



Position Paper

Proposed Bill: Israeli Penal Code (Amendment – Death Penalty for Terrorists) - 2023

April 2023

On 26 February 2023, the Israeli Ministerial Committee for Legislation voted in support of the proposed Bill: Penal Code (Amendment – Death Penalty for Terrorists) - 2023 (hereinafter: the Bill). It was then confirmed in a preliminary vote in the Knesset on 1 March 2023, and on 13 March 2023, was sent to the National Security Committee. This position paper analyzes the ways in which the Bill violates human rights of Palestinians.

The death penalty is a draconian policy that deliberately destroys the life of a human being and inevitably causes physical pain and psychological suffering. It abrogates the right to life, the right to be free from torture and other forms of ill treatment, and the right to a fair trial. As of 2007, the UN General Assembly has been encouraging member states to abolish the death penalty, and, today, it is widely agreed that the death penalty should be abolished. A long controversial and widely repudiated practice, the use of the death penalty in recent decades has not only dwindled, but in a great many countries, been wholesale abolished. As of this writing, approximately 140 countries have abolished the death penalty, without exceptions.¹ Notably, in 2002, the European Union, through an amendment to the European Convention of Human Rights,² adopted a sweeping prohibition on the use of the death penalty in all circumstances, and consequently, all EU member states abolished the death penalty. The European Court of Human Rights upheld this prohibition in 2010, ruling that the imposition of the death penalty constitutes a violation of the right to life, as well as the prohibition against cruel, inhumane, or degrading treatment or torture.³

¹

Amnesty

International,

<https://www.amnesty.org/en/what-we-do/death-penalty/the-death-penalty-your-questions-answered/>.

² The Protocol to the American Convention on Human Rights to Abolish the Death Penalty was also passed by a number of American states in 1990.

³ This prohibition was upheld by the European Court of Human Rights in *Al-Saadoon v. UK*, ECtHR, application No. 61498/08, para. 115 (2010). See also *Bader and Others v. Sweden*, 13284/04, European Court of Human Rights, 8 November 2005, available at:

https://www.refworld.org/cases_ECHR_437dd21dd.html. The South African Constitutional Court held similarly, finding in *State v. Makwanyane*, 1995 SA no. CCT/3/94 (1995) that the death penalty, *per se*, violates the prohibition against torture and against cruel, inhumane, or degrading treatment.



Part 1 will examine the current legal status of the death penalty under Israeli Law; **Part 2** will address the Bill and its likely effect; **Part 3** will set forth the violations of international law; and **Part 4** will conclude.

1) Current Legal Status of the Death Penalty under Israeli Law

Under current Israeli law, several provisions allow for the imposition of capital punishment, which can be applied against both Palestinian citizens of Israel (PCI) and Palestinian residents living under occupation in Jerusalem and the West Bank. Regulation 58 of the British Mandate-era Defense (Emergency) Regulations, 1945, which was part of British Mandatory Law and which is still valid and used today by Israeli authorities, is the earliest legislative provision that permits the imposition of the death penalty in both Israel and the West Bank. This regulation has been incorporated into Israeli law through Section 11 of the Law and Administration Ordinance, 1948. In the West Bank, the Israeli authorities consider these regulations to be a part of the local legal framework that was in effect before the 1967 Israeli occupation. This section allows for the death penalty to be imposed based on four categories of relatively minor offenses, including carrying a weapon or being a member of a group wherein one of its members has violated the regulations. In addition, in 1970, Section 51 of the Order regarding Security Provisions (No. 378) was introduced, which allows for the imposition of the death penalty on Palestinians in the West Bank for intentional killing⁴ but prohibits its imposition on minors (Section 51 (b)).

Over the years, Israeli law has expanded to include several offenses that may be punishable by death. These crimes include offenses under the Nazis and Nazi Collaborators (Punishment) Law of 1950, which allows for the imposition of the death penalty on individuals who committed crimes against the Jewish people or humanity during the Nazi regime, as well as war crimes during World War II. In addition, the Law on Genocide – 1950 also provides for the imposition of the death penalty on a perpetrator of genocide.

⁴ The current version of the order sets procedural limitations regarding the imposition of this penalty. Specifically, it mandates that a panel of three judges, all holding a rank not lower than Lieutenant Colonel, must be appointed to preside over the case. Furthermore, it is required that the judges must reach a unanimous decision when issuing the sentence (Section 47 (a) (8)); prohibits the imposition of the death penalty on minors (Section 51 (b)); provides for automatic appeal of this sentence (Section 40 (6)); and allows for a retrial for someone who has been sentenced to death (Section 50 (a) (4)).



The Knesset has also enacted the Penal Law – 1977, which stipulates the following three offenses to be punishable by death: offenses against the sovereignty or integrity of the state (Section 97); causing war (Section 98); and assisting the enemy during wartime (Section 99). Notably, the imposition of this penalty is restricted by Section 96 of the Penal Law, which permits its use only during periods of “armed hostilities carried on, by, or against Israel.”⁵ Yet another law that allows for the death penalty is the Military Jurisdiction Law – 1955, which applies to members of the security forces. Section 43 of the law provides for the possibility of imposing the death penalty for eight possible offenses committed during wartime, most of which relate to acts of treason.

Although the death penalty is formally included in Israeli law, over the years, Israel has become a de facto abolitionist country,⁶ as the death penalty has only been carried out once in 1962, in the case of Adolf Eichmann. Except for that case, the death penalty has not been used by Israeli authorities in Israel or in the West Bank.⁷ Further, laws recognizing the state's positive obligation to protect individuals from the death penalty have been introduced, such as the Extradition Law – 1954, which prohibits the state from extraditing someone to a country where the crime that they allegedly committed is punishable by death, if such a crime is not punishable by death in Israel. In such a case, the extradition will only be carried out if the state receives a commitment that the death penalty will not be imposed.

Following the enactment of the 1992 Basic Law: Human Dignity and Liberty, which recognized the value of the “sanctity of life” as a fundamental principle (Article 1), alongside the recognition of the right to life, as set out in Articles 2 and 4, it became clear that the death penalty provisions in other laws could not be enforced, due to their clear inconsistency with the spirit of the Basic

⁵ Charges for this punishment can only be filed by the Attorney General, or with his consent, as stipulated in Section 123.

⁶ The proposed law, however, is a direct continuation of Israel’s existing policy of extrajudicial executions of Palestinians, that has been implemented for years by Israel’s armed forces and is based on vague and undisclosed open fire regulations. Both the police and the military have been implementing a “shoot to kill” policy against Palestinians and are provided near blanket immunity for these killings. However, there is a distinction to be made between customary practice and a law that mandates judges to impose the death penalty. According to the proposed law, the crime of extrajudicial killing would become a legal provision. Unlike the daily practice, which can be argued against as being conducted in violation of criminal law, the law would incorporate extrajudicial killing into the legal code, making it appear as a legitimate and lawful means of punishment.

⁷ Through 1989, Israeli military courts imposed a death sentence in eight cases, however, these sentences were never carried out and were overturned on appeal. In other cases, clemency was granted based upon the right to life and bodily integrity (knesset.gov.il, page 59).



Law.⁸ Israeli court decisions since have further emphasized that the principle of the sanctity of human life is an inviolable value that must be protected without distinction of religion and nationality.⁹

In addition to not enforcing the death penalty, Israel has consistently voted in favor of the abolition of the death penalty at the UN.¹⁰

2) The New Bill – Racially Designed

The proposed 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, as stated in section 144F of this law”,¹¹ aiming to “harm the State of Israel” and the “revival of the Jewish people in their homeland”. It further stipulates that military courts in the West Bank will have the discretion to impose the death penalty on a defendant with a regular majority verdict and that the punishment for anyone who has been sentenced to death in a final judgment cannot be reduced.

⁸ For example, Justice Haim Cohen wrote in his article "The Values of a Jewish and Democratic State: Studies in the Basic Law: Human Dignity and Liberty" (Prosecutor/Jubilee Book, 1994) on pp 25-26: "At the top of the ladder of the values of 'human dignity' stands the sanctity of life. Without a person's life, no dignity can be of any use to him. The prohibition on taking a person's life, as a principle - a foundation of public law, its first meaning is the prohibition of imposing the death penalty."

⁹ See the ruling of Justice Vaitzkin, in CA (Court of Civil Appeal) 461/62 *Zim Israel Navigation Co. Ltd. v. Shoshana Maziar*, 17 PD 1319: "The first of these considerations - the sanctity of life - is not disputed and I would say that it is so well-known that it does not call for evidence. Everywhere, irrespective of religion or nationality, human life is regarded as a treasured possession to be guarded at all costs." Legal scholars also expressed doubts as to whether a future law that imposes the death penalty will pass the legal tests under the limitation clause (See, for example: "The Constitutionalization of the Israeli Legal System as a Result of the Basic Laws and Its Effect on Procedural and Substantive Criminal Law" published in the Journal of Law Studies, vol. 5, p. 19 (1996) (Mehkare Mishpat), where he stated: "There is room to raise the question of whether the death penalty - if imposed by the legislature in the future - will pass the limitation clause. Some comparative literature rules out this possibility. According to it, legislation on the death penalty may fail to meet any one of the requirements under the limitation clause. It will be particularly difficult for it to meet the requirement that it does not cause more harm than necessary."

¹⁰ UNGA Resolutions 62/149 of 18 December 2007, 63/168 of 18 December 2008, 65/206 of 21 December 2010, 67/176 of 20 December 2012, 69/186 of 18 December 2014, 71/187 of 19 December 2016, 73/175 of 17 December 2018 and 75/183 of 16 December 2020.

¹¹ Racism is defined under Article 144 of the Penal Law as "persecution, humiliation, degradation, display of enmity, hostility or violence, or causing hatred towards the public or parts of the population, all on the basis of color or racial or national-ethnic origin".



The Bill is clearly designed to turn the death penalty into a mandatory punishment for Palestinians in all areas under Israeli control. It establishes two separate and discriminatory tracks of offenses and legal penalties based on race, nationality, and ethnic belonging. While the Bill attaches the death penalty to the crime of causing death or murder motivated by racism or hostility towards the public, this punishment is imposed only when the offense is committed against a citizen of the State of Israel and in the context of harming the State of Israel and its right of the Jewish people "in their land". Thus, the Bill, in the manner that it defines victims, excludes all people who are not citizens - including Palestinians in the West Bank and East Jerusalem – and it further limits the scope of its application based on two additional cumulative conditions: the intent to "harm the State of Israel" and the "revival of the Jewish people in its homeland".

These three conditions, which do not appear anywhere else in the Penal Law, indicate the improper intention of the Bill and are clearly racist. Firstly, the crime of causing death or murder – committed for the same motivations – against Palestinians, whether citizens of the State of Israel and its residents, or protected persons in the OPT, including East Jerusalem, are punishable by imprisonment only. Secondly, the Bill allows for the potential enforcement of the death penalty in countless cases, as the text of the bill is general, vague, and wide-ranging. The Bill fails to clearly state which acts qualify as intending to "harm the State of Israel" or what is meant by the "revival of the Jewish people in its homeland", as it does not provide definitions of these terms.

The Bill's racial motivations are also evident in its explanatory notes, which state that it seeks to "create a weighty deterrent" against those convicted of murdering Jewish-Israelis with the intention of harming "the State of Israel and the revival of the Jewish people in its homeland".¹² These intentions are also apparent in the comments made by Knesset members who proposed the Bill. These lawmakers emphasized that the proposed law is exclusively aimed at Palestinians. For example, MK Son Har-Melech (Jewish Power Party), the initiator of the Bill, 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."¹³ MK

¹² Notably, this new bill is not the first time that a death penalty law has been brought up for debate in the Knesset. As early as 2017, MKs introduced a similar proposal to allow the imposition of the death penalty on "convicted murderers in terrorist circumstances," but it was not brought up for further voting.

¹³ Knesset protocol: preliminary discussion debate in plenary session 1 March 2023, session no. 48, p. 134. Available in Hebrew at:



Son Har-Melech reiterated this in her speech several times, emphasizing the purpose of the law is to heighten the penalty for those who “took the lives of Jews”.¹⁴

The Bill establishes a sweeping, mandatory punishment, as judges would not be allowed to use discretion when sentencing a defendant convicted of such an offense and would be obligated to sentence him or her to death, regardless of the circumstances of the case. Under the Bill, the case of the defendant’s punishment would not be examined on an individual basis, and the judge would be forbidden from determining a range of punishment, in accordance with the principle of proportionality.

3) **Violations of International Law** International law contains numerous major prohibitions against the use of the death penalty. These prohibitions are grounded, namely, in the right to life and the right to be free from torture and cruel, inhuman or degrading treatment or punishment, as laid out in the United Nations Declaration of Human Rights (Articles 3 and 5, respectively) and incorporated in the International Covenant on Civil and Political Rights (ICCPR) and the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT). Further, most UN member states have now abolished the death penalty in its entirety – trending towards an understanding of its abolition as a *jus cogens* norm¹⁵ while several international legal instruments expressly prohibit and/or limit its use under a number of circumstances.

A. The Right to Life

The right to life is grounded in Article 3 of the UN Declaration of Human Rights – “Everyone has the right to life...” It is also incorporated in the ICCPR, which stipulates that no one shall be arbitrarily deprived of life and that this right shall be protected by law (Article 6(1)). The second optional protocol to the ICCPR, which was adopted in 1989, further encouraged states to take all necessary measures to abolish the death penalty within their jurisdictions, emphasizing that abolition of death penalty contributes to the enhancement of human dignity and progressive development of human rights. To this end, General Comment No. 36 of the ICCPR provides that “the right to life is the supreme right from which no derogation is permitted, even

<https://m.knesset.gov.il/Activity/Legislation/Laws/Pages/LawBill.aspx?t=lawsuggestionssearch&lawitemid=2200663>

¹⁴ *Id.*, p. 133-134.

¹⁵ Geoffrey Sawyer, *Death Penalty Is Dead Wrong: Jus Cogens Norms and the Evolving Standard of Decency*, *The*, 22 *PENN ST. INT’L L. REV.* 459 (2004).



in situations of armed conflict and other public emergencies that threaten the life of the nation”.¹⁶ In the General Comment, the UN Human Rights Committee also emphasized that State parties to the Covenant may not transform into a capital offense any offense that, upon ratification of the Covenant or at any time thereafter, did not entail the death penalty and, therefore, that abolition of the death penalty is legally irrevocable.¹⁷

Thus, Article 6 of the ICCPR sets out safeguards to ensure that, for State parties that have not yet abolished the death penalty, it shall not to be imposed (1) except for “the most serious crimes” – according to General Comment 36, this term “must be read restrictively and appertain only to crimes of extreme gravity involving intentional killing;”¹⁸ (2) if the individual sentenced to death does not have the right to seek a pardon or a commutation of the sentence; (3) to people below the age of 18, pregnant women, and individuals facing special barriers in defending themselves on an equal basis with others (persons with serious psychosocial or intellectual disabilities); (4) in an arbitrary manner. The General Comment also provides that “mandatory death sentences that leave domestic courts with no discretion as to whether to designate the offense as a crime warranting the death penalty, and whether to issue the death sentence in the particular circumstances of the offender, are arbitrary in nature;”¹⁹ and (5) in a discriminatory manner, contrary to the requirements of Articles 2 (1) and 26 of the Covenant.²⁰

In light of the above, the imposition of the death penalty to new offenses is clearly prohibited under the ICCPR. Furthermore, the proposition that the death penalty will also encompass crimes that were carried out negligently falls far below the international standard, which requires an intent to kill. The new Bill is further designed to be applied in an arbitrary manner, as it requires that if a person is convicted under an applicable offense, imposition of the death penalty by the judge(s) is mandatory. Judges would have no discretion to consider aggravating or mitigating circumstances with respect to the crime or the offender, which has been held to be a violation of due process. Because the Bill is racially motivated and intended to apply only to Palestinians, it will also be applied “in a discriminatory manner”, in violation of the ICCPR. As emphasized in a recent statement by a group of UN Special Rapporteurs on the subject of the Bill, “the proposed law further entrenches two classes of criminal law in the State...One class which privileges and protects Israeli Jewish citizens of the State and one which further targets, marginalizes and

¹⁶ CCPR/C/GC/36, para. 2.

¹⁷ CCPR/C/GC/36, para. 34.

¹⁸ CCPR/C/GC/36, para. 35.

¹⁹ CCPR/C/GC/36, para. 37.

²⁰ CCPR/C/GC/36, para. 44.



undervalues the lives of Palestinian citizens of Israel and Palestinians living in the occupied Palestinian territory—and their fundamental rights to non-discrimination and self-determination.”²¹ The proposed Bill’s clear racist motives and design (see Section 2) to exclusively target Palestinians make clear that not only is there no question that this law will be applied in a “discriminatory manner”, but indeed that is its intent.

B. The Right to be Free from Torture and Other Cruel, Inhuman, or Degrading Treatment

The use of the death penalty is further restricted by the right to be free from torture and other cruel, inhuman, or degrading treatment, grounded in Article 5 of the UN Declaration of Human Rights and the UN CAT. Any death penalty conviction that is based on information procured by torture or cruel, inhuman or degrading treatment violates the prohibition on torture, as well as the right to life and the right to a fair trial.²² Today, it is widely accepted that the death penalty should be abolished due to its intrinsic violation of the right to be free from torture, according to both courts and international human rights organizations.

For Palestinians subject to General Security Service (“Shabak” or “Shin Bet”) interrogations, in relation to the offenses included in the Bill, employing so-called “special means”, which include physical violence in “necessity situations”, and “regular means”, including sleep deprivation, humiliation, threats and other forms of psychological pressure, to extract information are commonplace and legally accepted in Israel, making it reasonable to understand that the death sentence may be decreed on the basis of confessions or information obtained through torture, in violation of international law.

²¹ Statement by UN Experts, Fionnuala Ní Aoláin, Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism; Francesca Albanese, Special Rapporteur on the situation of human rights in the Palestinian Territory occupied since 1967; Mr. Morris Tidball-Binz, Special Rapporteur on extrajudicial, summary or arbitrary executions; Ms. Margaret Satterthwaite, Special Rapporteur on the Independence of Judges and Lawyers; Ms. Ashwini K.P., Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, *Israel: UN experts alarmed by potential reinstatement of death penalty for “terrorism offences”*, 24 February 2023, <https://www.ohchr.org/en/press-releases/2023/02/israel-un-experts-alarmed-potential-reinstatement-death-penalty-terrorism>.

²² CCPR/C/GC/36, para. 54.



Furthermore, courts have found that nearly every form of state execution violates the prohibition against torture, making it effectively impossible for states to carry out it out in compliance with international law. These methods include lethal injection,²³ gas asphyxiation,²⁴ death by hanging,²⁵ and death by stoning²⁶.

To this end, the UN Special Rapporteur on Torture and other Cruel, Inhuman, and Degrading Treatment or Punishment stated, during the 2017 high-level panel discussion on the question of the death penalty, that since the death penalty always leads to intense physical and psychological suffering of those convicted and their relatives, whatever the methods used and under whatever circumstances the executions were carried out, the "increasingly rigorous conditions imposed by international human rights jurisprudence made it almost impossible to carry out the death penalty without violating the prohibition of torture and other cruel, inhuman or degrading treatment or punishment."²⁷ In other words, current standards of international humanitarian law and international human rights law have made it near impossible to implement the death penalty without violating the right to be free from torture.²⁸

C. The Right to a Fair Trial

The right to a fair trial is a fundamental tenet of criminal and human rights law, and the sentencing of a person to death without having received due process and the requirements of a

²³ *Cox v. Canada*, Communication No. 539/1993, U.N. Doc. CCPR/C/52/D/539/19930 (1994); *Zimmers et al.*, Lethal Injection for Execution: Chemical Asphyxiation (2007).

²⁴ H.R. Comm., *Chitat Ng v. Canada*, Comm. No. 469/1991, 49th Sess., U.N. Doc. CCPR/C/49/D/469/1991 at ¶ 16.4 (Nov. 5 1993).

²⁵ *Aitken v. Jamaica*, Merits, Reparations, and Costs, Inter-Am. Ct. H.R. (ser. C) No. 58/02, ¶ 138 (Oct. 21, 2002); *In re Ramadan*, Application for Leave to Intervene as Amicus Curiae of United Nations High Commissioner for Human Rights (2007); *Republic v. Mbushuu*, High Court of Tanzania (Jun. 22, 1994).

²⁶ Human Rights Council Res. 2003/67, Question of the Death Penalty, E/CN.4/RES/2003/67 at ¶ 4(i) (Apr. 24, 2003); Human Rights Council Res. 2004/67, Question of the Death Penalty, E/CN.4/RES/2004/67 at ¶ 4(i) (Apr. 21 2004); Human Rights Council Res. 2005/59, Question of the Death Penalty, E/CN.4/RES/2005/59 at ¶ 7(i), 4(h) (Apr. 20 2005).

²⁷ High-level panel discussion on the question of the death penalty – Report of the UN High Commissioner for Human Rights, A/HRC/36/27, para. 16, 4 July 2017.

²⁸ Juan E. Méndez, UN Special Rapporteur on Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment, *The Death Penalty and the Absolute Prohibition of Torture and Cruel, Inhuman, and Degrading Treatment or Punishment*, <https://www.corteidh.or.cr/tablas/r27394.pdf>.



fair trial is a *per se* violation of international law.²⁹ General Comment No. 36 to the ICCPR further emphasizes that a violation of fair trial guarantees, such as the use of forced confessions, lack of effective representation in all stages of criminal proceedings, including criminal interrogations, lack of independence or impartiality, or a general lack of fairness of the criminal process, would make the sentence arbitrary and, therefore, illegal.³⁰

Palestinians living in the OPT are subject to Israel's military judicial system, which is racist, lacks any fair trial safeguards, and is wholly inadequate as a system of "justice". Military criminal law sets harsher maximum punishments, provides fewer procedural guarantees than Israeli civilian criminal 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, military courts violate essential rights, such as the translation of evidentiary and investigatory materials and legal proceedings into a detainee's or defendant's mother tongue.³¹ For example, interpreters are often not provided during court hearings, which are held in Hebrew, and even when an interpreter is present, not all proceedings are translated accordingly. As a result of these inherent deficiencies, several UN bodies have recommended to absolutely prohibit the imposition of death penalty by military courts, which this Bill would permit, as military courts are not designed, nor equipped, to comport with the internationally accepted standards of a fair trial.³²

It should be noted that the application of this Bill in the Occupied Palestinian Territory, in particular, constitutes a gross violation of international law, as the Knesset does not have the authority to apply Israeli law extraterritorially in occupied territories, which are instead governed by the laws of belligerent occupation.

²⁹ See, e.g., *Bader v. Sweden*, Eur. Ct. H.R. Application no. 13284/04 (2005); *Baboeram et al. v. Suriname*, Communication No. 146/1983 and 148 to 154/1983, U.N. Doc. Supp. No. 40 (A/40/40) at 187 (1985); *Pratt v. Jamaica*, Communication No. 210/1986 & 225/1987; U.N. Doc. CCPR/C/35/D/225/1987.

³⁰ CCPR/C/GC/36, para. 41.

³¹ Yesh Din: Volunteers for Human Rights, *BACK YARD PROCEEDINGS* (Report) (2007); HCJ, 3326/10 *Palestinian Ministry of Prisoners v. Commander of IDF forces*, *infra* note 251; Smadar Ben-Natan, *The Application of Israeli Law in the Military Courts in the Occupied Territories*, 43 *THEORY AND CRITICISM* 45–74 (2014).

³² See UN Economic and Social Council, Civil and Political Rights, Including Questions of Torture and Detention: Report of the Working Group on Arbitrary Detention, UN document E/CN.4/1999/63, para. 80, 18 December 1998; UN General Assembly, Extrajudicial, summary or arbitrary executions: Note by the Secretary-General, UN document A/67/275, paras 30-33, 121, 9 August 2012.



This Bill is being put forward despite the fact that it has already been ruled by the Supreme Court that "the military commander derives his power from public international law concerning belligerent occupation", as "the law, the judiciary, and the administration of the State of Israel do not apply in these areas...".³³ Article 43 of the Hague Regulations stipulates that the occupying power's principal consideration for exercising its authorities must be the well-being of the local population in the occupied territory. According to Regulation 43, the Military Commander's main duty, therefore, is to safeguard the needs of the local population under occupation, and he is further prohibited from contemplating policy considerations concerning the needs of his country. The imposition of domestic criminal law through the administration of any such criminal penalties – let alone the harshest possible sentence of capital punishment – clearly does not comport with the requirements of Article 43.

D. Crimes within the Jurisdiction of the International Criminal Court

In addition to violation of the right to life, the right to be free from torture, and the right to fair trial of Palestinians, execution of Palestinians in the context of prolonged belligerent occupation by Israel may amount to crimes within the jurisdiction of the International Criminal Court.

The imposition of the death penalty on Palestinians in the OPT without any fair trial guarantees – as described above – may fall into the war crime of "the passing of sentences and the carrying out of executions without previous judgement pronounced by a regularly constituted court, affording all judicial guarantees which are generally recognized as indispensable", in violation of Article 8(2)(c)(iv) of the Rome Statute of the International Criminal Court.

Additionally, in light of the described relation between imposition of death penalty and torture, execution of Palestinians can be considered war crimes of torture and other inhuman acts, in violation of Article 8(2)(a)(ii), 8(2)(a) of Rome Statute.

4) Conclusion

As argued in this paper, this Bill, entailing the effective reinstatement of the death penalty in Israel, is a racist law that is intentionally designed to target and kill Palestinians living under all areas controlled by Israel. The language of this law follows so many others that have come before it: contorting criminal law by using abstract and overbroad definitions of "racially motivated crimes", express criteria that target Palestinians exclusively, and gross violations of due process. These provisions violate central tenets of international law, including the right to

³³ See HCJ 7957/04 Mara'abe v. Prime Minister of Israel, PD 60(2) 477,492 (2005); HCJ 1308/17 Silwad Municipality v. Knesset (9.06.2020)



life, the right to be free from torture, and the right to fair trial. The imposition of the death penalty on Palestinians in the OPT, in particular, constitutes a severe escalation, integral to a pattern of racially, nationally, or politically-motivated state-sponsored violence against protected persons and may be considered a war crime in the context of the prolonged belligerent occupation by Israel.