



الهيئة المستقلة لحقوق الإنسان

ديوان المظالم

The Independent Commission for Human Rights



Introducing the First Palestinian Conference Against the Death Penalty

ICHR Executive Director Commends Civil Society Organisations' Advocacy to Abolish the Death Penalty

Ms. Randa Siniora, Executive Director of the **Independent Commission for Human Rights (ICHR)**, asserted that the First Palestinian Conference Against the Death Penalty was the first to be organised on the local Palestinian level. Despite the fact that activities are carried out by other Palestinian human rights institutions on Arab and international levels, the Palestinian Coalition Against the Death Penalty is one of the strongest in the Arab region. It also plays a significant international role.

Ms. Siniora explained that past initiatives against the death penalty were individualistic and derived from reactions to death sentences carried out against certain persons. Lobbying and advocacy activities carried out by **ICHR** and civil society organisations managed to place a moratorium on the implementation of death sentences enabled by then illegally-constituted State Security Court. Additionally, Ms. Siniora stated that seven death sentences have been issued in 2008, which constitutes a serious indicator of the resumption of such practices: Palestinians had rarely witnessed any death sentences being carried out in recent years. According to Ms. Siniora, the Palestinian *Penal Law* is trying and outdated. With regard to the death penalty, this Law must be modernised. It should also offer a distinctive model that varies from similar laws applied in other Arab countries.

Ms. Siniora made the above statement in the First Palestinian Conference Against the Death Penalty. Held on December 2nd 2008 at the Palestinian Red Crescent Society auditorium in the city of El Bireh, the Conference was organised by the Palestinian Coalition Against the Death Penalty. Over three major sessions, the Conference was scheduled to address justifications and causes of the death penalty; reasons why the death penalty should be abolished; and the *status quo* of capital punishment worldwide.

Appreciating the role the Palestinian Coalition Against the Death Penalty plays, Dr. Akram Dawoud, Dean of the Faculty of Law at the An Najah National University, reiterated the importance of the Conference as it coincided with the International Day Against the Death Penalty.

First Session

Sheikh Yousef Id'eis, Deputy and Representative of HE Chief Justice Sheikh Tayseer al Tamimi, explained the standing of the Islamic Shari'a law towards the death penalty. He made clear that the Islamic Shari'a law seeks to preserve human dignity and apply the Shari'a-prescribed penalties in order to achieve public interest through state mechanisms.

Sheikh Id'eis also explained that penalties aim to bring about deterrence on individual and public levels. In Islam, the death penalty is legally established by the Holy Qur'an. Drawing on evidence from criminal sociology, which confirms that penalties should be commensurate with the crimes committed, Sheikh Id'eis stated that the abolition of the death penalty will result in a rise in crimes. Thereby, instability, confessional feuds, and acts of revenge will definitely increase. According to Sheikh Id'eis, the death penalty is deterrent and may not be abolished by law. At the same time, he emphasised that Islamic Shari'a law provides several safeguards against potential errors. Necessary, respective conditions must be met to implement the death penalty. These include just judges, a criminal's confession, and testimonies given by trustworthy witnesses. Furthermore, a

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definite sentence must be in place to allow a judge to rule in other trials. Sheikh Id'eis also asserted that the death penalty may not take place unless a victim's family thus wishes and unanimously insist on imposing it on convicted criminals. If they relinquish their claim, the state may not execute the death penalty.

Atallah Hanna, Archbishop of the Sebaste Roman Orthodox Church, elaborated on the Church's position that entirely rejects the death penalty : Human beings are most sacred and may not be deprived of their lives.

Dr. Amin Dawwas, Vice-President of the Arab American University for Academic Affairs, made a presentation on the "Death Penalty between Reality and Necessity". Marking several examples, Dr. Dawwas concluded that the death penalty is justified in certain cases.

Second Session

Sameeh Muhsen, representative of the Palestinian Centre for Human Rights, addressed the civil society's principles and justifications against the death penalty. Ali al Sartawi, former Palestinian Minister of Justice, presented a comparative study on the death penalty between the Islamic Shari'a and positive law. Additionally, Mousa Abu Dheim, Director of the **ICHR** West Bank Programme, presented a working paper on the Palestinian Coalition Against the Death Penalty, elaborating the stages of establishment and reasons why it opposes the death penalty. Constituted in 2006, the Coalition now comprises a number of Palestinian civil society organisations, including **ICHR**, which jointly work towards abolishing the death penalty. The inauguration of the Coalition has crowned efforts made by civil society organisations, which have been stressing the necessity to abolish the death penalty since the Palestinian Authority (PA) was established in 1994.

Advocate Nasser al Rayyes, representative of Al-Haq, made a presentation on the death penalty in light of operative legislation in the Palestinian territory. Al Rayyes explained that Palestine is governed by various legislative systems, including those of the British Mandate, Jordan, Egypt, Israel and PA. As such, the Palestinian legal system features numerous, overlapping items of legislation. Pursuant to 16 articles, the Palestinian *Draft Penal Law* prescribes the death penalty for 23 criminal offences. In addition, 14 articles under the *Revolutionary Penal Law of the Palestine Liberation Organisation of 1979* provide capital punishment for 41 criminal acts. By tracking the chronological development of penal legislation in Palestine, legislature's immoderate provision of the death penalty is evident and marks a strong advocacy in favour of this penalty. Furthermore, Al Rayyes elaborated on restrictions prescribed by Palestinian regulations so as to ensure that death sentences are not arbitrary and that convicted persons are granted all possible guarantees to preserve their right to life, including obligatory appeals and PA President's endorsement of such sentences.

Third Session

In his working paper on "The *Status Quo* of the Death Penalty on the International Community Level", Advocate Baha' al Din al Sa'di, Human Rights Officer at the United Nations Office of the High Commissioner for Human Rights (OHCHR), explained that the United Nations never supports the use of the death penalty under any circumstances whatsoever, without exception, and regardless of the nature of criminal offences, characteristics of indicted persons, and the method a state uses to take the life of prisoners. According to Resolution 31/61 of 1997, the UN General Assembly expresses its willingness to abolish the death penalty. On December 18th 2007, UN General Assembly also issued Resolution 62/149 on the Moratorium on the Use of the Death Penalty. 104 Member States voted in favour of this Resolution.

In her presentation entitled "The *Status Quo* of the Death Penalty in the Arab World", Khuloud Nijem, representative of Penal Reform International, addressed conditions of prisons; applicable standards; consistency with relevant international norms; and

association with the death penalty. Nijem stated that both issues are closely related. She also inquired whether the death penalty can be abandoned in the Arab World:

We say that there is a possibility to do so. Indicators are positively derived from the fact that Algeria voted in favour of the resolution issued forth by the UN Committee Against the Death Penalty. On the other hand, Jordan and Lebanon abstained from voting. This is, nevertheless, a positive indicator. Though not yet abolished, the number of Arab states that refrain from implementing the death penalty is also increasing.

Dr. Mohammed Sharaqah, Professor of Law at the An Najah National University, presented a working paper on "Extra-Judicial Execution". Dr. Sharaqah highlighted cases of execution of Palestinian activists by Israel, allegedly because they were wanted; killings on grounds of 'family honour'; and execution of collaborators with the Israeli occupying authorities.

"As a legal expert, I denounce extra-judicial killings," Dr. Sharaqah further declared.

In a presentation entitled "Palestinian Parliamentarians' Strategy Against the Death Penalty", 'Issa Qaraqe', member of the Palestinian Legislative Council, admitted that a clear parliamentary strategy to abolish the death penalty was not available, due to the complex situation throughout the Palestinian territory and a nascent Palestinian parliamentary experience. However, Qaraqe' highly appreciated human rights organisations' endeavour to abolish capital punishment. To this avail, a strong, informed public opinion should positively impact relevant efforts. To be in line with the international trend as well as with intellectual developments in the fields of crime and penalty, Qaraqe' insisted that penal laws must be consolidated in both the West Bank and Gaza Strip. Moreover, the Palestinian *Penal Law* should be amended and civilians may not be tried before military courts.

Discussants at the First Palestinian Conference Against the Death Penalty concluded a number of recommendations:

- The PA President is well advised not to sign any decision ruling for the implementation of the death penalty.
- Penal legislation should be duly amended.
- A public campaign should be launched against the death penalty.
- Public awareness should be raised against the death penalty.
- Principle of the rule of law must be promoted.
- The Palestinian judiciary should be transparent, impartial, and integral.
- The role of media agencies should be consolidated in this course of activity.