



OPERATIONAL GUIDANCE NOTE

The Occupied Palestinian Territories

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1. Introduction

- 1.1** This document provides UK Border Agency caseowners with guidance on the nature and handling of the most common types of claims received from nationals/residents of Gaza and the West Bank including whether claims are or are not likely to justify the granting of asylum, Humanitarian Protection or Discretionary Leave. Caseowners must refer to the relevant Asylum Instructions for further details of the policy on these areas.
- 1.2** Caseowners *must not* base decisions on the country of origin information in this guidance; it is included to provide context only and does not purport to be comprehensive. The conclusions in this guidance are based on the totality of the available evidence, not just the brief extracts contained herein, and caseowners must likewise take into account all available evidence. It is therefore essential that this guidance is read in conjunction with the relevant COI Service country of origin information and any other relevant information.

COI Service information is published on Horizon and on the internet at:

<http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/>

- 1.3** Claims should be considered on an individual basis, but taking full account of the guidance contained in this document. In considering claims where the main applicant has dependent family members who are a part of his/her claim, account must be taken of the situation of all the dependent family members included in the claim in accordance with the Asylum

Instruction on Article 8 ECHR. If, following consideration, a claim is to be refused, caseowners should consider whether it can be certified as clearly unfounded under the case by case certification power in section 94(2) of the Nationality Immigration and Asylum Act 2002. A claim will be clearly unfounded if it is so clearly without substance that it is bound to fail.

2. Country assessment

2.1 Caseowners should refer to the relevant COI Service country of origin information material. An overview of the country situation including headline facts and figures about the population, capital city, currency as well as geography, recent history and current politics can also be found in the relevant FCO country profile at:

<http://www.fco.gov.uk/en/travel-and-living-abroad/travel-advice-by-country/country-profile/>

2.2 An overview of the human rights situation in certain countries can also be found in the FCO Annual Report on Human Rights which examines developments in countries where human rights issues are of greatest concern:

<http://centralcontent.fco.gov.uk/resources/en/pdf/human-rights-reports/accessible-hrd-report-2010>

2.3 Caseowners are reminded that any country information and specific country policy guidance contained within this document is based upon information available at the time of publication. Caseowners must consider the latest available COI Service bulletins and other COI products before determining asylum claims. Any questions about the handling of a particular case should be referred to a senior case worker. For additional queries relating to country specific policy, contact the CSL Team.

2.4 Actors of protection

2.4.1 Caseowners must refer to the Asylum Policy Instruction on considering the protection (asylum) claim and assessing credibility. To qualify for asylum, an individual not only needs to have a fear of persecution for a Convention reason, they must also be able to demonstrate that their fear of persecution is well founded and that they are unable, or unwilling because of their fear, to avail themselves of the protection of their home country. Caseowners should also take into account whether or not the applicant has sought the protection of the authorities or the organisation controlling all or a substantial part of the State, any outcome of doing so or the reason for not doing so. Effective protection is generally provided when the authorities (or other organisation controlling all or a substantial part of the State) take reasonable steps to prevent the persecution or suffering of serious harm by for example operating an effective legal system for the detection, prosecution and punishment of acts constituting persecution or serious harm, and the applicant has access to such protection.

2.4.2 The Palestinian Liberation Organisation (PLO) and Israel established the Palestinian Authority (PA) in 1994. Under the terms of the Oslo Accords, the authority of the PA is split into three zones:

Area 'A' – the PA has political and security control, but Israeli security forces regularly conduct security operations without coordinating with PA security forces;
Area 'B' – the PA holds political control but Israel retains responsibility for security control;
Area 'C' – Israel has full political and security control.¹

Israel controls the external security, air space, sea lanes and electromagnetic sphere.² The PA has a democratically elected president and legislative council. The president appoints the prime minister who forms a cabinet in consultation with the president. The PA exercises varying degrees of authority over the Palestinian population in the West Bank, because of

¹ USSD Human Rights Report 2010 (Occupied Territories) page 58 : [Freedom of Movement \(OPT\)](#)

² COI Report, 2 December 2010, [Occupied Palestinian Territories](#) para.5.01

the continuing presence of the Israeli Defence Force (IDF). It has little authority in Gaza, and none in terms of Israeli residents of the West Bank, or Arab residents of East Jerusalem.³

- 2.4.3** The Palestinian Territories are divided into two political units: the West Bank, which is an internationally recognised and accepted area led by President Mahmoud Abbas under tight Israeli security control, and the Hamas-led Gaza Strip, which is internationally isolated. Israel's presence in Gaza is confined to air and land incursions. Various attempts at peace talks have been taking place over a number of years, but so far without success. The PA security forces regularly crack down on Hamas militants, while Hamas continually arrests Fatah activists in Gaza.⁴ Egyptian-mediated efforts to bring the two factions together continue, but with little success. Talks between the Fatah-led Palestinian Authority and Israel about a solution to the conflict have also continued over several years, with international encouragement. Disagreements continue on the status of Jerusalem, which both sides wish to claim as their capital.⁵ However, some potential progress was made during talks in November 2011, when Hamas and Fatah committed themselves to observing a truce between the West Bank and Gaza, while jointly maintaining a degree of popular resistance to occupation.⁶
- 2.4.4** In recent years, the PA has restored order and personal safety in the West Bank; there are uniformed security forces patrolling. This has improved daily life for Palestinians, though the accompanying security cooperation with Israel, and the crackdown on opposition groups (mainly, but not exclusively Hamas) is less pleasing to them. However, violence by Israeli settlers against Palestinians in the West Bank has increased by 40% in 2011 compared to 2010, and by over 165% compared to 2009. In 2011, 3 Palestinians were killed and 167 injured by Israeli settlers. In addition, 1 Palestinian has been killed, and 101 others injured by Israeli soldiers in clashes between Israeli settlers and Palestinians.⁷ In 2011, nearly 10,000 Palestinian-owned trees (mainly olive trees) have been damaged or destroyed by Israeli settlers, significantly damaging the livelihoods of hundreds of people.⁸ It is further reported that such incidents are increasing, and that there have been recorded incidents of Palestinians being killed by Israeli settlers, with reportedly little or no intervention by Israeli security forces.⁹ Although security in the West Bank has improved to some extent, a few armed militias and terrorist organisations are still active, both there and also in the Gaza Strip.¹⁰
- 2.4.5** There are 6 PA security forces operating in the West Bank. The PA Civil Police have primary responsibility for civil and community policing. The National Security Force (NSF) conducts gendarmerie-style security operations in circumstances that exceed the capability of the Civil Police. The Military Intelligence Agency, a sub-unit of the NSF, deals with intelligence and criminal matters involving PA security force personnel. This includes accusations of abuse. The General Intelligence service is responsible for external intelligence gathering and operations; the Preventive Security Organisation is responsible for these matters internally. The Presidential Guard protects facilities and provides protection for dignitaries, and the Civil Defence service provides emergency services. PA security services are under the operational control of the minister of the interior.¹¹
- 2.4.6** Security forces under Hamas control and maintain security in the Gaza Strip. Various reports suggest that Hamas enforce strict control across all parts of society. Hamas police reportedly facilitate and benefit from the illegal smuggling tunnels. There is some evidence that Hamas detained a large number of persons during 2010 though numbers are

³ COI Report: 2 December 2010, paragraph 5.02 [Occupied Palestinian Territories](#)

⁴ COI Report: 2 December 2010, paragraph 5.04 [Occupied Palestinian Territories](#)

⁵ BBC News: [Palestinian Territories Profile](#)

⁶ Daily Star 25 November 2011: [Hamas to focus on popular resistance](#)

⁷ UNOCHA Fact Sheet November 2011: [Israeli Settler violence in the West Bank](#)

⁸ UNOCHA Fact Sheet November 2011: [Israeli Settler violence in the West Bank](#)

⁹ COI Report: 2 December 2010, paragraph 8.08 [Occupied Palestinian Territories](#)

¹⁰ USSD Human Rights Report 2010 (Occupied Territories) page 43 : [Freedom of Movement \(OPT\)](#)

¹¹ USSD Human Rights Report 2010 (Occupied Territories) page 59 : [Freedom of Movement \(OPT\)](#)

unverified, and that the majority were without recourse to legal counsel, judicial review or bail. Most of these detentions were politically based, targeting primarily former PA officials, Fatah party members, and those suspected of ties with Israel.¹² The U.S. Department of State noted in 2011, that Hamas security forces continued to kill, torture, kidnap, arbitrarily detain, and harass Fatah members and other Palestinians with impunity. There were reports of abuse of prisoners and failure to provide fair trials to those accused.¹³

2.4.7 The Palestinian Basic Law provides for an independent judiciary. In practice, the PA does generally respect judicial independence; the autonomy of the High Judicial Council maintains authority over most court operations within the West Bank. The efficiency of PA courts has improved in recent years, and there are improvements in several procedural areas, including case management, organisation, transparency, evidence collection and record-keeping. However, PA affiliated prosecutors and judges complain that restrictions on movement imposed by the Israeli authorities interfere with their ability to dispense justice, transport detainees and collect witnesses. Palestinian NGOs have criticised the practice of trying civilian defendants in military courts, but the PA defends this practice on the grounds of the security nature of the crimes involved.¹⁴ In 2011, the U.S. Department of State highlighted human right violations by the PA, including mistreatment in detention, arbitrary and prolonged detention, impunity, corruption, and lack of transparency.¹⁵

2.4.8 Laws governing Palestinians in the Gaza Strip derive from the previous British Mandate, plus Ottoman, Jordanian, Egyptian, PA and Islamic law, in addition to Israeli military orders. The judicial system is not considered to be independent, and the judiciary lack appropriate training and experience.¹⁶ Since 2007, Hamas replaced PA-appointed prosecutors and judges in the Gaza Strip with their own appointees. The PA declared this action illegal, but courts operated by Hamas appointees continue to function in the Gaza Strip.¹⁷ Hamas-run military courts sentenced 16 people to death during 2009 and 2010, eight of them for treason. In April 2010, two men were publicly executed by firing squad for spying on Israel's behalf. In July 2010, Fatah officials stated that Hamas security forces had detained over 100 Fatah activists and former PA security commanders in Gaza, and that some of these were tortured.¹⁸

2.4.9 The U.S. Department of State noted institutional, legal, and societal discrimination against Arab citizens and Palestinian residents of the West Bank and the Gaza Strip by the Israeli authorities.¹⁹ Israeli security forces reportedly used excessive force against Palestinian civilians, including non-violent demonstrators in the West Bank and Gaza, and also against farmers, fishermen and others working in the Israeli-declared "exclusion zone" inside Gaza or its coastal waters. According to the UN Office for the Coordination of Humanitarian Affairs, Israeli military forces killed 33 Palestinian civilians in the OPT, including 8 children. In addition, 15 Palestinian civilians, including 4 children, were killed and more than 100 injured by Israeli forces enforcing the 1,500m-wide "exclusion zone" inside Gaza's northern and eastern borders and the maritime restrictions.²⁰ UN statistics show that during 2011, deaths and injuries in Gaza and the West Bank continued to increase.²¹

2.4.10 The Israeli authorities maintain their security presence in the West Bank through the IDF, Shin Bet, the Israeli National Police and the Border Police. In the West Bank, Israeli security forces were reported to have used excessive force against civilians, including

¹² USSD Human Rights Report 2010 (Occupied Territories) section 1d: [Role of the Police & Security Apparatus](#)

¹³ [US Department of State: Country Report on Human Rights Practices 2010: Israel and the occupied territories, 08/04/2011](#), The Occupied Territories.

¹⁴ USSD Human Rights Report 2010 (Occupied Territories) section 1e [Denial of Fair Public Trial](#)

¹⁵ [US Department of State: Country Report on Human Rights Practices 2010: Israel and the occupied territories, 08/04/2011](#), The Occupied Territories.

¹⁶ Freedom House: [Gaza Strip 2011](#)

¹⁷ USSD Human Rights Report 2010 (Occupied Territories) section 1e [Denial of Fair Public Trial](#)

¹⁸ Freedom House: [Gaza Strip 2011](#)

¹⁹ [US Department of State: Country Report on Human Rights Practices 2010: Israel and the occupied territories, 08/04/2011](#), The Occupied Territories.

²⁰ Amnesty International: [Israel & OPT Report 2011](#)

²¹ UNOCHA 3 October 2011 [UN Statistics show that Israel's occupation is more aggressive](#)

killings, torture of Palestinian detainees, improper use of security detention procedures, demolition and confiscation of Palestinian properties, limits on freedom of expression and assembly, and severe restrictions on Palestinians' internal and external freedom of movement.²² In 2010, there were some instances of the Israeli authorities investigating and punishing abuse and corruption, but there were also many reports of failure to take disciplinary action in abuse cases.²³ Various reports state that impunity remains the norm for Israeli soldiers, police and other security forces, as well as Israeli settlers who commit serious human rights abuses against Palestinians; these include unlawful killings. In a few cases where Israeli security personnel were convicted, punishments have been described as 'extremely lenient'.²⁴

2.5 Internal relocation.

2.5.1 Caseowners must refer to the Asylum Policy Instructions on both internal relocation and gender issues in the asylum claim and apply the test set out in paragraph 339O of the Immigration Rules. It is important to note that internal relocation can be relevant in both cases of state and non-state agents of persecution, but in the main it is likely to be most relevant in the context of acts of persecution by localised non-state agents. If there is a part of the country of return where the person would not have a well founded fear of being persecuted and the person can reasonably be expected to stay there, then they will not be eligible for a grant of asylum. Similarly, if there is a part of the country of return where the person would not face a real risk of suffering serious harm and they can reasonably be expected to stay there, then they will not be eligible for humanitarian protection. Both the general circumstances prevailing in that part of the country and the personal circumstances of the person concerned including any gender issues should be taken into account, but the fact that there may be technical obstacles to return, such as re-documentation problems, does not prevent internal relocation from being applied.

2.5.2 The Basic Law provides for freedom of movement, and the Palestinian Authority generally does not restrict freedom of movement. Since the early 1990s, Israel has restricted Palestinian movement in the West Bank. The Israeli Defence Force (IDF) does restrict the movement of Palestinians to varying degrees, citing military necessity. Restrictions on movement affect virtually all aspects of life, including access to places of worship, employment, agricultural lands, schools, hospitals and the conduct of journalism and NGO activities.²⁵ Barriers to movement include checkpoints, a separation barrier between the West Bank and Israel, internal road closures and a Blockade on the Gaza Strip. In September 2011, the UN reported that the number of roadblocks and checkpoints that obstruct Palestinian movement in the West Bank to be 522, compared to 503 in July 2010. In addition, one or more of the main entrances are blocked to Palestinian traffic in ten out of eleven major West Bank cities, Palestinians holding West Bank IDs require entry permits to enter East Jerusalem and four of the five roads into the Jordan Valley are not accessible to most Palestinian vehicles.²⁶

2.5.3 The United Nations Office for the Coordination of Humanitarian Affairs (UNOCHA) stated that the Israeli authorities had halted work on the remaining planned construction of a separation barrier along parts of the Green Line, and in the West Bank. If the barrier were to be completed, it would separate approximately 9.5% of the West Bank (and approximately 50,000 Palestinians) and some parts of Jerusalem from the rest of the West Bank territory. Israel continues to restrict movement within these areas, including access from some NGOs. During 2010, approximately half of the checkpoints along the separation barrier were restricted to Israelis and Palestinians with permits. Palestinians with worker permits are required to pass through one of the 11 pedestrian crossings. Palestinians with permits, those working in international organisations, and biometric card holders and their

²² [US Department of State: Country Report on Human Rights Practices 2010: Israel and the occupied territories, 08/04/2011.](#)

²³ USSD Human Rights Report 2010 (Occupied Territories) page 59 : [Freedom of Movement \(OPT\)](#)

²⁴ COI Report, 2 December 2010, [Occupied Palestinian Territories](#) para.9.50 - 52

²⁵ COI Report: 2 December 2010, paragraph 25.01 [Occupied Palestinian Territories](#)

²⁶ [UN Office for the Coordination of Humanitarian Affairs – OPT, Movement and Access in the West Bank, September 2011](#)

immediate family members are allowed to pass in vehicles through any of the crossings. The barrier was deemed to be contrary to international law by an International Criminal Court advisory body in 2004.²⁷ Of the accessible gates, operating hours are very limited, although normally announced. Israeli authorities frequently prohibit travel between some or all West Bank towns. These internal 'closures' are said to have significant, negative economic effects. During major Jewish and Muslim holidays, the Israeli authorities enact comprehensive external closures, which prevent Palestinians from leaving the West Bank. Movement is also restricted for tens of thousands of Palestinian villagers south of Hebron, as road blocks on Route 60 cut direct access for businesses to the city's commercial centre. Palestinians not resident in the Jordan Valley are generally unable to drive on the main north-south route, Highway 90.²⁸

- 2.5.4** The restrictions on movement during the second intifada split the West Bank into six geographical areas: North, Centre, South, the Jordan Valley and northern Dead Sea, the enclaves resulting from the Separation Barrier and East Jerusalem. Movement between these sections, and within each section, became slow and complicated. Israel does now permit Palestinian movement between most parts of the West Bank but continues to restrict Palestinian movement to East Jerusalem, the Jordan Valley and the enclaves west of the Separation Barrier. Palestinians are prevented from travelling between the West Bank and the Gaza Strip in almost all cases.²⁹
- 2.5.5** The Blockade on the Gaza Strip (imposed by Israel since 2007) continues to significantly affect the Palestinian population there. Justified by Israel on the grounds that it prevents the supply of arms to Hamas by sea or land, both international and Israeli human rights organisations have nevertheless described the Blockade as "collective punishment" of the population of the Gaza Strip. It restricts access to basic goods and prevents civilians from undertaking travel abroad or changing their permanent place of residence. The Blockade has caused the cessation of postal services. Various humanitarian organisations report that the Blockade significantly hinders their ability to operate, and severely limits opportunities for Gazans to communicate with family and friends outside the Gaza Strip.³⁰
- 2.5.6** Personal travel in and out of Gaza is limited to one crossing point, and is restricted to humanitarian cases only. In fact, Israeli authorities denied many Gazans access to Israel or Egypt for medical treatment and detained some of them during 2010. The Israeli authorities are said to have refused requests for Palestinians to exit the Gaza Strip for medical treatment on security grounds, and also on the grounds that Palestinians might migrate to the West Bank.³¹ Hamas authorities in the Gaza Strip enforce movement restrictions on Gazans attempting to exit to Israel via the Erez Crossing, but maintain more relaxed restrictions on transfer to Egypt via the Rafah Crossing, although Fatah-affiliated individuals are subject to greater restrictions. Hamas do not appear to enforce routine restrictions on internal movement within Gaza, although there are reportedly some 'no go' areas to which Hamas prohibit access.³² The Rafah Crossing is currently closed, but does open occasionally.
- 2.5.7** Israel has retained exclusive power of civil registration and issuing of ID cards for Palestinians since their occupation of the Palestinian Territories in 1967. Following the Oslo Accords, the act of issuing ID cards passed to the Palestinian Authority (PA). However, because Israel continues to retain control over the Palestinian population registry, it is Israel that determines the rights and status of all Palestinians living on occupied land. The PA has no power to intervene on behalf of its people. Information on the name, age, date and place of birth, political affiliation and security record of all individuals is stored on a database

²⁷ USSD Human Rights Report 2010 (Occupied Territories) section 1d: [Freedom of Movement \(OPT\)](#)

²⁸ USSD Human Rights Report 2010 (Occupied Territories) section 1d: [Freedom of Movement \(OPT\)](#)

²⁹ B'Tselem May 6 2010: [Restrictions on Movement](#)

³⁰ USSD Human Rights Report 2010 (Occupied Territories) section 1d: [Freedom of Movement \(OPT\)](#)

³¹ USSD Human Rights Report 2010 (Occupied Territories) section 1d: [Freedom of Movement \(OPT\)](#)

³² USSD Human Rights Report 2010 (Occupied Territories) section 1d: [Freedom of Movement \(OPT\)](#)

accessed by Israeli officials at checkpoints and border crossings, giving Israel control over the movements of Palestinians.³³

2.5.8 Very careful consideration must be given to whether internal relocation would be an effective way to avoid a real risk of ill-treatment/persecution at the hands of, tolerated by, or with the connivance of, state agents. The current severe restrictions on the movement of Palestinians in the Gaza Strip and the West Bank, including East Jerusalem, will make internal relocation extremely difficult for many.

2.6 UNWRA and Article 1D of the 1951 Convention

2.6.1 Some applicants will have previously received support from the United Nations Relief and Works Agency for Palestinian Refugees (UNRWA). If so, they will need to be considered under Article 1D of the Convention and Article 12(a) of the Directive. Article 1D is one of the exclusion clauses in the Convention, with a significant inclusory element in the second paragraph. It provides as follows:

“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.”

2.6.2 Following the 1948 Arab-Israeli conflict, UNRWA was established by United Nations General Assembly resolution 302 (IV) of 8 December 1949 to carry out direct relief and works programmes for Palestinian refugees. The Agency began operations on 1 May 1950. In the absence of a solution to the Palestinian refugee problem, the General Assembly has repeatedly renewed UNRWA’s mandate. UNRWA registers and delivers assistance to 1948 Palestinian refugees in line with its working definition of a ‘Palestinian Refugee’. The eligibility rules issued in 1993 define a ‘Palestinian Refugee’ as ‘any person whose normal place of residence was Palestine during the period of 1 June 1946 to 15 May 1948, and who lost both home and means of livelihood as a result of the 1948 conflict’.³⁴

2.6.3 As the UNRWA was established and operational before the Refugee Convention was adopted, Palestine refugees were intentionally excluded from the international refugee law framework established in 1951. Those Palestinians who are receiving UNWRA assistance and protection are therefore excluded by Article 1D from the Convention because they do not need its protection and to avoid overlapping competencies between UNHCR and UNWRA.

2.6.4 The 1948 registered refugees and their descendants now number over 4.8 million, and mainly reside in the West Bank (including East Jerusalem), Gaza, Jordan, Lebanon or Syria. The Agency also provides services to refugees and people displaced by the Arab-Israeli conflict of 1967 and subsequent hostilities. UNRWA statistics noted that it supported up to 1 January 2010: a total of 778,993 registered refugees in the West Bank, and a total of 1,106,195 in Gaza. The organisation provides education, health services, relief and social services to eligible refugees among the 4.7 million registered Palestinian refugees within its five fields of operations.³⁵

2.6.5 If an applicant claims to be entitled to the benefits of the 1951 Refugee Convention as a result of the operation of Article 1D of the 1951 Refugee Convention or Article 12 of the Qualification Directive, caseowners should decide whether the applicant has actually

³³ COI Report: 2 December 2010, paragraph 25.02 [Occupied Palestinian Territories](#)

³⁴ COI Report: 2 December 2010, paragraph 6.07-09 [Occupied Palestinian Territories](#)

³⁵ COI Report: 2 December 2010, paragraph 6.05 & 6.10 [Occupied Palestinian Territories](#)

availed himself or herself of the “protection or assistance” of UNRWA. If the applicant has not actually availed him or herself of the “protection or assistance” of UNRWA the individual is not excluded from the Convention or the Directive and the asylum claim ought to be considered in the usual way. Cases where the individual has received UNWRA assistance should be referred for advice in the light of the progress of the CJEU case (see below).

2.7 Country guidance caselaw

El-Ali and Daraz [2002] EWCA Civ 1103

The Court of Appeal made three findings in respect of the application of Article 1D of the 1951 Refugee Convention.

First of all, the Court held that only Palestinians who were in receipt of UNRWA assistance when the Refugee Convention was adopted on 28 July 1951 fell within the scope of Article 1D.

Secondly, the Court held that the words “such protection or assistance has ceased for any reason” in Article 1D could only mean “the cessation of UNRWA assistance” overall, that is to say when the United Nations decides to end that Agency’s mandate. It did not include the cessation of assistance consequent on a Palestinian refugee leaving 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.

Thirdly, the Court held that if an individual passed the first two limbs of the test, the phrase “these persons shall *ipso facto* be entitled to the benefit of the Convention” is automatic and, thus, they should be entitled to the benefits of the Convention. This finding justified the interpretation of the other elements of Article 1D because “so great a parcel of rights would not likely be conferred...unless the class of its recipients were clear and certain...”.

Bolbol v Bevandorlasi es Allampolgarsagi Hivatal (C-31/09) Unreported June 17, 2010 (European Court of Justice)

The Court of Justice of the European Union considered the correct interpretation of Article 12(1)(a) of the Qualification Directive. That Article provides:

“1. A third country national or a stateless person is excluded from being a refugee, if:

- (a) he or she falls within the scope of Article 1 D of the Geneva Convention, relating to protection or assistance from organs or agencies of the United Nations other than the United Nations High Commissioner for Refugees. When such protection or assistance has ceased for any reason, without the position of such persons being definitely 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 Directive.”

The Court of Justice held 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 UNRWA 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.”

And;

“...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.”

Consequently, the findings on this issue in **El-Ali** should no longer be applied.

Abd El Karem El Kott Mostafa and Others Case C-364/11

A further reference has been made to the Court of Justice of European Union on the interpretation of Article 12 of the Qualification Directive. **At the time of writing the Court has not ruled on the questions referred.** The questions are:

1. Do the benefits of the Directive mean recognition as a refugee, or either of the two forms of protection covered by the Directive (recognition as a refugee and the grant of subsidiary protection), according to the choice made by the Member State, or, possibly, neither automatically but merely inclusion within the scope *ratione personae* of the Directive?
2. Does cessation of the agency's protection or assistance mean residence outside the agency's area of operations, cessation of the agency and cessation of the possibility of receiving the agency's protection or assistance or, possibly, an obstacle caused by legitimate or objective reasons such that the person entitled thereto is unable to avail himself of that protection or assistance?

HS (Palestinian – return to Gaza) Palestinian Territories CG [2011] UKUT 124 (IAC)
The Tribunal found that:

(1) The Tribunal has jurisdiction to consider practical issues concerning the return of a Palestinian family to Gaza. GH [2005] EWCA Civ 1182 and HH (Somalia) [2010] EWCA Civ 426 applied.

(2) Palestinians from Gaza with passports (expired passports can be renewed via a straightforward procedure) are unlikely to experience problems in obtaining and, if necessary getting extensions of, visas from the Egyptian authorities to enter Egypt and cross into Gaza via the Rafah crossing.

(3) The conditions likely to be experienced by Palestinians in Egypt while awaiting crossing into Gaza are not such as to give rise to a breach of their human rights.

(4) On the basis of the authorities: MA [2008] Imm AR 617; MT [2009] Imm AR 290 and SH [2009] Imm AR 306, it would not be persecutory or in breach of their human rights for Palestinians to be refused entry to Gaza.

(5) The Tribunal does not have jurisdiction to decide whether Israel has acted in breach of customary international law in respect of its treatment of Palestinians within the Occupied Palestinian Territories.

(6) The conditions in Gaza are not such as to amount to persecution or breach of the human rights of returnees or place them in need of international protection.

SH (Palestinian Territories) v Secretary of State for the Home Department [2008] EWCA Civ 1150

The appellant, a stateless Palestinian from the West Bank, raised the same point as that in MT (Palestinian Territories) v S of S for the Home Department [2008] EWCA Civ 1149. That point is whether this court is bound by the earlier decision of this court in MA (Palestinian Territories) v S of S for the Home Department [2008] EWCA Civ 304. The court made the following findings:

- 1) The evidence establishes no more than that she is a stateless Palestinian from the West Bank who is likely to be refused re-entry if she does not have the relevant travel documents, as will be the case if she is forcibly returned.
- 2) Denial of return to a stateless person to their country of former habitual residence does not of itself give rise to recognition as a refugee under the 1951 Geneva Convention. The authority for this, which is binding on the Court of Appeal, is MA. There is nothing to distinguish the present case from MA.
- 3) Even if this court were not bound by MA, refusal to allow the appellant re-entry to the West Bank because she is a stateless Palestinian would not cross the persecution threshold required by para 5 of the 2006 Regulations.

MA (Palestinian Arabs – Occupied Territories – Risk) Palestinian Territories CG [2007] UKIAT 00017 promulgated 20 February 2007.

Upheld by Court of Appeal 9 April 2008 EWCA Civ 304

The AIT found that:

para 121. Palestinian Arabs who would be at real risk in the Occupied Territories: If the personal history of an individual Palestinian Arab is such that it is reasonably likely that he/she would be suspected by the Israeli security forces of being involved in suicide bombing missions or terrorist activities against Israel or Israeli settlements, it is reasonably likely that he/she would be arrested and detained and held in "administrative detention". This is so whether the individual is picked up in military incursions, round ups or at checkpoints. A returnee who is reasonably likely to fall under such suspicion is reasonably likely to be persecuted or subjected to ill-treatment amounting to serious harm (or in breach of their rights under Article 3) although questions as to whether there is an applicable Geneva Convention reason and as to the possible exclusion of an applicant under Article 1F of the Geneva Convention or paragraph 339C of the Immigration Rules may then arise.

para 124. At checkpoints and in general round-ups, the fact that an individual is a Palestinian Arab male aged between 16 and 35 from the West Bank or the Gaza Strip is reasonably likely to lead that individual being more closely examined by the Israeli security forces but it is not reasonably likely that he would fall under suspicion for those reasons alone. There must be something more to attract the adverse attention of the Israeli security forces.

para 129 '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. This applies even in the case of a Palestinian male within the 16 to 35 age group who is from the northern part of the West Bank who would have to endure greater restrictions on his ability to move in the Occupied Territories.'

para 128 'There is no evidence to suggest that individuals who are forcibly returned and/or who have lived abroad for some time would be treated any differently from other Palestinians, whether at the time of seeking re-entry into the West Bank via the King Hussein Bridge, or thereafter.'

para 122 '.....However, if a Palestinian Arab who comes from the West Bank is refused re-entry by the Israeli security forces, this would not, of itself, amount to persecution or serious harm or Article 3 ill-treatment. Palestinian Arabs from the West Bank are stateless and have no right of re-entry into the Occupied Territories unlike a citizen. If a Palestinian Arab returnee is refused re-entry into the West Bank at the Israeli checkpoint on the King Hussein Bridge, then he would simply have to turn back to Jordan. The guidance in **NA (Palestinians – Not at general risk) Jordan CG [2005] UKIAT 00094** that ethnic Palestinians, whether or not recognised as citizens of Jordan, are not persecuted or treated in breach of their protected human rights by reason of their ethnicity although they may be subject there to discrimination holds good. Appeals on asylum grounds and humanitarian protection grounds must be determined on the hypothetical assumption that a returnee will be successful in re-gaining entry into the West Bank.'

3. Main categories of claims

- 3.1** This Section sets out the main types of asylum claim, humanitarian protection claim and discretionary leave claim on human rights grounds (whether explicit or implied) made by those entitled to reside in Israel, Gaza and the West Bank. Where appropriate it provides guidance on whether or not an individual making a claim is likely to face a real risk of persecution, unlawful killing or torture or inhuman or degrading treatment/ punishment. It also provides guidance on whether or not sufficiency of protection is available in cases where the threat comes from a non-state actor; and whether or not internal relocation is an option. The law and policies on persecution, Humanitarian Protection, sufficiency of protection and internal relocation are set out in the relevant Asylum Instructions, but how these affect particular categories of claim are set out in the instructions below.
- 3.2** Each claim should be assessed to determine whether there are reasonable grounds for believing that the applicant would, if returned, face persecution for a Convention reason - i.e. due to their race, religion, nationality, membership of a particular social group or political opinion. The approach set out in Karanakaran should be followed when deciding how much weight to be given to the material provided in support of the claim (see the Asylum Policy Instruction on considering the protection (asylum) claim and assessing credibility).

3.3 If the applicant does not qualify for asylum, consideration should be given as to whether a grant of Humanitarian Protection is appropriate. If the applicant qualifies for neither asylum nor Humanitarian Protection, consideration should be given as to whether he/she qualifies for Discretionary Leave, either on the basis of the particular categories detailed in Section 4 or on their individual circumstances.

3.4 All Asylum Instructions can be accessed via the on the Horizon intranet site. The instructions are also published externally on the Home Office internet site at:

<http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/>

3.5 Credibility

3.5.1 This guidance is not designed to cover issues of credibility. Caseowners will need to consider credibility issues based on all the information available to them. For guidance on credibility see the Asylum Policy Instruction on considering the protection (asylum) claim and assessing credibility. Caseowners must also ensure that each asylum application has been checked against previous UK visa applications. Where an asylum application has been biometrically matched to a previous visa application, details should already be in the Home Office file. In all other cases, the caseowner should satisfy themselves through CRS database checks that there is no match to a non-biometric visa. Asylum applications matched to visas should be investigated prior to the asylum interview, including obtaining the Visa Application Form (VAF) from the visa post that processed the application.

3.6 General country situation

3.6.1 Applicants may make an asylum and/or human rights claim based on ill-treatment amounting to persecution due to the poor humanitarian conditions, and the volatile general situation in the West Bank and Gaza.

3.6.2 Treatment Palestinians in the Occupied Palestinian Territories (OPT) continue to be denied fair access to adequate, safe water supplies by Israel, impeding social and economic development, and posing a threat to the health of the populace.³⁶ The current humanitarian operation in the OPT launched in November 2009, is one of the largest in the world. Through the Consolidated Appeal (CAP) programme, various UN agencies, international and national NGOs requested over US\$660 million for 2010. This support is intended to mitigate the worst effects of the on-going conflict on the most vulnerable Palestinians. Approximately 22% of households in the West Bank are food-insecure; in Gaza 52% of households are food-insecure.³⁷ Unemployment levels in the West Bank and in the Gaza Strip are high.³⁸

3.6.3 The routing of the West Bank barrier, which goes deep into occupied Palestinian territory, and also the security areas in and around Israeli settlements have prevented thousands of Palestinian farmers from accessing their lands. The ICRC operates projects to bring life back to agricultural land that had been neglected or abandoned due to the barrier. The ICRC works closely with the Palestine Red Crescent in order to provide a better response at times of crisis. During 2010 they actively monitored the humanitarian consequences of Israeli practices and policies on the civilian population the occupied territories, and visited over 2,800 persons detained by the PA in the West Bank, and 850 persons detained in Gaza by the Hamas authorities, to assess their treatment and living conditions. They also monitored the situation of over 8,000 Palestinian detainees held in Israeli detention, and enabled 124,000 family members from the West Bank to visit relatives held in Israeli prisons.³⁹

³⁶ COI Report: 2 December 2010, paragraph 24.02 [Occupied Palestinian Territories](#)

³⁷ World Food Programme: [Occupied Palestinian Territory Overview: Feb 2011](#)

³⁸ COI Report: 2 December 2010, paragraph 24.01 [Occupied Palestinian Territories](#)

³⁹ Red Cross: [ICRC maintains humanitarian effort March 2011](#)

- 3.6.4** Palestinian armed groups in Gaza launched fewer rocket attacks than in 2009, though they continue to target Israeli population centres. Hamas also claimed responsibility for the killing of four Jewish settlers in the West Bank. The Hamas authorities are reported to have carried out judicial executions in 2010, and have allegedly tortured scores of detainees. The Israeli authorities stated that the blockade would remain in place until Hamas release the Israeli soldier, Gilad Shalit (since released). Israeli forces regularly shoot at Gaza residents up to 1.5 kilometres from the armistice line, creating a “no-go” zone comprising 30% of Gaza’s agricultural land. The Israeli navy regularly shoots at Palestinian fishing boats sailing more than two nautical miles from the coast, prohibiting access to 85% of Gaza’s maritime area.⁴⁰
- 3.6.5** *Current security and humanitarian situation in Gaza*
The security situation in Gaza remains volatile. In August 2011, a series of Israeli air strikes killed six Palestinians and wounded more than 20 others in a 24-hour period, disrupting a cease-fire that was agreed on 22 August following violence that broke out after militants crossed into Israel from Egypt and killed eight Israelis”.⁴¹ On 29-30 October, fighting saw rockets fired from Gaza into Israel and a series of Israel air strikes which left 12 Palestinian militants and an Israeli civilian dead, raising fear of renewed conflict.⁴² Unrest continued in December 2011, with reports of Israeli air strikes on Gaza City on 7, 9 and 13 December in which several Palestinians were killed or wounded.⁴³
- 3.6.6** The continuing Israeli military blockade of the Gaza Strip worsened an already bleak humanitarian situation, complicating health and sanitation problems, and increasing poverty and malnutrition for the 1.5 million residents. The Israeli military offensive launched in December 2010 brought conditions to near catastrophe. Before the offensive, the local economy was already paralysed by the lack of imports and a ban on exports. Shortages of most basic necessities caused price increases, resulting in approximately 80% of the population becoming dependent on international assistance in 2009.⁴⁴ Efforts by various humanitarian organisations to provide emergency relief and humanitarian assistance were reportedly deliberately blocked by Israeli military forces during 2010-11.⁴⁵
- 3.6.7** On May 31 2010, Israeli troops intercepted an international aid flotilla aiming to break the blockade. They killed nine aboard the flotilla, and injured over fifty, some seriously. Several Israeli soldiers were also injured.⁴⁶ Enquiries were established into the attack, including two by the UN. In September, the investigative body appointed by the UN Human Rights Council concluded that lethal force was employed by the Israeli soldiers, causing an unnecessarily large number of persons to be killed or seriously injured. Following international criticism of this attack, the Israeli government announced a partial easing of the blockade. This was insufficient to significantly improve conditions in Gaza, and the ban on all exports from Gaza continued till 8 December 2010. At the end of 2010, the announced easing of restrictions on exports had not been implemented.⁴⁷ The Israeli government made another announcement early in 2011 that the restrictions would be eased, but this has not yet happened.⁴⁸
- 3.6.8** As of October 2011, Israel was still operating its closure policy in Gaza. Human Rights Watch reported that current imports of around 1,000 truckloads of goods a week remain considerably below the average 2,500 truckloads a week in 2005, before the closure. Imports of construction materials remain banned except in connection with Israeli-approved

⁴⁰ Human Rights Watch 2011: [World Report 2011](#)

⁴¹ [Radio Free Europe/Radio Liberty, Six Palestinians Reported Killed In Israeli Air Strikes, 25/08/2011.](#)

⁴² [Agence France-Presse, One killed in Israeli air raids: Palestinians, 07/12/2011.](#)

⁴³ [Agence France-Presse, Father, daughter hurt in Israeli Gaza raid, 11/12/2011](#), [Reuters, Israeli strikes kill 3 in Gaza, rockets hit Israel, 09/12/2011](#) and [Agence France-Presse, One killed in Israeli air raids: Palestinians, 07/12/2011](#)

⁴⁴ Amnesty International: [Israel & OPT Report 2011](#)

⁴⁵ Amnesty International: [Israel & OPT Report 2011](#)

⁴⁶ BBC News: [Q&A: Israeli deadly raid on flotilla](#)

⁴⁷ Amnesty International: [Israel & OPT Report 2011](#)

⁴⁸ World Food Programme: [Occupied Palestinian Territory Overview: Feb 2011](#)

projects by international agencies. Israel also bars virtually all exports from Gaza, which has significantly hindered its economic recovery.⁴⁹

3.6.9 In September 2011, a group of UN Independent Experts highlighted that at least two-thirds of Gazan households are food insecure and that between 90 and 95 per cent of Gaza's water is polluted and unfit for human consumption. They also noted that the blockade has severely hampered the ability of the health system in Gaza to properly function.⁵⁰ Similarly, in December 2011, the UN Committee on Economic, Social and Cultural Rights highlighted that Palestinians living in the OPT have severely restricted access to health facilities, goods and services and that they do not have access to sufficient and safe drinking water and adequate sanitation.⁵¹

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

The ICRC noted that stringent restrictions on construction and movement continued to hamper development, adversely affect livelihoods and make life generally difficult for Palestinians living close to Israeli settlements (which are illegal under international humanitarian law). Throughout 2010, particularly during the olive harvest, the ICRC noted an increase in the destruction of Palestinian property, particularly the burning or uprooting of olive trees, thereby destroying the income of farmers. The ICRC carried out water and sanitation projects for communities with little or no access to water.⁵² In April 2011, the UN called on the Israeli government to cease further settlement on occupied Palestinian territory, and reiterated that this practice is illegal.⁵³

3.6.11 The Israeli army repeatedly destroy rainwater harvesting cisterns used by Palestinians in the West Bank on the basis that they have been built without permission.⁵⁴ Israel continues to demolish homes and other properties constructed by Palestinians in areas of the West Bank under Israeli civil control, on the basis that they lack Israeli planning licenses. During 2010, the total number of homes and other structures demolished, together with villages destroyed or farmland levelled, increased on previous years.⁵⁵ The Israeli authorities cite lack of planning/building permission, but in fact such permits are only rarely granted if applied for.⁵⁶ Israeli forces in the West Bank killed at least 7 Palestinian civilians in 2010. These reportedly included 2 young men collecting scrap metal, and two children participating in a demonstration and posing no danger to Israeli forces or civilians.⁵⁷

3.6.12 Complaints of torture committed by West Bank PA security services increased in 2010; the Independent Commission for Human Rights had received 106 complaints by September 2010. The PA courts have failed to find any security officer responsible for torture or arbitrary detention. The PA security services arbitrarily or violently dispersed numerous nonviolent protests and press conferences during 2010, also assaulting and arbitrarily detaining journalists covering these incidents.⁵⁸

3.6.13 Palestinians face systematic discrimination due to their race, ethnicity and national origin, which deprives them of electricity, water, schools and access to roads, and limited access to hospitals. Jewish settlers living close by are able to enjoy all of these amenities. Building permits for houses, schools, clinics and infrastructure are denied, and homes and entire communities are regularly demolished.⁵⁹ Human Rights Watch reported that the number of

⁴⁹ [Human Rights Watch: Israel: Follow Prisoner Exchange by Ending Blockade, 18/10/2011.](#)

⁵⁰ [UN Office of the High Commissioner for Human Rights: United Nations Independent Experts Criticize Conclusion In "Palmer Report" That Israel'S Blockade Of Gaza Is Legal, 13/09/2011.](#)

⁵¹ [UN Committee on Economic, Social and Cultural Rights, Consideration of reports submitted by States parties under Articles 16 and 17 of the Covenant Concluding Observations of the Committee on Economic, Social and Cultural Rights Israel, 02/12/2011](#), paragraphs 12, 24, 28, 29 and 32.

⁵² Red Cross: [ICRC maintains humanitarian effort March 2011](#)

⁵³ UNHCR Refworld OPT: [UN News Service 5 April 2011](#)

⁵⁴ COI Report: 2 December 2010, paragraph 25.04 [Occupied Palestinian Territories](#)

⁵⁵ USSD Human Rights Report 2010 (Occupied Territories) section 1e: [Freedom of Movement \(OPT\)](#)

⁵⁶ Amnesty International: [Israel & OPT Report 2011](#)

⁵⁷ Human Rights Watch 2011: [World Report 2011](#)

⁵⁸ Human Rights Watch 2011: [World Report 2011](#)

⁵⁹ Human Rights Watch December 2010: [Separate & Unequal](#)

settler attacks between January and 31 October 2011 was 42 per cent higher than in the same period in 2010 (which saw 266 settler attacks).⁶⁰ The Head of the UN Office for Coordination of Humanitarian Affairs in the OPT noted that in 2011 around 10,000 Palestinian-owned olive trees had been destroyed or damaged in attacks by settlers”.⁶¹

3.6.14 In November 2011, Human Rights Watch called on the Israeli authorities to end the military’s “hand-off approach” to settler attacks against Palestinian property.⁶² Human Rights Watch also noted the deaths of fourteen people who were killed during demonstrations in southern Lebanon, the Golan Heights, and the West Bank against the destruction of Palestinian villages and expulsion of their residents.⁶³ The UN Committee on Economic, Social and Cultural Right observed in December 2011, that Palestinians in the West Bank faced serious obstacles to the enjoyment of the right to work. Particularly, Palestinians with agricultural land which has been rendered inaccessible or difficult to reach by the construction of the Wall, due to the limited allocation of permits and opening times of the Wall gates.

3.6.15 See also:

[Actors of protection](#) (section 2.3 above)
[Internal relocation](#) (section 2.4 above)
[Caselaw](#) (section 2.7 above)

3.6.16 Conclusion There is a generalised state of insecurity in the Occupied Palestinian Territories, but current 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. However, the general economic and humanitarian situation in the West Bank and in Gaza in particular is serious and may, in some cases, reach the minimum level of severity for persecution or serious harm, depending on the individual circumstances of the applicant.

3.6.17 In assessing claims based solely or partly on the general economic and humanitarian situation or on account of generalised violence in Gaza or the West Bank, caseowners should refer to the Interim Asylum Instruction on Humanitarian Protection: Indiscriminate Violence, and where appropriate, the Gender Asylum Policy Instruction. Caseowners must consider the particular humanitarian and security situation in the relevant territory, together with the individual circumstances of the applicant.

3.6.18 The grant of Humanitarian Protection on account of a claim based on a fear of generalised violence will only be appropriate where the particular circumstances of the individual are such that their return will breach Article 3, or if applicable, that Article 15(c) of the EC Qualification Directive applies. The UK Border Agency considers that in neither the West Bank nor the Gaza Strip is there such a high level of indiscriminate violence that there would be substantial grounds for believing that an applicant would, solely by being present there, face a real risk which threatens his life or person. If applicants do not meet the above test, it may also be applied on a sliding scale i.e. the more the applicant is able to show that he is specifically affected by factors particular to his personal circumstances (e.g. age, disability, gender, ethnicity or by virtue of being a perceived collaborator, teacher or government official etc), the lower the level of indiscriminate violence required for him to be eligible. For further details, see the Interim Instruction on the application of Article 15(c) of the Qualification Directive.⁶⁴

3.6.19 To establish a claim under Article 15(c) of the Qualification Directive and paragraph 339C of the Immigration Rules, it will therefore be necessary for an applicant to establish that particular factors place him or her at real risk of serious harm from the levels of

⁶⁰ [Human Rights Watch, New Commander Should Protect Palestinians From Settler Violence, 21/11/2011.](#)

⁶¹ [BBC News, Concerns over rising settler violence in the West Bank, 17/11/2011.](#)

⁶² [Human Rights Watch, New Commander Should Protect Palestinians From Settler Violence, 21/11/2011.](#)

⁶³ [Human Rights Watch, Investigate Killings During Border Protests, 20/05/2011.](#)

⁶⁴ UK Border Agency Interim Instruction: [Article 15c of the Qualification Directive](#)

indiscriminate violence that do exist, and that internal relocation to a place where there is not a real risk of serious harm is not reasonable.

3.7 Members of militant groups and those perceived to be involved in security offences

3.7.1 Some applicants may make an asylum and/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, or being perceived to be a security threat.

3.7.2 Treatment At the end of 2010, the World Organisation Against Torture (OMCT) reported that Israel had been holding hundreds of persons from the Occupied Palestinian Territories in administrative detention. In the West Bank this is carried out on the basis of Military Order 1651, which empowers military commanders to detain an individual for up to six months if they have “reasonable grounds to presume that the security of the area or public security require the detention”. A detention order can be renewed on or just before the expiry date and this process can be continued indefinitely. The OMCT also noted that administrative detention deprives detainees of basic safeguards, including the right to challenge the evidence on which the detention is based, and concluded that this type of indefinite detention, following manifestly unfair proceedings, can amount to cruel, inhuman or degrading treatment.⁶⁵

3.7.3 The UN Special Rapporteur on the situation of human rights defenders raised a number of urgent appeals regarding the arrest and detention without charge of several Israeli and Palestinian human rights activists by Israeli security officials during 2010. Israel defended its actions on the basis of alleged security concerns, but the UN Special Rapporteur expressed concern at increased restrictions on the activities of human rights defenders working in Israel, including arrests, administrative detentions and restrictions to their freedom of movement as well as to their freedom of opinion and expression. The UN Special Rapporteur also expressed concern at allegations of torture and ill-treatment he had received.⁶⁶ In 2011, the UK FCO noted an apparent rise over the last year in the number of Palestinian human rights defenders who have been arrested and detained by the Israeli authorities for their involvement in demonstrations.⁶⁷ Similarly, in August 2011, Reporters Without Borders condemned the failure to punish abusive treatment of Palestinian journalists by the Israel Defence Forces in the West Bank and noted that many arbitrary arrests have been reported in the past two months.⁶⁸

3.7.4 Human Rights Watch raised the matter of the arbitrary detention of Palestinians advocating non-violent protest against Israeli settlements and the route of the Separation Barrier. They highlighted the case of Abdallah Abu Rahme who was sentenced by a military court to one year in prison on charges of inciting violence and organising illegal demonstrations, largely on the basis of coerced statements by children.⁶⁹ Israeli law prohibits arbitrary arrest and detention, and these prohibitions are generally observed for all Israeli citizens. Non-citizens of Palestinian origin who are detained on security grounds fall under military jurisdiction, even when detained in Israel. Palestinians detained on security grounds (security offences range from throwing rocks to membership of a terrorist organisation and incitement to violence) are only rarely acquitted in Israeli military courts.⁷⁰

3.7.5 Persons detained on security grounds are likely to fall under one or more of three legal systems. These are: (a) the 2006 ‘temporary law’ on criminal procedures, where the IPS may hold individuals suspected of a security offence for 48 hours before being brought before a judge, with limited exceptions allowing up to 96 hours; (b) the 1979 Emergency

⁶⁵ OMCT: [Follow-up case: Harsh conditions of detention](#)

⁶⁶ OHCHR: [Israel & Occupied Palestinian Territories Feb 2011](#)

⁶⁷ [UK FCO, Human Rights and Democracy: The 2010 Foreign & Commonwealth Office Report, 31/03/2011](#), Israel and the Occupied Palestinian Territories, Human rights defenders.

⁶⁸ [Reporters Without Borders, PALESTINIAN JOURNALISTS UNDER FIRE AGAIN FROM ISRAELI TROOPS, 23/08/2011.](#)

⁶⁹ Human Rights Watch 2011: [World Report 2011](#)

⁷⁰ COI Report: 2 December 2010, paragraph 11.12 [Occupied Palestinian Territories](#)

Powers Law which allows the Defence Ministry to detain persons administratively, without charge, for up to six months, renewable indefinitely. These detainees are almost all Palestinians of the West Bank, and are permitted legal representation within seven days, extendable to up to 21 days in limited cases. These administrative detainees are generally held for less than one year, although in 2010, 21 detainees were found to have been held for more than two years; (c) the Illegal Combatant Law 2002 permits the holding of a detainee for 14 days prior to review by a district court judge. Access to counsel may be denied for up to 21 days with the approval of the attorney-general, and detainees may be detained indefinitely, subject to twice-yearly reviews at the district court. In 2008, the government extended a temporary provision that exempts law enforcement officers from the law requiring them to film and audio record all interrogations of detainees suspected of security offences.⁷¹

- 3.7.6** Various NGOs have stated that Israel continues to overuse the administrative detention process, including in non-security cases. At the end of 2010, B'Tselem stated that 204 Palestinians were being held in administrative detention without having been charged with a particular crime; this is a decrease from the 278 held at the end of 2009. More recently, Amnesty International reported that, according to the Israeli Prison Service statistics, in July 2011, 243 Palestinians were being held as administrative detainees.⁷² As a general practice, Arabs without Israeli citizenship detained for security reasons are not granted bail.⁷³
- 3.7.7** Hamas continues to consolidate its control over Gaza, eliminating or marginalising potential rivals. However, Gaza remains a base for several other terrorist organisations, including Palestine Islamic Jihad (PIJ) and various Salafist splinter groups. There are also a number of clan-based criminal groups that engage in or facilitate terrorist attacks. Rocket and mortar fire was the most prevalent form of attack by Palestinian terrorist organisations in 2010. The Government of Israel considers Hamas to be the dominant organisation effectively in control of Gaza, and responsible for all such attacks emanating from Gaza, although the majority of these attacks are conducted by the PIJ and other Popular Resistance Committees from inside Gaza.⁷⁴
- 3.7.8 See also:**
[Actors of protection](#) (section 2.3 above)
[Internal relocation](#) (section 2.4 above)
[Caselaw](#) (section 2.7 above)
- 3.7.9 Conclusion** Country of origin information indicates that a wide range of individuals may be of interest to the Israeli security forces on the basis of suspected or actual involvement in security offences. Such individuals may face treatment amounting to persecution, and for these applicants a grant of asylum may be appropriate.
- 3.7.10** Caseowners should note that militant groups have been responsible for numerous serious human rights abuses. If it is accepted that an applicant was an active operational member or combatant and has been involved in such actions, caseowners should first give consideration to whether that individual may have been forcibly recruited and then whether one of the Exclusion Clauses is applicable. Such cases should be referred to a Senior Caseworker in the first instance.

3.8 Fatah members and perceived supporters residing in Gaza

- 3.8.1** Some Fatah affiliated applicants from Gaza, and individuals perceived as being supporters of Fatah may make an asylum claim based on persecution by members of Hamas following the Hamas takeover of Gaza in June 2007.

⁷¹ USSD Human Rights Report 2010: (Israel section) [Arbitrary arrest or detention](#)

⁷² [Amnesty International, PALESTINIAN ACADEMIC'S DETENTION EXTENDED, 09/09/2011.](#)

⁷³ USSD Human Rights Report 2010: (Israel section) [Arbitrary arrest or detention](#)

⁷⁴ USSD Report on Terrorism 2010: [Israel, West Bank and Gaza](#)

- 3.8.2** The political victory of Hamas in the January 2006 Palestinian parliamentary elections complicated peace prospects, since both Israel and the international community refuse to deal with a Hamas-led government unless it recognises Israel, disavows violence and accepts previous Israeli-Palestinian accords. Hamas has consistently refused to do this. In June 2007, Hamas took control of the Gaza Strip by force, which it has retained ever since, and the Palestinian Authority resumed contact with the international community.⁷⁵
- 3.8.3 Treatment** At the end of 2010, the US Congressional Research Service reported that “Hamas also has frequently attacked or repressed Palestinian political and factional opponents, particularly in its struggle with Fatah and other groups for control of the Gaza Strip” and that there are “widespread reports of mistreatment and torture of Hamas’ political opponents (particularly Fatah members) and other prisoners.”⁷⁶ Similarly, it was reported by the joint annual report of the World Organisation Against Torture (OMCT) and the International Federation for Human Rights (FIDH), that in Gaza, “dozens of people were arrested for their alleged support of the Fatah Party”.⁷⁷ Freedom House also stated that since 2008 Hamas has significantly restricted freedoms of assembly and association, with security forces dispersing public gatherings of Fatah, culminating in July 2010 with the detention of over 100 Fatah activists, some of whom were tortured.⁷⁸
- 3.8.4** During the summer of 2010, it was reported that Hamas prevented dozens of Fatah activists from leaving Gaza by confiscating their passports. The representative for the Interior Ministry in Gaza, Ihab al-Ghoussein, told the Israeli newspaper Haaretz that 10,000 new passports are needed monthly, and that there is a waiting list of 100,000 applicants urgently awaiting travel documents. It is reported that both Hamas and Fatah use passports as a political weapon against the other side, and that ordinary Palestinians suffer as a result.⁷⁹ There have also been reports of targeted attacks against the homes of, and killings of, known figures in the Fatah movement in Gaza. The Palestinian Centre for Human Rights (PCHR) received dozens of complaints and testimonies from Fatah activists, including women, who were repeatedly summonsed and detained in the Gaza Strip during May and June, frequently in poor conditions.⁸⁰
- 3.8.5** Residents of the Gaza Strip have no right to political participation or to choose their government. Hamas security forces continue to kill, torture and kidnap, arbitrarily detain and otherwise harass Palestinians, particularly Fatah members, with impunity. There are reports of abuse of prisoners and failure to provide fair trials to those accused. Hamas actively restrict the freedom of speech, religion and movement of residents of the Gaza Strip.⁸¹ There are reports that during 2010, masked gunmen affiliated with Hamas unlawfully executed at least 32 people. According to law, the PA president must ratify all death sentences, but Hamas did not contact the PA regarding these executions.⁸²
- 3.8.6 See also:**
[Actors of protection](#) (section 2.3 above)
[Internal relocation](#) (section 2.4 above)
[Caselaw](#) (section 2.7 above)
- 3.8.7 Conclusion.** Applicants who can establish a well-founded fear of the de facto authorities in Gaza, i.e. Hamas, will not be able to obtain protection from these authorities. Individuals known or perceived by Hamas to be involved either in anti-Hamas activities, or affiliated with Fatah are likely to be of adverse interest to the de facto authorities in Gaza. For such applicants, a grant of asylum is likely to be appropriate. Caseowners must give

⁷⁵ COI Report: 2 December 2010, paragraph 3.22 [Occupied Palestinian Territories](#)

⁷⁶ US Congressional Research Service: Background and Issues for Congress: [Overview, and Leadership & Organisation](#)

⁷⁷ World Organisation Against Torture: [Steadfast In Protest: Annual Report - 13/09/2010](#)

⁷⁸ [Freedom House, Freedom in the World: Country Report 2011: Gaza, May 2011.](#)

⁷⁹ Inter Press Service News Agency: Mideast: [Palestinian Patients Suffer from political rivalry 24/08/2010](#)

⁸⁰ Palestinian Centre for Human Rights: [gravely concerned by continued summonsing and detention 4/07/2010](#)

⁸¹ USSD Human Rights Report 2010 (Occupied Territories) [Introductory section to OPT](#)

⁸² USSD Human Rights Report 2010 (Occupied Territories) [OPT section 1a Arbitrary or Unlawful Deprivation of Life](#)

consideration to the latest available country of origin information in order to assess whether there is a significant and non-temporary change in country conditions, such as would indicate that a grant of asylum is not appropriate.

- 3.8.8** Caseowners should note that members of security forces and militias controlled by Fatah have been responsible for serious human rights abuses. If it is accepted that an applicant was an active operational member or combatant and has been involved in such actions, caseowners should consider whether one of the Exclusion Clauses is applicable. Caseowners should refer such cases to a Senior Caseworker in such instances.

3.9 Hamas members and perceived supporters residing in the West Bank

- 3.9.1** Some Hamas affiliated applicants from the West Bank and those perceived to support Hamas may make a claim for asylum based on persecution by members of Fatah following the Hamas takeover of Gaza in June 2007.

- 3.9.2 Treatment** At the end of 2010, the US Congressional Research Service noted that there were reports of ill-treatment by the Palestinian Authority of Hamas members and sympathisers in the West Bank.⁸³ Various organisations reported that the PA was responsible for the arbitrary arrest of members and supporters of Hamas and Palestinian Islamic Jihad and had subjected detainees to cruel treatment.⁸⁴ In August 2010, it was reported that, in a similar manner to Hamas' treatment of Fatah activists and sympathisers in Gaza, the PA in the West Bank prevented suspected and actual Hamas members from leaving the West Bank by confiscating their passports.⁸⁵ Freedom House reported that protests against the PA's policies are generally disallowed and forcibly dispersed, and Hamas has been effectively banned from holding demonstrations in the West Bank.⁸⁶ The U.S. Department of State confirmed that torture against detainees remained a problem in the West Bank, including abuse by Fatah-affiliated Palestinian security officials against Hamas members and supporters in the West Bank.⁸⁷

- 3.9.3** In February 2011, Human Rights Watch reported that the PA were responsible for deaths in custody of prisoners believed to be Hamas supporters or activists. They particularly requested an independent investigation into the death of Haitham Amer, a suspected Hamas member who died on 15 June 2009, reportedly by torture at the hands of the General Intelligence Service (GIS) in Hebron. They reported that the trial of officers involved in the death of Amer is the only known instance in which Palestinian security officials in the West Bank have been criminally prosecuted for torture, despite hundreds of allegations of torture. Subsequently, all five officers accused of causing his death were acquitted. This was despite eye witness testimonies and an official autopsy report stating the cause of death to be torture.⁸⁸

- 3.9.4** The PA has been criticised for banning pro-Hamas publications in the West Bank. Journalists who are perceived to be pro-Hamas have been sentenced to months in prison, including for "resisting the policies of the authorities". In October 2010, the Hamas Internal Security Agency closed the office of the Palestinian Journalists Syndicate in Gaza. The Syndicate had been holding workshops aimed at uniting journalists across the West Bank and Gaza. The International Federation of Journalists accused Hamas of targeting journalists who wished to promote solidarity and unity within the Palestinian community. Hamas apparently offered no explanation for their action.⁸⁹

3.9.5 See also:

⁸³ US Congressional Research Service: Background and Issues for Congress: [Overview, and Leadership & Organisation](#)

⁸⁴ Palestinian Centre for Human Rights 11/10/2010: [West Bank arbitrary arrest and detention conditions](#)

⁸⁵ Inter Press Service News Agency: Mideast: [Palestinian Patients Suffer from political rivalry 24/08/2010](#)

⁸⁶ [Freedom House, Freedom in the World: Country Report 2011: West Bank, May 2011.](#)

⁸⁷ [US Department of State: Country Report on Human Rights Practices 2010: Israel and the occupied territories, 08/04/2011](#), Section 1. c. Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment.

⁸⁸ HRW: 16/02/2011 [No Justice for torture death in custody](#)

⁸⁹ Committee to Protect Journalists: Israel & OPT: [Attacks on the Press in 2010](#)

[Actors of protection](#) (section 2.3 above)

[Internal relocation](#) (section 2.4 above)

[Caselaw](#) (section 2.7 above)

3.9.6 Conclusion Individuals who are known or perceived by the Fatah-controlled PA to be involved in anti-Fatah activities or affiliated with Hamas are likely to be of current interest to the PA authorities in the West Bank. For such applicants a grant of asylum is likely to be appropriate. Caseowners should consider the latest available country of origin information in order to assess whether there is a significant and non-temporary change in country conditions which would indicate that a grant of asylum is not appropriate.

3.9.7 Caseowners should note that members of security forces and militias controlled by Hamas have been responsible for serious human rights abuses. If it is accepted that an applicant was an active operational member or combatant and has been involved in such actions, caseowners should consider whether one of the Exclusion Clauses is applicable. Caseowners should refer such cases to a Senior Caseworker in the first instance.

3.10 Forced recruitment by armed groups

3.10.1 Some applicants will make an asylum or human rights claim based on ill-treatment amounting to persecution at the hands of Hamas or another militant group due to enforced recruitment.

3.10.2 Treatment The limited information on forced recruitment by armed groups reflects the potential risks to those seeking to research or publicise this issue. Hamas has expelled visiting reporters who interview radical Islamists and local journalists are warned that writing on the subject is forbidden.⁹⁰ The UN Report of the Secretary-General on children and armed conflict noted that cases in which children are recruited and trained by militant groups in Gaza are reported, but 'community members are, however, reluctant to provide information on this practice.'⁹¹ The latest annual U.S. Department of Labour report on child labour stated that children in Gaza and the West Bank are reportedly recruited for use in armed conflict as human shields and informants. Some child informants have been tortured.⁹²

3.10.3 Hamas maintains an active social service network as well as operating a terrorist wing which carries out suicide bombings and attacks using mortars and short-range rockets. The group has launched attacks both in the West Bank and Gaza, and Israel. In addition to its military wing, the Izz al-Din al-Qassam Brigade, Hamas devotes much of its estimated \$70 million dollar budget to its extensive social services provision. It funds schools, orphanages, mosques, healthcare clinics, soup kitchens, and sports leagues. Hamas' efforts in this area, as well as a reputation for honesty, help to explain the broad popularity it summoned to defeat Fatah in the PA's recent elections. However, it is also possible that the inability to access welfare support or the threat of withdrawing support could be used as a mechanism for coercing unwilling individuals into co-operation with Hamas.⁹³ Its military wing is believed to have more than 1,000 active members in addition to thousands of supporters and sympathizers.⁹⁴

3.10.4 Various polls taken in the West Bank and Gaza in recent years have suggested that approximately 60% of Palestinians support suicide attacks to some degree; as being (in their view) the only form of armed resistance to occupation available to them, given the enormous superiority of the Israeli army. The main organisations behind such attacks are Hamas, Islamic Jihad, the Popular Front for the Liberation of Palestine and militia groups

⁹⁰ International Crisis Group: [Radical Islam in Gaza](#) section 11.D. Salafi – Jihad groups in Gaza today.

⁹¹ UN Report of Secretary-General: (OPT & Israel) 13/4/2010 [Children & Armed Conflict , 13/4/2010](#)

⁹² [U.S. Department of Labor, 2010 Findings on the Worst Forms of Child Labor, 03/10/2011.](#)

⁹³ [The Majalla, The Economics of Terror, 25/01/2010.](#)

⁹⁴ Council on Foreign Relations: Background: [Hamas](#)

linked to Fatah.⁹⁵ Gaza in particular remains a base of operations for several terrorist organisations, including Hamas, Palestinian Islamic Jihad, Salafist splinter groups and clan-based criminal groups engaging in or facilitating terrorist attacks. Hamas reportedly relies on its internal intelligence, police, coastal patrol, border guard, and military-wing 'Executive Force' bodies, which reputedly number at least 15,000 in total.⁹⁶

3.10.5 See also:

[Actors of protection](#) (section 2.3 above)

[Internal relocation](#) (section 2.4 above)

[Caselaw](#) (section 2.7 above)

3.10.6 Conclusion There are various armed Palestinian groups operating in Gaza and the West Bank that support and carry out politically motivated violent acts. Ideologies are based on nationalist, religious or left-wing beliefs, or a combination of these. There are many individuals who willingly join armed groups, but information relating to the recruitment process is insufficient to rule out the possibility that some individuals may be coerced into supporting these groups because of the likely consequences of a refusal to co-operate. Where there is evidence that this is the case, and that security forces in Gaza and the West Bank may not be willing or able to provide protection, a grant of asylum or Humanitarian Protection may be appropriate.

3.10.7 Caseowners should note that armed groups have been responsible for numerous serious human rights abuses. If it is accepted that an applicant was an active operational member or combatant and has been involved in such actions, caseowners should first consider whether that individual was forcibly recruited and then whether one of the Exclusion Clauses is applicable. Caseowners should refer such cases to a Senior Caseworker in the first instance.

3.11 Israeli collaborators

3.11.1 Some applicants will make an asylum or human rights claim based on ill-treatment amounting to persecution at the hands of the PA and militant groups due to being suspected of being Israeli informants.

3.11.2 Treatment In September 2010, the UN found that "Hamas had failed to conduct credible investigations into [...] killings or mistreatment of alleged collaborators".⁹⁷ The Palestinian Centre for Human Rights (PCHR) noted that, since its creation in 1994, the PA courts have issued the death penalty on 47 occasions for collaboration with foreign parties in reference to the Israeli occupation forces.⁹⁸ Various human rights organisations have reported on individuals who have been sentenced to death for collaboration in 2011-12.⁹⁹ The UK FCO and Amnesty International both noted that five people were executed by Hamas in Gaza in 2010, including two who were convicted of "collaboration" with Israel.¹⁰⁰ The latest reported execution by Hamas took place in July 2011, when they hanged a father and his son after convicting them on charges of murder and collaborating with Israel.¹⁰¹ Previously, in May 2011 Hamas killed another man by firing squad, after a military appeals court confirmed a ruling that he had provided information leading to Israeli attacks that killed a member of Islamic Jihad and the son of Hamas leader Yassin Nasar.¹⁰²

⁹⁵ BBC News 2007: [Analysis: Palestinian suicide attacks](#)

⁹⁶ USSD Country Report on Terrorism 2010: [Middle East & North Africa overview 2010](#)

⁹⁷ Human Rights Watch 2011: [World Report 2011](#)

⁹⁸ PCHR Position Paper: [Death Penalty under the Palestinian Authority October 2010](#)

⁹⁹ Human Rights Watch 2011: [World Report 2011](#)

¹⁰⁰ [UK FCO, Human Rights and Democracy: The 2010 Foreign & Commonwealth Office Report, 31/03/2011](#), Israel and the Occupied Palestinian Territories, Death penalty and [Amnesty International Report 2011 - The State of the World's Human Rights: Palestinian Authority, 13/05/2011](#), Death penalty.

¹⁰¹ [Human Rights Watch, Hamas Should Stop Executions: Due Process Violations Common in Territory's Criminal Justice System, 01/08/2011](#). See also [The Guardian, Hamas executes two Palestinians in Gaza for 'spying', 26/07/2011](#).

¹⁰² [Human Rights Watch, Hamas Should Stop Executions: Due Process Violations Common in Territory's Criminal Justice System, 01/08/2011](#).

- 3.11.3** It is reported that the PA have perpetrated serious human rights abuses on known or suspected Israeli collaborators. Scores of people have reportedly been shot in the legs, knee-capped or otherwise injured in order to cause permanent disability, or were severely beaten or otherwise tortured or ill-treated. Detainees held in the West Bank and Gaza are frequently beaten, subjected to sleep deprivation and forced to spend long periods of time in painful stress positions during interrogation. Hamas forces and militias reportedly engaged in a campaign of abductions, deliberate and unlawful killings, torture and death threats against people they accused of collaborating with Israel and other opponents and critics.¹⁰³
- 3.11.4** The likelihood of reprisals against informers was highlighted in an International Crisis Group report, that stated that Israel's reluctance to share intelligence information with Palestinian security services, with whom they work collaboratively in the West Bank, is based on their concern that "those forces might use information to track down collaborators" given that the Israeli Defence Force has "no small number of informants within the Palestinian security services themselves".¹⁰⁴ According to the Palestinian Human Rights Monitoring Group, alleged collaborators are routinely tortured in Palestinian jails. These practices are not prohibited under Palestinian law.¹⁰⁵
- 3.11.5** In the West Bank there have been a number of death penalties issued by military courts of the PA. The courts apply the Palestinian Liberation Organisation Revolutionary Penal Code of 1979. In 2009, PA military courts handed down 3 death sentences for alleged 'collaboration' and treason. In September 2010, the PA reaffirmed the death penalty for any Palestinian found guilty of selling land to the Israelis. This decision came in response to a previous ruling by a Palestinian court, which found that such acts were only a 'minor offence'.¹⁰⁶
- 3.11.6** In April 2010, the Hamas authorities in Gaza resumed executions after a de facto moratorium of five years. An Amnesty International article reported that two men were executed, and noted that although a number of people previously accused of collaboration (with the Israelis) had been killed in Gaza by Hamas militias and other armed groups since the Hamas takeover in June 2007, the executions that took place on 13 April 2010 represented the first formal executions carried out by the Hamas de facto authority in Gaza.¹⁰⁷
- 3.11.7** Since the beginning of the Al-Aqsa Intifada in 2000, dozens of Palestinians suspected of collaborating with Israel have been executed, sometimes publicly, with the aim of deterring future collaborators. These killings have included assassinations by militant organisations, lynchings by crowds of people, and also at the hands of the PA security forces by executions, during torture, or when attempting to escape.¹⁰⁸
- 3.11.8** The Israeli government does not officially sanction the practice of forcing or persuading Palestinian civilians to assist in military activities, and available information on this issue is limited. Palestinians are known to have been placed in situations where it was extremely difficult to refuse assistance. Some Palestinians do collaborate for financial gain, or because they are being blackmailed following arrest, or because of their opposition to some militant group members. B'Tselem maintains that some members of the security forces ask Palestinians to collaborate with them in exchange for work permits or to access medical treatment (including life-saving treatment) inside Israel.¹⁰⁹

¹⁰³ COI Report: 2 December 2010, paragraphs 9.26 & 9.30 [Occupied Palestinian Territories](#)

¹⁰⁴ International Crisis Group: Squaring the Circle: [Palestinian security reform under occupation](#)

¹⁰⁵ COI Report: 2 December 2010, paragraph 11.08 [Occupied Palestinian Territories](#)

¹⁰⁶ COI Report: 2 December 2010, paragraph 14.04-5 [Occupied Palestinian Territories](#)

¹⁰⁷ COI Report: 2 December 2010, paragraph 14.08 [Occupied Palestinian Territories](#)

¹⁰⁸ B'Tselem: [Harm to Palestinians suspected of collaborating with Israel](#) accessed 7/12/2011

¹⁰⁹ B'Tselem: [Information Sheet 2007](#)

3.11.9 It is reported that only a small number of collaborators (relative to the numbers involved) actually receive help and protection from the Israeli authorities. The burden of proof falls on them to demonstrate that they did in fact collaborate with Israel, in order to gain even minimal protection and the right to live in Israel. Hundreds more collaborators remain in Israel without permission to live there legally, no way of leaving the country and no possibility of returning home. Consequently, many are homeless and destitute, and constantly in hiding from the authorities.¹¹⁰

3.11.10 See also:

[Actors of protection](#) (section 2.3 above)

[Internal relocation](#) (section 2.4 above)

[Caselaw](#) (section 2.7 above)

3.11.11 Conclusion The evidence indicates that there are thousands of Palestinians collaborating with Israel in Gaza and the West Bank. The lives of those identified as collaborators are at risk, and if discovered, the Israeli authorities have undertaken to provide protection and assistance in Israel for collaborators and their families. However, it is unclear whether the Israeli authorities are able to provide adequate protection and support to all Palestinians and their families who are considered collaborators. Indications suggest that the Israeli authorities are unwilling to provide protection in a large number of cases. Each case should therefore be considered on its own merits and if there is evidence that the applicant is a collaborator and would not receive adequate protection and support from the Israeli government then a grant of asylum or Humanitarian Protection is likely to be appropriate.

3.12 Statelessness and the right of re-entry

3.12.1 An asylum application from a Palestinian may be accompanied by a claim to stay in the UK on the grounds that they are stateless, or may be made upon the basis that they should be granted asylum or humanitarian protection on the basis that they will be refused re-entry to Gaza by the Israeli authorities.

3.12.2 Treatment Article 1 of the 1954 Convention Relating to the Status of Stateless Persons defines a stateless person as: 'a person who is not considered a national by any state under the operation of its law.'

3.12.3 Millions of Palestinians are not only refugees, but are also stateless. Following the war in 1948, more than 750,000 Palestinians were displaced and became refugees in neighbouring Arab States and in lands now occupied by Israel. Over the succeeding years, the number of Palestinians worldwide has grown to an estimated 8 - 9 1/2 million people. While the Palestinian population theoretically has had a state since the approval of UN General Assembly Resolution 194 (1948), they have been unable to return to their homes. Their claim to a right of return to their homes has been disputed by Israel. Apart from Jordan, neighbouring Arab countries have not granted citizenship to Palestinian refugees, leaving around 4 million individuals as *de jure* stateless persons.¹¹¹

3.12.4 In September 1967 Israel conducted a snap census in the territories it had just occupied. Anyone not registered had their residency rights revoked. Tens of thousands of Palestinians who were studying, working or travelling abroad immediately lost any entitlement to residency and today, have no official identity. Some of this group arbitrarily dispossessed of any nationality later applied to return through a 'family reunification' programme. Some of these were granted the right to live in the OPT as temporary visitors or tourists but even this right has been difficult to obtain or sustain. Palestinians are the largest stateless community in the world.¹¹²

3.12.5 See also: [Caselaw](#) (section 2.7 above)

¹¹⁰ Jews for Justice for Palestinians: [The tragedy of Palestinian collaborators](#)

¹¹¹ Refugees International: [Lives on hold, the scope of statelessness](#)

¹¹² COI Report: 2 December 2010, paragraphs 27.03 - 04 [Occupied Palestinian Territories](#)

3.12.6 Conclusion The UK is a signatory to the 1954 Convention on the Status of Stateless Persons, but that Convention does not require signatories to grant leave to stateless persons. There is no provision in primary legislation, the Immigration Rules or Home Office published policies that require leave to be granted to a person on the basis that they are stateless. A claim on this basis alone would therefore fall to be refused on the grounds that leave is being sought for a purpose not covered by the Immigration Rules.

3.12.7 No distinction is made between applications for leave to remain from stateless people and from people who have a nationality. Stateless people whose applications are successful are granted leave to enter or remain in the usual way. Those whose applications fail are expected to leave the United Kingdom, usually to return to their countries of habitual residence. The fact of being stateless is not, per se, a reason for granting leave to enter or remain in the UK, and would not give rise to a grant of asylum or Humanitarian Protection.

3.13 Prison conditions

3.13.1 Applicants may claim that they cannot return to Israel, Gaza or the West Bank due to the fact that there is a serious risk that they will be imprisoned on return and that prison conditions in Israel, Gaza or the West Bank are so poor as to amount to torture or inhuman treatment or punishment.

3.13.2 The guidance in this section is concerned solely with whether prison conditions are such that they breach Article 3 of ECHR and warrant a grant of Humanitarian Protection. If imprisonment would be for a Refugee Convention reason or in cases where for a Convention reason a prison sentence is extended above the norm, the asylum claim should be considered first before going on to consider whether prison conditions breach Article 3 if the asylum claim is refused.

Israel

3.13.3 Treatment The law provides for the right to conditions that do not cause harm to the health or dignity of prisoners or detainees. Although some organisations found deficiencies in some aspects of prisoner care, in general, conditions for common criminals and security prisoners were found to meet international standards according to international and domestic NGOs.¹¹³ However, in December 2010, a classified report by the Israel Bar Association (IBA) found that the majority of isolation cells within the Israeli Prison Service (IPS) did not meet international standards. The IBA report described the development of mental and physical health problems due to a lack of natural light. The government did acknowledge the necessity to improve conditions for Palestinian security prisoners in response to an earlier IBA report.¹¹⁴

3.13.4 In 2011, the U.S. Department of State noted that NGOs filed numerous complaints alleging that security forces tortured or abused Palestinian residents of the West Bank and the Gaza Strip.¹¹⁵ Amnesty International also reported consistent allegations of torture and other ill-treatment, including beatings, threats to the detainee or their family, sleep deprivation, and being subjected to painful stress positions for long periods.¹¹⁶

3.13.5 By the end of November 2011, there were 4,803 Palestinian security detainees.¹¹⁷ Prisoners and detainees had reasonable access to visitors, including via a Red Cross programme that brought prisoners' relatives from the West Bank into Israel for prison visits. The government ended a similar programme for visitors from the Gaza Strip, following the Hamas takeover of the Gaza Strip in 2007. In December 2009, a High Court ruled against

¹¹³ USSD Human Rights Report 2010 Israel & The Occupied Territories (Israel) section 1c: [Prison Conditions](#)

¹¹⁴ USSD Human Rights Report 2010 Israel & The Occupied Territories (Israel) section 1c: [Prison Conditions](#)

¹¹⁵ [US Department of State: Country Report on Human Rights Practices 2010: Israel and the occupied territories., 08/04/2011](#), Section 1, c. Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment.

¹¹⁶ [Amnesty International Report 2011 - The State of the World's Human Rights: Israel, 13/05/2011](#), Torture and other ill-treatment.

¹¹⁷ B'Tselem: [Detainees and prisoners](#)

a petition from prisoners' relatives from the Gaza Strip, finding that such visits did not amount to a humanitarian need.¹¹⁸

- 3.13.6** It is reported that female Palestinian prisoners detained in Israel are frequently denied legal representation and medical care, and housed in squalid conditions. They may be shackled during and after childbirth, and infants are removed from their mothers after two years. Their numbers are small in comparison with male Palestinian prisoners, but they reportedly face particular ill-treatment and deprivation due to their gender.¹¹⁹ The Office of the Secretary General for Children & Armed Conflict reported continual arrests and detention of Palestinian children by Israeli authorities and the continued reports of inhumane and degrading treatment including sexual assault, of children in detention.¹²⁰ In October 2011, IRIN reported that there are 164 Palestinian children from the West Bank in Israeli custody, who are either sentenced or are being detained, mainly for stone-throwing.¹²¹
- 3.13.7** The International Committee of the Red Cross regularly monitored IPS facilities, interrogation facilities and both IDF provisional detention centres, but did not monitor security detainees in military detention centres. The government also allowed the IBA and the Public Defenders' Office to inspect IPS facilities, which they did during 2010. Prisoners are permitted religious observance. They are also allowed to submit petitions to judicial authorities in response to substandard prison conditions, and the authorities investigated such allegations appropriately and publicly.¹²²
- 3.13.8** Security detainees held in some detention centres including military facilities are excluded from certain provisions made for 'ordinary' prisoners: these include the right to a daily walk, the right to use a telephone, and the right to fortnightly visits from all but first degree relatives. It is reported that around 900 Palestinian prisoners continued to be denied family visits, some for three consecutive years, because Gazans have not been allowed to travel into Israel since the Blockade was imposed.¹²³
- 3.13.9 Conclusion** Prison conditions in Israel for common criminals who are Israeli citizens generally meet international standards. For Palestinians held in Israeli prisons, detention centres and interrogation facilities, conditions are worse, and overcrowding, lack of hygiene facilities and lack of visiting rights constitute particular problems. Palestinians are at risk of suffering inhuman and degrading treatment, and even torture. Security detainees, often held in military detention facilities, are at significantly greater risk. Where Palestinian applicants can demonstrate a real risk of imprisonment, a grant of Asylum or Humanitarian Protection may be appropriate.
- 3.13.10** Individual factors must always be considered, to determine whether detention will cause an individual in his particular circumstances to suffer treatment contrary to Article 3. Relevant factors include the political profile of the applicant, the likely length of detention, the type of detention facility, and the individual's age, gender and state of health. Where the particular individual circumstances suggest that treatment is likely to breach the Article 3 threshold, a grant of Humanitarian Protection will be appropriate.

West Bank

- 3.13.11** Palestinian Authority (PA) prison conditions have improved in recent years, although the PA prison system remains significantly inadequate for the population it serves. PA police stations, which hold non-security prisoners, are severely overcrowded. Lack of capacity and resources further limits the availability of medical care and vocational programmes for inmates of civil police prisons. At December 2010 there were approximately 1,050 prisoners in the seven PA civil police prisons; of these, women and male juveniles each

¹¹⁸ USSD Human Rights Report 2010 Israel & The Occupied Territories (Israel) section 1c: [Prison Conditions](#)

¹¹⁹ IPS Inter Press Service 10 March 2011: [Women are shackled during childbirth](#)

¹²⁰ Office of the Special Representative of the Sec. General for Children & Armed Conflict: [Developments in the Occupied Palestinian Territory & Israel](#)

¹²¹ [Integrated Regional Information Network: Concerns over Palestinian children in Israeli custody, 19/10/2011.](#)

¹²² USSD Human Rights Report 2010 Israel & The Occupied Territories (Israel) section 1c: [Prison Conditions](#)

¹²³ COI Report: 2 December 2010, paragraph 13.06-07 [Occupied Palestinian Territories](#)

comprise approximately 2% of the prison population, according to PA statistics. Male juveniles are sometimes held with adult men. The PA intelligence services hold several hundred security detainees separately from the general population. The PA authorities undertook prison improvement efforts at a number of facilities.¹²⁴

3.13.12 Human Rights Watch (HRW) have documented cases of arbitrary arrest and torture of individuals, primarily those associated with Hamas, by the PA's security services.¹²⁵ According to HRW, complaints of torture committed by West Bank PA security services increased in 2010, with the Independent Commission for Human Rights having received 106 complaints by September 2010. The PA courts have not found any security officers responsible for torture or arbitrary detention. This is despite documented cases of detainees whose deaths were caused directly by torture.¹²⁶ The Palestinian Centre for Human Rights obtained testimonies from a number of recently released prisoners, and concluded from these that many detainees had been subjected to torture, and to various forms of cruel and degrading treatment.¹²⁷ Amnesty International noted in April 2011, that it had received reports that torture and other ill-treatment of detainees were committed by the Palestinian Authority's Preventive Security force.¹²⁸

3.13.13 Conclusion Prison conditions in Palestinian Authority run prisons are extremely poor, but in most cases will not be sufficiently severe to breach the Article 3 threshold. However, members or perceived supporters of Hamas, or of Islamic Jihad who are held in prisons or detention centres in the West Bank are at risk of inhuman and degrading treatment, including torture. Where applicants in this category can demonstrate a real risk of imprisonment on return to the West Bank, a grant of Humanitarian Protection is likely to be appropriate. If the imprisonment is for a Convention reason, a grant of Asylum will be appropriate.

3.13.14 Individual factors must always be considered, to determine whether detention will cause an individual in his particular circumstances to suffer treatment contrary to Article 3. Relevant factors include the political profile of the applicant, the likely length of detention, the type of detention facility, and the individual's age, gender and state of health. Where the particular individual circumstances suggest that treatment is likely to breach the Article 3 threshold, a grant of Humanitarian Protection will be appropriate.

3.13.15 Caseowners should note that members of Hamas and of Palestinian Islamic Jihad have been responsible for numerous organized attacks against Israel, and also of serious human rights abuses. If it is accepted that an applicant was an active operational member or combatant for one of these groups then caseowners should consider whether one of the Exclusion clauses is applicable. Caseowners should refer all such cases within this category of claim to a Senior Caseworker in the first instance.

3.13.16 *Gaza Strip*

Prison conditions in the Gaza Strip are generally considered to be poor, but objective evidence is limited. Detention facilities have been unofficially reported to be below international legal or humanitarian standards. The ICRC conducted monitoring visits to some prisoners in the Gaza Strip, but Hamas authorities denied their representatives permission to visit the captured Israeli soldier, Gilad Shalit (since released).¹²⁹ Human Rights Watch report that the practice of *shabeh*, a form of torture in which the detainee is forced to stand or sit in painful positions for long periods, is 'common' in Gaza.¹³⁰ They also noted that the judicial authorities in Gaza, under Hamas control, have failed to respond to complaints of torture filed against Hamas security services with the Ombudsman. There

¹²⁴ USSD Human Rights Report 2010 (Occupied Territories) section 1c: [Prison Conditions](#)

¹²⁵ Human Rights Watch: [West Bank: Reports of Torture](#)

¹²⁶ Human Rights Watch: [World Report: Israel & Occupied Palestinian Territories](#)

¹²⁷ Palestinian Centre for Human Rights, 11 October 2010: [Arbitrary Arrests Continue in West Bank](#)

¹²⁸ [Amnesty International Report 2011 - The State of the World's Human Rights: Palestinian Authority, 13/05/2011](#), Torture and other ill-treatment.

¹²⁹ USSD Human Rights Report 2010 (Occupied Territories) section 1c: [Prison Conditions](#)

¹³⁰ Human Rights Watch: [Gaza: Halt Morality Enforcement Campaign](#)

were 87 complaints filed in 2009, and 156 in 2010.¹³¹ Beatings, sleep deprivation and the use of shabeh during interrogation of detainees in Gaza have been reported by Amnesty International.¹³² Further to this, judicial executions have been carried out by the Hamas authorities in 2010, often after military trials conducted without due process of law. It is alleged that Hamas have tortured scores of detainees.¹³³ Both Amnesty International and Human Rights Watch reported on deaths in custody after Hamas security officials arrested individuals.¹³⁴

3.13.17 Conclusion Reports suggest that prison and detention facilities in Gaza do not meet international standards, although such reports are unconfirmed. Applicants who can demonstrate a real risk of imprisonment on return to Gaza may be at risk of inhuman and degrading treatment, including torture. This applies particularly to individuals with actual or perceived allegiance to Fatah. These applicants may also be at risk of incurring the death penalty at the hands of the Hamas authorities.

3.13.18 Individual factors must always be considered, to determine whether detention will cause an individual in his particular circumstances to suffer treatment contrary to Article 3. Relevant factors include the political profile of the applicant, the likely length of detention, the type of detention facility, and the individual's age, gender and state of health. Where the particular individual circumstances suggest that treatment is likely to breach the Article 3 threshold, a grant of Humanitarian Protection will be appropriate.

4. Discretionary Leave

4.1 Where an application for asylum and Humanitarian Protection falls to be refused there may be compelling reasons for granting Discretionary Leave (DL) to the individual concerned. (See Asylum Instructions on Discretionary Leave) Where the claim includes dependent family members consideration must also be given to the particular situation of those dependants in accordance with the Asylum Instructions on Article 8 ECHR.

4.2 With particular reference to Israel, Gaza and the West Bank the types of claim which may raise the issue of whether or not it will be appropriate to grant DL are likely to fall within the following categories. Each case must be considered on its individual merits and membership of one of these groups should *not* imply an automatic grant of DL. There may be other specific circumstances related to the applicant, or dependent family members who are part of the claim, not covered by the categories below which warrant a grant of DL - see the Asylum Instructions on Discretionary Leave and the Asylum Instructions on Article 8 ECHR.

4.3 Minors claiming in their own right

4.3.1 Minors claiming in their own right who have not been granted asylum or HP can only be returned where (a) they have family to return to; or (b) there are adequate reception and care arrangements. At the moment we do not have sufficient information to be satisfied that there are adequate reception, support and care arrangements in place for minors with no family in Israel, Gaza or the West Bank. Those who cannot be returned should, if they do not qualify for leave on any more favourable grounds, be granted Discretionary Leave for a period as set out in the relevant Asylum Instructions.

4.4 Medical treatment

4.4.1 Applicants may claim they cannot return to Gaza or the West Bank due to a lack of specific medical treatment. Where a person claims that their return would be in breach of Article 3

¹³¹ Human Rights Watch: Palestinian Authority: [No Justice for Torture Death in Custody](#)

¹³² Amnesty International: [Israel & Palestinian Authority, 2010](#) and [Amnesty International Report 2011 - The State of the World's Human Rights: Palestinian Authority, 13/05/2011](#), Torture and other ill-treatment

¹³³ Human Rights Watch: World Report: Israel & Occupied Palestinian Territories

¹³⁴ [Amnesty International Report 2011 - The State of the World's Human Rights: Palestinian Authority, 13/05/2011](#), Torture and other ill-treatment and [Human Rights Watch, Suspicious Death in Custody, 26/04/2011](#).

of the ECHR because of their medical condition, they are not in need of international protection and are not eligible for Humanitarian Protection. A breach of Article 3 may arise if the healthcare available to the applicant in the UK is not available in the country of return and because of the applicant's own exceptional circumstances but the threshold for establishing an Article 3 breach in such cases is very high.

- 4.4.2** The hostilities between Hamas and Israel and the Israeli Blockade of Gaza have destroyed large parts of Gaza's infrastructure. Israel has obstructed the delivery of building materials and other essential supplies. This has had a significant impact on the humanitarian situation in Gaza, including the availability of medical treatment.¹³⁵
- 4.4.3** A World Health Organisation (WHO) assessment of 122 health facilities in Gaza established that 48% of them were damaged or destroyed during the military offensive in December 2008 (Operation Cast Lead). This included 15 hospitals and 41 primary health care centres that were partially damaged, and the complete destruction of two primary health care centres. In addition, 29 ambulances were damaged or destroyed. Since the end of hostilities, most health services have resumed, and are functioning with relative normality within the constraints imposed by the Blockade. Structural damage to health facilities has not been adequately addressed, due to the ban on entry of construction materials into Gaza.¹³⁶
- 4.4.4** Health services in Gaza have other, significant difficulties due to the blockade. There is a chronic shortage of specialised medical personnel and access to training, together with difficulties due to the ban on entry of spare parts and repair services for damaged medical equipment. This has increased the dependence of Gazans on medical assistance outside Gaza. However, the Israeli authorities at Erez Crossing frequently deny even very seriously ill patients permission to exit Gaza for treatment in medical centres in the West Bank, East Jerusalem, Israel or Jordan. For those who are permitted to leave, the majority wait for at least seven days.¹³⁷ According to Amnesty International, at least 28 individuals died in Gaza while waiting for permission to travel.¹³⁸
- 4.4.5** During 2011, the International Committee of the Red Cross monitored the supply and stocks of essential drugs, aiming to ensure that hospitals were able to provide an acceptable level of patient care. Insufficient cooperation between the health ministries in Ramallah and Gaza in addition to fuel shortages brought patient care to the brink of crisis on several occasions. A particular problem arose when haemodialysis fluids ran short several times.¹³⁹ However, Medecins sans Frontieres reported in November 2011 that the supply of essential medical and surgical equipment in Gaza had reached crisis point, and that many essential drugs and equipment could no longer be accessed in Gaza.¹⁴⁰
- 4.4.6** The West Bank (Separation) Barrier has adversely affected the access of the entire population to urban areas, particularly East Jerusalem, where the main providers of routine, emergency, secondary and tertiary care for Palestinians from Gaza and the West Bank is located.¹⁴¹ Notwithstanding the above paragraphs, there are significant differences between the West Bank and Gaza in terms of various health indicators. The Gaza Strip has consistently higher infant mortality rates than the West Bank, and a lower life expectancy. Both areas compare unfavourably with Israel. Palestinian residents of the West Bank do have some level of access to Israeli health services, hospitals etc., which are very difficult for Gazans to access. Also, Gazans effectively live under siege-like conditions, with the attendant damage to infrastructure and health provision.¹⁴²

¹³⁵ COI Report: 2 December 2010, paragraph 3.29 [Occupied Palestinian Territories](#)

¹³⁶ Amnesty/Oxfam/Cafod Report, December 2009: [Failing Gaza: No more excuses](#)

¹³⁷ Amnesty/Oxfam/Cafod Report, December 2009: [Failing Gaza: No more excuses](#)

¹³⁸ Amnesty International: [Israel & Palestinian Authority, 2010](#)

¹³⁹ Red Cross: [ICRC maintains humanitarian effort March 2011](#)

¹⁴⁰ Medecin sans Frontieres: [Gaza drugs shortage](#)

¹⁴¹ COI Report: 2 December 2010, paragraph 23.02 [Occupied Palestinian Territories](#)

¹⁴² COI Report: 2 December 2010, paragraph 23.03 [Occupied Palestinian Territories](#)

- 4.4.7** Access to secondary and tertiary level care centres in the West Bank is adversely affected by the restrictions on movement, since most of the hospitals are located in cities. This includes East Jerusalem, with almost 20% of the West Bank's hospital beds. Movement restrictions affect both patients and hospital staff. They are required to cross the checkpoints daily to go to and from work, and subjected to close security inspections, causing delays of up to two hours.¹⁴³
- 4.4.8** The Article 3 threshold will not be reached in the majority of medical cases and a grant of Discretionary Leave will not usually be appropriate. Where a caseworker considers that the circumstances of the individual applicant and the situation in the country reach the threshold detailed in the IDI on Medical Treatment making removal contrary to Article 3 or 8 a grant of Discretionary Leave to remain will be appropriate. Such cases should always be referred to a Senior Caseworker for consideration prior to a grant of Discretionary Leave.
- 5. Returns**
- 5.1** There is no policy which precludes the enforced return to Israel, Gaza or the West Bank of failed asylum seekers who have no legal basis of stay in the United Kingdom.
- 5.2** Factors that affect the practicality of return such as the difficulty or otherwise of obtaining a travel document should not be taken into account when considering the merits of an asylum or human rights claim. Where the claim includes dependent family members their situation on return should however be considered in line with the Immigration Rules.
- 5.3** Nationals of Israel, Gaza and the West Bank may return voluntarily to any region of Israel, Gaza or the West Bank at any time in one of three ways: (a) leaving the UK by themselves, where the applicant makes their own arrangements to leave the UK, (b) leaving the UK through the voluntary departure procedure, arranged through the UK Immigration service, or (c) leaving the UK under one of the Assisted Voluntary Return (AVR) schemes.
- 5.4** The AVR scheme is implemented on behalf of the UK Border Agency by Refugee Action which will provide advice and help with obtaining any travel documents and booking flights, as well as organising reintegration assistance in Israel, Gaza or the West Bank. The programme was established in 1999, and is open to those awaiting an asylum decision or the outcome of an appeal, as well as failed asylum seekers. Nationals of Israel, Gaza and the West Bank wishing to avail themselves of this opportunity for assisted return to Israel, Gaza or the West Bank should be put in contact with Refugee Action Details can be found on Refugee Action's web site at:

www.refugee-action.org/ourwork/assistedvoluntaryreturn.aspx

Country Specific Litigation Team
Immigration Group
UK Border Agency
February 10 2012

¹⁴³ COI Report: 2 December 2010, paragraph 23.06 [Occupied Palestinian Territories](#)