaza in the year 2020
2	M.Z	34	Gaza	Collaboration with hostile parties	2020/2/25	Permanent Military Court	Imprisoned since 19/8/2014
3	A.E	39	Gaza	Murder of the victim Y.S on 16/7/2001	2020/5/21	Gaza Court of First Instance	-
4	N.E	64	Jabalia Camp	Collaboration with hostile parties	2020/6/16	Permanent Military Court	This sentence constituted a violation of the citizen's right to appear before a civil court
5	E.Q	42	Central Governorate	Murder of a victim	2020/7/12	Deir Al-Balah Court of First Instance	Death penalty of two siblings
6	M.Q	34	Central Governorate	Murder of a victim	2020/7/12	Deir Al-Balah Court of First Instance	Death penalty of two siblings
7	S.H	31	Rafah City	Murder of the citizen Mahmoud Bashar Ibrahim Al-Hamadyeh	2020/8/18	Khan Younis Court of First Instance	An indicator of the fast pace at which death penalties were being issued in the year 2020
8	M.A	24	-	Murder of the citizen Marwan Awad Al-Gharabli	2020/10/6	Gaza Court of First Instance	The perpetrator murdered the citizen Marwan Awad Al-Gharabli by throwing a grenade towards him while the

							<p>former was on the run from justice.</p> <p>The same court a 3-year suspended sentence and a 1000-JOD fine to another defendant in the case. The weapon of crime was confiscated. The crime took place in 2008</p>
9	M.E	57	Khan Younis Camp	Murder of a moneychanger named Ahmad Zaki Al-Bsheiti (53 years old)	2020/10/8	Khan Younis Court of First Instance	Death by hanging
10	M.D	42		Murder of the citizens (E.A) and (N.A) using firearms on 8/12/2016 due to familial and financial disputes	2020/10/18	Gaza Court of First Instance	
11	R.D	27		Murder of the citizens (E.A) and (N.A) using firearms on 8/12/2016 due to familial and financial disputes	2020/10/18	Gaza Court of First Instance	
12	B.D	29		Murder of the citizens (E.A) and (N.A) using firearms on 8/12/2016 due to familial and financial disputes	2020/10/18	Gaza Court of First Instance	
13	S.E			Murder of the citizen	2020/11/2	North Gaza Court of First Instance	The perpetrator murdered the victim on

				Abdulfattah Ahmad			10/10/2016 by hitting him on the head with a wooden plank and a stone, causing the victim to sustain fatal wounds
14	E.E	32		Convicted of the murder of the citizen Mousa Abu Nar on 14/01/2009	2020/11/5	Deir Al-Balah Court of First Instance	Death by hanging
15	N.Q	50		Vendetta murder of the victim Muhammad Hasan Muhammad Al-Aidi on 14/4/2002	2020/11/8	Central Governorate Court of First Instance	Death by hanging
16	E.A	35	Deir Al-Balah	Murder of the citizen Ragheb Suleiman Abu Mgheisib (42 years old) on 18/08/2021 using an AK-47	2020/11/11	Deir Al-Balah Court of First Instance	Death by hanging. The perpetrator is currently on the run.
17	M.E			Murder of the victim Jabr Ahmad Abu Arabyan on 17/09/2008 using a knife	2020/11/11	Deir Al-Balah Court of First Instance	Death by hanging (trial in absentia)