

## The Palestinian Justice System: The Role of the Executive and Judicial Authorities and Violations of Human Rights

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### Introduction

Since the killing of activist and former Palestinian Legislative Council candidate Nizar Banat, on 24 June 2021, by agents of the Palestinian Preventive Security Forces (PSF),<sup>1</sup> the last period constituted an alarming deterioration of the Palestinian justice system. Serious human rights violations were committed by the Palestinian Authority executive branch (also referred to as the [PA executive authority]), represented by the security forces (hereinafter: “PA forces” or “security forces”), including attacks on peaceful demonstrations, violations of citizens’ right to liberty, freedom of speech and expression, freedom of assembly, and right to privacy.

Palestinian activists, political movements, and electoral candidates called for peaceful demonstrations condemning the killing of Nizar Banat, demanding that the perpetrators be held accountable and further protest the arbitrary arrest and repression of demonstrators, in addition to calls to have the postponed Palestinian legislative elections. Calls for demonstrations began Thursday morning, 24 June 2021, following the news of Nizar’s killing: two marches took place that day, both of which were severely repressed by security and police forces deploying sound bombs, tear gas, and beating with batons. Several marches and peaceful assemblies followed, which totaled about 17 demonstrations in the period between 24 June 2021 and 25 August 2021.<sup>2</sup> Among them, 13 demonstrations took place in Ramallah; from the 17 documented demonstrations held in Ramallah, Hebron, and Bethlehem, nine were violently repressed by uniformed and plainclothes security and police forces (eight in Ramallah, and one in Bethlehem), in addition to civilian attacks on protestors.

Forms of repression ranged from weapons employed, including sound and tear gas bombs, assault and beatings by batons all over the body, dragging, sexual harassment, theft of phones, and notably, a phenomenon whereby security forces (and/or civilian perpetrators) access the stolen phones to violate protestors’ privacy—particularly women—by publishing their private pictures to protestors’ social media accounts. Several demonstrators sustained various injuries due to the assaults, leading some to require hospitalization for treatment.



<sup>1</sup> The Palestinian Security Force (PSF) is an internal intelligence agency, part of the Palestinian Security Services (PSS), which was established in 1994 following the Oslo Accords.

<sup>2</sup> The length of time covered by this report, referred to thereafter as “the aforementioned period.”

Security forces, uniformed and in plain clothes, also targeted journalists covering the demonstrations, beating them, smashing their cameras, and stealing their phones. Broadly, such targeting aims to restrict the work of journalists, prevent them from covering violations committed against demonstrators, and was similarly mirrored by attacks on employees of local and international human rights institutions who were present to monitor and document violations.



Conversely, under a discriminatory framework practiced by the PA Executive Authority against Palestinian citizens in violation of the law, the Fatah movement initiated 12 assemblies and gatherings in several West Bank governorates to support the President of the Palestinian Authority (PA) and PA security forces. In addition to the assemblies mentioned above, the families of the PSF personnel arrested and accused of killing Nizar Banat called for two protests to demand the release of their sons on the grounds that the defendants had “implemented the law.” One such vigil was held in front of the “Security Forces Judiciary Commission” in Ramallah, in the presence of police forces. In contrast, another was held in front of the Hebron governorate building. Neither of these assemblies was subjected to any repression, assault, or prosecution by security forces, showcasing a discriminatory policy of discrimination employed by the PA executive branch against the rights of Palestinian citizens.



The violations of the PA executive branch and security forces extended beyond the repression and assault of peaceful assemblies to include the implementation of a mass campaign of arbitrary arrests targeting individuals who had participated in demonstrations. During the period above, 70 individuals were arrested on their way to, or participation during, the peaceful demonstrations, including women, the elderly, activists, human rights defenders, doctors, lawyers, university lecturers, and former political prisoners in Israeli occupation jails. Most of them were assaulted by beatings and/or dragging during and/or before their arrests. All of them were subjected to difficult detention conditions, where they were held in cells that lacked minimum living conditions, and poor sanitary and environmental conditions, and no preventative measures were taken to protect the detainees from the COVID-19 pandemic.

Most detainees were arrested under the supervision of police forces (المباحث العامة); some were released after hours of their arrest, and others were transferred to the Public Prosecutor’s office, which either decided to extend their detention or release them. Others were transferred to the

relevant court to be tried under charges of “illegal gathering,” “insulting leadership,” and “inciting sectarian strife,” whereafter they were released on bail until the end of their trials.

## Security Forces and Civilians Attacks and Arrests Against Various Sectors

### The Case of Journalist “A.H.” (27 years old)

In his capacity as a journalist, A.H. was attacked while photographing a demonstration at Al-Saa’a Square (or “Clock Square”) on 27 June 2021. Several people in civilian clothes threatened him, saying, “Photography is not allowed, and if you take pictures, we’ll break you and your camera.” Journalist **A.H.** continued taking photographs, exercising his right to practice his journalistic work, and after about 15 minutes, several people in civilian clothes went to him and began beating him. One individual tried to steal his camera, while others continued beating him on his head and face, and one tried to “trip him” to fall on the ground before **A.H.** was able to run away from them. Notwithstanding, **A.H.** donned a complete journalist uniform, including a press vest and helmet. The assault of journalist **A.H.** was also documented on video by two other journalists at the time and issued a medical report by the Palestinian Ministry of Health bruises and scratches on his face and head.

Addameer submitted a report to the Public Prosecution for an immediate investigation on behalf of the journalist, which included pictures of the individuals who had assaulted the journalist, and a medical report of his injuries, to take legal action against the individual perpetrators, in line with protecting the fundamental right to bodily integrity and journalistic work, under Palestinian Basic Law, and international conventions signed, without reservations, by the State of Palestine. Nevertheless, to this day, no investigation has been opened.



The Case of Doctor "A." (49 years old)

**Dr. A** was severely assaulted by police officers on 5 July 2021 while participating in a peaceful demonstration in front of Al-Balou' police station in Ramallah in protest of political arrests and, more specifically, the arrest of a group of protestors from Al-Manara roundabout before the time of the demonstration at 7 pm. **Dr. A** arrived at the police station, where there were about ten people, most of whom were families of the detainees who had been arrested at Al-Manara, in addition to the elderly and children. There were no chants except one from the wife of one of the detainees, and it was solely to denounce political arrests.

After some time, the number of participants increased as human rights activists and journalists joined the demonstration, which was premised on the demand for the release of all detainees, according to **Dr. A**. Uniformed and plainclothes police and security forces informed the demonstrators that they must immediately leave the location within 10 minutes. After arguing as to the purpose of the order, and the prohibition against gathering, the police and security forces told the demonstrators that the order was based on the PA Prime Minister's forbidding the gathering of over seven people.

Demonstrators responded by spreading out, standing on the sidewalk across the police station in groups of 7 individuals, and **Dr. A** says in her affidavit to Addameer:

*"In less than 10 minutes, a large contingent of security forces arrived in several cars and began attacking everyone present brutally with batons. Before we could move away, I was shocked to find that they were dragging us on the ground for about 10 meters to the outward entrance of the police station. At first, the forces violently dragged us, and policewomen continued to drag us from our hair and punch our faces. I was one of them, and I do not know who else was detained with me until we reached the inside entrance of the police station, whereafter we were detained and taken to a room inside the station that was not more than 2x3 meters in size."*

She continued:

*"While I was in the room, I saw several police officers took turns beating young detainees. Here, I informed the police and security forces present in the room that I was a doctor, and I showed them my doctor's ID card, and I asked that they stop beating the detainees in this violent manner. After some time, the number of detainees began to increase, both men and women. The young men were left on the ground, and they continued to beat them brutally and violently, to the extent that I expected that there may be severe medical cases resulting from this brutal beating, which could lead to death."*

*"I and some of the female detainees tried to stand up and ask the officials to stop beating the detainees, and I was screaming at them that the detainees would be killed if they continued hitting them. While I was screaming, one of the policemen pushed me and hit me against the wall, but I insisted on examining two of those beaten, as one of them lost consciousness. After*

*a long period of adamantly insisting, they let me see them. I immediately asked for an ambulance to transfer them to the hospital, but that did not happen until after 3-4 hours.”*

More still, she recounts:

*“When we were there, there was a door leading to a corridor next to the room I was in, where they would take youths who were arrested. We could hear sounds of severe screaming and beating, which continued without stop, despite that a portion of the detainees were journalists and lawyers, and they were screaming, but no one from the security forces cared. After about an hour and a half of our presence in the room, we were separated from the detained youths and taken to an inner room where we stayed for about two hours, after which they asked us to go to the upper floor to sign a pledge, after which they told us we would be released. Still, when we asked to see it, they refused. We asked to call a lawyer for legal advice, and after we all refused to sign it, they allowed us to contact a lawyer. He told us not to sign any paper, and the security forces said that due to our refusal, we would all be arrested, and steps would be taken to send us to the Public Prosecutor’s office the next day. Indeed, they began the procedures for arresting us, seizing our belongings, and telling us to prepare ourselves to complete the medical checkups in preparation for our transfer to prison. After a little under an hour, they informed us we would be released without signing the pledge, which is what happened.”*

Addameer submitted an appeal to the Public Military Prosecutor calling for an immediate investigation into the complaint submitted by Addameer on behalf of **Dr. A** regarding the excessive and unjustified use of force to prosecute and take the necessary legal action against the police who assaulted the doctor. Still, to this date, an investigation has yet to be opened.

#### *The Case of Human Rights Defender “A.’A.” (37 years)*

Human rights defenders and former political prisoner<sup>3</sup> **A.’A.** were arbitrarily arrested twice in the time mentioned above period by PA security forces. His first arrest took place on 5 July 2021, while he was at Al-Manara roundabout in a peaceful demonstration demanding accountability for Nizar Banat’s murder. **A.’A.** was arrested with several others before joining the demonstrators, and he was transferred to Al-Balou’s police station, where he was detained for one night before being taken to the Ramallah Magistrate Court the following morning on charges of “illegal gathering” and “desecrating shrines.” The court decided to release him on bail. On 21 August 2021, **A.’A.** was arrested for a second time as he was heading towards Al-Manara roundabout to participate in a peaceful protest demanding justice for Nizar Banat and holding the Palestinian legislative elections.

Just as **A.’A.** was headed to the roundabout, accompanied by another person, security personnel dressed in military uniforms of the Special Police, wearing masks, arrested **A.’A.** and his

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<sup>3</sup> In Israeli occupation prisons

companion. They were taken to a police bus, where they sat for about an hour and a half, as other demonstrators were arrested.

The detainees were transferred to Al-Balou police station and placed in an outdoor yard from 7 pm until 11:30 pm. There were only a few seats in the yard, which was not enough for all detainees. Security personnel then began registering the information of detainees, seizing their belongings, and transferring them over to interrogation to take their testimonies.

A.'A. refused to give a statement during interrogation, declaring to the interrogator that he was on hunger strike, after which he was transferred with the rest of the detainees to the rooms for criminal detainees. A.'A. was transferred to a room of about 35 square meters, with 16 beds, two bathrooms, a shower, and small windows providing poor ventilation. About 50 detainees were held in this section, most of whom were criminal detainees except for A.'A., who was a political detainee. There were not enough beds for the number of detainees, so they brought additional mattresses, which still weren't enough, so they divided one mattress for every two detainees, either on the floor or on a bed frame.

Political detainees were transferred at about 4 am to the headquarters of the military medical services, where they were asked about their situation and if they'd been subjected to beatings or assault, then returned them. In the morning of the following day, they were transferred to the Ramallah Magistrate Court and presented to the Public Prosecutor's office, where they were interrogated. A.'A. chose to exercise his right to remain silent, and his detention was extended for 48 hours.

Immediately upon his transfer to Al-Balou's police station, A.'A. declared his hunger strike and requested that he be separated from the rest of the detainees who were not on strike. At this point, police officers began putting pressure on criminal detainees who were with him in the same room, depriving them of the prison canteen and phone contact with their families. A police officer summoned him to ask about his demands, to which he replied that they are to separate political detainees from criminal detainees, strikers from non-strikes, and to gather the hunger strikers in the same room. His demands were rejected.

On the morning of his third day of detention, A.'A. was taken to Ramallah Magistrate Court on charges of "illegal gathering" and "defamation of the authorities." The court ruled to release him on bail in exchange for his commitment to attend court sessions. Human rights defender A.'A. reports that the detention conditions on both occasions were inhumane, as the rooms suffered from overcrowding, lack of ventilation, lack of sufficient beds and mattresses, and the detention of political detainees and criminal detainees in the same room.



*The Case of Political Activist “E’.E’.” (71 years old)*

Political activist E’.E’. was arbitrarily arrested three times by PA Security Forces during the time mentioned above period due to his participation in various peaceful demonstrations called following the killing of Nizar Banat. He was first arrested on 5 July 2021 while in Al-Manara roundabout before the beginning of a peaceful demonstration. He was transferred to Al-Balou’s police station and arbitrarily detained for a day. The following morning, he was taken to Ramallah Magistrate Court on charges of “illegal gathering”; the court ruled to release him on bail.

On 21 August 2021, E’.E’. was arrested a second time while at Al-Manara roundabout to participate in a demonstration demanding accountability for Nizar Banat’s death and to call for the holding of Palestinian legislative elections. At the time of the arrest, PA police officers carrying lists of names arrested him along with a group of men and women, transferring them to Al-Balou’s police station in overcrowded cells that lacked ventilation. The following morning, E’.E’. was brought before the Public Prosecutor’s office, which charged him with attending an “illegal gathering” and extended his detention for 48 hours. On the third day, E’.E’. was taken to the Ramallah Magistrate Court, which released him on bail in return for his commitment to attend future trial sessions.

As soon as political activist E’.E’. left Al-Balou’s police station after completing the procedures for his release, he headed to Al-Manara roundabout to participate in a sit-in by the families of detainees against political arrests. While participating in the protest, the city police chief approached him and demanded that he leave the place. E’.E’. refused, responding that he would not leave the families that stood with him in solidarity during his detention. The police chief returned, took him close to the police car, and demanded that he leave again. After E’.E’. refused again, the police chief asked him to get into the police car, and 10 minutes later, the chief returned with two other officers to demand that he leave the place. E’.E’. responded that he would leave the car, but he would not leave the site, and that no one could coerce him in this manner.

E’.E’. was then transferred to Al-Balou’s police station, along with five other protestors in the area. After waiting hours in the General Investigations offices, they were taken to the Military Medical Services for medical examinations, after which they were taken back to the police station. E’.E’. was taken to a room containing other detainees that were not big enough for him to sleep in, so a detainee got up from his mattress, which he shares with another detainee, to offer it to E’.E’. to sleep. The room contained about 18 detainees, despite that it was built to only fit up to 10 individuals so that when mattresses were brought in, they placed them on the floor in the corridor leading to the bathroom.

The following morning, E’.E’. submitted a complaint to the prison director regarding the reason for his arrest and the poor conditions of his detention and arrest. E’.E’. was informed that the complaint had been passed on to the chief of the police force. Later, he was transferred, along with those arrested with them, to the Ramallah court and presented before the Public

Prosecutor's office, which extended his detention for another 24 hours on charges of "illegal gathering" and "inciting sectarian strife."

Upon his return to the police station, E'.E'. refused to enter the room, which lacked minimum living conditions. Following arguments and discussions with officials, he was transferred to a second room that was relatively better than the first. In the afternoon of the same day, he was released along with those with him.



### **The Palestinian Public Prosecutor's Office and Arrests based on Peaceful Assembly and Political Affiliation**

The role of the Public Prosecution in the Palestinian legal regime is that of investigation and indictment, representing society in bringing charges against cases relating to the public right.<sup>4</sup> In principle, the Public Prosecutor's Office seeks to strengthen the rule of law, and its vision, according to its stated mandate, strives for "a Palestinian society in which law and justice prevail, the principle of separation of powers, and in which rights are respected, and freedoms are maintained."<sup>5</sup> Despite its stated mandate, the Palestinian Public Prosecution continues to act beyond the role assigned to it by law, which must be consistent with the constitutional guarantees by Article 11 of the Basic Law, which emphasizes respect for the rights of personal freedoms and compliance with the standards and guarantees of arrest and detention by international legal conventions signed by the State of Palestine.

Nevertheless, the Palestinian Public Prosecution pursues a policy of issuing subpoenas against individuals with a political background, by Article 106 of the Palestinian Penal Procedures Law, which allows the issuing of subpoenas in the event the accused does not appear before a subpoena or for fear of their escape. The Public Prosecution issues subpoenas against citizens

<sup>4</sup> Mustafa Abdul-Baqi, Explanation of the Palestinian Penal Procedures Law No. (3) of 2003 (Palestine: Scientific Research and Publishing Unit - College of Law and Administration General at Birzeit University, 2015), 83.

<sup>5</sup> The official website of the Public Prosecution in Palestine, accessed 10 May 2021, <http://www.pgp.ps/ar/PP/Pages/MissionVision.aspx>

based on their expressed opinions and/or political activities, which are protected under Palestinian Basic Law and related legislation, based on requests by PA security forces who enjoy judicial impunity. These subpoenas are issued without referring to legal justifications necessary for such subpoenas and which often have no basis in the law, as is later proven through the issuance of court decisions acquitting charges against detained activists.

The role of the Public Prosecution in issuing an arrest warrant against Nizar Banat before his murder, despite that it was not preceded by the issuance of a subpoena, cannot be overlooked. On 4 May 2021, the Public Prosecution in Dawra (Hebron) issued an arrest warrant addressed to the Hebron police chief, ordering the arrest of the accused Nizar Banat to be brought before the Prosecutor's office in Dawra on charges of "defamation" of the PA, in violation of Article 45 of Law No. 10 of 2018, relating to Article 191, Penalties No. 16 of 1960. The arrest warrant came despite the Public Prosecutor's knowledge that Nizar Banat was only exercising his freedom of speech via social media and that his acts do not constitute a crime punishable by law. On the contrary, it is a protected practice under Palestinian Basic Law and international conventions to which the State of Palestine is a signatory. Still, the Public Prosecutor issued the arrest warrant against him, directed towards the security forces, in an attempt to criminalize the expression of opinion and place it within a broader framework of "slandering" the Palestinian Authority.

Arrests based on thought and expression, initiated by the Public Prosecution's issuance of subpoenas, thus denigrate the Public Prosecution's primary role in protecting the rights and freedoms guaranteed in the Basic Law, making it an unfair opponent in a public right case, and loses its purported independence in performing its tasks. The cumulative of which contradicts the Public Prosecution's stated mandate and the role entrusted to it in establishing justice and the rule of law without discrimination and in protecting fundamental rights and public freedoms.

The Public Prosecution's **overreach** is not limited to the issuance of subpoenas in cases of freedom of thought and expression or politically motivated cases. Instead, it extends to the arrest of activists exercising their right to peaceful assembly, their right to expression, and their right to political affiliation. In the last period, the Public Prosecution exploited its powers under the framework of Article 108 of the Palestinian Penal Procedures Law, which allows a public prosecutor to detain the accused for interrogation for 48 hours at a time. The Public Prosecution extended the detention of several detainees arrested during peaceful demonstrations during the period mentioned above, despite the arbitrary and illegal nature of their arrests by PA security forces. The UN Working Group on Arbitrary Detention, treaty committees, and the Human Rights Council in particular, which assumes the role of monitoring the provisions of the International Covenant on Civil and Political Rights (ICCPR), explicate that any arrest or detention taking place against the exercise of fundamental human rights falls within the definition of arbitrary detention. Moreover, in addition to employing detention as a punitive measure contrary to what is stipulated by law and contrary to its prescribed purpose as a precautionary measure.

The Public Prosecution's conduct concerning the exercise of rights and freedoms was applied discriminatorily against citizens in violation of the Basic Law, particularly Article 9. During the period in which the Public Prosecution issued subpoenas and extensions of detention against activists, Addameer submitted 11 complaints regarding the attack of protestors during peaceful demonstrations, including four complaints submitted to the Military Prosecution (against security and police force perpetrators) and seven complaints to the Civil Public Prosecution (against civilian and/or plainclothes perpetrators, it is unknown if they are affiliated with PA security forces). The communications were submitted on behalf of individual reports and requests. Nevertheless, to this day, no investigation has been opened, except one in response to a complaint submitted by a citizen regarding their assault and robbery by an individual in civilian attire while attending a peaceful demonstration. It was revealed that the perpetrator was a military officer, leading the file to be sent to the Military Prosecution, which submitted a list of charges against him relating to robbery and assault.

The Public Prosecution's delay in investigating reports of assault against citizens leads to the loss or damage of evidence, thus aggravating difficulties in identifying and reaching perpetrators, which leads to the absence of justice and violates the principle of the rule of law, and which is considered a failure by the Public Prosecution's Office to carry out the responsibilities and obligations that fall upon it under the law.

### **The Palestinian Judiciary and Cases of Detention on the Basis of Peaceful Assembly and Political Affiliation**

The role of the Palestinian judiciary in accepting cases and conducting trial procedures against detainees on the grounds of peaceful assembly, despite knowing that the facts of the case ascribed in the indictment do not conform to the legal text contained in the Penal Code, stems from judges' liberal prosecution of citizens on the grounds of peaceful assembly, freedom of opinion and expression, and political affiliation. Even when judges ruled for detainees arrested for their peaceful assembly to be released on bail—whether personal or financial—they continued trial procedures against the released detainees due to their exercise of fundamental rights, particularly the right to peaceful assembly.

On 30 November 2021, the Ramallah Magistrate Court issued a ruling acquitting seven activists on charges of illegal gathering due to the lack of sufficient evidence. Palestinian police arrested: Ahmad Kharouf, Obay Aboudi, Yahya Abu Al-Rab, Omar Al-Jallad, Adly Hanaysheh, Hussam Barjas, and Omar Ali in different areas near Al-Manara roundabout before the start of a peaceful demonstration called for to demand accountability for the murder of Nizar Banat, where they were taken to Al-Balou' Police Station. The following morning, on 6 July 2021, they were presented to the Magistrate Court, which ruled to release them on a personal bail of 1,000 Jordanian Dinars to ensure their attendance at future court sessions. Their trials lasted four months before the court ruled to acquit them of all charges laid against them.

Notably, in Addameer's long years of work on political detention, including the follow-up of detainees' cases before the Palestinian judiciary, about 99% of cases presented to the judiciary

relating to freedom of opinion and expression and political affiliation end with the acquittal of the accused, primarily due to “insufficient evidence.” This indicates the Palestinian justice system’s disregard for the rights of its citizens, as the political prisoner endures the long journey beginning with arrest and detention of freedom, interrogation by PA security forces, in which the detainee is often subjected to ill-treatment, up to the trial before a competent judiciary which drags on for months before the defendant is finally acquitted.

The judiciary constitutes one of the most critical national mechanisms for protecting rights and freedoms; to this end, an independent, impartial, and neutral judiciary is the fundamental guarantee for respecting the principle of the rule of law and the separation of powers. Palestinian judges have a duty to protect the fundamental rights of citizens, and their public freedoms, particularly in light of the State of Palestine’s ascension to international treaties and conventions guaranteeing these rights. As such, the judiciary must ensure that the Executive Authority is committed to its responsibilities toward its citizens. In the event of a violation, the judges must hold those who committed the violation accountable. Judges must also preserve their independence by combatting the influence or falling to the whims of the Executive Authority and stop accepting cases and following through court procedures against citizens practicing their right to peaceful assembly, freedom of expression, and political affiliation.

The most important guarantee of human rights is the principle of the rule of law. In the absence of the rule of law and the separation of powers, violations committed by the executive and judicial authorities against citizens are rampant. Such violations reinforce citizens’ mistrust of the authorities and the justice system as a whole and establish a state of disobedience, particularly in light of the discrimination between citizens based on political affiliation.

In the most recent period, a clear discriminatory pattern emerged by authorities regarding the right of citizens to conduct peaceful assemblies. The Executive Authority did not object to any assemblies organized by the Fatah movement or by the families of those accused of killing Nizar Banat; none of the organizers or participants were prosecuted, whereas other oppositional assemblies were subjected to severe repression, prosecution, and arrest. This discrimination against Palestinian citizens blatantly contravenes Article 9 of the Palestinian Basic Law, which prohibits discrimination between Palestinians before the law and the judiciary based on political opinion, and Article 26, which guarantees the rights of citizens to participate in political life and hold public meetings and assemblies within the limits of the law.

Finally, this practice violates the Universal Declaration of Human Rights (UDHR) and the International Covenant on Civil and Political Rights (ICCPR), prohibiting discrimination based on political rights. This report makes clear the necessity for a comprehensive and immediate accountability framework for all those involved in the crimes of discrimination, assault, torture, and arbitrary detention.