

Death Penalty Bill in Israel: An imminent threat to the human rights of Palestinians

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Context

Although several provisions of Israeli law allow for the imposition of the death penalty, both in Israel and in the occupied West Bank, Israel has become a *de facto* abolitionist country, as it has carried out the death penalty only once in 1962 in the case of Adolf Eichmann, and has consistently voted in favor of abolishing the death penalty at the UN.

This situation may change drastically, as on 9 March 2023, the Ministerial Committee for Legislation voted in support of a proposed Bill: Penal Code (Amendment – Death Penalty for Terrorists) - 2023 (hereinafter: the Bill).

The New Bill

The Bill seeks to impose the death penalty as a mandatory sentence for “a person who willfully or negligently causes the death of an Israeli citizen out of a motive of racism or hostility toward the public”, aiming to “harm the State of Israel” and the “revival of the Jewish people in its homeland”. It further stipulates that military courts in the West Bank will have the discretion to impose the death penalty on a [Palestinian] defendant with a regular majority verdict, and that this punishment if given in a final judgment, cannot be reduced. The Bill does not provide clear definitions of an act that is intended to “harm the State of Israel” or the “revival of the Jewish people in its homeland”. The very proposal of this bill conveys a message that Palestinian lives are less sacrosanct than those of Israelis and contributes to a process of dehumanization of Palestinians. The Bill is racist and discriminatory, in that it:

1. **Is Racially Designed:** The imposition of the death penalty is only applied when the offense is committed against a citizen of Israel and in the context of harming the State of Israel and its right of the Jewish people "in their land", three conditions which do not appear in other provisions of the Penal Law. These conditions create two separate and discriminatory tracks of offences and legal penalties based on race. The racial motivation of the bill is also evident in its explanatory notes, and from the comments of Member of Knesset (MK) Son Har-Melech (Jewish Power Party), the Bill's initiator, who said: “For years an absurd situation has existed in the State of Israel, in which despicable terrorists who murdered Jews are imprisoned in an Israeli prison for a few years, are released in a terrorist release deal or a lenient plea bargain, and return to walk among us like any other person.”

2. Violates international human rights law:

- a) **The Right to Life:** The bill violates the right to life as stipulated in the International Covenant on Civil and Political Rights (ICCPR) and in General Comment No.36, as it (1) adds a new offence to death penalty sentences; (2) encompass crimes that were carried out negligently, a standard that falls far below intent to kill in criminal law; (3) sets the death penalty as a mandatory punishment what makes it arbitrary; and (4) discriminatory as it applies to Palestinians only.
- b) **The Right to be Free from Torture:** Any conviction and death penalty sentence that is based on information procured by torture or other forms of ill treatment violates the prohibition on torture. It is commonplace and legally accepted in Israel that Palestinian suspects of security-related offenses are subject to General Security Service interrogations and physical violence and/or sleep deprivation, humiliation, threats and other forms of psychological pressure to extract information. Thus, it is likely that the death sentence will be decreed on the basis of confessions or information obtained through torture. This situation raises the risk that innocent people may be executed based on evidence received under torture.

Moreover, since 2010, the European Court of Human Rights held that the death penalty should be prohibited in all circumstances, including on the basis of the prohibition of torture (Al-Saadoon and Mufdhi v. United Kingdom, A.L. (X.W.) v. Russia). Further, over the years, courts have found that nearly every form of state execution (lethal injection, gas asphyxiation, death by hanging, etc.) violates the prohibition against torture. The UN Special Rapporteur on Torture reaffirmed this position in a high-level panel discussion on the question of the death penalty in 2017.

- c) **The Right to Fair Trial:** General Comment No. 36 of the ICCPR emphasizes that a violation of fair trial guarantees would make a subsequently imposed death sentence arbitrary and illegal. Palestinians in the OPT live under and are subject to Israel's military courts system. Military criminal procedure sets harsher maximum punishments, provides fewer procedural guarantees than Israeli civilian procedure, including longer detention periods and denial of access to counsel, and defines offenses in extremely broad terms, which violate the principle of legality. Further, these courts fail to provide, in many cases, essential rights such as the translation of evidentiary and investigatory materials and legal proceedings into a defendant's

mother tongue. As this system is racist and lacks any fair trial safeguards, Palestinians' right to a fair trial is violated.

Recommendations:

- The international community should urge the Israeli government to refrain from passing the Bill, as it violates international law and the rights of Palestinians, both citizens of Israel and protected persons under Israeli Occupation.
- Were Israel to carry out death penalty executions of Palestinians, the international community must hold Israeli perpetrators legally accountable in all applicable international tribunals, institutions and courts of law.
- In light of the Shoreditch Declaration for a Torture-Free Trade Treaty, the international community must stop the trade of all goods and tools with Israel that could be related to the execution of death penalty.