

**Death Penalty in the Palestinian Legal System:
A Legal Review**

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Introduction¹

Death penalty has long been part of all the laws in all civilizations and eras as well as in monotheistic religions and other belief systems. It was practiced by the Greeks and the ancient Egyptians as well as during the prehistoric times and the Middle Ages. Many countries still apply death penalty which is provided for in their national legislation. Numerous ways and means have been used in the execution of death penalty in the past centuries. Regardless of the various manners and ways used for its execution of death penalty, the result remains the imminent death of the person in question.

The judge who issues the death sentence also determines the manner of its implementation. Throughout history, many methods of execution were adopted that include the release of projectiles from fire-arms and other weapons at the person sentenced to death, or it may be executed by hanging, beheading by sword or guillotine, or throwing the person to a deep ravine. Other methods involved inflicting torture on the person before his death such as crushing by elephants that tramp to death the victim whose hands and legs were tied up. "Impalement" was one of the worst execution methods because it involved piercing the body with a sharp object or a stake that penetrated the victim's rectum and came out at the sternum. The object was usually wooden with a sharp end but it gradually increased in thickness, which inflicted more pain and torture as its diameter increase by body moistures. To further torture the victim, expert executors drove this instrument deeper into the body without piercing the heart so that the victim bled for one to three days before passing away².

In recent times, death penalty has drawn a lot of debate. On one side, **proponents of enforcing this punishment** argue that³:

1. Society has a right to impose death penalty. It is false to argue that society can not deny individuals their right to life, because society has not granted life to man. However, the opponents respond that such logic can be used to deprive individual of all their human rights, since society is not the party the granted such rights. Therefore, it is not possible to deprive a person from his personal liberty so that imprisonment and deprivation of liberty are not allowed.
2. If death penalty is grave, in terms of possible errors on part of the judge, imprisonment is a graver punishment and also unfair, as it affects the person's health and life. A life sentence may be more harmful than death itself.
3. Even if death penalty has not led to a reduction in the criminal motives of serious criminals, it has undoubtedly contributed to a considerable decrease in the number of criminals which is the most important.

¹ ICHR expresses its gratitude to his Honor Councilor Mazen Sissalem, the Supreme Court Judge, for his valuable contribution and consultation he provided during the preparation of this legal review.

² Albert Camus, 1960. **The Guillotine**, (translated by George Trabish and published by Dar Al-Hayat Library, Beirut), Ahmad Bakri's article "**When Humans Devise Ways of Death**", published in the Crescent Magazine in Egypt in April 2007 and Ahmed Saeed's article "**Procedures for the Execution of Death Penalty**", published in the "**Lawyers Magazine**" of 1967, issue No. 65, May - June 2002.

³ Ghassan Rabah. **Summary of Capital Punishment: A comparative Study on the End of the Death Punishment** (Beirut: Halabi Legal Publications, 2008), Page 7.

4. The argument that capital punishment is inappropriate to the acts punishable by death penalty also applies to punishment by imprisonment.
5. If criminals' fear of death penalty could not deter all criminals, it does deter some criminals and thus limits the level of crime.
6. Sentencing a premeditated murder to death is not issued by the competent court hastily or to avenge of a criminal regardless of enormity of the crime committed. The Court takes a rather long time before that the judge is convinced of uttering the death sentence which usually issues after overwhelming evidence is made available and after the death sentence is discussed at more than one level of litigation. Most importantly it is issued after all guarantees of fair trial are ensured in accordance with the various relevant conventions.
7. Revenge⁴, especially in Arab societies, is a phenomenon that is unlikely to be eradicated or limited unless through the death of the person who killed another. This is the only punishment acceptable to the victim's family. The abolition of death penalty in the penal code would therefore reinforce the culture of revenge that calls for taking the law into the people's hand.

In addition, the French Professor **Frye**, one of the notable legal figures in the 20th century stated that: "death penalty will be gone the day the public opinion and tradition considers the next punishment sufficient to defend society". **Sir Alex Paterson** also said that "experience has proved that crime increases when the death penalty is replaced, and also proved that, for several reasons, the number of death penalties issued and executed, which points out to the good impact achieved by the death penalty⁵".

On the other hand, **opponents of death penalty**⁶ argue for the abolition of this punishment due to the following:

1. From a philosophical perspective, Professor Cesare Beccaria believes that the purpose of death penalty is not the punishment of a criminal that did occur, but the prevention of the occurrence of such act in the future. This point of view is contrary to Jean-Jacques Rousseau's theory of social contract according to which the individual has authorized the State in advance the power to take his own life. For Rousseau, the State is not permitted to impose death penalty except in difficult political circumstances, which means that is not allowed to apply the death penalty in normal circumstances.

⁴ During a workshop on death penalty held by ICHR on 4/11/2009, the Palestinian Chief Military Justice Ahmed Al-Mubaid stated that "even though death penalty is enforced on horrible crimes that "turn newborn's hair gray" which are only punishable by death. Moreover, the issue of revenge in the Palestinian society must be taken accounting when abolition of the death penalty is discussed. The fact is if the murderer is not executed in accordance to a court sentence, the victim relatives will seek all means to kill the murderer themselves, even if placed under the protection of the security agencies. For example, one of a victim's relatives broke into the Jericho prison where a person accused of murder was held and killed him and other persons uninvolved in the crime.

⁵ Ghassan Rabah. A previous source. Page 9.

⁶ Ibid

2. When an offender is punished, the best interest of society dictates that this punishment contribute to his reform and rehabilitation which obviously can not be achieved if the offender was executed.
3. The damage ensuing from death penalty is endless, irrevocable, and incommensurate with the crime committed by the convicted person.
4. Death penalty can not be revoked or corrected if after its execution an error is discovered in the sentence or the victim was proven innocent.
5. Society has not granted life to the individual so that it has right to take it. All monotheistic religions conclusively assert that human beings are not allowed to take their own lives or by committing suicide. By the same notion a person must not be allowed to be killed by others regardless of the status bestowed on the others.
6. Death penalty has not deterred criminals. This is evident in countries which saw no increase in the number of crimes punishable by death penalty after the abolition⁷ of the capital punishment. Similarly, the same category of crimes has not declined in the country that retained such punishment in their legal system.

The United Nations followed a gradual approach for setting procedures for abolishing death penalty from the national legal systems. Although the international declarations and covenants, such as the Declaration of Human Rights and the International Covenant on Civil and Political Rights, have not prohibited the national legal systems from applying the death penalty, the UN imposed on State Parties a number of restrictions and conditions that must be taken into account in legislating the death punishment as well as in issuing and executing death sentences. Perhaps the most important controls have been those related to the inadmissibility of a death sentence unless after all guarantees for fair trial guarantees are made available in the court process.

Moreover, the UN is still actively pursuing the abolition of death penalty as punishment for any crimes. The most important of these efforts is a resolution that the UN passed in 2007 on the optional prohibition of death penalty. The resolution was endorsed by (104) states and proposed by only (54) states while (29) states declined voting.

As a result of these efforts, death penalty was abolished in many national legislations including (89) countries that abolished such punishment for all crimes, while (10) countries abolished death as a penalty for ordinary crimes. According to Amnesty International, about (30) countries no longer apply this punishment compared to (68) states which still retain this punishment in its legal system⁸.

⁷ In a workshop on death penalty held by ICHR on 4/11/2009, the PNA Public Executor, Counselor Ahmed Moghani, said that he is personally against the death penalty, but from practical experience and direct knowledge of some crimes, he feels that some crimes whose perpetrators should be punished by death. The Islamic Scholar Hamdi Murad believes that "death penalty must not be eliminated from the Qur'an or Sunnah, but its application should be suspended until further notice when the time becomes appropriate and the human societies mature".

⁸ Ayman Salameh's article "Death Punishment between Abolition and Enforcement in Accordance with the International Law" in "Studies on Death Penalty and the Right to Life in the Arab World". Jordan, the International Organization for Criminal Reform and Amman Human Rights Studies, 2007, page 207.

By retaining death penalty as a punishment for a number of acts that can be described as grave criminal acts, the Palestinian laws have not completely supported the right to life. This study is set forth to review the following laws:

1. The Basic Law for the year 2002, and its amendments
2. The Jordanian Penal Code of 1960, and its amendments
3. The British Mandate Penal Code of 1936
4. The Jordanian Law on Explosives of 1964
5. The PLO Revolutionary Military Penal Code of 1979
6. The Military Criminal Procedural Code of 1979.
7. The Palestinian Criminal Procedural Code of 2001.
8. The Amended Law on Penitentiaries and Rehabilitation Centers of 2005.

At the international level, some of the relevant international instruments were revised including the Universal Declaration of Human Rights of 1948, the International Covenant on Civil and Political Rights of 1966, the Second Optional Protocol to the Covenant mentioned for the year 1989, and the UN General Assembly's Resolution of 2007. This legal revision aims at assessing the extent to which the Palestinian legal system is consistent with the international provisions on death sentences, both in terms of the penal substantive or procedural issues.

In practice, the Palestinian courts issued since (93) death sentences since the PNA creation in 1994 of which (76) were issued by military tribunals or state security courts which have a military nature. The civil courts issued the remaining (17) sentences. Of all sentences, only (14) were executed after being approved by the President of the PNA. Two persons sentenced to death were killed in the courtroom after the Courts uttered their rulings.

This study analyzes the Palestinian legislations in light of the UN procedures and criteria on the issuance, imposition or execution of death sentences. The study is divided into two main parts, each of which is dedicated to either the international or national legislation on death penalty. This part is divided into two main chapters. Chapter One addresses the substantive provisions on death penalty and Chapter Two is concerned with the procedural provisions⁹. This classification is inline with the international efforts for the abolition of death penalty, particularly because the UN, in its capacity as the representative of the international community, has not banned the capital punishment but opted for the introduction of a number of legal actions for the States to consider when they include such penalty in their legislations, or when such sentences are issued by the courts or actually executed. Thus, the procedural and the substantive provisions are addressed separately in this study, both at the international and national levels.

Objective of the Study:

⁹ According to the international law, the **criminal legal provisions** are divided into two categories: 1) the **Substantive Penal/Criminal provisions**, which the countries usually develop in their penal and criminal laws that address punishment stipulated for each of the criminal acts. 2) **The Procedural Penal/Criminal Provisions** that are usually set by the many laws on criminal procedure, each bearing a title that reflect the content, such as the Criminal Procedural Code, or the law on the Procedures of Criminal Trials or Procedural Standards which are intended to define procedures that must be followed in order to impose the punishment prescribed in the substantive criminal law.

ICHR carried out this review in order to assist the PNA in its attempts to join international community that did abolish death penalty from their legal system. In order for the PNA to ratify the various international conventions stipulating respect for the right to life and prohibits the execution of every human being. In this study, ICHR aims to define the practical steps that the PNA should take in order to abolish death penalty from the Palestinian legal system. According to Article (10) of the Basic Law of 2002, the human rights and fundamental freedoms shall be binding and respected by the PNA which shall, without delay, accede to the regional and international declarations and instruments that protect human rights, especially those international charters and resolutions that governing the right to life, the abolition of death penalty, and/or placing restrictions on the procedures of its execution.

Undoubtedly, no one expects a momentary transition from one legal system that wastes life and imposes death penalty on a dozens of crimes to another system that respects the individual's right to life or adopts death penalty. Such a process is a lengthy one where over time the state gradually adopts a number of actions leading to the abolition of death penalty for all crimes. At least, the law may seek to limit to the most extent possible the application of death penalty on fewer and grave criminal acts.

The total abolition of death penalty on all crimes from the Palestinian legal system requires many actions and steps in the fields of awareness-raising as well as in the educational, social and religious arenas that might pose hinder abolition. ICHR does advocate for this abolition unless the ensuing results ensure that the right to life is guaranteed and that this penalty is imposed solely by the judiciary and in accordance to predetermined and strict measures, and conditioned by the availability of a set of guarantees. ICHR also hopes that the abolition would not lead to a increase in the extrajudicial killing as in the case of family rivalries and revenge.

Chapter I:

Substantive Legal Provisions of the Death Penalty in the International and the Palestinian Legal Systems¹⁰

This chapter summarizes the perspectives on the right to life and death penalty of some international conventions and international declarations. In addition, this chapter offers a review of the substantive legal provisions on to criminal acts punishable by death penalty in the Palestinian legal system.

At the constitutional level, the Palestinian Basic Law of 2002, as amended¹¹, does not contain a provision that either prohibits death penalty or its actual application. However, Article (10) of the Basic Law provides that the human rights and fundamental freedoms shall be binding and respected. The same article stipulates that PNA shall accede without delay to all regional and international declarations and instruments that protect human rights, including those on the restriction of the imposition of death penalty, particularly for light offenses and crimes.

In addition, some Palestinian provide for punishment by death through a number of provisions of major legislations albeit at a lower legal level than the constitutional ones

¹⁰ For more information, please refer to the original study in Arabic.

¹¹ The Palestinian Basic Law was modified twice in the years 2003 and 2005.

provided for in the Basic Law. At present, two penal codes are applied in the PNA controlled territory. The Jordanian Penal Code No. (16) of 1960 is in force in the West Bank and the British Mandate Penal Code No. (74) of 1936 has been in force in the Gaza Strip. Both laws detail the criminal acts that are punished by death as the ultimate penalty. The Jordanian Law on Explosives of 1963 also sanctions certain criminal acts by death penalty.

In addition, Palestinian military courts in the West Bank and Gaza Strip apply the Military Penal Code of 1979, which was issued and enforced by the PLO in exile, even though that such a law in the PNA controlled territories is considered legally inapplicable.

In terms of the provisions of substantive criminal laws of Palestine, the Jordanian Penal Code of 1960, still in force in the West Bank, contains 26 articles which impose death penalty for various criminal acts involving use of explosives including terrorist activities, activities endangering the state's internal and external security, public safety, human life, or public hazards and threats that lead to deaths. Eight articles punished criminal acts against the state's external security by death penalty, compared to one article which promises death penalty to any act committed to undermine the state's internal security, and another article that also imposes death penalty on acts endangering the right to life.

Furthermore, the applicable laws on juveniles' reform in the PNA controlled territory, whether in the West Bank or in the Gaza Strip, prohibit death sentencing against children.

The Revolutionary Penal Code of 1979 allows death penalty to be imposed on perpetrators of many criminal acts. Despite the unconstitutionality of this "law", it is still applied by the Palestinian military courts which issued dozens of death sentences some of which had actually been carried out. The law encompasses 43 articles whereas different criminal acts are sanctioned by death penalty such as: acts endangering the nation's internal or external security, public safety, military service, or human life in addition to those acts which present an overall threat or affect the safety of the nation's transportation system, and commercial and industrial facilities. The death penalty is applied to acts that lead to the spreading of communicable diseases and epidemics, and on the use of beating and physical violence against officers of alcohol and drugs combating agencies.

Chapter II: Legal Procedural Provisions of Death Penalty in the International and National Legal Systems¹²

This chapter provides an overview of a number of international conventions and universal declarations on human rights and their stance on procedures that should be followed for the execution of death sentences. This chapter also addresses the legal procedural provisions on the implementation of death penalty in the Palestinian legal system.

Whereas the Palestinian legal system, particularly the Amended Basic Law of 2003, have permitted death penalty as a punishment for grave criminal acts, it has also placed a number of safeguards that would provide a higher degree of justice for people who may be susceptible to be sentenced to death. The Penal Code and the Criminal Procedural Code also

¹² For more information, please refer to the Arabic version of this report.

stipulate further guarantees that would allow the judiciary to substitute death penalty by a lighter sentence. Of these safeguards are:

2.1 Procedural Safeguards in the Basic Law for Issuing Death Sentences.

1. The first guarantee: the Basic Law obliges the PNA to work, without delay, on becoming a party to the international conventions and declarations of human rights, including those that place many safeguards on the execution of death penalty in the States Parties whose national legislation stipulate for death penalty (Article 10 of the Basic Law).

- 2) The second guarantee: the Basic law stipulates for a number of guarantees that would ensure a fair trial for any person accused of committed a crime. The law states that “the accused is innocent until proven guilty in a court of law through a legal trial in which the accused is guaranteed the right to a defense, so that any person accused in a criminal case shall be represented by a lawyer. The Basic Law further affirms that punishment shall be personal and prohibits collective punishment. Crime and punishment shall only be determined by the law. Punishment shall be imposed only by judicial order and shall apply only to actions committed after the entry into force of the law (Articles 14 and 15)

- 1) The third guarantee: the law grants the President of the PNA the right to pardon or commute sentences. However, general amnesties or pardon for crimes may not be granted except by law (Article 42).

- 2) The fourth guarantee: Any death sentence pronounced by any court shall not be implemented unless endorsed by the President of the PNA, which entails that the president is given an opportunity for the President to reduce the punishment or exempt the accused from it (Article 1).

- 3) The fifth guarantee: According to the Basic Law, official authorities with the right to declare a state of emergency and impose restrictions on fundamental rights and freedoms are prohibited from exercising this right except to the extent necessary to achieve the objective stated in the decree declaring a state of emergency (Article 111).

- 4) The Sixth guarantee: the Basic Law prohibits the application of the application of penal provisions on acts committed in the past prior to the entry of such provisions into force (Article 117).

2.2 Procedural Safeguards of the Issuance of Death Sentence in the Criminal Procedure Code and the Law on Penitentiaries and Rehabilitation Centers

The Criminal Procedural Code and other relevant laws also ensure the accused person a number of guarantees while undergoing criminal trial. The most important of which are: the availability of all guarantees of all fair trial, particularly the impartiality and integrity of the judge, the judge’s independent from the executive authority and free from their influence while making his/her sentences and rulings, the judge’s competence and expertise, a public

trial which oral proceedings are written down and documented, and the presence of a defense lawyer especially in acts classified as crimes.

In addition to the general procedural safeguards that the law requires to be met during the trials of persons accused of any crime, the law incorporates a number of explicit safeguards on the issuance or execution of death penalty. These guarantees are listed below:

1. **The first procedural guarantee:** A death sentence must be reached by consensus between all members of the Judging panel. While the judicial panel usually makes its ruling in any criminal case by the majority vote of its members, the death sentence is an exception. The Palestinian law dictates that a court must not issue a death sentence unless the judicial panel reaches a unanimous agreement.
2. **The second procedural guarantee:** The law provides for appeal and cassation of a court ruling. By law, all death sentences must be appealed even if the accused party did not file a request for this appeal. Similarly, the law stipulates that cassation of appeal decisions on all death sentences must be done even without the request of the accused party.
3. **The third procedural guarantee:** the law affirmed the provision of the Basic law by which the endorsement of the President of the PNA of the death sentence must be obtained for the execution of the death penalty. This condition gives an opportunity for the president to exercise his legal right to pardon the convicted person and spare his life through commuting his punishment from death to a lesser penalty.
4. **The fourth procedural guarantee:** the prohibition of carrying out death sentences against pregnant women is in four laws. The Penal Code in force in the West Bank incorporates a **general provision** stipulating that death sentences against a woman who after **being sentenced** has been proven pregnant penal must be replaced by servitude for life, applicable to all crimes. The Penal Code in force in the Gaza Strip, states that if the court, **prior to sentencing**, is provided with a proof of pregnancy of a woman under trial for premeditated murder or adultery, as stipulated in article (49) and (50) of this law, shall be sentenced to life in prison. It is noticeable, however, that this provision limits the types of crimes and the time of discovering the pregnancy before a pregnant women could have her sentence commuted, unlike the penal code which applies such a provision regardless of the crime committed and the time of sentencing before pregnancy is proven.

In 2001, the Criminal Procedural Code, which has since become in force in both of the West Bank and Gaza Strip, prohibits the execution of pregnant women until she gives birth. If she delivered a living newborn, her sentence is commuted from death to life imprisonment. This provision clearly modified the Penitentiaries and Rehabilitation Centers Law of 1998, which stipulates for the suspension of execution of a death sentence against a pregnant inmate pregnant woman until the born child completes two years of age. However, the law was amended in 2005 in accordance to the provision of the Criminal Procedural Code.

5. **The fifth procedural guarantee:** The law provides for a delayed execution of a death sentence due to appeal or cessation of the ruling or due to a re-trial. Death penalty is the only case where the enforcement of court sentence is postponed if challenged by

an appeal or the court motioned to a re-trial. The Court of Cassation may order the suspension of the death penalty if it calls for a new trial.

These are other procedures prohibiting the execution of death penalty in official or religious holidays observed by the faith of the convicted person. Other procedures require from the Attorney General or his designee or assistant to oversee the actual execution of the death sentence. The execution should be done in the presence of: the Public Prosecutor or his representative, the Director of the Rehabilitation center (prison) or his representative, the Chief of District's Police, the clerk of the court that issued the death sentence, the prison's medical doctor, and a clergyman of the sect to which the convicted person belongs. The person's relatives shall be allowed to meet with him/her before the date set for execution provided that this meeting occurs away from the place intended for execution. In case the convicted person is required by his faith to confess or carry out any other religious rituals before death, the relevant authorities shall facilitate such rituals through allowing a clergy to see convicted person and guide him through the act. More procedural provisions on the issuance and execution of death penalty are also detailed in the Criminal Procedure Code and the Law on the Penitentiaries and Rehabilitation Centers.

3: Procedural Safeguards of Death Penalty in the Military Criminal Procedural "Code" of 1979 of the Palestine Liberation Organization

As said, the Palestinian military courts must abide to the aforementioned constitutional procedural safeguards contained within the Basic Law of the PNA. The military courts also abide by the Revolutionary Criminal Procedural "Code" of 1979 which contains the following safeguards:

1. **The First procedural guarantee:** is represented in the necessity to obtain the President's endorsement of the death sentence and right to exercise the Presidential pardon or sentence commuting powers. As with death sentences issued by civil courts, death sentences issued by military courts shall be executed only after being ratified by the Commander in Chief of the security forces in accordance with the Revolutionary "Code" of 1970. The party that is conferred with the power to ratify death sentences has the right to issue a pardon, substitute the death penalty with a lighter sentence, or order a re-trial of the person sentenced to death.
2. **The second procedural guarantee:** the Revolutionary Code also stipulated for the suspension of the execution of death sentence against a pregnant woman sentenced to death until the baby is born.
3. **The third procedural guarantee:** the law requires than appealed death sentences at the court of Cassation must be plead in a legal proceeding rather than by review so as to provide a higher degree of justice for people sentenced to death.

There are other procedural safeguards such as: the prohibition of executing death sentences on Fridays and Sundays as well as on religious and national holidays; the necessity to carry out executions in the presence of the chief judge or a member of the trial court, the Public Prosecutor or any of his assistants, and clerk of the trial court, the medical doctor of the Correctional facility or the medical services, clergyman of

the sect to which sentenced person belongs, and an chief officer of the Correctional facility or his deputy.

4. Conclusions and Recommendations

4.1 Conclusions

Based on the comparison of the Palestinian legal provisions concerning death penalty with the relevant legal provisions in the international legal system, particularly those contained within the international declarations and covenants on Human Rights, it is possible to made the following observations:

First: Conclusions Pertinent to Substantive Provisions on Death Penalty

Although the United Nations has not prohibited death penalty, some efforts were made to convince those States that have not abolished this punishment from their legal system to do. For example, the United Nations endorsed the Second Optional Protocol to abolish the death penalty in 1989 and the decision on the optional abolition of death penalty was issued in 2007.

Despite such advancement at the international level, the Palestinian legal system still embraces death as a penalty for dozens of criminal acts rather than limiting it to grave ones. Despite its creation in 1994, the PNA has yet to adopt legislative measures to reduce the number of acts punishable by the death.

The Palestinian military courts continue to apply the Revolutionary Military Penal "Code" that was issued by the PLO in 1979, none-withstanding the debate over its constitutionality. Thus, this law contradicts the international standards that assume the existence of a legal provision criminalizing acts punishable by death prior to the committing of the criminal act.

However, the Palestinian penal system is consistent with the international standards in two important issues regarding commuting death sentences to a lesser punishment in the following cases: 1) the Palestinian juvenile laws provide for such commute when the child is convicted of committing acts punishable by death, and 2) some procedural codes in force allow for such commute when the convicted person is a pregnant women and in accordance to certain conditions. Nevertheless, the laws in force discriminate against pregnant women depending on the geographical region. The Penal Law of 1936 does not grant pregnant women in the Gaza Strip any commute unless the pregnancy is known to the court prior to sentencing and if pregnancy is established after the court's ruling, the women benefit from the commute unless the baby is born alive as stipulated in the Criminal Procedural Code of 2001. But in the West Bank, pregnant women who had committed the same criminal act in the same circumstances have their death sentences substituted by hard labor, regardless whether pregnancy was established before or after sentencing.

II: Conclusions Pertinent to Procedural Provisions on Death Penalty.

In the Palestinian legal system, many guarantees for the procedural penal provisions on death penalty are on line with the international standards in this regard, particularly with the following:

1. The Basic Law affirms the right of every person to a fair trial, which take into account all guarantees for fair trial enshrined in the international covenants. The law states that the accused is innocent until proven guilty by a competent court in accordance with fair procedures, and that no crime or punishment except as provided by law, and the accused right to appoint a defense lawyer.
2. The law grants the person sentenced to death the right to benefit from the presidential amnesty or pardon.
3. The Law prohibits the execution of death sentences unless being ratified by the President of PNA.
4. The Basic law requires that the death sentence is unanimously taken, rather than made by a Majority vote, by the court's judging panel.
5. The law requires that death sentences be challenged at the courts of appeal and cassation.
6. The judge has the right to rely on any causes or conditions that might help reduce death penalty to hard labor.

Despite all of the above guarantees, the major procedural problems remain in the following areas:

1. Lack of fair trial guarantees at military and state security courts that issued death sentences.
2. The statutory provision permitting the President of PNA to grant amnesty from or commute death to hard labor punishment is not activated yet which entails that (14) death sentenced were executed in which (14) people lost their lives.

Recommendations

ICHR recommends to the PNA to undertake all necessary legislative steps to abolish the death penalty from the entire Palestinian legal system, in tandem with the standards adopted by more than one hundred countries in the world, and in accordance with the objectives and principles contained within UN resolutions and efforts in this regard. ICHR believes that, in order for the Palestinian legal system to achieve success in the abolition of death penalty, a series of procedures and steps must be taken, as follows:

The First Step: Suspension of Death Penalty Pending its Abolition

As a preliminary measure to abolition death penalty from the entire Palestinian legal system, ICHR recommends that the PNA takes the necessary legislative measures for the suspension of death penalty.

The Second Step: Gradual Abolition of Death Penalty

ICHR recommends gradual abolition of death penalty from the entire Palestinian legal system through the adoption of the following phases:

Phase I: Immediate Action

First, the PNA must immediately adopt several actions do in order to achieve the abolition of death penalty, at all levels as follows:

1. **The judicial authority:** the PNA should proceed with its measures to reform the judiciary and the justice system and ensure that all guarantees for fair trial are met in all trials conducted at the Palestinian courts in general, and especially trials of persons accused of grave crimes punishable by death penalty.
2. **The President of the PNA:** the President should a) refrain from ratifying any death sentences, particularly those issued by the military justice that does not provide the accused with adequate guarantees of fair trails. B) In addition to not signing, the president should issue special amnesty for those sentenced to death to commute their punishment to life imprisonment abstinence suspends their execution rather than abolishes death penalty. A new president may assume office who, if s/he a proponent of this punishment, would endorse the suspended sentences and authorize their execution. In this manner, the President's abstinence from endorsing death sentences would become to no avail.
3. **At the cultural and social levels:** all formal and non-formal institutions working in the cultural, social and religious arenas are required to raise and discuss the issue of death penalty in their own forums, advocate for the abolition of capital punishment from the judicial system and provide support and justification for its abolition from the Palestinian legal system.
4. **The media:** all official and non-official media outlets, as well as relevant human rights organizations, are required to work diligently on the preparation for a large-scale and effective media campaigns in order to create public opinion supportive of abolition of death penalty from the Palestinian legal system.
5. **The Military Justice:** there is a Need for the military courts to comply with the penal laws in force both of the West Bank (the Jordanian Penal Code No. 16 of 1960) and the Gaza Strip (Penal Code No. 74 of 1936) as well as to the Palestinian Criminal Procedural Code No. 3 of 2001. This requires the adoption of official measures such as a decision issued by the President of the PNA, in its capacity and the Commander in chief of the Palestinian forces, in which the military courts are ordered to apply the aforementioned substantive and procedural provisions of the penal laws as well as any other constitutional laws. At the same time the President should not ratify any rulings and sentences issued by the military courts that are not based on these laws.

Phase II: Complicating the Issuance and Execution of Death Sentences

1. It is necessary to consolidate penal laws in force in the West Bank and Gaza Strip and eliminate all discrimination in penalties imposed on offenders who commit the same acts, regardless of their geographical area.
2. It is also necessary **to amend the provisions of penal code in force** and limit the number and type of acts punishable by death to those acts of grave and serious nature. This must be done pursuant to the provisions of the International Covenant on Civil and Political Rights, which prohibit the imposition of death penalty unless on serious crimes.

3. Clear legal provisions must be incorporated into the Palestinian legal system to provide for commuting death penalties to hard labor for pregnant women, regardless in pregnancy is established prior to or after sentencing and enforcement.
4. Legal provisions must also be promulgated to commute death penalty against elderly citizens to life imprisonment sentences.
5. A general provision must be introduced to delineate and limit the individual crimes punishable by death and substitute such punishment with imprisonment, in case the motive was an honorable one (as stated in Article 62 of the Revolutionary Penal Code of 1979), even if there is an excuse or reason for commuting the sentence.

Phase III: Abolition of Death Penalty from the Palestinian Legal System.

The comprehensive abolition of death penalty from the Palestinian legal system and punishment it imposes on all offenses without exception, could only be done after the first two phases were concluded whereas the recommended measures were adopted that would limit any negative consequences from the complete abolition of death penalty.