

**Comments on the Operational Guidance Note (February 2009) on Israel, Gaza and the West Bank by Jo Pettitt, Research Information and Policy Unit (RIPU) of the Immigration Advisory Service (IAS)**

**With comments on Article 1D of the Refugee Convention by Nick Oakeshott, Head of Law, Asylum Aid**

1. This document has been prepared by members of the Still Human, Still Here campaign. It is being published, along with the COI referred to within in it, to help legal practitioners representing asylum seekers. It is meant to be used as a guide to some of the COI available. It was prepared 15 April 2010. There is, however, no guarantee that the COI referred is comprehensive and it should not be a substitute for case specific COI research.
2. **THIS DOCUMENT IS A GUIDE FOR LEGAL PRACTITIONERS OF RELEVANT COI, WITH REFERENCE TO THE OPERATIONAL GUIDANCE NOTE ON ISRAEL, GAZA AND THE WEST BANK ISSUED IN FEBRUARY 2009. THIS DOCUMENT SHOULD NOT BE SUBMITTED TO UKBA, THE TRIBUNAL OR IN PROCEEDINGS. LEGAL PRACTITIONERS ARE WELCOME TO SUBMIT THE COI REFERED TO IN THIS DOCUMENT.**

**Overview**

3. This first section of the review focuses on the Main Categories of Claim, excluding UNRWA and Statelessness. These remaining two categories are dealt with at the end of the document. The first section covers:
  3. Main categories of claim - 3.1 – 3.5
    - Gaza and the West Bank
    - General Country Situation - 3.6
    - Members of militant groups - 3.7
    - Fatah members/Gaza - 3.8
    - Hamas members/West Bank - 3.9
    - Forced recruitment to armed groups - 3.10
    - Israeli collaborators - 3.11
4. The main concerns with these sections of the Operational Guidance Note (OGN) are: 1) the use of Country of Origin Information (COI) sources, including out of date sources, inaccurate and incomplete referencing of sources and the inadequate use of COI to address all relevant issues, and; 2) conclusions and guidance which are not adequately argued or evidenced by the COI presented.

5. For each category of claim, specific comments in relation to these points are given below. In addition reference is made to current and relevant COI.
6. As a generic point that applies across all OGNs we consider that guidance should refrain from using the language of “sufficiency of protection”. The UK Border Agency accepts that protection must be effective and the applicant must be able to access it<sup>1</sup>, if a claim for international protection is to be refused on these grounds.

## Main categories of claim

### Gaza and West Bank: General Country Situation

4. This section deals with claimants who ‘make an asylum or human rights claim based on ill-treatment amounting to persecution due to the violent and volatile general situation in the West Bank and Gaza.’<sup>2</sup> From the use of the word ‘volatile’ in this statement it is acknowledged that the situation in the Occupied Territories is unstable and subject to change. In order to be able to give accurate guidance for claimants who may fall in to this category therefore, it is important that reference is made to the most recent and relevant COI, and also that the West Bank and Gaza are dealt with distinctly, given the differences in the situation on the ground in the two territories.
  1. *The use of COI sources*
    5. Five sources are referred to in this section of the current OGN. Two of these are from 2007; USSD Human Rights Report and the FCO Human Rights Report. Given that these are both annual reports, the current version should have been cited. A third report from Amnesty International, presumably the annual report, is simply cited as ‘Amnesty International 2008’. One other source cited, a report from B’Tselem entitled ‘Violations of the human rights of Palestinians by Palestinians’, is not dated. The most recent source cited is an OCHA field report from January 2009.
    6. Although URLs are included in the full list of source documents it is clearly a time consuming process for the OGN user to trace the original report in order to check its date and for other potentially relevant information. Such information should be included as a matter of course.
    7. Overall the range of sources used and depth of information considered is very limited for such a complex assessment of risk to be made. Moreover, given that the OGN will only be reviewed periodically, and therefore that the COI and the guidance might become outdated by emerging facts on the ground, it would be preferable for decision makers to be advised in the OGN to make their decisions on cases of this type in accordance with the most recent evidence and the specific facts of the case. If that information is not available or not current in the latest UKBA COIS report, then UKBA decision makers should be encouraged to make

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<sup>1</sup> See, for example, the attached letter from Amelia Wright, Head of Asylum Policy to Alaisdair Mackenzie, Acting Chair of ILPA and Nuala Mole, Director of the AIRE Centre dated 08/02/10 headed Response to ILPA and the AIRE Centre comments to the UK Border Agency on the recast Procedures and Qualification Directives.

<sup>2</sup> UK Home Office Border Agency, Operational Guidance Note: Israel, Gaza and the West Bank, 04/02/2009, para 3.6.1

use of the COIS case specific research request service, or by independent research, to access such relevant information.

8. By way of example, a non-exhaustive range of COI sources give the following information about the current security and humanitarian situation in Gaza and the West Bank:

*Current security situation in Gaza*

9. Recent evidence shows that the security situation in Gaza remains very dangerous. On April 2, 2010, Israel bombed 4 structures in Gaza which it said were used to make and store weapons; although no one was killed, three Palestinian children were injured by flying glass.<sup>3</sup> The Daily Telegraph reported that Israel was threatening a fresh offensive in Gaza in addition to these April 2 attacks, and the newspaper called this “the most serious escalation of violence for a year”<sup>4</sup> There is evidence that in March 2010, one Palestinian was killed and 12 more were injured when Israeli forces opened fire on Palestinian demonstrators.<sup>5</sup> On March 27, 2010, Voice of America reported that fighting in Gaza left 2 Israeli soldiers and several Palestinian fighters dead.<sup>6</sup> Human Rights Watch reported that in 2009 Palestinian armed groups placed civilians at risk by firing rockets from densely populated areas, and that armed groups intentionally hid behind civilians to use them as shields to deter Israeli counter-attacks.<sup>7</sup>

*General humanitarian situation in Gaza; access to food, water, and other goods & services*

10. There is strong evidence that, particularly because of Israel’s blockade of Gaza which has been in place since 2007, the humanitarian situation in Gaza is dire. The blockade makes it impossible for basic goods to reach the people of Gaza.<sup>8</sup> The UNRWA says that poverty and unemployment have risen to “unprecedented levels” since the blockade was imposed<sup>9</sup>, and the International Red Cross reports that “most families in Gaza are afflicted by unemployment and poverty”.<sup>10</sup> In addition, although the UN and many aid organisations serve Gaza, there is evidence that the blockade has prevented these groups from bringing needed supplies to the area.<sup>11</sup> Human Rights Watch reported in its most recent World Report’s section on Gaza:

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<sup>3</sup> The New York Times, “Israel Mounts Air Attacks in Gaza,” 03/04/2010

<http://www.nytimes.com/2010/04/03/world/middleeast/03gaza.html>

<sup>4</sup> The Daily Telegraph (London), “Air strikes raise threat of a new Gaza offensive,” 03/04/2010 available at: [www.lexisnexis.com](http://www.lexisnexis.com) [subscription only]

<sup>5</sup> AlArabiya.net, “Palestinian killed, 12 hurt in Gaza demos,” 29/03/2010

available at: [www.lexisnexis.com](http://www.lexisnexis.com) [subscription only]

<sup>6</sup> Voice of America (VOA) News, “Israeli Forces Leave Gaza after Fiercest Clashes in 14 Months,” 27/03/2010

<http://www1.voanews.com/english/news/Israeli-Forces-Leave-Gaza-after-Fiercest-Clashes-in-14-Months.html>

<sup>7</sup> Human Rights Watch, “World Report 2010: Israel / Occupied Palestinian Territories (OPT),” 20/01/2010

<http://www.hrw.org/en/world-report-2010/israel-occupied-palestinian-territories-opt>

<sup>8</sup> U.S. State Dept., “2009 Human Rights Report: Israel and the occupied territories,” 11/03/2010 [Excerpt]

<http://www.state.gov/g/drl/rls/hrrpt/2009/nea/136070.htm>

<sup>9</sup> Voice of America News, “UN: Gaza in State of Physical, Psychological Collapse,” 25/01/2010

<http://www1.voanews.com/english/news/middle-east/UN--Gaza-Physical-Psychological-Collapse--82614082.html>

<sup>10</sup> International Committee of the Red Cross (ICRC), “Gaza: one year after war, still no prospect of decent life,” 22/12/2009

<http://www.icrc.org/web/eng/siteeng0.nsf/html/palestine-gaza-update-211209>

<sup>11</sup> Internal Displacement Monitoring Centre, “Occupied Palestinian Territory: Gaza offensive adds to scale of displacement: A profile of the internal displacement situation,” 30/12/09 [Excerpt]

Hundreds of thousands of people lacked electricity, running water, cooking gas, gasoline and other goods for weeks on end; raw sewage flooded some city streets; hospitals were overcrowded, lacked essential medicines, and were often inaccessible to the wounded. As of September roughly 20,000 people remained homeless and 10,000 remained without water. Items Israel prohibited from entry included reconstruction materials, chickpeas, dates, macaroni, a water purification system, and 120 truckloads of school supplies.<sup>12</sup>

#### *electricity*

11. There is evidence that Gaza lacks adequate electricity, which also affects the ability of hospitals, water and sewerage systems to function.<sup>13</sup> Amnesty International et al. reported that 90% of the people of Gaza continue to suffer power cuts of four to eight hours per day.<sup>14</sup>

#### *food*

12. The evidence shows that food security is a major problem in Gaza. Sources report that prices for food have increased dramatically because of the blockade, which has forced families to go without needed nutrients<sup>15</sup>. A source cited in the UK Parliament Foreign Affairs Committee report on Israel and the Occupied Palestinian Territories stated Operation Cast Lead made food insecurity in Gaza even worse: "90% of people [in Gaza] are partially dependent on food aid compared to 76% before the conflict."<sup>16</sup> The U.S. State Dept. reports that UNRWA provides food assistance to 750,000 refugees in Gaza.<sup>17</sup>

#### *water*

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[http://www.nrc.ch/8025708F004BE3B1/\(httpInfoFiles\)/D40639B05526A2D4C125769C00408166/\\$file/Occupied+Palestina n+Territory+-+December+2009.pdf](http://www.nrc.ch/8025708F004BE3B1/(httpInfoFiles)/D40639B05526A2D4C125769C00408166/$file/Occupied+Palestina n+Territory+-+December+2009.pdf)

<sup>12</sup> Human Rights Watch, "World Report 2010: Israel / Occupied Palestinian Territories (OPT)," 20/01/2010

<http://www.hrw.org/en/world-report-2010/israel-occupied-palestinian-territories-opt>

<sup>13</sup> Internal Displacement Monitoring Centre, "Occupied Palestinian Territory: Gaza offensive adds to scale of displacement: A profile of the internal displacement situation," 30/12/09 [Excerpt]

[http://www.nrc.ch/8025708F004BE3B1/\(httpInfoFiles\)/D40639B05526A2D4C125769C00408166/\\$file/Occupied+Palestina n+Territory+-+December+2009.pdf](http://www.nrc.ch/8025708F004BE3B1/(httpInfoFiles)/D40639B05526A2D4C125769C00408166/$file/Occupied+Palestina n+Territory+-+December+2009.pdf)

<sup>14</sup> Amnesty International, Oxfam International et al., "FAILING GAZA: No rebuilding, no recovery, no more excuses: A report one year after Operation Cast Lead," 22/12/2009

<http://www.oxfam.org/sites/www.oxfam.org/files/failing-gaza-no%20rebuilding-no-recovery-no-more-excuses.pdf>

UK Parliament House of Commons Foreign Affairs Committee, "Global Security: Israel and the Occupied Palestinian Territories," 15/07/2009

<http://www.publications.parliament.uk/pa/cm200809/cmselect/cmffaff/261/26105.htm#a5>

<sup>15</sup> U.N. Human Rights Council, "Human Rights in Palestine and Other Occupied Arab Territories: Report of the United Nations Fact-Finding Mission on the Gaza Conflict," 25/09/2009

<http://www2.ohchr.org/english/bodies/hrcouncil/docs/12session/A-HRC-12-48.pdf>

Palestinian Center for Human Rights, "23 Days of War, 928 Days of Closure: Life One Year after Israel's Latest Offensive on the Gaza Strip, 27 December 2008 – 18 January 2009," 23/12/2009 [Excerpt]

[http://www.pchrgaza.org/files/Reports/English/pdf\\_spec/23-days.pdf](http://www.pchrgaza.org/files/Reports/English/pdf_spec/23-days.pdf)

International Committee of the Red Cross (ICRC), "Gaza: one year after war, still no prospect of decent life," 22/12/2009

<http://www.icrc.org/web/eng/siteeng0.nsf/html/palestine-gaza-update-211209>

<sup>16</sup> UK Parliament House of Commons Foreign Affairs Committee, "Global Security: Israel and the Occupied Palestinian Territories," 15/07/2009

<http://www.publications.parliament.uk/pa/cm200809/cmselect/cmffaff/261/26105.htm#a5>

<sup>17</sup> U.S. State Dept., "2009 Human Rights Report: Israel and the occupied territories," 11/03/2010 [Excerpt]

<http://www.state.gov/g/drl/rls/hrrpt/2009/nea/136070.htm>

13. In addition, the sources consulted show that access to clean water is very difficult for most individuals in Gaza: water treatment plants are unable to function because of the lack of electricity, and the water and sanitation infrastructure heavily damaged in Operation Cast Lead has yet to be adequately repaired.<sup>18</sup> The UN Fact-finding mission to Gaza reported in September 2009 that “of the water supplied to Gaza 80 per cent did not meet WHO standards for drinking water” and that “important health risks were consequently likely to arise”.<sup>19</sup> The UK Foreign Affairs Committee cited evidence that 50,000 people are without running water, and that a further 100,000 receive running water at home only once every seven to ten days.<sup>20</sup>

#### *healthcare*

14. There is strong evidence that the health system in Gaza is also in disarray: sources report that, because of the blockade on raw building materials such as concrete, it is not possible to rebuild buildings, and the blockade also makes it difficult for people to access needed medicines and trained health personnel.<sup>21</sup>

#### *Current security and humanitarian situation in the West Bank*

15. The situation in the West Bank is characterised by restrictions on freedom of movement, increased settlement related violence including property demolition, and rising vulnerability of Palestinians and directed violence and abuse by Palestinian security forces against civilians. Sources listed in this review, particularly in the following paragraphs, should be seen as an example of the COI available in the public domain and are not exhaustive.

16. With regard to freedom of movement, several sources continue to document the severe restrictions put in place, including the difficulties in granting residency permits.<sup>22</sup> The Office

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<sup>18</sup> Amnesty International, Oxfam International et al., “FAILING GAZA: No rebuilding, no recovery, no more excuses: A report one year after Operation Cast Lead,” 22/12/2009

<http://www.oxfam.org/sites/www.oxfam.org/files/failing-gaza-no%20rebuilding-no-recovery-no-more-excuses.pdf>

International Committee of the Red Cross (ICRC), “Gaza: one year after war, still no prospect of decent life,” 22/12/2009

<http://www.icrc.org/web/eng/siteeng0.nsf/html/palestine-gaza-update-211209>

<sup>19</sup> N. Human Rights Council, “Human Rights in Palestine and Other Occupied Arab Territories: Report of the United Nations Fact-Finding Mission on the Gaza Conflict,” 25/09/2009

<http://www2.ohchr.org/english/bodies/hrcouncil/docs/12session/A-HRC-12-48.pdf>

<sup>20</sup> UK Parliament House of Commons Foreign Affairs Committee, “Global Security: Israel and the Occupied Palestinian Territories,” 15/07/2009

<http://www.publications.parliament.uk/pa/cm200809/cmselect/cmfa/261/26105.htm#a5>

<sup>21</sup> International Committee of the Red Cross (ICRC), “Gaza: one year after war, still no prospect of decent life,” 22/12/2009

<http://www.icrc.org/web/eng/siteeng0.nsf/html/palestine-gaza-update-211209>

Amnesty International, Oxfam International et al., “FAILING GAZA: No rebuilding, no recovery, no more excuses: A report one year after Operation Cast Lead,” 22/12/2009

<http://www.oxfam.org/sites/www.oxfam.org/files/failing-gaza-no%20rebuilding-no-recovery-no-more-excuses.pdf>

<sup>22</sup> See for example the Office of the United Nations High Commissioner for Human Rights (OHCHR), Report of the Special Committee to Investigate Israeli Practices Affecting the Human Rights of the Palestinian People and Other Arabs of the Occupied Territories, 09/09/2009, para. 47,

<http://www.unhcr.org/refworld/publisher,UNGA,COUNTRYREP,PSE,4ad4747b2,0.html>; the UK Foreign and

Commonwealth Office (FCO), Annual Report on Human Rights 2009 - Countries of Concern: Israel and the Occupied

Palestinian Territories, 17/03/2010, <http://centralcontent.fco.gov.uk/resources/en/pdf/human-rights-reports/human->

[rights-report-2009](http://centralcontent.fco.gov.uk/resources/en/pdf/human-rights-reports/human-rights-report-2009); Internal Displacement Monitoring Centre (Norwegian Refugee Council), Occupied Palestinian Territory:

Gaza offensive adds to scale of displacement, 30/12/2009, <http://www.internal->

[displacement.org/8025708F004BE3B1/\(httpInfoFiles\)/CFB20A80C60A20EC125769C003BD617/\\$file/OPT\\_Overview\\_Dec0](http://www.internal-displacement.org/8025708F004BE3B1/(httpInfoFiles)/CFB20A80C60A20EC125769C003BD617/$file/OPT_Overview_Dec0)

of the United Nations High Commissioner for Human Rights reports the rising of “flying” checkpoints, as well as “administrative and legislative measures that include the formal annexation of territory to Israel, the declaration of areas as “closed military zones”, prohibition of the use of roads, prohibition, on the basis of age or sex, on moving through checkpoints, and time limitations on the opening of checkpoints and curfews”.<sup>23</sup> The same report notes that “males between the ages of 16 and 35” are particularly unable to leave cities in the northern West Bank and further reports that “freedom of movement is significantly obstructed by a network of roads in the West Bank which links settlements to each other and to Israel and is off limits to Palestinians. The prohibition of access to key arteries, within the West Bank, is severely impacting on the freedom of movement of Palestinians” in general.<sup>24</sup>

17. With regard to the increase in settlements, this has led to a rise in violence, as well as aggravated the already restrictive movement possibilities of Palestinians, particularly for young men and farmers.<sup>25</sup> According to the Internal Displacement Monitoring Centre, a “high proportion of attacks are undertaken by settlers, with Israeli minors often implicated in order to limit criminal culpability”.<sup>26</sup> This violence and intimidation is leading to the closure of Palestinian businesses as well the vacation of Palestinian homes.<sup>27</sup> In addition, Human Rights Watch documents the demolition of Palestinian homes by Israeli authorities on dubious grounds, forcibly displacing numerous families.<sup>28</sup>

## 2. Conclusions and guidance

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[9.pdf](#); Human Rights Watch, World Report 2010: Israel / Occupied Palestinian Territories (OPT), 20/01/2010, <http://www.unhcr.org/refworld/docid/4b586ceec.html>

<sup>23</sup> Office of the United Nations High Commissioner for Human Rights (OHCHR), Report of the Special Committee to Investigate Israeli Practices Affecting the Human Rights of the Palestinian People and Other Arabs of the Occupied Territories, 09/09/2009, para. 48, <http://www.unhcr.org/refworld/publisher,UNGA,COUNTRYREP,PSE,4ad4747b2,0.html>

<sup>24</sup> See for example the Office of the United Nations High Commissioner for Human Rights (OHCHR), Report of the Special Committee to Investigate Israeli Practices Affecting the Human Rights of the Palestinian People and Other Arabs of the Occupied Territories, 09/09/2009, paras. 48 and 49,

<http://www.unhcr.org/refworld/publisher,UNGA,COUNTRYREP,PSE,4ad4747b2,0.html>

<sup>25</sup> See for example the UK Foreign and Commonwealth Office (FCO), Annual Report on Human Rights 2009 - Countries of Concern: Israel and the Occupied Palestinian Territories, 17/03/2010, <http://centralcontent.fco.gov.uk/resources/en/pdf/human-rights-reports/human-rights-report-2009>; Internal Displacement Monitoring Centre (Norwegian Refugee Council), Occupied Palestinian Territory: Gaza offensive adds to scale of displacement, 30/12/2009, [http://www.internal-displacement.org/8025708F004BE3B1/\(httpInfoFiles\)/CFB20A80C060A20EC125769C003BD617/\\$file/OPT\\_Overview\\_Dec09.pdf](http://www.internal-displacement.org/8025708F004BE3B1/(httpInfoFiles)/CFB20A80C060A20EC125769C003BD617/$file/OPT_Overview_Dec09.pdf)

<sup>26</sup> Internal Displacement Monitoring Centre (Norwegian Refugee Council), Occupied Palestinian Territory: Gaza offensive adds to scale of displacement, 30/12/2009, [http://www.internal-displacement.org/8025708F004BE3B1/\(httpInfoFiles\)/CFB20A80C060A20EC125769C003BD617/\\$file/OPT\\_Overview\\_Dec09.pdf](http://www.internal-displacement.org/8025708F004BE3B1/(httpInfoFiles)/CFB20A80C060A20EC125769C003BD617/$file/OPT_Overview_Dec09.pdf)

<sup>27</sup> Internal Displacement Monitoring Centre (Norwegian Refugee Council), Occupied Palestinian Territory: Gaza offensive adds to scale of displacement, 30/12/2009, [http://www.internal-displacement.org/8025708F004BE3B1/\(httpInfoFiles\)/CFB20A80C060A20EC125769C003BD617/\\$file/OPT\\_Overview\\_Dec09.pdf](http://www.internal-displacement.org/8025708F004BE3B1/(httpInfoFiles)/CFB20A80C060A20EC125769C003BD617/$file/OPT_Overview_Dec09.pdf)

<sup>28</sup> Human Rights Watch, World Report 2010: Israel / Occupied Palestinian Territories (OPT), 20/01/2010, <http://www.unhcr.org/refworld/docid/4b586ceec.html>. See also the UK Foreign and Commonwealth Office (FCO), Annual Report on Human Rights 2009 - Countries of Concern: Israel and the Occupied Palestinian Territories, 17/03/2010, <http://centralcontent.fco.gov.uk/resources/en/pdf/human-rights-reports/human-rights-report-2009>; Internal Displacement Monitoring Centre (Norwegian Refugee Council), Occupied Palestinian Territory: Gaza offensive adds to scale of displacement, 30/12/2009, [http://www.internal-displacement.org/8025708F004BE3B1/\(httpInfoFiles\)/CFB20A80C060A20EC125769C003BD617/\\$file/OPT\\_Overview\\_Dec09.pdf](http://www.internal-displacement.org/8025708F004BE3B1/(httpInfoFiles)/CFB20A80C060A20EC125769C003BD617/$file/OPT_Overview_Dec09.pdf)

18. It is acknowledged in paragraph 3.6.11 of the OGN that the option of internal relocation is not available to claimants in this category as 'the whole of Gaza and the West Bank is affected by the armed struggle between Palestinians and the Israeli authorities'.

However the concluding paragraph states

3.6.13 Conclusion [...] The **reports of tension and security breaches do not indicate that there would be a consistent pattern of gross and systematic violation of rights** under Article 3 of the ECHR. Whilst it is acknowledged that the general economic and humanitarian situation in the West Bank and Gaza is poor, it is considered that the **cumulative difficulties faced by residents do not reach the minimum level of severity** for persecution or serious harm, nor is the threshold for a breach of Article 3 likely to be reached. The grant of Humanitarian **Protection on account of generalised violence will only be appropriate where the particular circumstances of the individual** are such that their return will breach Article 3. Case owners should refer to the Asylum Instructions on Humanitarian Protection for further information. (Emphasis added)

19. The conclusions reflect the finding of the most recent case law from the AIT, MA (Palestinian Arabs – Occupied Territories – Risk) Palestinian Territories CG [2007] UKAIT 00017, which was heard in November 2006 and promulgated in February 2007. As cited in the OGN, this case found that

[...]' The **difficulties faced by Palestinians in the Occupied Territories (economic situation, food insecurity, travel restrictions etc)** taken cumulatively are **not such that the minimum level of severity for persecution or serious harm is reached**, nor is the minimum threshold for a breach of a returnees' rights under Article 3 reached.[...](Emphasis added)<sup>29</sup>

20. This case remains current case law and considers the issue of ill-treatment amounting to persecution due to the general situation in the Occupied Territories. Although it finds that this threshold had not been met, it should be noted that the case was heard in November 2006 and that the latest COI evidence included in the 'background materials', is dated 13 November 2006. As the situation on the ground has demonstrably changed since then, quite dramatically in the case of Gaza in particular, it would seem appropriate for decision makers to be advised that reliance on the findings of this case should be set against current objective evidence and the specifics of the individual claimant.

21. In an evolving situation which is subject to rapid and dramatic change, as evidenced by the Israeli offensive in Gaza in December 2008- January 2009, the assessment of risk of ill treatment due to the 'volatile and violent general situation' that exists in the West Bank and Gaza needs to be assessed in light of the most current and authoritative sources of COI available. However, even the limited and dated information cited in the OGN is not accurately represented in the conclusion, which refers merely to 'tension and security breaches' and 'poor' economic and humanitarian conditions.

22. By contrast, the evidence presented describes a situation of 'increasing lack of law and order' (paragraph 3.6.3); 'frequent air strikes and other attacks by Israeli forces' killing numerous Palestinian civilians; the closure of Gaza and the consequent devastation of the economy and further deterioration of the humanitarian situation; the further devastation in Gaza caused by the 2008-9 Israeli offensive as well as the loss of life and injury; the severe freedom of movement restrictions in the West Bank and consequent effects on the lives and

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<sup>29</sup> MA (Palestinian Arabs – Occupied Territories – Risk) Palestinian Territories CG [2007] UKAIT 00017, para 129

livelihood of Palestinians and continuing violence and harassment from settlers in the West Bank.

23. More up to date and comprehensive COI indicates a significant deterioration in the security and humanitarian environment of the Occupied Territories since the publication of the sources cited in the current OGN, especially in Gaza. (See appendix of source documents and summary below)

### Members of militant groups

25. This section relates to 'asylum or human rights claim based on ill-treatment amounting to persecution at the hands of the Israeli authorities due to their involvement in a militant group'. In order to reflect the current COI set out below, this heading for this section should be amended to read "Claims based on suspicion of involvement in security offences by the Israeli security services".

1. *The use of COI sources*

26. Only two COI sources are referred to in this section, the 2008 USSD Human Rights Report (reporting on events during 2007) and a 2006 report from B'tselem. These sources provide the following information about the actions of the Israeli security forces in the Occupied Territories:

- Israel has conducted **targeted operations** directed at terrorist leaders and weapons experts, IDF incursions into the West Bank and Gaza to conduct roundup operations, and other efforts designed to increase pressure on **Palestinian terrorist organisations and their supporters**.
- Israeli security services have imposed **strict and widespread closures and curfew** in Palestinian areas and continued constructing an extensive security barrier in the West Bank
- Israeli **military courts tried Palestinian civilians** accused of security offences. Israeli military courts **rarely acquitted** Palestinians charged with security offences; some security prisoners were convicted on the basis of **allegedly coerced confessions** by themselves and others; the military judicial system has been criticised for **failing to meet minimum standards of due process** because of de facto restrictions on public presence in military courts, unpublished verdicts, no explicit right to a presumption of innocence, indictments provided to defendants and attorney only after they have been filed in court, restrictions on the right to be tried without undue delay, and limitations on the ability of attorneys to provide clients with effective counsel.
- Israeli security forces have reportedly used **excessive force, abused, and tortured Palestinian detainees**.
- Israeli security personnel may **arrest without warrant** or hold for questioning a person suspected of having committed or being likely to commit a security-related offence.
- **Administrative security detention orders** could be issued for up to six-month periods and **renewed indefinitely** by judges. No detainee has ever successfully appealed a detention order under this process. According to Palestinian and Israeli NGOs, there were approximately 11,500 Palestinian prisoners and detainees, including 1,800 common law criminals, in Israeli Prison Service (IPS) prisons and the three IDF detention centres in Israel and the West Bank. This number also included 300 minors and **800 to 850 administrative detainees**.



- Israel conducted **some mass arrests** in the West Bank but **most targeted specific persons**.
  - Israeli authorities are reported to have **targeted and killed 18 Palestinians, many affiliated with terrorist organisations** during 2007. On 13 December 2006, the High Court of Justice ruled that **targeted killings**, which the state has carried out officially since the beginning of the second intifada in 2000, **are not per se illegal**
27. This information is used to inform the conclusions that only ‘those wanted for serious offences’ and ‘exceptional cases’ of ‘high profile members of militant groups’. (See discussion in section below)
28. A non-exhaustive selection of recent COI sources, included the current USSD Human Rights Report, provide an up-date to this information below.
29. According to a March 2010 report from the UK Foreign and Commonwealth Office (FCO)<sup>30</sup>:
- Palestinians, including children, continue to be **detained without trial and tried in military courts**.
  - **330 Palestinians** are reported to be **detained without charge**, around a third of whom have been in detention for one to two years and eight per cent for up to five years.
  - Many of these have been detained for **minor actions such as throwing stones**. Many do not have access to a fair criminal trial and often do not know why they have been detained. They have limited access to a lawyer or the evidence on which their detention is based, which the military judge usually declares "privileged" – related to intelligence or security so neither the defendant nor their lawyer is allowed to see it.
  - **Allegations of abuse of detainees** have been made.
30. The March 2010 USSD Human Rights report provides the following information<sup>31</sup>:
- According Israeli government and United Nations statistics 27 Palestinians in the West Bank and East Jerusalem **died in clashes with Israeli security forces** during the year.
  - According to B'Tselem **22 Palestinians were killed** in the in the West Bank by Israeli security. Of them, four were killed while participating in hostilities, **13 were killed while not participating**; B'Tselem did not know whether the remaining five were killed while participating in hostilities.
  - According to Israeli government figures, **Palestinian deaths resulting from Israeli military operations in the Gaza Strip** in December 2008 and January 2009 **totalled 1,166, including 295 non-combatant deaths. Human rights organizations estimated** the number of dead at 1,400 Palestinians, including **more than 1,000 civilians**, and the wounded at more than 5,000.
  - During 2009 Israeli forces **targeted and killed two Palestinians** in the Gaza Strip.
  - During the year reports continued of Palestinians being killed in the Gaza perimeter zone, as in previous years.

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<sup>30</sup> UK Foreign and Commonwealth Office (FCO), Annual Report on Human Rights 2009 - Countries of Concern: Israel and the Occupied Palestinian Territories, 17/03/2010, Administrative Detention

<http://centralcontent.fco.gov.uk/resources/en/pdf/human-rights-reports/human-rights-report-2009>

<sup>31</sup> US Department of State, 2009 Human Rights Report: Israel and the occupied territories, 11/03/2010

<http://www.state.gov/g/drl/rls/hrrpt/2009/nea/136070.htm>

see also Human Rights Watch, World Report 2010: Israel / Occupied Palestinian Territories (OPT), 20/01/2010

<http://www.unhcr.org/refworld/docid/4b586ceec.html>

- At least **1,168 Palestinians were injured**, the vast majority by the IDF in Gaza, but some by the IDF and Israelis who lived in West Bank settlements.
- Between January 1 and September 28 2009, the **IDF conducted 1,199 incursions** into West Bank Area A, according to UN agencies. During the same period, the IDF conducted 262 incursions into West Bank refugee camps in areas A, B, and C.
- The UN Committee Against Torture (CAT) has raised questions about what it categorized as "numerous, ongoing and consistent allegations" of **torture and mistreatment** by Israel of Palestinians.
- The IDF reportedly held dozens of Palestinians captured during hostilities in Gaza in January in newly-dug pits, exposed to winter weather, without sanitary facilities, and with insufficient food and blankets.
- B'Tselem reported that approximately 6,800 Palestinians were held in Israeli civilian prisons and military detention facilities at year's end, approximately 5,000 of whom were serving criminal sentences.
- NGO sources reported in October 2009 that military judicial authorities were holding **335 Palestinians under "administrative detention" without charge**. They also reported the isolation of detainees during the interrogation period and sleep deprivation, protracted handcuffing, insults and humiliation, threats, and naked body searches.
- Israeli human rights organizations reported the use of **psychological abuse** by Israeli interrogators, including threats of house demolition or of questioning elderly parents, and kept prisoners in harsh conditions, including solitary confinement for long periods.
- The IDF **tried Palestinians accused of security offenses (ranging from rock throwing to membership in a terrorist organization to incitement) in military courts**. Israeli law defines security offenses as including a range of charges.
- Israeli military courts **rarely acquitted** Palestinians charged with security offenses.
- Israeli security forces used force against Palestinians and others involved in demonstrations, and military orders banned public gatherings of 10 or more persons without a permit. On several occasions, soldiers tear gassed, beat, or injured demonstrators with rubber bullets. Israeli forces detained activists, holding some of them without charge for periods of up to three weeks.
- In the last six months of the year, the IDF detained at least 31 residents of Bilin, and in neighboring Nilin, 91 persons were arrested since mid-2008. In addition, five members of the Palestinian NGO Bil'in Popular Committee Against the Wall were arrested late in the year on suspicion of incitement. Among them, Abdullah Abu Rahma was arrested on December 10 and **charged with illegal possession of weapons based on his possession of spent tear gas canisters that Israeli forces fired on demonstrators** during the weekly demonstrations.

31. On the basis of this information alone, it is clear that a wide range of individuals may be subject to ill-treatment by Israeli security forces on the basis of imputed or actual involvement in 'security offences'. According to the information cited above, such offences might range from the throwing of rocks as Israeli security forces, the possession of a spent gas canister or the membership of a militant organisation.

## 2. *Conclusions and guidance*

32. The information provided in the current OGN and more up-to date COI, as detailed above, do not support the current conclusions and guidance, as has been indicated above.

[...]3.7 Members of militant groups

[...] 3.7.10 Internal relocation. Claimants are not able to relocate to a different area to escape the threat of persecution where the alleged source of persecution is state-sponsored. **If it is accepted that the claimant is likely to be known to the Israeli authorities as an anti-Israeli activist, internal flight will not be an option.**

[...]3.7.11 Conclusion. Individuals likely to be of interest to the Israeli authorities would be **those wanted for serious offences. These cases will be exceptional and will normally be high-profile members of one of the militant groups who are wanted by the authorities.** Such individuals may face persecution on return. Case owners should refer such cases to a Senior Caseworker in the first instance.(emphasis added)

### **Fatah members/Gaza**

34. This section relates to 'Fatah affiliated claimants from Gaza [who] may make a claim based on persecution by members of Hamas following the Hamas takeover of Gaza in June 2007.'

#### *1. Use of COI sources*

35. Limited COI is referred to in this section. The main evidence presented relies on three sources, the 2008 USSD Human Rights Report and the 2008 Human Rights Watch World Report and an undated report from B'Tselem. Given that the first two are annual reports and report on the previous year's events (i.e. 2007 in this case), the current versions should have been cited. Three news reports and a Foreign Office report all dated in January 2009, are cited for the standard paragraph dealing with the Israeli offensive in Gaza in December 2008.

36. The information given from these sources overall is limited and dated, but supports the conclusion that that individuals affiliated with Fatah could face ill-treatment or persecution by members of Hamas in Gaza. It should be noted that no objective evidence is included in this section relating to the ability of individuals to leave the Occupied Territories and Gaza in particular (see conclusions below).

37. An examination of further and more recent and more wide ranging COI sources indicates the following:

- Hamas, often through its military wing the Al-Qassam Brigade, has shot, severely beaten and harassed members of Fatah and other political opponents.<sup>32</sup> Evidence shows that simply

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<sup>32</sup> Human Rights Watch, "World Report 2010: Israel / Occupied Palestinian Territories (OPT)," 20/01/10

<http://www.unhcr.org/refworld/docid/4b586ceec.html>

Human Rights Watch, Under Cover of War: Hamas Political Violence in Gaza," 20/04/09

<http://www.unhcr.org/refworld/docid/49ec66822.html>

Internal Displacement Monitoring Centre, "Occupied Palestinian Territory: Gaza offensive adds to scale of displacement: A profile of the internal displacement situation," 30/12/09

[http://www.nrc.ch/8025708F004BE3B1/\(httpInfoFiles\)/D40639B05526A2D4C125769C00408166/\\$file/Occupied+Palestina n+Territory+-+December+2009.pdf](http://www.nrc.ch/8025708F004BE3B1/(httpInfoFiles)/D40639B05526A2D4C125769C00408166/$file/Occupied+Palestina n+Territory+-+December+2009.pdf)

U.S. State Dept., 2008 Country Reports on Human Rights Practices - Israel and the occupied territories," 25/02/09

<http://www.state.gov/g/drl/rls/hrrpt/2009/nea/136070.htm>

Amnesty International, "Palestinian Authority: Hamas' deadly campaign in the shadow of the war in Gaza," 10/02/09

<http://www.amnesty.org/en/library/info/MDE21/001/2009/en>

being suspected of supporting Fatah is sufficient to become a Hamas target.<sup>33</sup> There is a report of individuals being beaten simply for wearing a Fatah medallion.<sup>34</sup>

- There is evidence from the sources consulted that the official security apparatus of the Gaza strip is comprised of former and current members of the Al-Qassam Brigade<sup>35</sup>, although Hamas has insisted that the Al-Qassam Brigade is independent of its internal security forces in Gaza.<sup>36</sup> Evidence shows that Hamas's takeover of Gaza in 2007 transformed the Al-Qassam Brigade from an underground guerrilla movement to a uniformed military force.<sup>37</sup>
- There is evidence that Hamas forces arbitrarily detain Fatah supporters<sup>38</sup>, often by imposing house arrest.<sup>39</sup>
- One source states that Hamas has removed Fatah-affiliated employees from all sectors, including teachers.<sup>40</sup> A source indicates that teachers affiliated with Fatah were beaten by Hamas forces in front of their students.<sup>41</sup>

38. This information indicates that members and affiliates of, as well as those in any way associated with Fatah, continue to be subject to ill-treatment, and treatment that amounts to persecution by Hamas and its security forces in Gaza.

## 2. Conclusions

39. The conclusions to this section state:

[...]3.8 Fatah members residing in Gaza

[...]3.8.14 Conclusion. **There are likely to be few claims in this category due to the reported difficulty of Palestinians exiting Gaza. Case owners should carefully establish full details of the claimant's journey to the UK.** [...]

40. Although no evidence was presented on this point in this section, it is well known and well reported that the official border crossing from Gaza to Egypt at Rafah is severely restricted. It may be inferred from this that a Palestinian claimant from Gaza is likely to have exited the

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<sup>33</sup> Amnesty International, "Amnesty International Report 2009: Palestinian Authority," 28/05/09

<http://www.amnesty.org/en/region/palestinian-authority/report-2009>

<sup>34</sup> Human Rights Watch, Under Cover of War: Hamas Political Violence in Gaza," 20/04/09

<http://www.unhcr.org/refworld/docid/49ec66822.html>

<sup>35</sup> UN General Assembly, "Report of the Independent International Fact-Finding Mission : note / by the President of the General Assembly, A/64/490," 29/10/09

<http://www.unhcr.org/refworld/docid/4af15e652.html>

Human Rights Watch, Under Cover of War: Hamas Political Violence in Gaza," 20/04/09

<http://www.unhcr.org/refworld/docid/49ec66822.html>

<sup>36</sup> Human Rights Watch, Under Cover of War: Hamas Political Violence in Gaza," 20/04/09

<http://www.unhcr.org/refworld/docid/49ec66822.html>

<sup>37</sup> Ibid

<sup>38</sup> U.S. State Dept., 2008 Country Reports on Human Rights Practices - Israel and the occupied territories," 25/02/09

<http://www.state.gov/g/drl/rls/hrrpt/2009/nea/136070.htm>

<sup>39</sup> Human Rights Watch, Under Cover of War: Hamas Political Violence in Gaza," 20/04/09

<http://www.unhcr.org/refworld/docid/49ec66822.html>

Amnesty International, "Palestinian Authority: Hamas' deadly campaign in the shadow of the war in Gaza," 10/02/09

<http://www.amnesty.org/en/library/info/MDE21/001/2009/en>

<sup>40</sup> U.S. State Dept., 2008 Country Reports on Human Rights Practices - Israel and the occupied territories," 25/02/09

<http://www.state.gov/g/drl/rls/hrrpt/2009/nea/136070.htm>

<sup>41</sup> International Crisis Group, "Ruling Palestine I: Gaza Under Hamas," 19/03/08

<http://www.crisisgroup.org/home/index.cfm?!=1&id=5525>

country illegally. However, the inference that is made in this statement, that without more, the credibility of any Palestinian claimant from Gaza should be questioned on the basis that it is difficult for Palestinians to exit the territory, is unjustified. On this basis it is recommended that this statement is removed from the conclusions.

41. The conclusions also state that a grant of asylum is only likely to be appropriate to those who are 'involved in anti-Hamas activities or affiliated with Fatah security services'.

[...]3.8.14 Conclusion. [...] **Only those known by Hamas to be involved in anti-Hamas activities or affiliated with Fatah security services are likely to be of current interest** to the de facto authorities in Gaza. For such claimants a grant of asylum is likely to be appropriate.(Emphasis added)

### **Hamas members/West Bank**

43. This section relates to 'Hamas affiliated claimants from the West Bank [who] may make a claim based on persecution by members of Fatah following the Hamas takeover of Gaza in June 2007.'

#### *1. Use of COI sources*

44. Limited COI is referred to in this section. The main evidence presented relies on four sources, the 2008 USSD Human Rights Report, the 2008 Human Rights Watch World Report, the 2008 Freedom House Report and an undated report from B'Tselem. Given that the first three are annual reports and report on the previous year's events (i.e. 2007 in this case), the current versions should have been cited.

45. Three news reports and a Foreign Office report all dated in January 2009, are cited for the standard paragraph dealing with the Israeli offensive in Gaza in December 2008.

46. The information given from these sources overall is limited but supports the conclusion that that individuals affiliated or associated with Hamas could face ill-treatment or persecution by members of Fatah in the West Bank.

47. In particular the evidence indicates that:

- the Palestinian Authorities have failed to maintain effective control over security forces, with armed factions exercising de facto control of much of the PA administered areas
- the treatment of those identified with Hamas has included mass and targeted arrests without due process, ill-treatment and torture in detention, revenge attacks, abductions and executions and attacks on businesses and charitable institutions.

48. It should be noted that no objective evidence is included in this section relating to the ability of individuals to leave the Occupied Territories and the West Bank in particular (see conclusions below).

49. An examination of the current (2009/2010) annual reports from the USSD, Human Rights Watch and Freedom House<sup>42</sup>, as cited above, indicates that:

- Palestinian factional violence continued to result in fatalities and injuries in the West Bank during 2009.<sup>43</sup> Frequent and violent clashes are reported to have occurred between Hamas and Fatah gunmen.<sup>44</sup>
- Three men, reportedly supporters of Hamas, died in the custody of the Palestinian Authority (PA) security services in the West Bank. In only one of these cases had the detainee been brought to trial; the same defendant's body had shown signs of torture after he was arrested by the General Intelligence Agency.<sup>45</sup> The Palestinian Independent Commission for Human Rights is reported to have received 150 complaints of torture in PA custody in the West Bank as of October.<sup>46</sup>
- Armed factions continue to exercise de facto rule over significant areas of PA administered territory. News reports identified at least five autonomous armed militias operating in PA territory.<sup>47</sup>

50. On the basis of this information alone, it is possible to conclude that those associated with Hamas continue to be subject to ill-treatment, and treatment that amounts to persecution by Fatah and its security forces in the West Bank.

## 2. *Conclusions*

51. The conclusions to this section state:

[...]3.9 Hamas members residing in the West Bank

[...]3.9.13 Conclusion. **There are likely to be few claims in this category due to the reported difficulty of Palestinians exiting the West Bank. Case owners should carefully establish full details of the claimant's journey to the UK.**

52. Although no evidence was presented on this point in this section, it is known that movement restrictions affect all Palestinians severely in the West Bank and that the only possible route of entry and exit is via the Allenby Bridge into Jordan. It may be inferred from this that a Palestinian claimant from the West Bank has potentially exited the country illegally. However, the inference that is made in this statement, that without more, the credibility of

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<sup>42</sup> US Department of State, 2009 Human Rights Report: Israel and the occupied territories, 11/03/2010  
<http://www.state.gov/g/drl/rls/hrrpt/2009/nea/136070.htm>

Human Rights Watch, World Report 2010: Israel / Occupied Palestinian Territories (OPT), 20/01/2010  
<http://www.unhcr.org/refworld/docid/4b586ceec.html>

Freedom House, Freedom in the World 2009: Palestinian Authority-Administered Territories [Israel], 16/07/2009  
<http://www.freedomhouse.org/template.cfm?page=22&country=7587&year=2009>

<sup>43</sup> US Department of State, 2009 Human Rights Report: Israel and the occupied territories, 11/03/2010  
<http://www.state.gov/g/drl/rls/hrrpt/2009/nea/136070.htm>

<sup>44</sup> Freedom House, Freedom in the World 2009: Palestinian Authority-Administered Territories [Israel], 16/07/2009  
<http://www.freedomhouse.org/template.cfm?page=22&country=7587&year=2009>

<sup>45</sup> Human Rights Watch, World Report 2010: Israel / Occupied Palestinian Territories (OPT), 20/01/2010  
<http://www.unhcr.org/refworld/docid/4b586ceec.html>

<sup>46</sup> Ibid

<sup>47</sup> Freedom House, Freedom in the World 2009: Palestinian Authority-Administered Territories [Israel], 16/07/2009  
<http://www.freedomhouse.org/template.cfm?page=22&country=7587&year=2009>

any Palestinian claimant from the West Bank should be questioned on the basis that it is difficult for Palestinians to exit the territory, is unjustified. On this basis it is recommended that this statement is removed from the conclusions.

53. The conclusions also state that a grant of asylum is only likely to be appropriate to those who are known to be 'involved in anti-Fatah activities or affiliated with Hamas security services'.

[...]3.9.13 Conclusion. [...] **Only those known by the Fatah-controlled PA to be involved in anti-Fatah activities or affiliated with Hamas security services** are likely to be of current interest to the PA authorities in the West Bank. For such claimants a grant of asylum is likely to be appropriate.

### **Forced recruitment to armed groups**

This section relates to claims based on 'ill treatment amounting to persecution at the hands of Hamas or another militant group due to enforced recruitment.'

#### *1. The use of COI sources*

55. Limited COI is cited in this section although it is recognised that limited information on this problematic issue is available in the public domain. Given the potential risk to an individual who publicises such information, it is not surprising to find that it is an under-reported issue.

56. No information in the form of COI is presented in this section about the security forces in Gaza and the West Bank, in relation to the issue of state protection for this category of claimant.

57. Three of the sources cited are undated; these are reports from the Council on Foreign Relations (entitled 'Backgrounder: Hamas'); BBC News ('Who are the suicide bombers?') and the Foundation of the Defence of Democracies ('Globalisation of Hamas'). These sources focus on the recruitment and motivation of suicide bombers by Hamas and Islamic Jihad. A further report from the Canadian IRIB is cited, though it should be noted that this information relates primarily to the recruitment of students in universities to militant groups.<sup>48</sup> The 2005 US Army handbook is cited although it does not appear in the footnotes or list of sources and there is no URL. The source states that 'a variety of methods' are used by militant groups to recruit their members. Two further news reports from Time and the BBC are correctly cited; these sources refer to the use of 'blackmail' or pressure in recruitment to armed groups. An examination of the IRIB report shows that all three of these sources originate there, although this is not clear from the way they have been cited in the OGN.

58. The sources, as cited in the OGN, focus mainly on the recruitment of suicide bombers, on the motivation and ideological commitment of those recruited, and in general seem to find evidence that that sufficient 'willing' recruits and radicalised individuals are found by militant groups and little evidence of recruitment by coercion.

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<sup>48</sup> Immigration and Refugee Board of Canada, Palestinian Territory, Occupied: Forced recruitment by Hamas, Fatah or any other organization in the West Bank; in particular whether forced recruitment by these groups occurs in universities; the consequences for individuals who refuse to join, 15/02/2008

<http://www.unhcr.org/refworld/country,,IRBC,,PSE,4562d8cf2,4804c0e023,0.html>



59. However the three sources referred to in the IRIB report indicate that the reality is likely to be far more complex than this picture suggests. These sources suggest that a variety of methods may be used to 'recruit' individuals, that a variety of individuals may be recruited and that an element of coercion or pressure may be brought to bear in the recruitment process. This issue is not further examined in the OGN through objective evidence and, more importantly, the lack of evidence and ambiguity is not reflected in the conclusions and guidance given to case owners.
60. The focus of the information on the recruitment of individuals to carry out suicide attacks obscures the fact that different individuals are likely to be recruited in different ways to perform many different functions, one of which might be to carry out such missions. The motivation of such individuals and the extent to which persuasion, radicalisation and politicisation, pressure, blackmail and inducements, threats and explicit force are used, is also likely to differ according to many different variables. Similarly the consequences for an individual who refuses to become involved at any level or who curtails their involvement or affiliation with a particular group may be hard to predict and not reported due to fear of the consequences for the individual or those close to them.
61. The limited available COI presented below indicates, for example, that the Hamas social-welfare infrastructure is used in a sophisticated way to radicalise the Palestinian population and to recruit supporters. A 2007 report from the Washington Institute for Near East Policy<sup>49</sup> describes the many means, 'including secular and religious institutions, grassroots activism and globalized media' by which 'Hamas successfully radicalizes Palestinians not only to support and fund but to facilitate and participate in the group's terrorist attacks'.<sup>50</sup>
62. The report states that Hamas charitable and humanitarian organisations both 'fund the families of Hamas suicide bombers' but also finance critical health education and welfare projects in the West Bank and Gaza, which builds support for Hamas and its agenda. The report further states that 'Those who benefit from Hamas largesse support the organization and, frequently, actively facilitate the group's attacks.' In the same report an Israeli defence official is cited as stating 'In the territories, there are no free lunches: those who receive help from the Islamic associations pay with support for Hamas'.<sup>51</sup> It is implicit in this information that support recruited in this way may not be given on an ideological or clearly 'voluntary' basis. There might be implications, for example, in the form of withdrawal or lack of access to welfare support to the family of someone who was unwilling to co-operate with or work directly with Hamas.
63. Other COI from a 2005 report from the Australian Broadcasting Corporation<sup>52</sup> indicates that it is hard to profile a 'typical' individual who might be recruited by Hamas by whatever means. The report states that as well as recruiting 'suicide bombers', Hamas also recruits 'professionals such as computer programmers and engineers to fight its political battles'.<sup>53</sup> A further report from the Sunday Telegraph cites examples of Palestinians from the educated

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<sup>49</sup> Washington Institute for Near East Policy, Teaching Terror: How Hamas Radicalizes Palestinian Society, 12 February 2007 <http://www.likud.nl/press431.html>

<sup>50</sup> Ibid

<sup>51</sup> Ibid

<sup>52</sup> Australian Broadcasting Corporation, Transcripts (Australia), Hamas showing in West Bank local council elections, 7 October 2005

NEXIS, subscription only news source

<sup>53</sup> Ibid



middle classes who are leaving the Occupied Territories in order to evade the efforts of Hamas to recruit them either by persuasion or by force.<sup>54</sup>

## 2. Conclusions and guidance

### *Sufficiency of Protection*

64. Instead of presenting evidence that the security forces would be willing and able to provide protection to those fearing forced recruitment by armed groups in the West Bank and Gaza, the OGN simply asserts that there is no evidence that they would not:

[...]3.10.7 Sufficiency of protection. Palestinian police are responsible for security and law enforcement for Palestinians and other non-Israelis in PA-controlled areas of the West Bank. Hamas has established its own de facto security forces in Gaza. **There is no evidence that security forces would be unwilling or unable to provide protection for claimants in this category.** (Emphasis added)

65. Given that the armed groups in question are directly affiliated to Fatah in the West Bank and to Hamas in Gaza and the West Bank this seems to be a dangerously speculative assertion.<sup>55</sup> Furthermore, elsewhere in the OGN evidence is presented which indicates that the security forces in both territories might not be willing or able to provide protection in such circumstances. For example:

[...]3.6 General country situation

[...]3.6.2 Treatment President Abbas and his subordinates control PA security forces in the West Bank. Armed militias and terrorist organisations were still active in some areas. **There were reports of PA torture, arbitrary and prolonged detention, poor prison conditions, insufficient measures to prevent attacks by terrorist groups, corruption and lack of transparency.** In Gaza, Hamas established its own de facto security forces which answer to former Hamas Prime Minister Ismail Haniyeh and which **continued to kill, kidnap and harass PA security forces and Palestinian opponents** and shell civilian targets in Israel.[...]

[...]3.8 Fatah members residing in Gaza

[...]3.8.3 **Neither the President nor the Interior Ministry maintained effective control over security forces under their respective authorities, and there were reports that members of security forces committed numerous, serious abuses.** Palestinian police were normally responsible for security and law enforcement for Palestinians and other non-Israelis in PA-controlled areas of the West Bank and Gaza. There was a widespread public perception of corruption, notably within the PA security forces and the Executive Force. [64]

[...]3.8.5 Following the Hamas takeover of Gaza in June 2007, Hamas established its own de facto security forces in Gaza which answer to the former Hamas Prime Minister... **The ruling Hamas government in Gaza, headed by deposed PA Prime Minister Isma'il Haniyeh, imposed an oppressive regime against its critics, especially those identified with Fatah.** The Executive Force carried out arrests daily. The prisoners were held for a number of days and no charges were filed

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<sup>54</sup> SUNDAY TELEGRAPH(LONDON), Hebron's middle classes choose America rather than martyrdom Sons of better-off Palestinians escape clutches of Hamas for refuges in the West, 5 September 2004  
NEXIS subscription only news service

<sup>55</sup> See Annex, Palestinian factions, for information about the links between the different Palestinian organisations and factions

against them. Amnesty International has taken many testimonies from Palestinians in Gaza who have been arrested in this manner, and the victims report being ill-treated and tortured. [...]

[...]3.8.7 In **Gaza Hamas reportedly enforced laws selectively according to its priorities. Hamas aligned militias provided local security and abused human rights in Gaza.**[...] (All emphasis added)

#### *General conclusion*

67. The conclusions state without qualification that there is no evidence of coercion in the recruitment to any 'group':

[...]3.10.9 Conclusion. [...] **There is no evidence of individuals being coerced into membership of any group.** The grant of asylum or Humanitarian Protection in such cases is, therefore, unlikely to be appropriate.[...](Emphasis added)

68. However, country information demonstrates the limitations of the available objective evidence on enforced recruitment to armed groups and on the implications for those who do not accept such coercion, as well as the indication in the information that is available, that some element of coercion may be involved in some cases.

#### **Israeli collaborators**

69. This section deals with claims based on 'ill treatment amounting to persecution at the hands of the Palestinian authorities and militant groups due to being suspected of being Israeli informants.'

##### *1. The use of COI sources*

70. Limited COI sources are cited here and the sources that are cited are relatively dated. It should be noted however that this is an issue that is under-reported in public domain sources. Information cited in the OGN from the two Canadian IRIB reports from 2004 and 2005 indicates that collaboration does take place to a significant level and for a variety of complex and often pragmatic reasons which have little to do with an ideological affiliation with the Israeli state. It is also reported that collaborators risk torture and execution or targeted killing by militant organisations or other citizens, although the source cited in the OGN, B'Tselem, is not dated and does not give figures for 2008 onwards.

71. Information is also included about the protection offered by the Israeli state to those Palestinians who have collaborated. Two sources are cited on this issue, a 2005 IRIB report and a 2008 news report from the Guardian. Information cited from these sources indicates that i) as of 1997 there was an Israeli government programme implemented to assist Palestinian collaborators (source: the Jewish Telegraphic Agency, date 1997) ii) Israeli security services (Shin Bet) promise protection to collaborators who are discovered and that protection is typically available to 'high ranking informants' (former Shin Bet agent, date 2004) and iii) Palestinians who collaborate are generally entitled to financial assistance, accommodation, a job and tuition for their children, and sometimes citizenship (Consul of Israel in Ottawa, date 2004).

72. However, further scrutiny of the 2005 IRIB report provides the following information (additional information in bold text):

[...]Protection available to Palestinian collaborators

According to a 22 May 2002 article in The Christian Science Monitor, certain human rights groups have suggested that around 15,000 Palestinians are collaborating with Israel in the West Bank and the Gaza Strip. A former Shin Bet (Israel's internal security service) agent who was involved in recruiting Palestinian informants said that Israel promises protection in the Jewish state to collaborators who are discovered (The Christian Science Monitor 22 May 2004). Protected collaborators are typically high-ranking informants; Shin Bet either assigns them a new identity and places them in neighbourhoods developed by Shin Bet where former Israeli informants live or sends them overseas (ibid.).

**The article also indicates that some lower-ranking collaborators, who were dissatisfied with the protection offered by Israel, were preparing a legal case (ibid.).** However, no information on that case could be found among the sources consulted by the Research Directorate within the time constraints of this Response.

**According to a report from the Jewish Telegraphic Agency (JTA), a Palestinian man collaborating with Israel indicated that he was abandoned by Israel following the signing of the Oslo peace accords because he was no longer considered to be useful (23 May 1997).** After 1993, Israel offered hundreds of former collaborators the chance to resettle in Israel; many of them accepted (JTA 23 May 1997).

[...]Recourses available to Palestinian collaborators

[...]A 22 July 2004 PM (ABC) transcript indicated that hundreds of Palestinian collaborators felt betrayed, claiming that Israel had broken its promise to give them citizenship or long-term residency. Many of those who fled to Israel are afraid of having to return to the West Bank or the Gaza Strip, where they risk being killed (PM 22 July 2004). However, no corroboration of this information could be found among the sources consulted by the Research Directorate.

73. This additional information, as well as that included in the OGN, indicates that not all Palestinian collaborators have been assisted by Israeli protection programmes nor have found adequate protection, and that their level of protection may have been arbitrary or may have been determined by the nature of the collaboration and the 'value' of the assistance given. This is supported by a 2007 news report from the Times which states that some collaborators living in Israel may receive shelter from the state including a monthly allowance, medical insurance and, in some cases, citizenship while others 'are left to fend for themselves.'<sup>56</sup>
74. The sources cited by the IRIB are, moreover, limited and dated. There is no indication in the evidence provided in the OGN from this or other sources of i) whether the protection programme reported on is currently in operation ii) the extent and effectiveness of the protection it offers iii) the criteria upon which protection is offered to collaborators.
75. Further research has not revealed additional information about a current protection programme in Israel for Palestinian collaborators.

## 2. Conclusions and guidance

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<sup>56</sup> Times online, Collaborators face death in town where they hoped to find safety, 8 June 2007  
[http://www.timesonline.co.uk/tol/news/world/middle\\_east/article1901103.ece](http://www.timesonline.co.uk/tol/news/world/middle_east/article1901103.ece)

76. The conclusions and guidance assert without qualification that Palestinian collaborators who have been discovered and fear reprisals are able to relocate to Israel and are able to access protection and support from the Israeli authorities, including financial assistance for them and their families.

[...]3.11.8 Sufficiency of protection. Claimants who fear reprisals from local residents due to the discovery of their actions in collaborating with the Israeli authorities **are provided with protection and support from the Israeli authorities.**

3.11.9 Internal relocation. Collaborators who seek the assistance of the Israeli authorities **are able to relocate to Israel.**

3.11.10 Conclusion. The evidence indicates that there are around 15,000 Palestinians collaborating with Israel in Gaza and the West Bank and that, **if discovered, Israeli authorities have undertaken to provide protection, financial assistance and accommodation in Israel for collaborators and their families.** It is unlikely, therefore, that such claims would engage the UK's obligations under the 1951 Refugee Convention and a grant of asylum or Humanitarian Protection is unlikely to be appropriate.

77. These conclusions are not borne out even by the limited objective evidence presented and discussed above, which provides a more nuanced and conditional picture of the assistance available. Moreover, no recent COI has been presented in the OGN or found by subsequent research to suggest that there is a current and comprehensive protection programme for Palestinian collaborators.

#### **1951 Refugee Convention Article 1 D**

78. The guidance contained in this section will need to be immediately reviewed and updated following the handing down of the judgment of the Court of Justice of the European Union in the reference in Bolbol<sup>57</sup>. An analysis of the effect of Court of Justice's decision on UK law is set out below:

79. The UK government has taken a restrictive view of the scope Article 1D of the 1951 Convention on the Status of Refugees. That Article provides:

"This Convention shall not apply to persons who are at present receiving from organs or agencies of the United Nations other than the United Nations High Commissioner for Refugees protection or assistance.

When such protection or assistance has ceased for any reason, without the position of such persons being definitively settled in accordance with the relevant resolutions adopted by the General Assembly of the United Nations, these persons shall *ipso facto* be entitled to the benefits of this Convention."

80. The UK's position has had a direct impact on the treatment of the claims for refugee status of Palestinians who had previously been in receipt of the assistance of UNWRA. The Court of Appeal's decision in El-Ali<sup>58</sup> had the effect of requiring that all such Palestinians in the UK

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<sup>57</sup> C-31/09 Bolbol Nawras v Bevándorlási és Állampolgársági Hivatal, [OJ C 82/15, 04.04.2009], at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2009:082:0015:0015:en:pdf>

<sup>58</sup> El-Ali v SSHD [2002] EWCA Civ 1103

would have to prove that they were refugees as defined by Article 1(A) 2 of the Convention if they were to gain the benefits of the Refugee Convention. The Court held that:

- (i) Only Palestinians who had been were in receipt of UNWRA assistance when the Refugee Convention was adopted on 28 July 1951 fell, *ratione personae*, within the scope of Article 1D. In particular those displaced by the 1948 conflict;
- (ii) The words ‘such protection or assistance has ceased for any reason’ could only mean ‘the cessation of UNWRA assistance’ overall, and did not include the cessation of assistance consequent on a Palestinian refugee leave a territory in which he or she is registered and receiving assistance except in ‘exceptional circumstance’, for example where the refugee is actually prevented from returning there by the relevant authorities<sup>59</sup>;
- (iii) The effect of the phrase, ‘these persons shall *ipso facto* be entitled to the benefit of the Convention’ is automatic, but thought that ‘so great a parcel of rights would not likely be conferred...unless the class of its recipients were clear and certain...’<sup>60</sup>.

81. The decision in El-Ali has been criticised in the leading academic text on international refugee law<sup>61</sup> and is inconsistent with UNHCR’s position<sup>62</sup>. Indeed, the Court of Justice of the European Union has recently held, in ruling on a preliminary reference from Hungary on the interpretation of Article 12 of the EC Qualification Directive that:

“Contrary to the line of argument developed by the United Kingdom Government, it cannot be maintained, as an argument against including persons displaced following the 1967 hostilities within the scope of Article 1D of the Geneva Convention, that only those Palestinians who became refugees as result of the 1948 conflict who were receiving protection and assistance from UNWRA at the time when the original version of the Geneva Convention was concluded in 1951 are covered by Article 1D of that convention, and therefore, by Article 12(1)(a) of the Directive.”

Rather, it concluded that:

“...for the purposes of the first sentence of Article 12(1)(a) of the Directive 2004/83, a person receives protection or assistance from an agency of the United Nations other than UNHCR, when that person has actually availed himself of that protection or assistance.”<sup>63</sup>

Consequently, the conclusion of the Court of Appeal set out in paragraph 2 (i) above is no longer good law. As the Court of Justice declined to make rulings on the additional questions referred as they were no longer material, it is presently unclear whether and in what circumstances, as a matter of law, a Palestinian who was previously in receipt of UNWRA assistance and who is in an EU member state to which the Directive applies<sup>64</sup>, is entitled to the benefits contained in Chapter VII of

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<sup>59</sup> See Goodwin-Gill, G.S. and McAdam, J. ‘The Refugee in International Law’ 2<sup>nd</sup> Edition, 2007, p157-159

<sup>60</sup> Ibid.

<sup>61</sup> Ibid.

<sup>62</sup> See UN High Commissioner for Refugees, UNHCR Revised Statement on Article 1D of the 1951 Convention, October 2009, available at: <http://www.unhcr.org/refworld/docid/4add79a82.html> [accessed 23 June 2010]

<sup>63</sup> See Bolbol [2010] EUECJ C31-09, paragraphs 47 and 53

<sup>64</sup> The Qualification Directive does not apply in Denmark

the Qualification Directive. Further, if so entitled, it remains undecided which of those benefits he or she would be entitled to.

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