



The Palestinian Centre for Human Rights

Position Paper

Execution for Alleged Collaboration



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



The Palestinian Centre for Human Rights

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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.



The Palestinian Centre for Human Rights

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

Since they occupied the West Bank and the Gaza Strip in 1967, Israeli Occupation Forces (IOF), through their various security services, especially the General Security Service (GSS), have sought to recruit some Palestinians to use them as a means to corrupt the Palestinian society and destroy its cultural, social, political and economic potentials. IOF have used those Palestinians as front arms to facilitate their special missions to search for and extra-judicially execute activists of the Palestinian resistance (assassinations).¹ This fact has equated collaborators with IOF with Israeli war criminals, who must be searched for and brought to justice like Israeli war criminals.

Nevertheless, 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.”

¹ The policy of assassination has been one of the major means used by IOF to continue to commit extra-judicial executions even though this penalty was abolished in the West Bank and the Gaza Strip by Israeli military orders 266 and 395 respectively. The former was issued on 24 July 1968 to abolish articles 111 and 112 of the Jordanian Penal Law of 1960, applicable to the West Bank, whereas the latter was issued in March 1971 to abolish article 37 of the British Penal Law (70) of 1936 applicable to the Gaza Strip. See: Israel Defense Force Command in the Gaza Strip and Northern Sinai. Publications, Orders and Declarations. Issue 23, on 4 March 5731 (1 March 1971). See also: Technical Consultative Teams. Military Orders Issued in the West Bank Since 7 June 1967. March 1994 (2nd Volume, July 1994), P. 147. concerning the British Penal Law (74) of 1936, see: Mazen Sisalem, Is’haq Mahanna, Suleiman al-Dahdouh. The Set of Palestinian Laws. 12th Volume, 4th edition, February 1997.

Kidnapping and Extra-Judicial Killing of Persons for Alleged Collaboration with IOF

The period 1994-2004 witnessed negative developments with regard to pursuing persons for alleged collaboration with IOF. Palestinian armed groups took the initiative to punish such persons extra-judicially, as the PNA failed to search for such persons and bring them to justice. This development was clear during the al-Aqsa Intifada, which has given these groups unprecedented momentum and has revealed the notable failure of Palestinian security services to search for collaborators and weaken their major role in the success of extra-judicial executions committed by IOF against activists of the Palestinian resistance during the Intifada. These two factors encouraged armed wings of Palestinian factions to act as “a judicial and executive body” to punish collaborators away from the official judiciary. According to PCHR’s documentation, from the beginning of the al-Aqsa Intifada in September 2000 until the end of 2005, armed groups of Palestinian factions killed at least 90 Palestinians for alleged collaboration. In most cases, those Palestinians were shot dead by armed groups after they had been kidnapped and tortured.

However, a notable decrease was registered in 2004 in comparison with 2005 in the number of Palestinians killed for alleged collaboration with IOF; in 2004, 4 Palestinians were killed, whereas in 2005, 22 Palestinians were killed. This development cannot be explained aside from judicial developments related to issue of collaborators with Israel, which gained momentum in 2005.

Executions for Alleged Collaboration with IOF

Palestinian courts, including State Security Courts, military ones and civil ones, issued at least 20 death sentences from 1994 to the end of 2005 against persons convicted of collaboration with IOF. Most of those sentences have not been implemented pending ratification by the PNA President according to the Penal Procedures Law (3) of 2001, which gives the PNA President the authority to ratify death sentences or issue amnesties.² However, a number of such sentences remain legally debatable and questionable, especially those issued by State Security Courts, which were established in February 1995.³ It is well known that State Security Courts routinely violate fundamental human

² 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 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.

³ 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. See Presidential Decree 49 of 1995 on the establishment of State Security Courts in the Palestinian official gazette, issue 4, 6 May 1995.

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. Thus, State Security Courts violate article 14 of the International Covenant on Civil and Political Rights of 1966, which gives everyone charged with a criminal offence the right “to have adequate time and facilities for the preparation of his defense and to communicate with counsel of his own choosing...”; the right to examine “the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him...”; the right “not to be compelled to testify against himself or to confess guilt...”; and the right “to his conviction and sentence being reviewed by a higher tribunal according to law...”

On 22 June 2005, Palestinian President Mahmoud Abbas a decision stipulating the retrial in civil courts of all those convicted in State Security Courts. Accordingly, Gaza First Instance Court, which was established in accordance with Decision 130 issued by the Higher Judiciary Council earlier in 2005, started to consider cases of collaboration with foreign parties. For instance, on 28 June 2005, the Court considered cases of 10 Palestinians charged with collaboration with foreign parties. This development has apparently contributed to the promotion of the role of the judiciary in considering such cases, and the decrease in the number of Palestinian extra-judicially killed for alleged collaboration with IOF.

PCHR’s Position Concerning the Issue of Collaborators with IOF

In light of the debate in the Palestinian society on the issue of collaborators with IOF and the discussion related to the best method to punish those criminals as a precondition to end this phenomenon:

- PCHR believes that collaborators with the Israeli occupation are an integral part of the occupation's structure and one of the most dangerous means plunged into the body of the Palestinian people. They carry out and contribute to the crimes committed by the Israeli occupation, which are war crimes punishable by the international law and humanitarian law. While searching for Israeli war criminals is an international duty, searching for collaborators with the Israeli occupation is an absolute Palestinian duty that must be executed definitively and the Palestinian Authority is fully responsible, as a right and a duty, to carry out this mission in the framework of law.
- PCHR recalls that the Palestinian human rights movement has raised its voice loudly for several years criticizing the Israeli-Palestinian Interim Agreements, in which the Palestine Liberation Organization gave guarantees not to search for or harass collaborators, and has considered this an unjustifiable concession of the legitimate right of the Palestinian people to search for collaborators and bring them to justice.

PCHR absolutely rejects any failure of the PNA to take legal action against collaborators with Israel as they can never be above legal accountability.

- PCHR stresses that the demand to bring collaborators to justice does not mean in any way trialing them before State Security Courts. Since the establishment of the State Security Courts in 1995, human rights organizations have considered that they undermine the judiciary and lack the minimum standards of a fair trial, as all trials in these courts are prompt and appropriate defense is not available and their judgments are unappealable. As the PNA ratified the Basic Law, the Law of the Judiciary and the Law of the Structure of Courts, which all have no mention of State Security Courts, it is important to reiterate the call for the abolishment of State Security Courts as a precondition to promote the independence of the judiciary and the rule of law.⁴
- PCHR emphasizes that its position towards the death penalty is a fundamental professional and moral one and is not related to a very specific case.⁵ In light of the widespread debate around the world on the feasibility of the death penalty, and although many countries in the world, including the United States, still apply it, PCHR believes that the death penalty does not deter crimes. It is one of the most hideous punishments that should be abolished throughout the world, including Palestine, for it violates the right to life. The abolishment of this kind of punishment does not mean indulgence for those convicted of committing grave crimes, including collaborators, but other kinds of deterring punishments should be considered in a way that preserves our humanity. PCHR's position towards the death penalty does not contradict the rule of law, which PCHR persistently struggles for its respect.

⁴ Even though Palestinian President Mahmoud Abbas issued a decision on 22 June 2005 stipulating the retrial in civil courts of all those convicted in State Security Courts, no presidential decree abolishing State Security Courts has been issued.

⁵ For more details about PCHR's position concerning the death penalty, see Death Penalty under the Palestinian National Authority: Position Paper.