

## Capital Punishment Under The Palestinian Authority\*

The Palestinian Authority (PA) came into existence following the signing of the Oslo Agreement between Israel and the Palestine Liberation Organization (PLO) in 1993. As an "offspring" of the PLO and of that agreement, the PA's governing "jurisdiction" covers Palestinian population centers in Gaza and the West Bank that came under Israeli occupation in 1967, excepting East Jerusalem. Laws the PA "voluntarily" inherited from pre-existing Jordanian and Egyptian legal systems in the West Bank and Gaza include the Jordanian Penal Code (16/1960), and the Mandatory Penal Code (74/1936) -adjusted by Order 555 of the Egyptian General Governor (1957). The PA also "imported" into the area an additional "Revolutionary Penal Code", issued by the PLO in 1979. Capital punishment is respectively identified for 16, 15 and 42 different types of so-called "crimes" by these three Codes. The adverb "voluntarily" is inserted here because, after Gaza and the West Bank fell under occupation in 1967, Israel's Military Governor issued orders in 1968 in effect suspending capital punishment, and replacing it by life sentences and hard labor. On assuming authority, however, the PA revived those clauses in the pre-existing penal codes, complementing them with the Revolutionary Code as this applies to para-military personnel. Under these different Codes, but primarily under the Revolutionary Code, the incredible total of 76 different sentences of capital punishment have already been delivered since the inception of the PA, of which 14 have to-date already been executed. A brief lull in the passing of such sentences occurred following the announcement, in June 2005, by the President of the PA that all those sentenced to death under the Revolutionary Penal Code in military courts will stand a new trial before a civilian court. No new sentences were delivered in 2006 or 2007, but sentences were again delivered by military courts in

2008 (13), and 2009 (17). A new penal code to supersede the three operational codes which has been passed by the PA's Legislative Council is now awaiting ratification by the PA President. While the draft legislation does not abolish capital punishment, its proponents argue that it makes its execution extremely unlikely, both by requiring a consensus judgment in a civilian court by a three-person jury, as well as by providing the said jury with the discretion to stay an order for reasons of compassion. (Under the present system, only the President has the right to stay an execution order).

The Palestinian Independent Commission for Human Right (ICHR) published in 1999 a report on capital punishment, and announced in 2009 the launching of the Campaign Against Capital Punishment in Palestinian Authority Areas. Another Human rights group, calling itself the Palestinian Coalition against Capital Punishment was also launched in 2006. Its activities include raising public awareness, publications, petitions, and town-house meetings<sup>1</sup>.

However, there hardly exists any public pressure on the Authority to abolish capital punishment<sup>2</sup>. Quite the contrary, and as even the 1999 ICHR report attests, the execution of capital punishment sentences has often been carried out as a result of public pressure, rather than in spite of it. This has driven many local human right activists who oppose capital punishment to focus in their campaigns on procedural issues rather than appealing to matters of principle, such as the right to life argument<sup>3</sup>. Indeed, an additional obstacle facing human rights activists in Muslim communities who wish to raise the issue of capital punishment as a matter of principle is the Qur'an's position, which allows for it. Even so, it is arguable that the Palestinian public in the occupied territories of the West Bank and Gaza as well as their underground leadership proved, during their uprising of 1988 through 1992, and through acts of public pardon for repenting collaborators, that they would have easily done with developing a penal code which excluded capital punishment altogether. It is only the advent of a para-military PA, with its para-military code and background,

which unleashed an unprecedented wave of capital punishment sentences and actual executions. Needless to say, matters in this regard have turned worse after the split which took place between the *Hamas*-led Government in Gaza, and the *Fatah*-led Government in the West Bank, where death sentences in rival military courts laid bare the danger inherent in the so-called Revolutionary Penal Code.

The first execution of a sentence of capital punishment took place in August of 1998, when the PA President ratified the military court sentences against two brothers employed as military intelligence officers accused of killing two fellow Palestinians belonging to the same family. Indeed, the majority of capital punishment sentences have been delivered by military courts against para-military officers. Such courts operate under special emergency rules, some times taking place abruptly in the middle of night, and presided over by a military officer often with no prior training in legal proceedings, according to the aforementioned ICHR report. Three kinds of military courts are in use by the PA, called “central”, “permanent” and “special”. Sentences by central and permanent courts can be appealed to a military official in charge of legal proceedings, who can turn the case to the special court. All major sentences by these courts have to be ratified by the President, in his capacity as Chief Officer of the so-called Armed Forces.

Whether in the case of the afore-mentioned two brothers, or in that of the third sentence delivered and almost immediately executed the following year against another officer accused of raping a six-year old child, it is important to note that the PA was primarily responding to public pressure. Both because of the accused belonging to the para-military forces, while the victims being civilians, as well as because of the governing role the PA was beginning to assume in Palestinian life, the factor of public appeasement was clearly primary in the PA’s calculations, as was the factor of wishing to assert or to be seen as exercising authority. It is also important to

point out in this context that, given prevalent Palestinian tribal culture, a small population size, and what we might describe as “demographic visibility”, by which is meant the fairly immediate revelation to the family of the victim of who the culprits in a crime or an offense are, it is not unheard of for the family of the victim to “take the law into their own hands”, striking back immediately at the offender or at members of his family. In this culture, family members are held to be as responsible for an offense as the individual himself who physically commits it. In this kind of environment, the PA's swift action in the cases mentioned was thus probably carried out as a preemptive measure, calculated to prevent a breakdown of law and order, and of human security in the community. However, given the para-legal and para-formal systems of conflict resolution normally in use by this community in such cases, it is not clear that the PA's formal reaction was in fact a necessary or a best course of action. Indeed, it is more generally arguable that social cohesion factors holding the Palestinian community together especially in the pre-Oslo and pre-PA days have on the whole proven to be far more effective at providing human security than the PA has been, or continues to be at the moment, despite the inordinately high number of capital punishment sentences.

Let me quickly elaborate on one aspect of the culture of “socializing” or “generalizing” an offense, where, that is, any of the members of the family of an offending party becomes automatically liable before the other family for the said offense: in this situation, preventing what is considered to be a rightful vendetta action by the offended family –and a possible breakdown therefore of social law and order- can be quickly achieved through a tested reconciliation mechanism involving moral as well as financial compensation for the offended party. The enormity of the cost necessitates that it be borne by the entire family of the offender. This social reconciliation, let it be added, need not also prevent appropriate penal action by the Government.

In sum, if one could draw a conclusion from the Palestinian experience in this matter, one might easily claim that the formal "security package" accompanying the establishment of the PA -that is, the PA's paramilitary and policing forces, as well as its use of a strict penal code rooted in capital punishment both as a philosophy as well as a tool- neither has brought the crime rate down (it was negligible in the first place anyway), nor has it increased the sense of human security among the population. Quite the contrary, as one considers this "security package", especially if one takes note of the recently increased "professionalism" and "visibility" of the American-trained security and strike-forces moving around, while this has certainly caused a rise in the level of fear among the population, this has not been the kind of deterrent fear expected to result in an increased sense of human security, but the kind of intimidating fear meant to cower the free human spirit.

I would like, before concluding, to add a brief comment expressing my point of view on the question of the principle of capital punishment, or of the taking of life more generally: I would claim that, principally, if one is to find human understanding or sympathy for it, the taking of a human life by someone in a position of control must spring from the love for the life which is being taken. A prime example for such an act would be the consent one might give for putting a loved one out of misery. My opposition to capital punishment thus does not depend on a right to life argument (the general principle that having it implies having the right to it) as it does on the parameters set by a right to "take away" argument -or on what general moral support one might find for choosing to deprive someone of something they already happen to have.

I apologize for not being able within the time constraints to lay before you a full exposition for what I believe to be this stronger argument.

Thank you.

Sari Nusseibeh

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<sup>1</sup> The Palestinian Coalition Against the Death Penalty consists of 11 human rights organizations, including ICHR.

<sup>2</sup> The general policy at the presidential office not to ratify death penalty sentences since 2005, after European pressure on the PNA

<sup>3</sup> ICHR's Project against the death penalty focuses on obtaining a Moratorium on the death penalty through lobbying and advocacy with the President's office