

Gaza - West Bank (22)

59

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- United States

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PAGE < TOC ≡ PAGE >

VI. BALANCING SECURITY AND HUMAN RIGHTS DURING THE INTIFADA

14/11-02

I admit the fact that the legal procedure is not completely 100 percent ... We are in a hurry. What are we going to do? We are in a corner, our back to the wall. We can't wait for more victims, more assassinations, more assassinated.

Freih Abu Meddein, Palestinian minister of justice⁴⁹

Because we have a difficult political situation, our internal situation must be strong. We must have a strong rule of law.

Ahmad M. Sayyad, lawyer and director of Mandela Institute for Prisoners⁵⁰

"Collaborators" and the Intifada

One of the most explosive issues within Palestinian society concerns Palestinians who allegedly assist or cooperate with Israel in ways harmful to Palestinian national security.⁵¹ The issue of collaborators has become especially acute during this Intifada, in connection with charges that Palestinians have provided information that enabled Israeli security forces to kill Palestinians they are targeting as part of their policy of "liquidations" of militants who are said to pose a threat to Israelis.⁵²

Since Israel withdrew from territories now under the control of the PA, Israel's "need to recruit agents has grown," writes an Israeli journalist:

The burden of gathering intelligence now falls mainly on collaborators. It is perhaps the dirtiest game of the occupation, and far from fading away, it continues as strong as ever ... the Shin Bet tries every possible method of acquiring more agents and its people cynically exploit economic and personal hardships. A license to visit Israel? An exit permit for medical treatment? Family reunification? First tell us a little about what's happening in the village mosques.⁵³

Many Palestinians see collaborators as the enemy within. The issue has split communities, creating fear and suspicion, stigmatizing families if one member is accused perhaps in an anonymous leaflet of "collaborating." Hanna Mansour Salama (see below), convicted by a court in January 2001 of cooperating with Israeli security, was quickly denounced by his family in an advertisement placed in *Al-Ayyam* newspaper, which declared "we have cut off relations with him. . . . We support the verdict against him, and against all the traitors...."⁵⁴

During the first Intifada, before the PA was established, hundreds of alleged collaborators were lynched, tortured or killed, at times with the implied support of the PLO.⁵⁵ Street killings of alleged collaborators continue in the current Intifada (see below) but so far in much fewer numbers. During this Intifada, the PA has arrested hundreds of suspected collaborators, tortured many to extract confessions put some on trial, and televised confessions. State security and military courts have convicted a handful-imposing the death penalty on most, two of whom have been executed. The aim is to punish suspected collaborators and deter others from assisting Israel. The PA also offered to pardon collaborators who turned themselves in and gave a full confession during a highly-publicized forty-five-day "amnesty" that began on January 13, 2001. Officials told Human Rights Watch that relatively few people took advantage of the "amnesty."

The term "collaborator" has several broad and sometimes ill-defined meanings.⁵⁶ During the current Intifada particular focus has been put on two types of collaborators. The "informant" (*jasus*) provides Israeli security forces with information about the activities and movements of Palestinian activists, while the "infiltrator" succeeds in infiltrating Palestinian organizations and providing information from the inside. The "land dealer" (*simsar al-aradi*) or broker facilitates the purchase of Palestinian land by Israelis, often by purchasing blocks of land and then reselling it.

There are, however, other meanings of collaborator that were more relevant to the period of the Israeli occupation through 1994. The "intermediary" (*al-wasit*) helped Palestinians do the complex paper work and security checks the Israelis required before granting most services. The "armed collaborator" (*al-'amil al-musallah*) accompanied Israeli Special Forces to identify the houses of wanted activists. Palestinians have also spoken about the "economic collaborators" who tried to promote Israeli products on the Palestinian market, often acting as representatives of Israeli companies, and the "political collaborators" who officially or informally represented Israeli interests, sometimes taking on positions of authority in local administrations.

In the tensions of the current conflict almost anyone fitting these descriptions is at risk of being denounced or killed by unknown attackers or arrested by security forces, even for activities committed many years ago during the Israeli occupation. The following sections will consider which aspects of the popular notions of "collaboration" could be considered a criminal offense under human rights principles and Palestinian law and how such people should be treated.

Applying Human Rights Principles

The PA has a responsibility to protect people living under its jurisdiction and to arrest and put on trial those who have committed a criminal offense that threatens public safety. International human rights principles point to the circumstances in which the arrest, detention, and trial of alleged collaborators may be legitimate. These same principles indicate serious abuses in the way the PA deals with alleged collaborators.

First, certain human rights, enshrined in article 4 of the U.N. International Covenant on Civil and Political Rights, can never be ignored or suspended in any circumstances. These include the right not to be arbitrarily deprived of life and the

right not to be tortured. No matter what crime an alleged collaborator or other detainee may be accused of committing, he or she can never be tortured or extrajudicially, summarily, or arbitrarily killed. Yet, as this report shows, alleged Palestinian collaborators have been tortured and some have died in custody.

Second, it is a basic principle of criminal law that, for an individual to be detained she or he must be suspected of, or charged with, having committed a recognizable criminal offense—that is, an offense established by law. PA officials told Human Rights Watch they only arrest, detain and prosecute collaborators who fall into two categories. The first is made up of those who have had a relationship with Israeli security after 1994,⁵⁷ especially informants who give information that assists Israel in its policy of "liquidations."⁵⁸ From the perspective of the Palestinian Authority, giving such information to Israel amounts to a recognizable criminal offense akin to "treason" or "espionage," and is punishable by death or a lengthy term of imprisonment.

The PA also says it arrests Palestinians who sell land to Israelis. It is not uncommon for governments to prohibit or penalize the alienation of land to foreigners, including nationals of neighboring countries. Violations of such prohibitions are usually dealt with by blocking the sale of land in the courts, and/or by imposing fines or terms of imprisonment. In the context of the Palestinian-Israeli conflict, the PA has declared all such alienation of land as a threat to national security carrying a lengthy term of imprisonment, or even the death penalty.

In both of the above examples, the PA does not distinguish between different levels of culpability, nor does it appear to take account of the intentionality element. For example, mere contact with Israelis, even Israeli security officials, should not by itself constitute a treasonable offense unless the accused carried out a specific act, such as intentionally giving sensitive information to the Israeli authorities. An unwitting participant in Israeli intelligence-gathering activity should not be charged with, nor found guilty of, the severe crime of treason.

Finally, if any person is arrested on suspicion of having committed a form of collaboration that is a recognizable criminal offense, he or she must be treated according to the law and in line with international human rights standards for arrest, detention, and trial. If legitimately arrested, an alleged collaborator must be treated equally and fairly, like any other criminal suspect. This includes ensuring he or she is charged within a reasonable time or released, and not being subject to prolonged or arbitrary detention.

"Collaboration" in Palestinian Criminal Law

In the first State Security Court trial in the West Bank of an alleged collaborator accused of passing information to Israel which assisted in a 'liquidation' (see trial of 'Alam Bani 'Odeh in State Security Court below), the accused was charged with premeditated murder and being an accomplice to murder under the 1960 Jordanian Penal Code. He was also charged under the 1979 PLO Revolutionary Penal Code (described below). Subsequent State Security Court trials in the West Bank have invariably applied article 111 of the 1960 Jordanian Penal Law, which says:

Any Jordanian who conspires with a foreign state, or contacts it to



incite an aggression against the state or to provide the means for such aggression, is punished with life imprisonment with hard labor. The act is punishable by execution if it had repercussions.

Article 112 of this law is also occasionally used, but is more open-ended, providing the death penalty for "Any Jordanian who conspires with the enemy or contacts it to collaborate with it by any means to achieve victory over the state..."

The laws used in the Gaza Strip are still more loosely-worded, unsuited to trying civilians and open to abuse. The 1979 Revolutionary Code, used in the past to discipline its fighters, has never been incorporated into PA domestic law, yet it has occasionally been applied by the State Security Court and continues to be used regularly in the Military Court. "Treason" in article 131 is punishable by death for "anyone who works or establishes a relationship with a state or party hostile to the revolution ... to commit hostile acts against the revolution" or "to support its [the enemy state's] military operations or to harm the military operations of the revolution." The State Security Court in Gaza has also referred to espionage provisions of (Egyptian) order no. 555 of 1957, introduced when Egypt controlled the Gaza Strip. The provisions of order no. 555 should also be reviewed and updated.

Those accused of selling land in the West Bank are prosecuted under Jordanian law. Prior to 1967 Jordanian law provided a punishment of up to five years in prison for selling land to "foreigners."⁵⁹ This appears to have been superseded in 1973 by the Law for Preventing the Sale of Immovable Property to the Enemy, which characterized the sale of land to Israelis in Jordan or the West Bank as a crime against state security punishable by death. Jordan repealed this law as part of the peace process with Israel. Although there is continuing legal controversy about whether either of these laws applies in the West Bank today,⁶⁰ the PA attorney general said in May 1997 that he would seek the death penalty for any Palestinian convicted of selling land to Jews.⁶¹ Human Rights Watch has learned of three persons, a judge, a notary, and a lawyer, who have been arrested in 2001 allegedly for involvement in land sales to Israelis, though it is not known if anyone has been charged or tried.

49 Quoted in an interview by Orla Guerin for BBC News, March 20, 2001, http://news.bbc.co.uk/hi/english/world/middle_east/newsid_1231000/1231455.stm

50 Human Rights Watch interview, Ramallah, September 9, 2001.

51 For detailed studies on Palestinian "collaborators" and human rights, see PHRMG, *Human Rights and Legal Position of Palestinian 'Collaborators'*, July 2001, <http://www.phrmg.org/English/Collaborators/Collaborators.htm>; and B'Tselem, *Collaborators in the Occupied Territories: Human Rights Abuses and Violations*, by Dr. Saleh Abdel Jawad and Yizhar Be'er, February 1995.

52 See Human Rights Watch, "Letter to Ehud Barak: Halt 'Liquidations'," press release, January 29, 2001.



53 Gideon Levy, "Between False Friends and True Enemies," *Ha'aretz*, May 14, 2000, quoted in PHRMG, *Human Rights and Legal* . . .

54 Tom Segev, "Condemned to Death in Four and a Half Hours," *Ha'aretz*, January 19, 2001, p. B6.

55 See PHRMG, *Human Rights and Legal* . . . , and B'Tselem, *Collaborators in the Occupied Territories* . . .

56 The following is taken from Dr. Saleh Abd al-Jawwad, "The Classification and Recruitment of Collaborators," in papers from the PASSIA conference on collaborators (see footnote no. 1 above).

57 Article XX(4) of the 1994 Gaza-Jericho Agreement provided that until there is an "agreed solution" for "Palestinians who were in contact with the Israeli authorities," the "Palestinian side undertakes not to prosecute these Palestinians or harm them in any way." Article XVI (2) of the Israeli Palestinian Interim Agreement on the West Bank and the Gaza Strip ("Oslo II") of September 28, 1995 states that "Palestinians who have maintained contact with the Israeli authorities will not be subjected to acts of harassment, violence, retribution or prosecution."

58 See Human Rights Watch, "Letter to Ehud Barak. . . ."

59 See PHRMG, *Human Rights and Legal* . . .

60 Human Rights Watch discussions with Hussain Abu Hannud, PICCR lawyer, Ramallah, September 9, 2001.

61 Human Rights Watch, *World Report 1998*, p. 340.

PAGE < TOC PAGE >

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