

**Mandates of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism; the Special Rapporteur on extrajudicial, summary or arbitrary executions; the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; the Independent expert on the promotion of a democratic and equitable international order; the Special Rapporteur on the situation of human rights in the Palestinian territory occupied since 1967; the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment; the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence and the Special Rapporteur on violence against women and girls, its causes and consequences**

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(Please use this reference in your reply)

3 December 2025

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism; Special Rapporteur on extrajudicial, summary or arbitrary executions; Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; Independent expert on the promotion of a democratic and equitable international order; Special Rapporteur on the situation of human rights in the Palestinian territory occupied since 1967; Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment; Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence and Special Rapporteur on violence against women and girls, its causes and consequences, pursuant to Human Rights Council resolutions 58/14, 53/4, 60/10, 57/7, 1993/2A, 52/7, 54/8 and 59/20.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning **the Penal Bill (Amendment – Death Penalty for Terrorists), 5783-2023 (“Bill”)**, the first reading of which was passed by the Knesset in November 2025. We are concerned that the Bill is inconsistent with Israel's obligation to protect the right to life under article 6 of the International Covenant on Civil and Political Rights, ratified by your Excellency's Government in 1991, and related provisions including the prohibition on torture and other cruel, inhuman or degrading treatment or punishment (article 7, ICCPR as well as articles 1, 2 and 16 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or punishment, also ratified by Israel in 1991), non-discrimination and equality (articles 2(1) and 26 of the ICCPR), fair trial (article 14 of the ICCPR), legality (article 15 of the ICCPR) and the right to an effective remedy (article 2(3) of the ICCPR).

*The provisions of the Bill*

The Bill would make mandatory the death penalty for anyone who “intentionally or recklessly causes the death of an Israeli citizen when the act is committed out of a motive of racism or hostility towards the public, and with the aim of harming the State of Israel and the revival of the Jewish people in its homeland”.

The Bill would also allow a simple majority of military judges in the occupied Palestinian West Bank to impose the death penalty, lowering the existing threshold, which requires unanimity of three judges.

The Bill would also preclude the commutation of a final sentence of a military court.

The stated purpose of the Bill is to deter terrorism, based on the belief that existing prison sentences are not sufficient.

Concern has been expressed that the Bill may be applied retroactively.

It is reported that various amendments may be under discussion, such as a requirement to implement a death sentence by lethal injection within 90 days and to preclude appeals.

Israel maintains the death penalty for war crimes, crimes against humanity, crimes against the Jewish people, treason and certain crimes under military law in wartime. It has, however, a long-standing *de facto* moratorium on implementation. It has only finally imposed the death penalty in two cases in its history: an Israeli army officer, executed for espionage in 1948 but later exonerated; and a Nazi leader abducted to Israel and executed in 1962.

#### *Human rights concerns*

Firstly, we are concerned that mandatory death sentences that leave domestic courts with no discretion as to whether to designate the offence 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 (Human Rights Committee, General Comment No. 36, para. 37) and are thus contrary to the right to life under article 6 of the ICCPR. It also violates the principle of proportionality in sentencing under international law, which requires that each offender receive a punishment that corresponds to the gravity of the crime, taking into account factors such as the seriousness of the conduct, the offender's degree of responsibility, and any aggravating or mitigating circumstances.

Secondly, since Israel previously abolished the death penalty for murder and maintains it only for certain international crimes, military offences and treason, we emphasize that under international law States parties may not transform into a capital offence any offence that, upon ratification of the Covenant or at any time thereafter, did not entail the death penalty (Human Rights Committee, general comment No. 36, para. 34).

Thirdly, it is prohibited to impose the death penalty based on vaguely defined criminal provisions – such as “racism or hostility towards the public” and “the aim of harming the State of Israel and the revival of the Jewish people in its homeland” – whose application depends on subjective or discretionary considerations and is not reasonably foreseeable (general comment No. 36, para. 38), thus rendering the deprivation of life arbitrary contrary to article 6 and incompatible with the requirement of legality under article 15.

Fourthly, the Bill does not limit the death penalty to offences amounting to “the most serious crimes” as required by article 6(2) of the ICCPR, since it extends beyond intentional killing (general comment No. 36, para. 35) to include the lower mental standard of recklessly causing death.

Fifthly, the Bill’s exclusion of commutation is not consistent with article 6(4) of the ICCPR, which requires that “Anyone sentenced to death shall have the right to seek pardon or commutation of the sentence. Amnesty, pardon or commutation of the sentence of death may be granted in all cases.” We emphasise that no category of sentenced persons can be a priori excluded from such measures of relief (Human Rights Committee, general comment No. 36, para. 47).

Sixthly, the Bill involves two types of unlawful discrimination. It protects only Israeli citizens and Jewish interests, thus adversely treating non-Israeli and non-Jewish members of the public. Further, in practice, it is likely to indirectly discriminate against Palestinians under Israeli occupation, including those exercising the right of resistance against occupation (enforced by Israeli military personnel) under international law, even when such resistance is conducted in accordance with international humanitarian law. Discrimination in the application of the death penalty is contrary to articles 2(1), 6 and 26 of the ICCPR (Human Rights Committee, general comment No. 36, para. 44). Discrimination is also prohibited under international humanitarian law (ICRC Customary International Humanitarian Law, rule 88).

Seventhly, we are concerned that, because Israeli military trials of civilians typically do not meet international fair trial standards under human rights law and humanitarian law, any resulting imposition of the death penalty would be arbitrary in violation of article 6 of the ICCPR (Human Rights Committee, general comment No. 36, para. 41). Specific breaches have included, for example, torture and forced confessions, denial of adequate access to legal representation, lack of interpretation, inadequate facilities to prepare a defence, and non-disclosure of secret evidence necessary for a fair trial, lack of independence or impartiality of military courts, and a near-total conviction rate for Palestinian defendants. The Human Rights Committee has further emphasized that “[a]s a rule, civilians must not be tried for capital crimes before military tribunals (general comment No. 36, para. 45).

In its general comment No. 32, the Committee has stressed that trials of civilians by military courts raise serious concerns for the administration of justice and, where resorted to at all, must be strictly exceptional and afford all guarantees of independence, impartiality and due process (see also ECOSOC resolution 1984/50).

Eighthly, we highlight that considerable progress may have been made towards establishing an agreement among the States parties to consider the death penalty as a cruel, inhuman or degrading form of punishment” (HRC, general comment No. 36, para. 51), contrary to article 7 of the ICCPR, including because of the methods of execution, as well as the mental torment of protracted periods and conditions on death row. In this regard, we also draw attention to European practice banning the trade in goods such as lethal injection chemicals that could be used to implement the death penalty (see, for example, [Regulation \(EU\) 2019/125 of the European Parliament and of the Council](#) and the Council of Europe’s Committee of Ministers adopted a

[Recommendation Rec\(2021\)2](#)). It is thus almost impossible to impose the death penalty without breaching the absolute prohibition of torture or other ill-treatment (see [PAK 8/2025](#) and [USA 30/2025](#)). We also refer to article 12 of the International Covenant of Economic, Social and Cultural Rights, ratified by Israel on 3 October 1991, which guarantees the right to health, which is closely related to the realization of other human rights, including the prohibition against torture as an integral component of the right to health (Committee on Economic, Social and Cultural Rights, general comment No. 14, paras. 3 and 8).

Ninthly, we reiterate that the Human Rights Committee has indicated that article 6(6) of the ICCPR “reaffirms the position that States parties that are not yet totally abolitionist should be on an irrevocable path towards complete eradication of the death penalty, *de facto* and *de jure*, in the foreseeable future. The death penalty cannot be reconciled with full respect for the right to life” (Human Rights Committee, general comment No. 36, para. 50). Moreover, “[i]t is contrary to the object and purpose of article 6 for States parties to take steps to increase *de facto* the rate of use of and the extent to which they resort to the death penalty, or to reduce the number of pardons and commutations they grant” (*ibid*).

Tenthly, we are alarmed by any suggestion that the Bill would be applied retroactively. Article 6(2) of the ICCPR unambiguously provides that a “sentence of death may be imposed... in accordance with the law in force at the time of the commission of the crime”. Retroactive punishment would also infringe article 15 of the ICCPR.

Finally, any further proposal to abolish the appeal of death sentences would violate the requirement of “final” judgment under article 6(2) and the right of criminal appeal under article 14(5) of the ICCPR. Any penalty of death can be carried out only pursuant to a final judgment, after an opportunity to resort to all judicial appeal procedures has been provided to the sentenced person, and after petitions to all other available non-judicial avenues have been resolved, including supervisory review by prosecutors or courts, and consideration of requests for official or private pardon (Human Rights Committee, general comment No. 36, para. 46).

We stand ready to provide any technical advice that your Excellency’s Government may require in ensuring that legislation is consistent with international human rights law and international humanitarian law.

As it is our responsibility, under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention, we would be grateful for your observations on the following matters:

1. Please provide any additional information and/or comment(s) you may have on the above-mentioned analysis.
2. Please indicate whether the Government is planning to support the passage of the Bill. If so, please share the human rights assessment that has been undertaken to ensure Israel’s international obligations are adhered to.

3. Please clarify whether the Government plans to abolish *de jure* the death penalty, noting that Israel is currently considered a *de facto* abolitionist State.
4. Please explain how the prosecution of capital offences before military courts is compatible with the right to fair trial by an independent and impartial tribunal. In addition, please explain how fundamental safeguards – from the moment of arrest and throughout all stages of the judicial proceedings – protect the rights of persons accused of capital offences, including against arbitrariness.
5. Please explain how the proposed legislation would avoid having a discriminatory impact on Palestinians under Israeli occupation.
6. Please indicate the manner in which the Bill ensures respect for the right to life, the right to fair trial, including the right to appeal and the absolute prohibition on torture and other cruel, inhuman or degrading treatment or punishment.

This communication and any response received from your Excellency's Government will be made public via the communications reporting [website](#) within 60 days. They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

Please be informed that a copy of this letter has also been sent to the Government of the State of Palestine.

Please accept, Excellency, the assurances of our highest consideration.

Ben Saul

Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism

Morris Tidball-Binz

Special Rapporteur on extrajudicial, summary or arbitrary executions

Tlaleng Mofokeng

Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health

George Katrougalos

Independent expert on the promotion of a democratic and equitable international order

Francesca Albanese

Special Rapporteur on the situation of human rights in the Palestinian territory occupied since 1967

Alice Jill Edwards

Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment

Bernard Duhaime  
Special Rapporteur on the promotion of truth, justice, reparation and guarantees of  
non-recurrence

Reem Alsalem  
Special Rapporteur on violence against women and girls, its causes and consequences