

# The Judiciary and Executions in the Palestinian Authority

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## ABOUT THE AUTHORS



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Brief Analysis

On March 10, the Palestinian judicial system sentenced yet another security official to death -- the fourth such sentence in the past six months. That was an ironic way to end a week of festivities celebrating Palestinian democratic achievements, which had been kicked off by the Palestinian Authority's (PA) first ever "Democracy Day."

The impending execution of Ra'ed Alattar -- a security official who allegedly killed an officer in a rival Palestinian police force -- represents the latest in a series of trials and executions of Palestinian security officials whose alleged offenses provoked outrage in the Palestinian community. While the executions of these security officials have, for the most part, been well received in PA-controlled territory, the trial, sentencing and appeal procedures have raised serious questions about the nature of due process in the PA. The process has also led to speculation among Palestinians that the verdicts have been driven by political rather than judicial considerations.

Background: On February 1, the PA Preventive Security Service (PSS) in Gaza attempted to capture three officers in the Special Security Forces (SSF) with suspected ties to Islamic militants. In the ensuing shootout and car chases, two children and a PSS officer named Rifat Judeh were killed. The three SSF officers escaped, but surrendered after a ten-day manhunt. Alattar was later singled out as the leading suspect in the killing of Judeh. Following the arrests, reports surfaced that the alleged killers were members of the Izzadin al-Qassam wing of Hamas who, three years earlier, had been recruited to serve in the PA security forces. A statement issued by Hamas immediately after the arrests denied that the accused men were members and "rejected the hasty attempts to connect this tragic event with Hamas." Reports also indicated that the accused men had been wanted by Israeli authorities since before 1994.

In Gaza, the three arrests were a source of great acrimony. The Alattar clan distributed leaflets protesting Ra'ed's innocence; the Judeh clan demanded justice for their martyred son; members of the PSS opened fire on the house of Ra'ed's uncle in revenge; Fatah officials clamored for execution. At the same time, the PA launched an arrest campaign against suspected Hamas activists during which, according to the Hamas weekly al-Risala, PA police wore masks to conceal their identities. In the days leading up to the trial, protests grew so violent that the executive council in the Rafah Governate called on citizens "to abide by the law" and to "not take the law into [their] own hands."

Judicial Process: The trial of Alattar and the other accused men began at the end of February. Unlike some of the

earlier trials that had resulted in executions -- such as the two-hour trial and immediate execution of Palestinian Police Col. Ahmed Abu Mustafa on child rape charges in Gaza two weeks ago -- the Alattar trial proceeded according to a more traditionally accepted judicial process. On February 27, Palestinian security officials and witnesses testified, the accused were questioned, and evidence was presented. On March 3, the court convened a "special session" in which the accused were allowed to testify on their own behalf.

Although none of the prosecution witnesses claimed to have seen the accused shoot in the direction of the slain officer, and no ballistic tests were presented as evidence, after one week of deliberations Alattar was found guilty and sentenced to death. Alattar's two companions were sentenced to lengthy jail terms and hard labor. During a large Gaza rally protesting the verdict, Palestinian security forces shot and killed two teenagers. Hundreds have been injured in subsequent rallies. Alattar's execution date has not yet been set.

**Independent Judiciary:** The judiciary is perceived more as a branch of the PA Chairman Yasir Arafat's executive authority than as an independent entity. For example, the troubling perception that no "smoking gun" evidence was presented in the Alattar case has led Palestinian observers to believe that the verdicts have been influenced by PA political considerations.

The Palestinian Legislative Council (PLC) and Palestinian human rights groups have been particularly critical in their assessments of the judiciary. In its February 10 report, the PLC's Political Committee cited the need to "lay the foundations of [the judiciary's] independence" as an immediate priority of the PA executive authority. An NGO headed by Haidar Abdel Shafi -- who is widely respected by Palestinians as incorruptible -- stated that Arafat's PA shows no desire to "expand the scope of the Judicial Authority to establish its role as mandated by law."

**Judicial Authority:** Even if the judiciary were independent, however, there would be no assurance that its rulings would be implemented. The case of Abdel Aziz Rantisi, the Hamas leader from Gaza imprisoned by the PA without charge or trial since April 1998, provides a good example of the judiciary's impotence. On June 4, 1998, after three months of incarceration without trial, the PA high court ordered Rantisi's immediate release. PA security officials ignored the request for several months, until forty-seven Hamas prisoners in Jneid prison in Nablus began a well-publicized hunger strike. After thirty-six days -- and several large tire-burning rallies in Gaza and Nablus -- the PA made an oral agreement with Hamas to try or release the nearly 300 Islamist "political" prisoners, including Rantisi, by the end of March. In a similar case, the courts last month ordered the release of a 7-year-old from Gaza who was taken into custody under odd circumstances. He remains behind bars.

Perhaps one of the clearest demonstrations of Arafat's willingness to manipulate the legal system is his use of his Justice Ministry to subvert legislative will. Legislation passed by the PLC is supposed to become law within thirty days, upon its publication in the Official Gazette. The Gazette, however, is published by the Justice Ministry. When Arafat does not like a law -- which is frequently the case -- he simply instructs the ministry not to publish it. In fact, Arafat used this gambit when the PLC passed the Basic Law, the "Palestinian constitution" and foundation of much of Palestinian legal life. The nonpublication, and therefore questionable status of the Basic Law, puts into question the validity of almost every legal action in the PA.

**Rule of Law?** The Palestinian judiciary operates in difficult conditions and amid much legal confusion. Laws in PA-controlled territory are an amalgam of British mandatory and Ottoman law, with Jordanian legal influences in the West Bank and Egyptian legal influences in Gaza. In 1994, when the PA took control over Gaza and areas of the West Bank, all laws passed by Israel from 1967 to 1994 were declared null and void. In at least one case, a ruling was made on the basis of the obscure Palestinian Penal Code of 1979 -- an apparent remnant of PLO law in Lebanon. In 1996, the Palestinian Ministry of Justice declared the unification of existing laws governing the West Bank and Gaza Strip as its number-one objective, but no visible progress has been made thus far.

Postmortem: Given the established precedent and the dynamics of traditional family relationships in Gaza, Alattar will probably face the firing squad. The controversy over the executions is likely to persist; in Ramallah, two other Palestinian security officials await trial. In October, while attempting to disperse a large Fatah rally, two military intelligence officers shot into a crowd and killed Wissam Tarifi, an 18-year-old high school student. Wissam was a nephew of PA Civilian Affairs Minister Jamil Tarifi -- a stalwart Arafat supporter. The political pressure to execute will be extreme. The trial has already been delayed five times, and protests are starting to mount.

Executions in the PA must be authorized personally by Arafat. The executions of PA officials have to some degree enabled Arafat to dissociate himself and the PA from the excesses and the abuses of the security apparatuses that keep them in power. In this sense, those who are executed serve as the PA's scapegoats, placating a disappointed, frustrated, and increasingly embittered citizenry. Still, in the absence of a system in which rule of law reigns supreme, the executions may provide some Palestinians with a sense that Arafat's security forces are at least somewhat accountable to popular standards of justice.

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