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The Palestinian Centre for Human Rights

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## Position Paper

# Death Penalty under the Palestinian National Authority



## **Palestinian Centre for Human Rights**

Consultative Status with the ECOSOC of the United Nations  
Affiliate of the International Commission of Jurists - Geneva  
Member of the International Federation for Human Rights (FIDH) - Paris  
Member of the Euro-Mediterranean Human Rights Network – Copenhagen  
Member of the International Legal Assistance Consortium (ILAC) - Stockholm  
Member of the Arab Organization for Human Rights – Cairo



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# The Palestinian Centre for Human Rights

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## ***The Palestinian Centre for Human Rights***

The Palestinian Centre for Human Rights is an independent non-profit legal agency based in Gaza city. The Centre was established in April 1995 by a group of Palestinian lawyers and human rights activists in order to protect human rights and promote the rule of law in accordance with international standards, create and develop democratic institutions and an active civil society in Palestine in accordance with internationally accepted standards and practices and support all efforts aimed at enabling the Palestinian people to exercise their inalienable rights according to international law.

The Centre enjoys Consultative Status with the ECOSOC of the United Nations. It was granted three international prominent awards for its efforts in the field of human rights:

1. The 1996 French Republic Award on Human Rights; and
2. The 2002 Bruno Kreisky Award for Outstanding Achievements in the Area of Human Rights; and
3. The 2003 International Service Human Rights Award (UNAIS).

The Centre has wide relationships with human rights and civil society organizations throughout the world. It is an affiliate of five international and Arab human rights organizations, which are active in the international arena:

## ***International Commission of Jurists***

The International Commission of Jurists (ICJ), headquartered in Geneva, is a non-governmental organisation in consultative status with the United Nations Economic and Social Council, UNESCO, and the Council of Europe and the OAU. Founded in 1952, its task is to defend the rule of law throughout the world and to work towards the full observance of the provisions in the Universal Declaration of Human Rights. its membership is composed of sixty eminent jurists who are representatives of the different legal systems of the world.

## ***Federation Internationale des Ligues des Droits de l'Homme***

The Federation Internationale des Ligues des Droits de l'Homme (FIDH) is an international non-governmental organisation dedicated to the world-wide defence of human rights as defined by the Universal Declaration of Human Rights of 1948. Founded in 1922, FIDH has eighty-nine national affiliates in all regions.

## ***Euro-Mediterranean Human Rights Network***

The Euro-Mediterranean Human Rights Network (Euro-Med Network) is a network of human rights organisations and individuals from the Middle East, North Africa and the European Union, established in 1997. The overall objective of the Network is to contribute to the protection of the human rights principles embodied in the Barcelona Declaration of 1995.

## ***International Legal Assistance Consortium (ILAC)***

The International Legal Assistance Consortium (ILAC) is one of the most important international legal bodies. It is specialized in legal and judicial training. It includes more than 30 members of distinguished legal organizations throughout the world, including American Bar Association; Arab Lawyers Union; and Bar Council of England and Wales.

## ***The Arab Organization for Human Rights***

It is an NGO founded in 1983. It calls for respect and promotion of human and people rights and fundamental freedoms in the Arab World for all individuals on its land in accordance with international human rights instruments. The Organization signed an agreement with Egypt in May 2000, according to which its headquarter was moved from Limassol in Cyprus to Cairo.



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## The Palestinian Centre for Human Rights

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The Palestinian Centre for Human Rights is an independent non-profit non-governmental organisation dedicated to the protection and promotion of human rights, the rule of law, and democratic principles in the Occupied Palestinian Territories.

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## **Introduction**

The death penalty is one of the most outstanding issues that have the attention of human rights defenders and international legal and human rights organizations. It violates one of the fundamental human rights, which is the cornerstone of other rights, that is the right to life, and constitutes the most severe degree of torture and cruel and inhuman treatment. Consequently, article 3 of the Universal Declaration of Human Rights<sup>1</sup> prohibits the use of the death penalty and emphasizes that “everyone has the right to life, liberty and security of person.” This right, as prescribed by article 5 of the Declaration, includes that “no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment,” including the death penalty.

In the second half of the 20<sup>th</sup> century, many international and regional conventions<sup>2</sup> and instruments were produced, emphasizing provisions in the Universal Declaration of Human Rights with relation to the right to life. They called overtly for the non-application of the death penalty, excluding in exceptional cases and under specific conditions and norms. In this context, article 6-1 of the International Covenant on Civil and Political Rights<sup>3</sup> prescribes 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.” Paragraph 2 of the same article determines the conditions and norms of the application of the death penalty, stating that “in countries which have not abolished the death penalty, sentence of death may be imposed only for the most serious crimes in accordance with the law in force at the time of the commission of the crime and not contrary to the provisions of the present Covenant and to the Convention on the Prevention and Punishment of the Crime of Genocide. This penalty can only be carried out pursuant to a final judgment rendered by a competent court.” Even though this paragraph allows the application of the death penalty under certain limits, paragraph 5 of the same article prohibits the imposition of death sentences “for crimes committed by persons below eighteen years of age and shall not be carried out on pregnant women.”

The Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty,<sup>4</sup> which seeks to abolish the death penalty, calls upon States Parties to the Protocol to take “all necessary measures to abolish the death penalty within its jurisdiction,” and not to impose the death penalty except “in time

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<sup>1</sup> Adopted and proclaimed by General Assembly resolution 217 A (III) of 10 December 1948.

<sup>2</sup> These conventions and instruments include the European Convention on Human Rights and the American Convention on Human Rights.

<sup>3</sup> Adopted and opened for signature, ratification and accession by General Assembly resolution 2200A of 16 December 1966.

<sup>4</sup> Adopted and opened for signature, ratification and accession by General Assembly resolution 128/44 of 15 December 1989.

of war pursuant to a conviction for a most serious crime of a military nature committed during wartime.”<sup>5</sup>

The application of the death penalty not only violates the right to life, but also violates the rights to enjoy human and non-degrading treatment. Thus, it constitutes a flagrant violation of the Convention on the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of 1984.

Since it violates the right to life and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of 1984, many States have started since the beginning of the second half of the last century to take actions to stop the application of the death penalty. By 2006, 88 States have abolished the death penalty at both the *de jure* and the *de facto* levels; whereas 10 states have abolished the death penalty for ordinary crimes (not related to national security); 37 States (including one Arab State – Tunisia) have abolished the death penalty at the *de facto* level;<sup>6</sup> and 55 States, including 12 Arab States (including the Palestinian National Authority) have continued to apply the death penalty at both the *de jure* and the *de facto* levels.<sup>7</sup>

## **Death Penalty in Palestinian National Authorities Areas**

The Palestinian National Authority (PNA) was established in 1994 to manage, according to the Israeli – Palestinian Interim Agreements, the civil affairs of Palestinians living in the West Bank and the Gaza Strip. The PNA had to, *inter alia*, establish legal basics and principles that would govern its relation with the Palestinian society. In this context, the PNA asserted in its temporary constitution of 1997, and its amended version of 2003, that its commitment to work – without delay – to join international and regional instruments that protect human rights, and that it would respect all international human rights instruments. Although this commitment meant that the PNA must have sought to amend all applicable laws and legislations under its jurisdiction to be consistent with international human rights instruments, the PNA, since its establishment in 1994, has violated international human rights instruments, as it has imposed the death penalty in accordance with article 37 of the Penal Law (74) of 1936 applicable in the Gaza Strip, and article 14 of the Jordanian Penal Law (16) of 1960 applicable in the West Bank. In addition to these two laws, the PNA referred in the application of the death penalty to the Revolutionary Penal Law of the Palestine Liberation Organization of 1979, which legalizes the application of the death penalty, but has not been approved by the

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<sup>5</sup> Articles 1 and 2 of the Protocol.

<sup>6</sup> These States have maintained domestic laws that legalize the death penalty in spite of the non-application of these laws.

<sup>7</sup> See: <http://www.handsoffcain.orh/bancadati/index.php?tipotema=arg&idtema=8000573>

Palestinian Legislative Council, especially to those convicted of crimes related to national security and collaboration with foreign powers.<sup>8</sup>

Based on the aforementioned laws and legislations, the PNA issued 74 death sentences from 1994 to the end of 2005 against persons convicted of various crimes, including crimes related to national security.<sup>9</sup> Most of those sentences were issued by State Security Courts, which were established in February 1995. The late Palestinian President Yasser Arafat issued a presidential decree establishing these courts, without determining their mandates or the nature of cases to be considered by them.<sup>10</sup> PCHR and other human rights organizations have continued to call for the abolition of the State Security Courts on the basis that they routinely violate fundamental human rights, including the right to fair trial before an independent and impartial court and to appeal against sentences to a higher judicial body. Trials in State Security Courts are summary; the accused are not given time to prepare a defense and are denied access to effective legal counsel. Sentences issued by these courts cannot be appealed to a higher body, including death sentences.

In spite of criticism by human rights organizations directed to the PNA for the establishment of State Security Courts, the PNA implemented a number of death sentences issued by these courts. Moreover, in November 1999, the PNA invented the post of the Attorney General of State Security Courts, which further enhanced the operation of these courts in areas under its jurisdiction.

In 2001, in an attempt to partially overcome criticism for the application of the death penalty under its jurisdiction, the PNA promulgated the Penal Procedures Law (3) of 2001. This law prescribes the procedures to be followed to implement death sentences. According to this law, a convicted person has the right to challenge sentences before the Appeal Court no later than 15 days from the date of issuing the death sentence, otherwise, the sentences would be applicable. If the Appeal Court rejected such appeal, the case

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<sup>8</sup> The Israeli Palestinian Interim Agreements obligates the PNA not to search for and harass collaborators. Palestinian human rights organizations have considered it an unjustified concession of the legitimate rights of the Palestinian people to search for collaborators and bring them to justice. Article 20-4 of the Israeli – Palestinian Agreement on the Gaza Strip and the Jericho Area of 1994 prescribes that “with the assumption of Palestinian authority, the Palestinian side commits itself to solving the problem of those Palestinians who were in contact with the Israeli authorities. Until an agreed solution is found, the Palestinian side undertakes not to prosecute these Palestinians or to harm them in any way.” Article 16-2 of the Israeli – Palestinian Interim Agreement on the West Bank and the Gaza Strip of 1995 includes similar guarantees to collaborators, as article 16-2 prescribes that “Palestinians who have maintained contact with the Israeli authorities will not be subjected to acts of harassment, violence, retribution or prosecution. Appropriate ongoing measures will be taken, in coordination with Israel, in order to ensure their protection.”

<sup>9</sup> According to PCHR’s documentation.

<sup>10</sup> See Presidential Decree 49 of 1995 on the establishment of State Security Courts in the Palestinian official gazette, issue 4, 6 May 1995.

would be transferred to the President of the PNA, who has the authority, according to the Basic Law, to approve the sentence or issue an amnesty. Nevertheless, the law did not preclude the implementation of death sentences issued by State Security Courts. For instance, in 2002, two death sentences issued against Faisal Ahmed Abu Tailakh, 26, and Sa'id Lebrawi al-Najjar, both from the Rafah, who were convicted of raping and murdering 7-year-old Islam Mahmoud al-Khatib, were implemented.<sup>11</sup>

On 27 July 2003, the then Palestinian Minister of Justice, 'Abdul Karim Abu Salah, issued a decision abolishing the State Security Courts judicial system. PCHR welcomed the decision believing that this step would contribute to the promotion of the independence of the Palestinian judiciary and called upon the Palestinian President to issue a decree to entirely abolish the courts and cancel presidential decree 49 (1995) which established the courts. The failure to promulgate such a presidential decree is certain to permit the continuing operation of these courts. PCHR's expectations proved true as the PNA established a Partial State Security Court on 2 September 2003 to consider cases that fall under the mandate of the civil judiciary.<sup>12</sup>

The PNA went further and implemented a number of death sentences issued by State Security Courts in previous years. For instance, in 2005, the PNA carried out 5 death sentences issued in previous years:

1. Mohammad Daoud al-Khawaja, 24, from al-Shati refugee camp in Gaza. He was sentenced to death on 12 September 2000 by the State Security Court for killing Mustafa Baruod on 5 September 2005. He was executed by a firing squad in the Police Headquarters in Gaza City.
2. Wa'el Sha'ban al-Shoubaki, 33, from Gaza City. He was sentenced to death on 15 March 1996 by the Central Gaza Court for murdering Suhail al-Sayyed. He was hanged in Gaza Central Prison.
3. 'Odeh Mahmoud Abu 'Azab, 27, from Khan Yunis. He was sentenced to death on 31 October 1995 by the Central Gaza Court for kidnapping and murdering a citizen. He was hanged in Gaza Central Prison.
4. Salah Khalil Musallam, 27, from Khan Yunis. He was sentenced to death on 25 January 1996 by the Higher Criminal Court for murder and theft. He was hanged in Gaza Central Prison.
5. Ra'ed Khalil al-Moghrabi, 32, from Jabalya. He was sentenced to death in 2001 for the pre-meditated murder of Khalil Zumlot, 35, from Jabalya refugee camp in 1998. He was hanged in Gaza Central Prison.

The implementation of these sentences contradicted a decision taken by Palestinian President Mahmoud Abbas on 22 June 2005 stipulating the retrial in civil courts of all those convicted in State Security Courts.

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<sup>11</sup> See: PCHR's Annual Report 2002: Human Rights Report, Narrative Report and Financial Report (1 January – 31 December 2002), Gaza: PCHR, April 2003, p. 49.

<sup>12</sup> See: PCHR's Annual Report: Human Rights Report, Narrative Report and Financial Report (1 January – 31 December 2003), Gaza: PCHR, April 2004, p. 40.

## **PCHR's Position**

In light of the debate over the feasibility of the death penalty, and despite continued application of it by many countries in the world, including the United States, PCHR reiterates its rejection for the death penalty for the following reasons:

1. PCHR believes that the death penalty constitute a flagrant, unjustified violation of the right to life. Thus, it undermines opportunities for individuals to enjoy other rights, which makes it necessary to abolish it all over the world, including in Palestine, to ensure and protect human civil, political, economic and social rights.
2. PCHR believes that this punishment is the most severe form of cruel and inhuman treatment, and thus, violates the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of 1984. PCHR asserts that the application of the death penalty harms the human dignity and undermines human rights, including the right to life and the right to receive human treatment.
3. PCHR believes that the death penalty does not constitute a deterrent to crimes, as the experiences of countries which apply the death penalty, such as the United States, China and Saudi Arabia, have proved that it can never ensure stability in the society and the non-recurrence of crimes. Consequently, the application of the death penalty is a form of retaliation aiming only at killing.
4. PCHR contends that the application of the death penalty leads to disastrous consequences, as victims of the death penalty lose their lives, which makes it one of the most severe forms of punishment, as it is irreversible.
5. PCHR emphasizes that the abolishment of the death penalty does not mean in anyway indulgence with those who are convicted of serious crimes, but other forms of punishment which maintains the human dignity should be considered. PCHR's position concerning the death penalty is professional and moral. It is not related to a specific case, and does not contradict the rule of law, for which PCHR steadily struggle.

## **PCHR's Demands**

1. PCHR calls upon the Palestinian President Mahmoud 'Abbas to use his constitutional authorities and not ratify death sentences, precluding the implementation of such severe punishment which violates the right to life.
2. PCHR highly appreciates the decree issued by President 'Abbas on 22 June 2005, stipulating the retrial in civil courts of all those convicted in State Security Courts. PCHR calls upon President 'Abbas to use his constitutional authorities and continue the retrial in civil courts of all those convicted by State Security Courts. Since the beginning of 2006, 11 of such cases have been transferred to civil court.

3. PCHR calls upon the Palestinian Legislative Council (PLC) to reconsider Palestinian laws related to the death penalty, particularly article 37 of the Penal Law (74) of 1936, which is applicable in the Gaza Strip; article 16 of the Jordanian Penal Law (16) of 1960, which is applicable in the West Bank; and the Penal Law 3 of 2001. PCHR calls upon the PLC to promulgate modern laws that are consistent with international human rights instruments, including those which call for the abolishment of the death penalty.
4. PCHR calls upon the PLC to incorporate international human rights instruments into the Palestinian domestic laws, especially the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of 1984, to ensure that the death penalty will not be applied in the future.