

Flygtningenævnets baggrundsmateriale

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Titel:	Information on the situation and treatment by Hamas of Muslims
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COI QUERY

Country of Origin	Palestine
Question(s)	1. Information on the situation and treatment by Hamas of Muslims not actively practicing Islam in Gaza, including of atheists and apostates.
Date of completion	10 January 2020
Query Code	Q33
Contributing EU+ COI units (if applicable)	---

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This response to a COI query has been elaborated according to the [Common EU Guidelines for Processing COI](#) and [EASO COI Report Methodology](#).

The information provided in this response has been researched, evaluated and processed with utmost care within a limited time frame. All sources used are referenced. A quality review has been performed in line with the above mentioned methodology. This document does not claim to be exhaustive neither conclusive as to the merit of any particular claim to international protection. If a certain event, person or organisation is not mentioned in the report, this does not mean that the event has not taken place or that the person or organisation does not exist. Terminology used should not be regarded as indicative of a particular legal position.

The information in the response does not necessarily reflect the opinion of EASO and makes no political statement whatsoever.

The target audience is caseworkers, COI researchers, policy makers, and decision making authorities. The answer was finalised on the 10 January 2020. Any event taking place after this date is not included in this answer.



COI QUERY RESPONSE

1. Information on the situation and treatment by Hamas of Muslims not actively practicing Islam in Gaza, including of atheists and apostates.

Background information

Information on the situation of Muslims not actively practising Islam in Gaza was scarce amongst consulted and used sources.

The Islamic Resistance Movement or Hamas, ruling Gaza since 2007, and considered by the EU to be a terrorist group¹, seeks to create an Islamic state governed by the *sharia* law in the territory from the Jordan River to the Mediterranean Sea.²

Alongside the Sunni Muslims, who represent the vast majority of the population in the West Bank and Gaza, sources indicate that the biggest religious minority in Palestine are Christians.³ There are no official figures on the presence of atheists in Palestine, according to the Australian Department of Foreign Affairs and Trade (DFAT).⁴ According to an older 2012 WIN/Gallup poll about the atheism in the Middle East, 29 % of respondents in Palestine said that they were 'not religious'.⁵ In June 2019, BBC News published results from their survey conducted by the Arab Barometer in late 2018 - early 2019, which indicates that some 10 % of respondents in Palestine stated that they were not religious.⁶

Migrationsverket, the Swedish Migration Board, noted in their 2019 report on the situation in Palestine that atheism in Gaza is one of the most difficult topics to obtain information about 'due to the sensitivity of the matters'.⁷ A 2017 article about atheism in the Muslim world by the Washington Times stated that '[k]eeping their beliefs secret is the norm for atheists of all backgrounds throughout the region.'⁸

Ahmed Benchemsi, editor in chief of FreeArabs.com, a website providing online space for secular Arabs, explained that:

¹ EU, Council Decision (CFSP) 2019/25 of 8 January 2019 amending and updating the list of persons, groups and entities subject to Articles 2, 3 and 4 of Common Position 2001/931/CFSP on the application of specific measures to combat terrorism, and repealing Decision (CFSP) 2018/1084, 8 January 2019, [url](#)

² CEP, Hamas, n.d., [url](#), p. 1; Hamas, A Document of General Principles and Policies, 1 May 2017, [url](#)

³ USDOS, 2018 Report on International Religious Freedom: Israel: West Bank and Gaza, 21 June 2019, [url](#), p. 41; World Population Review, Palestine Population 2020, n.d., [url](#)

⁴ DFAT, DFAT Thematic Report, Palestinian Territories, 15 March 2017, [url](#), p. 15

⁵ MPC Journal, Facts About Atheism in the Middle East May Surprise You, 7 December 2015, [url](#)

⁶ BBC News, The Arab world in seven charts: Are Arabs turning their backs on religion?, 24 June 2019, [url](#)

⁷ Migrationsverket, Situationen i Palestina - Västbanken och Gaza, 22 May 2019, [url](#)

⁸ Washington Times (The), Atheists in Muslim world: Silent, resentful and growing in number, 1 August 2017, [url](#)



‘In today’s Arab world, it’s not religiosity that is mandatory; it’s the appearance of it. Nonreligious attitudes and beliefs are tolerated as long as they’re not conspicuous. As a system, social hypocrisy provides breathing room to secular lifestyles, while preserving the façade of religion. Atheism, per se, is not the problem. Claiming it out loud is. So those who publicize their atheism in the Arab world are fighting less for freedom of conscience than for freedom of speech.’⁹

A 2013 Pew Research Center survey found that 66 % of those in the Palestinian territories, who want *sharia* as law of the country, would be in favour of death penalty for apostasy. In the same survey, 89 % of the respondents answered that they want *sharia* to be the official law of the land.¹⁰

Legal situation

Officially, Palestinian legal system applies in both, the West Bank and Gaza. However, Hamas maintains de facto control in Gaza since 2007¹¹ and the Palestinian Authority (PA) does not have power to enforce the laws there. In practice, Gaza is also governed by decrees issued by the Hamas authorities.¹² Furthermore, a separate, ‘politically controlled’ ad hoc judicial system based on Hamas’ own interpretation of *sharia* is in place in Gaza.¹³

Palestinian Basic Law, meant to serve as an interim constitution in the Palestinian Territories, declares Islam as the ‘official religion in Palestine’, while calling for respect of ‘all other divine religions’, meaning Judaism and Christianity.¹⁴ The basic law further establishes freedom of belief, equality of all citizens and the principles of *sharia* as a basis of legislation.¹⁵ In its report covering 2018, Freedom House noted that blasphemy is a criminal offence in Palestine, however, it did not specify under which law.¹⁶

In the Gaza strip, British penal code from the 1936 is in force.¹⁷ However, according to the Women’s Learning Partnership (WLP)¹⁸, quoting the Palestinian Legislative Council, ‘[t]hree penal codes have

⁹ Benchemsi, A., Invisible Atheists, New Republic, 24 April 2015, [url](#)

¹⁰ Pew Research Center, The World’s Muslims: Religion, Politics and Society, 30 April 2013, [url](#), pp. 46, 55

¹¹ USDOS, 2018 Report on International Religious Freedom: Israel: West Bank and Gaza, 21 June 2019, [url](#)

¹² USDOS, Country Report on Human Rights Practices 2018 - Israel, Golan Heights, West Bank, and Gaza - West Bank and Gaza, 13 March 2019, [url](#)

¹³ Freedom House, Freedom in the World 2019 - Gaza Strip, 4 February 2019, [url](#); USDOS, 2018 Report on International Religious Freedom: Israel: West Bank and Gaza, 21 June 2019, [url](#)

¹⁴ Freedom House, Freedom in the World 2019 - Gaza Strip, 4 February 2019, [url](#); Humanists International, The Freedom of Thought Report 2018 - Palestine, n.d., [url](#); USDOS, 2018 Report on International Religious Freedom: Israel: West Bank and Gaza, 21 June 2019, [url](#)

¹⁵ USDOS, 2018 Report on International Religious Freedom: Israel: West Bank and Gaza, 21 June 2019, [url](#)

¹⁶ Freedom House, Freedom in the World 2019 - Gaza Strip, 4 February 2019, [url](#)

¹⁷ CEDAW, Consideration of reports submitted by States parties under article 18 of the Convention pursuant to the simplified reporting procedure, State of Palestine, 24 May 2017, [url](#), p. 10. The penal code is available at: [url](#)

¹⁸ WLP describes itself as ‘a partnership of 20 autonomous women’s rights organizations located throughout the Global South that promote women’s leadership, civic engagement, and human rights. We are an international, non-profit, non-governmental organization in Special Consultative Status with the Economic and Social Council (ECOSOC) of the United Nations.’ See: WLP, Who we are, n.d., [url](#)



the same legal importance in Gaza. They are the Palestinian Criminal Code, British Mandate Criminal Code, and Egyptian Penal Code. Whenever a provision in one law contradicts a provision in another law, it is the most recent one that supersedes.¹⁹ No corroborating information on the application of the three legal codes in Gaza could be found amongst consulted and listed sources.

In January 2017, the Law Library of Congress (LOC) published a report on blasphemy in 77 jurisdictions around the world, including in Palestine. About the Gaza Strip, the report stated:

‘The law applicable in the Gaza Strip criminalizes as a misdemeanor the publishing of any print, writing, picture or effigy intending to insult the religious feelings or belief of others. Offenders are subject to one year of imprisonment. The utterance in public and in the hearing of another person of a word or sound with the same intention is subject to the same penalty.’²⁰

The law in question is the abovementioned British mandate-era penal code, namely its article 149.²¹

For comparison, in the West Bank, an offence of ‘defaming religion’ originating in the Jordanian law is punishable by a maximum penalty of life imprisonment.²²

Situation of atheists and apostates in practice

Quoting several sources, a 2018 UNHCR report found that: ‘The Hamas authorities reportedly harass, fine and punish women and men for perceived infractions of traditional and Islamic norms and other behaviours considered “un-Islamic”.’²³ Freedom House wrote that Hamas authorities enforced ‘conservative Sunni Islamic practices’ throughout 2018.²⁴

‘Morality police’ was established in Gaza with a goal to ‘enforce a strict interpretation of Islamic law and moral code’, according to the Humanists International.²⁵ However, the authorities have reportedly not enforced prayers at school and female dress to an extent as they did in the years following their coming to power.²⁶

No information on the persecution of atheists or apostates in Gaza could be found in the consulted and used sources. One source mentioned a story of a young Palestinian atheist whose relations with his parents ended because he left Islam.²⁷

¹⁹ WLP, Palestine (Gaza) Penal Code, British Mandate Criminal Code (document, Arabic), n. d., [url](#)

²⁰ LOC, Blasphemy and Related Laws in Selected Jurisdictions, January 2017, [url](#), p. 33

²¹ UK, High Commissioner for Palestine, Criminal Code Bill No. 633, 28 September 1936, [url](#)

²² Humanists International, The Freedom of Thought Report 2018 - Palestine, n.d., [url](#); USDOS, 2018 Report on International Religious Freedom: Israel: West Bank and Gaza, 21 June 2019, [url](#)

²³ UNHCR, Country of Origin Information on the Situation in the Gaza Strip, Including on Restrictions on Exit and Return, 23 February 2018, [url](#), p. 20

²⁴ Freedom House, Freedom in the World 2019 - Gaza Strip, 4 February 2019, [url](#)

²⁵ Humanists International, The Freedom of Thought Report 2018 - Palestine, n.d., [url](#)

²⁶ Freedom House, Freedom in the World 2019 - Gaza Strip, 4 February 2019, [url](#)

²⁷ Pacific Standard, The hard lives of non-believers in the Middle East, 14 June 2017, [url](#)



Both, the 2017 LOC study on blasphemy in different jurisdictions, including in Palestine, as well as the 2018 Humanists International report on the freedom of thought, mention the imprisonment of Waleed Hasayin (founder of the Proud Atheist blog) as the only recent case of persecution for blasphemy in Palestine.²⁸ Mr Husayin was arrested in October 2010 in the West Bank for posting allegedly blasphemous content online and for insulting Islam.²⁹ He was released in 2012 and left for Europe.³⁰

In theory, apostasy could be punishable by death under the *sharia* law, especially in case of 'an adult male in full possession of his faculties who has renounced Islam voluntarily.'³¹

Reportedly, 15 criminal offences in Gaza carry the death sentence³², including murder, treason, espionage and terrorism.³³ Moreover, the Revolutionary Penal Code from 1979, applicable in the West Bank and in Gaza, includes 42 capital offences.³⁴ Amongst consulted and listed sources, it could not be verified whether apostasy is one of them.

Hamas authorities have continued to issue death sentences, including 13 in 2018, with no reported executions in the same period.³⁵ Amnesty International also reported that no executions took place in Gaza in 2018.³⁶

In the period of 2010-2017, amongst all the executions by Hamas recorded by the Israeli human rights organisation B'Tselem, no executions for apostasy were reported.³⁷

²⁸ Humanists International, The Freedom of Thought Report 2018 - Palestine, n.d., [url](#); LOC, Blasphemy and Related Laws in Selected Jurisdictions, January 2017, [url](#), p. 33

²⁹ BBC News, Palestinian blogger facing prison for Islam 'insults', 23 November 2010, [url](#); Daily Beast, What It's Like to Be an Atheist in Palestine, 14 April 2017, [url](#); New York Times, Palestinian Blogger Angers West Bank Muslims, 15 November 2010, [url](#); Humanists International, The Freedom of Thought Report-2018 – Palestine, n.d., [url](#)

³⁰ Humanists International, The Freedom of Thought Report 2018 – Palestine, n.d., [url](#)

³¹ Rizvi, S. M., Apostasy in Islam, n.d., [url](#); Oxford Dictionary of Islam (The), Apostasy, n.d., [url](#)

³² B'Tselem, Death Penalty in the Palestinian Authority and Under Hamas Control, 1 January 2011, [url](#); Prison Insider, When murder occurs in the name of justice, 1 March 2017, [url](#)

³³ Cornell Center on the Death Penalty Worldwide, Cornell Law School, Palestinian Authority, 2019, [url](#)

³⁴ B'Tselem, Death Penalty in the Palestinian Authority and Under Hamas Control, 1 January 2011, [url](#); Prison Insider, When murder occurs in the name of justice, 1 March 2017, [url](#)

³⁵ PGA, Palestine and the Death Penalty, [url](#)

³⁶ AI, Death sentences and executions 2018, 2019, [url](#)

³⁷ B'Tselem, Palestinians killed by Hamas Government in the Occupied Territories, since Operation Cast Lead, n.d., [url](#)



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