



THE STATE OF PALESTINE
Compliance with the Convention on the Elimination of All Forms of Discrimination against Women:
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

and

Human Rights & Democratic Participation Center “SHAMS”

for the 85th Pre-Sessional Working Group of the Committee on the Elimination of Discrimination against Women
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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.

Human Rights & Democratic Participation Center “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. In April 2014, the State of Palestine acceded to the Convention on the Elimination of All Forms of Discrimination against Women without any reservations.¹ On March 18, 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.² The State of Palestine has not yet abolished the death penalty. Indeed—as described herein—the June 14, 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. As the State of Palestine has not formally abolished the death penalty, women are at risk of being sentenced to death.

The State of Palestine fails to uphold its obligations under the Convention against the Elimination of All Forms of Discrimination against Women

2. The State of Palestine has officially enshrined the death penalty in four different laws: (1) the Revolutionary Penal Code (1979) (issued by the Palestinian Liberation Organization (PLO) before the emergence of the Palestinian Authority, authorizing the death penalty for 45 crimes, most of which are vaguely defined political crimes); (2) the British Mandate Penal Code of 1936 (applied in the Gaza Strip) (authorizing the 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) (an old version of the Jordanian Penal Code, which came into force in the West Bank during Jordan’s rule over the West Bank, authorizing the death penalty for 16 crimes, some of which are political); and (4) the amended Jordanian law of explosives (1963).³ These laws are arguably relics of a past era or enacted by a political entity that lacked a mandate to promulgate them.⁴
3. Courts continue to hand down death sentences 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. On September 4, 2022, five citizens were executed by the status quo government in [the] Gaza Strip. Two were accused of communication with [a] hostile party and three were accused of murder crimes. 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 by the military and civilian courts of first

¹ Human Rights Watch, “Women’s Centre for Legal Aid and Counselling, and Equality Now, Joint Submission to the CEDAW Committee on the State of Palestine, 70th session,” accessed Sept. 23, 2022, <https://www.hrw.org/news/2018/06/11/human-rights-watch-womens-centre-legal-aid-and-counselling-and-equality-now-joint#:~:text=Palestine%20acceded%20to%20the%20UN,Africa%20region%20to%20do%20so.>

² 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.

³ The Human Rights and Democracy Media Centre/SHAMS, *Information about the Death Penalty in the Palestinian Territories* (2022), 1-2 (hereinafter “SHAMS Information Document”), source on file with the author.

⁴ *Id.*, 2.

instance while [the Palestinian Centre for Human Rights] reported 2 cases of serious breaches in use of death penalty in the Gaza Strip.”⁵

4. In 2005, the President of the State of Palestine committed to no longer ratifying any new death sentences. Despite this commitment, in 2005 the President approved the execution of five death sentences, one of which authorities carried out on May 27, 2005. Authorities carried out the remaining four on June 12, 2005. Since the 2007 split, however, Hamas has not refrained from carrying out executions.⁶
5. In Gaza, there are reports of military tribunals sentencing civilians to death, albeit without presidential ratification.⁷ Civil society organizations have repeatedly called for an end to the use of military tribunals to try civilians and sentence them to death.⁸ At the time of this report, 18 people have been sentenced to death in Gaza in 2022, with the most recent death sentence issued by a military court against a civilian on September 28, 2022.⁹

I. Access to justice (Concluding Observations, paras. 16, 17)

6. In its 2018 Concluding Observations, the Committee on the Elimination of Discrimination against Women noted that “although free legal aid is recognized as a right in the State party, the provisions of legal aid services for women has been largely delegated to civil society organizations in the State party.”¹⁰ The Committee recommended that the State of Palestine “revitaliz[e] the National Legal Aid Commission and ... prepar[e] ... a strategic plan on legal aid so that women, including disadvantaged groups of women, have access to affordable or, if necessary, free legal aid services.”¹¹
7. The Committee also recommended that the State party reduce economic barriers that prevented women from accessing justice through sufficient funding and supporting legal aid with an eye toward benefiting economically disadvantaged women.¹²

⁵ 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/>.

⁶ *Id.*, 101-08

⁷ *Id.*, 119-21.

⁸ 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).

⁹ 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>.

¹⁰ Committee on the Elimination of Discrimination against Women, *Concluding observations on the initial report of the State of Palestine* (hereinafter “*Concluding observations*,” (July 25, 2018), U.N. Doc. CEDAW/C/PSE/CO/1, ¶ 16.

¹¹ *Id.*, ¶ 17.

¹² *Ibid.*

8. The State of Palestine reported no progress with regard to access to justice in its 2020 Follow-Up to the Concluding Observations.¹³
9. 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 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. Authorization of the death penalty also seems to be influenced by public opinion trends.¹⁴
10. Global trends show that women sentenced to death face intersectional discrimination. According to a groundbreaking study conducted by the Cornell Center on the Death Penalty Worldwide, most women on death row come from backgrounds of severe socio-economic deprivation and many are illiterate, which can reinforce unequal access to effective legal representation.¹⁵ This intersectional discrimination exacerbates the risk that a woman charged with a capital crime will be subjected to an unfair trial.
11. 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).”¹⁶
12. Palestinian human rights groups are concerned that the trial of the only woman currently sentenced to death in Palestine, N.A. (see paragraph 20 below), lacked the minimum guarantees of a fair trial. N.A. had killed her husband, who had subjected her to domestic violence. Her family had refused to hire her a defense lawyer and also refused to compensate her husband’s family with “blood money.”¹⁷ The court appointed N.A. a lawyer who reportedly provided a substandard defense.¹⁸

II. Stereotypes and harmful practices, including education (Concluding Observations paras. 24, 34)

13. The Committee took note of the “persistence of discriminatory stereotypes concerning the roles and responsibilities of women and men in the family and in society, which perpetuate the

¹³ Committee on the Elimination of Discrimination against Women, *Information received from the State of Palestine on follow-up to the concluding observations on its initial report* (hereinafter “*Follow-Up*”) (Aug. 19, 2020), U.N. Doc. CEDAW/C/PSE/FCO1.

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 *Judged for More Than Her Crime: A Global Overview of Women Facing the Death Penalty*, Cornell Center on the Death Penalty Worldwide, Sept. 2018, at 3, <https://www.deathpenaltyworldwide.org/wp-content/uploads/2019/12/Judged-More-Than-Her-Crime.pdf>.

¹⁶ PCHR Annual Report 2021, 29.

¹⁷ Rasha Abou Jalal, *Gaza to hear appeal of woman’s death sentence*, Al-Monitor, Dec. 23, 2016, <https://www.al-monitor.com/originals/2016/12/palestine-execution-women-first-time-death-penalty-nahla.html> (last visited Oct. 3, 2022).

¹⁸ Information on file with author.

subordination of women,” also identifying discriminatory stereotypes as a major cause of gender-based violence against women.¹⁹ Further, the Committee found that, following a review of school curricula in 2006, textbooks perpetuated discriminatory stereotypes about women and girls.²⁰

14. In response, the Committee recommended that the State party end discriminatory stereotyping and educate the public on the negative effects of discriminatory stereotyping. This recommendation included public education campaigns, reaching out to religious and tribal leaders, and using the media to address the need to eradicate stereotypes of women and girls’ roles in society.²¹ The Committee also recommended that Palestine remove discriminatory stereotypes against women in girls from textbooks and train teachers to eliminate stereotypes in the learning environment.²²
15. The Palestinian Government did not provide evidence of progress regarding discriminatory stereotypes in its Follow-Up to the Concluding Observations.²³
16. According to the Cornell Center, women are more likely to receive a death sentence when the adjudicating authority perceives that they are violating entrenched gender norms, being cast as the “female fatale” or the “witch.” Women are often put on trial not only for acts they performed but also for allegedly being “a bad wife, a bad mother, and a bad woman.”²⁴

III. Gender-based violence against women

17. The Committee noted that despite the State party’s attempts to stem gender-based violence, there remained a “high prevalence of gender-based violence against women, in particular ... domestic and sexual violence.”²⁵
18. The Committee recommended that the State of Palestine adopt legislation that protects women and girls from gender-based violence, including prosecuting and punishing perpetrators of gender-based violence and building the capacity of legal system actors to combat gender-based violence.²⁶
19. The State party noted that it has established a “free direct phone line ... for family protection units in the police force across the country to receive complaints from women victims of violence.”²⁷ The Palestinian Government has also indicated that it has “elaborated” its mechanisms to respond to gender-based violence against women, but it is unclear what that elaboration entails.²⁸

¹⁹ *Concluding observations*, ¶ 24.

²⁰ *Id.*, ¶ 34.

²¹ *Id.*, ¶ 25.

²² *Id.*, ¶ 35.

²³ *Follow-Up*.

²⁴ *Judged for More Than Her Crime: A Global Overview of Women Facing the Death Penalty*, Cornell Center on the Death Penalty Worldwide, Sept. 2018, at 4, <https://www.deathpenaltyworldwide.org/wp-content/uploads/2019/12/Judged-More-Than-Her-Crime.pdf>.

²⁵ *Concluding observations*, ¶ 26.

²⁶ *Id.*, ¶ 27.

²⁷ *Follow-Up*, ¶ 19.

²⁸ *Ibid.*

20. On October 5, 2016, the Khan Younis First Instance Court sentenced N.A., a then-26-year-old woman, to death by hanging following her conviction for the premeditated murder of her husband.²⁹ N.A. marriage reportedly had been arranged against her will, and her husband subjected her to physical and psychological domestic violence. At the time of her conviction and sentencing, she had a two-and-a-half-year-old son who now lives with her husband's family; the family members have denied her visitation with her son.³⁰
21. According to the Cornell Center, in the global context, women are most likely to be sentenced to death for murdering a family member, often in an environment of gender-based violence.³¹ Many women under sentence of death are victims of gender-based violence and come from disadvantaged socio-economic backgrounds.³² In many countries that retain the death penalty, however, courts fail to take into account a defendant's experience as a survivor of gender-based violence when making sentencing decisions.³³

IV. Suggested questions for the Government of the State of Palestine

22. The coauthors suggest the following questions for the Government of the State of Palestine:
- What steps, if any, has Palestine taken to abolish the death penalty—thus implementing its obligations as a State Party to the Second Optional Protocol to the International Covenant on Civil and Political Rights—and replace it with a penalty that is fair, proportionate, and consistent with international human rights standards?
 - What steps, if any, has the State of Palestine taken to amend the Penal Code to limit applicability of the death penalty to intentional killings committed by the defendant?
 - Please describe the steps taken to provide fair trial and due process safeguards in capital cases involving women defendants, including by providing them with access to effective legal representation and safeguards prohibiting admissibility of evidence obtained through torture or ill-treatment.
 - In what ways have authorities ensured that courts do not consider any evidence obtained through torture, except with respect to evidence of the crime of torture itself, and that courts have a mechanism by which defendants may raise the issue of inadmissibility before trial, including by ensuring that all judicial authorities receive adequate training and support to assess such allegations and know that they can and should bar consideration of such evidence?

²⁹ Press Release, The Human Rights and Democracy Media Centre/SHAMS, SHAMS Center condemns inflicting death sentence upon a woman by the Court of First Instance of Khan Younis (Oct. 12, 2016); Palestinian Centre for Human Rights, "Unprecedented Decision: Woman Sentenced to Death Penalty in Khan Younis; PCHR Reiterates Rejection of Death Penalty and Calls for its abolishment," accessed Sept. 27, 2022, <https://pchrgaza.org/en/unprecedented-decision-woman-sentenced-to-death-penalty-in-khan-younis-pchr-reiterates-rejection-of-death-penalty-and-calls-for-its-abolishment/>.

³⁰ Information on file with author.

³¹ *Judged for More Than Her Crime: A Global Overview of Women Facing the Death Penalty*, Cornell Center on the Death Penalty Worldwide, Sept. 2018, at 4, <https://www.deathpenaltyworldwide.org/wp-content/uploads/2019/12/Judged-More-Than-Her-Crime.pdf>.

³² *Ibid.*

³³ *Ibid.*

- What measures have authorities implemented to 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 arrest through any appeals, including during any interrogations?
- What steps, if any, has the State Party taken to codify gender-specific defenses and mitigation in capital cases, encompassing women's experiences of trauma, poverty, and gender-based violence?
- What measures has the Palestinian Government implemented to ensure that all judicial officers responsible for sentencing in capital cases receive comprehensive training on gender-based discrimination, domestic violence, and tactics of coercive control that may influence or prompt a woman to commit a death-eligible offense?
- Please provide clear descriptions for all crimes eligible for a sentence of death, including the respective components of those crimes and definitions for political crimes that could result in a sentence of death.
- What training does the Government provide to defense counsel who take on capital cases regarding gender-specific mitigation and how to raise discrimination against clients on the basis of their gender, when appropriate?
- What measures has the State Party implemented to ensure that all prison authorities adopt gender-sensitive policies in relation to women's detention, based on the Bangkok Rules and the Nelson Mandela Rules, ensuring women's safety and security pre-trial, during admission to any detention facility, and while incarcerated?
- Please provide data on women's detention conditions, including, but not limited to, the number of women in detention and their location, disaggregated by age, race/ethnicity, nationality, crime of conviction, and sentence being served.
- How has prison infrastructure design accommodated women's specific needs, including their need for privacy?
- Please provide and publish transparent information on the number of women charged with capital offenses and the number of women sentenced to death and on death row during the reporting period, disaggregated by age, age of dependent children (if any), nationality, ethnic group, crimes of conviction, date of conviction, and date of execution (if applicable), to facilitate analysis of the demographics of women on death row.
- In what ways has the Government collaborated with civil society to conduct and publish research on root causes and structural, systemic discrimination against women that may lead to women's increased likelihood of coming into conflict with the law, particularly in capital cases?