



THE STATE OF PALESTINE
**Compliance with the Convention against Torture and Other Cruel, Inhuman
or Degrading Treatment or Punishment Treaty:**
The Death Penalty

Submitted by:
The Advocates for Human Rights
a non-governmental organization in special consultative status with ECOSOC since 1996

The World Coalition Against the Death Penalty

The Palestinian Centre for Human Rights
and
Human Rights and Democracy Media Centers “SHAMS”

for the 74th Session of the Committee against Torture
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The Advocates for Human Rights (The Advocates) is a volunteer-based nongovernmental organization committed to the impartial promotion and protection of international human rights standards and the rule of law. Established in 1983, The Advocates conducts a range of programs to promote human rights in the United States and around the world, including monitoring and fact finding, direct legal representation, education and training, and publications. In 1991, The Advocates adopted a formal commitment to oppose the death penalty worldwide and organized a death penalty project to provide pro bono assistance on post-conviction appeals, as well as education and advocacy to end capital punishment. The Advocates currently holds a seat on the Steering Committee of the World Coalition against the Death Penalty.

The World Coalition Against the Death Penalty is a volunteer-based non-government organization committed to strengthen the international dimension of the fight against the death penalty. Established in 2002, its ultimate objective is to obtain the universal abolition of the death penalty. To achieve its goal, the World Coalition advocates for a definitive end to death sentences and executions in those countries where the death penalty is in force. In some countries, it is seeking to obtain a reduction in the use of capital punishment as a first step towards abolition.

The Palestinian Centre for Human Rights is an independent legal body dedicated to the protection of human rights, the promotion of the rule of law, and the upholding of democratic principles in the Occupied Territories. The work of the Centre is conducted through documentation and investigation of human rights violations, provision of legal aid and counseling for both

individuals and groups, and preparation of research articles relevant to such issues as the human rights situation and the rule of law.

Human Rights and Democracy Media Centers “SHAMS” is a Palestinian NGO, founded in 2003 that operates in the West Bank and Gaza Strip. “SHAMS” holds consultative membership with the United Nations Economic and Social Council (ECOSOC); is a member of the World Coalition against the Death Penalty; and is a member of many local, regional, and international coalitions. “SHAMS” is active in opposing the death penalty, in addition to its ongoing work on promoting and defending human rights and democracy within the Palestinian community; promoting good governance and human rights within the Palestinian security sector; enhancing women’s access to justice; advocating for children’s rights and community safety; defending the right to peaceful assembly; and providing legal aid to women and children.

EXECUTIVE SUMMARY

1. The State of Palestine on 1 April 2014 ratified the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.¹ On 28 December 2017, the State of Palestine signed the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.² On 18 March 2019, the State of Palestine also ratified the Second Optional Protocol to the International Covenant on Civil and Political Rights (ICCPR), which aims to abolish the death penalty.³ The State of Palestine has not yet abolished the death penalty. Indeed—as described herein—the 14 June 2007 split in power between the Palestinian Authority in Ramallah in the West Bank under President Abbas, and the Hamas movement in Gaza, has been followed by many documented executions in Gaza without the requisite signature of President Abbas, and Gazan military courts conduct trials of civilians, where they can be sentenced to death.
2. This report considers the prevalence of torture and other issues ancillary to the death penalty itself: confessions under torture or degrading treatment, due process, access to legal counsel, death-row conditions, and methods of execution.

The State of Palestine fails to uphold its obligations under the Convention against Torture and Other Cruel, Inhumane or Degrading Treatment or Punishment

3. The State of Palestine’s Initial State Party Report describes multifarious efforts, by many agencies, to investigate and prevent torture and overall mistreatment,⁴ including in the Gaza strip.⁵ Nonetheless, the State continues to engage in practices that can be considered torture and mistreatment, both in the West Bank and in Gaza. The Initial State Party Report itself acknowledges such occurrences.⁶

I. Death penalty

4. Death sentences continue in both the West Bank and the Gaza Strip, although executions have notably slowed. “No death sentence was executed in the Gaza Strip in 2021, becoming the fourth year in a row during which no verdict has been executed in Palestine as the latest was in 2017 in the Gaza Strip. Meanwhile, no death sentence has been executed since 2005 in the West Bank. In 2021, there was a significant increase in the number of death sentences issued

¹ Committee against Torture, *Initial report submitted by the State of Palestine under article 19 of the Convention, due in 2015*, (Aug. 26, 2019), U.N. Doc. CAT/C/PSE/1, (hereinafter “Initial State Party Report”) ¶ 1.

² Initial State Party Report ¶ 4; The Human Rights and Democracy Media Centre/SHAMS, *Information about the Death Penalty in the Palestinian Territories* (2022), 3 (hereinafter “SHAMS Information Document”), source on file with the author.

³ United Nations, “Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty,” accessed June 8, 2022, https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=IV-12&chapter=4&clang=_en#:~:text=Under%20Article%202%2C%20paragraph%201%20of%20the%20Second%20Optional%20Protocol,time%20of%20ratification%20or%20accession.

⁴ Initial State Party Report ¶¶ 13-16, 18, 31, 39, 77, 85, 96, 121, 126, 144, 149, 168, 183, 200.

⁵ *Ibid.* ¶¶ 141-42

⁶ *Ibid.* ¶ 43.

by the military and civilian courts of first instance while [the Palestinian Centre for Human Rights] reported 2 cases of serious breaches in use of death penalty in the Gaza Strip.”⁷

5. The State of Palestine has officially enshrined the death penalty in four different laws: (1) the Revolutionary Penal Code (1979) (death penalty for 45 crimes, most of which are vague political crimes that enable wide interpretation and increase the number of crimes enforceable under the given law, issued by the Palestinian Liberation Organization (PLO) before the emergence of the Palestinian Authority); (2) the British Mandate Penalty Code of 1936 (applied in the Gaza Strip) (death penalty for 15 crimes, some of which are political crimes identified to prevent Palestinians from resisting the British Occupation); (3) the Jordanian Penal Code of 1960 (applied in the West Bank) (old version of the Jordanian Penalty Code where it came into force in the West Bank during the Jordanian political Mandate of the West Bank; death penalty for 16 crimes, some of which are political such as a plot to overthrow the political regime); and (4) the amended Jordanian law of explosives (1963).⁸ These laws are arguably relics of a past era or enacted by a political organization without the mandate to promulgate them.⁹
6. In 2005, the President of the State of Palestine committed to no longer ratifying any new death sentences. Since the 2007 split, however, Hamas has not refrained from death-penalty executions.¹⁰
7. In Gaza, there are reports of military tribunals sentencing civilians to death, albeit without presidential ratification.¹¹ Civil society organizations have repeatedly called for an end to the use of military tribunals to try civilians and sentence them to death.¹² At the time of this report, 11 people have been sentenced to death in Gaza 2022, with the most recent death sentence issued by a military court against a civilian on 6 June 2022.¹³

II. Due process

8. Civil society organizations have noted that the application of the death penalty in the State of Palestine often violates the accused’s due process rights, in part because of how quickly the death penalty is carried out. People sentenced to death are often unable to exercise their due

⁷ Palestinian Centre for Human Rights, *Annual Report 2021: Human Rights in the occupied Palestinian Territory (oPt)* (Gaza City: 2022) (hereinafter “PCHR Annual Report 2021”), 27,103-08. Also available online at <https://pchrgaza.org/en/annual-report-2021/>.

⁸ SHAMS Information Document, 1-2.

⁹ *Ibid.*, 2.

¹⁰ *Ibid.*, 101-08

¹¹ *Ibid.*, 119-21.

¹² Press Release, The Human Rights and Democracy Media Centre/SHAMS, About the Issuance of a Death Sentence by the Gaza Court of First Instance to a Citizen by Hanging “There is no justice in Capital Punishment” (Sep. 12, 2021); Press Release, The Human Rights and Democracy Media Centre/SHAMS, Issuing a death sentence after only one week of starting trials confirms the absence of fair-trial guarantees, and the transformation of Gaza’s Judiciary system into vengeance tool controlled by the public opinion and its vengeful desires (Dec. 2, 2021); Press Release, The Human Rights and Democracy Media Centre/SHAMS, The Judicial Sector in Gaza Welcomes Ramadan Month with a Death Sentence against a Citizen (Apr. 4, 2022); Press Release, The Human Rights and Democracy Media Centre/SHAMS, The Military Court in Gaza Sentenced to Death by hanging against a Palestinian Civilian in Violation of Law (Apr. 11, 2022).

¹³ SHAMS Information Document, 1; The Human Rights and Democracy Media Centre/SHAMS, “SHAMS center condemns the issuance of a death sentence by hanging by the military court against a Palestinian citizen,” accessed June 8, 2022, <https://www.shams-pal.org/eng/?p=3709>.

process rights because of the short window between sentencing and execution. Further, the use of military tribunals to try civil cases impinges upon civilians' due process rights.¹⁴

9. Palestinian security services engage in practices that violate the due process rights of civilians in both the West Bank and Gaza Strip, including a “policy of arbitrary arrests, summonses, and detention of Palestinian citizens, without due process of law and in violation of the Palestinian Basic Law (PBL), Code of Criminal Procedure, and Palestine’s contractual obligations, including International Covenant on Civil and Political Rights (ICCPR) and Convention against Torture (CAT).”¹⁵

III. Allegations of torture and ill-treatment

10. In both the West Bank and Gaza Strip, Palestinian authorities have reportedly tortured civilians who have expressed disagreement with the Government. They have also used excessive force against protesters.¹⁶
11. Amnesty International reported on widespread torture in Palestine throughout 2021, including 104 complaints of torture and ill-treatment filed with the Independent Commission for Human Rights (ICHR) against government officials in the West Bank and 104 complaints against government officials in Gaza.¹⁷
12. Prosecutors with the ICHR closed an investigation into the torture and custodial death of Nizar Banat, finding extensive injuries all over Banat’s body. Fourteen members of the Hebron Preventative Security forces were subsequently put on trial for Nizar’s torture and death.¹⁸
13. With respect to detention conditions, the Palestinian Centre for Human Rights has reported that several people in Palestinian prisons have suffered declining health, resulting in their custodial death.¹⁹

¹⁴ SHAMS Information Document, 2-5; Amnesty International, *Amnesty International Report 2021/22: The State of the World’s Human Rights*, by Amnesty International (London: Amnesty International Ltd, 2022), 290-292. Also available at <https://www.amnesty.org/en/wp-content/uploads/2022/03/WEBPOL1048702022ENGLISH.pdf>.

¹⁵ PCHR Annual Report 2021, 29.

¹⁶ Amnesty International, *Amnesty International Report 2021/22: The State of the World’s Human Rights*, by Amnesty International (London: Amnesty International Ltd, 2022), 290. Also available at <https://www.amnesty.org/en/wp-content/uploads/2022/03/WEBPOL1048702022ENGLISH.pdf>.

¹⁷ *Ibid.* 291.

¹⁸ *Ibid.*

¹⁹ PCHR Annual Report 2021, 112-13. Palestinians are also housed in Israeli jails, where they reportedly experience “degrading treatment and inhumane conditions from the first moments of their arrest, as they are subjected to mental and physical torture, including physical abuse, sleep deprivation, [and] threats . . . Inside the prison, detainees are subjected to the same treatment, including: solitary confinement, barred of visitation rights, arbitrary transfer, and deprivation of adequate medical treatment.” *Ibid.*, 19, 60-64. Israeli forces have allegedly tortured and mistreated Palestinians in detention, and Israeli courts do not discredit testimony coerced under such conditions, legislatively sanctioned use of solitary confinement is systematically employed in Israeli prisons against Palestinians. Initial State Party Report, ¶¶ 184, 197-99. Israeli officials reportedly hide evidence of their mistreatment of Palestinians in Israeli custody by retaining of the bodies of those who have died in custody and preventing autopsies that could reveal mistreatment as the cause of death. PCHR Annual Report 2021, 61-62.

IV. Suggested recommendations for the State of Palestine

14. The coauthors of this report offer the following suggested recommendations for the State of Palestine

- Abolish the death penalty and replace it with a sentence that is fair, proportionate, and respects international human rights standards—thus implementing the aim of the Second Optional Protocol to the International Covenant on Civil and Political Rights.
- In the interim, establish an official moratorium on executions, effective immediately, and direct all judges to cease sentencing people to death.
- Proceed with presidential and legislative elections, in abeyance since 2010, to restore democratic integrity to the government and safeguard against executive overreaching, especially regarding the independent judiciary.
- In the interim, amend the penal code to restrict applicability of the death penalty only to intentional killing.
- Reaffirm the law that courts be barred from considering any evidence obtained through torture, except with respect to evidence of the crime of torture itself, and create a mechanism by which defendants may raise the issue of inadmissibility before trial. Ensure that all judicial authorities receive adequate training and support to assess such allegations and have the capacity to bar consideration of such evidence.
- Ensure that all persons charged with capital offences are provided with legal counsel free of charge, and ensure that they have access to counsel from the time of charging through any appeals, including during any interrogations.
- Take concrete measures to improve conditions in prisons for all persons, including people on death row, in accordance with the Nelson Mandela Rules, and enact a policy prohibiting the use of solitary confinement as the standard method of detention for persons who might be sentenced to death, consistent with Rule 45 of the Nelson Mandela Rules.
- Establish a system of regular unannounced visits to all places of detention by national and international monitors, including granting entry and access to all human rights nongovernmental organizations.
- Provide full co-operation to the ICC investigator of Israeli war crimes in order to prevent continuing violations of the Treaty by Israeli forces.