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OPERATIONAL GUIDANCE NOTE

OCCUPIED PALESTINIAN TERRITORIES

CONTENTS

1. Introduction

1.1 This document provides UK Border Agency case owners with guidance on the nature and handling of the most common types of claims received from 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. Case owners must refer to the relevant Asylum Instructions for further details of the policy on these areas.

1.2 Case owners 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 case owners 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. Where a claim for asylum or Humanitarian Protection is being considered, case owners must consider any elements of Article 8 of the ECHR in line with the provisions of Appendix FM (Family Life) and paragraphs 276 ADE to 276DH (Private Life) of the Immigration Rules. Where a person is being considered for deportation, case owners must consider any elements of Article 8 of the ECHR in line with the provisions of Part 13 of the Immigration Rules. Case owners must also consider if the applicant qualifies for Discretionary Leave in accordance with the published policy.

1.4 If, following consideration, a claim is to be refused, case owners 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 Case owners should refer to the relevant COI Service country of origin information material. 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://fcohrdreport.readandcomment.com/wp-content/uploads/2011/02/Cm-8339.pdf

2.2 Actors of protection

2.2.1 Case owners must refer to section 7 of the Asylum Instruction - Considering the asylum claim and assessing credibility. To qualify for asylum, an individual must have a fear of persecution for a Convention reason and be able to demonstrate that their fear of persecution is well founded and that they are unable, or unwilling because of their fear, to seek protection in their country of origin or habitual residence. Case owners must 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.

2.2.2 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], [2]

Israel controls the external security, air space, sea lanes and electromagnetic sphere. 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 the continuing presence of the Israeli Defence Force (IDF). It has little or no authority in Gaza, and none in terms of Israeli residents of the West Bank, or Arab residents of East Jerusalem.[3]

2.2.3 The Occupied Palestinian Territories (OPT) are divided into two political units: the West Bank, 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 taken 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. In November 2012, the UN General Assembly voted overwhelmingly to recognise Palestine as a non-member observer State, despite strong objections from Israel and the US.[5] Disagreements continue on the status of Jerusalem, which both sides wish to claim as their capital.[6] In response, Israel announced plans to build thousands of new settler homes in contested lands.[7]

2.2.4 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.[8] This was intended to pave the way for the formation of a new transitional unity government formed of independents, to prepare the way for legislative elections scheduled to be held before the end of May 2012. The process

[1] UN Office for the Coordination of Humanitarian Affairs (OCHA): Displacement and Insecurity in Area C of the West Bank Aug. 2011 http://www.ochaopt.org/documents/ocha_opt_area_c_report_august_2011_english.pdf
[2] US Department of State: Country Report on Human Rights Practices 2011:Israel & the Occupied Palestinian Territories (OPT, section 1d) /www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?dynamic_load_id=186430
[3] Jane's Information Group Ltd: Sentinel Country Risk Assessments 2012: http://www.janes.com/products/janes/security/country-risk/assessments.aspx
[4] Jane's Information Group Ltd: Sentinel Country Risk Assessments 2012: http://www.janes.com/products/janes/security/country-risk/assessments.aspx
[5] BBC News: Palestinians win upgraded UN status by wide margin 30 November 2012 http://www.bbc.co.uk/news/world-middle-east-20550864
[6] BBC News: Palestinian Territories Profile accessed 30 November 2012 http://www.bbc.co.uk/news/world-middle-east-14630174
[7] Reuters: Defiant Israel to boost settlements 30 November 2012 http://uk.reuters.com/article/2012/11/30/us-palestinians-israel-settlements-idUKBRE8AT0VQ20121130
[8] Daily Star: Hamas to focus on popular resistance 25 November 2011 http://www.dailystar.com.lb/News/Middle-East/2011/Nov-25/155167-hamas-to-focus-on-popular-resistance-meshaal.ashx

was not implemented, mainly due to their fundamentally different approaches to Israel. However, in January 2013, the leaders of the two rival groups finally agreed to implement the unity deal.[9]

2.2.5 On 22 January 2013, the Israelis went to the polls, following a call for an early election in October 2012, by the Prime Minister, Benjamin Netanyahu. The results were arguably surprising, as it had been predicted that Mr Netanyahu would win a slender majority, and form a new coalition more rightwing than before. In fact, a new, centrist party came second, led by a former TV personality, Mr Yair Lapid. This has some implications for the peace process, but for the time being the issue is reportedly on hold.[10]

2.2.6 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 increased (by 2011) over 165% since 2009. In 2011, 3 Palestinians were killed and 167 injured by Israeli settlers. In addition, 1 Palestinian was killed, and 101 others injured by Israeli soldiers in clashes between Israeli settlers and Palestinians.[11] 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.[12]

2.2.7 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.[13] 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.[14] At the close of 2012, a total of 253 residents of Gaza had been killed in conflict related violence, and 206 injured. In the West Bank, a total of 9 residents had been killed, and over 3000 injured.[15] Daily life for West Bank residents in particular is made more difficult by the large number of restrictions on movement and access imposed by the Israelis.[16]

2.2.8 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

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[9] BBC News: Palestinian groups Hamas and Fatah agree on unity deal: 10 Jan 2013
http://www.bbc.co.uk/news/world-middle-east-20954633
[10] BBC News: Q & A: Israeli Elections 23 Jan 2013:
http://www.bbc.co.uk/news/world-middle-east-21013042
[11] UNOCHA Fact Sheet November 2011: Israeli Settler violence in the West Bank:
http://reliefweb.int/sites/reliefweb.int/files/resources/Full%20Report_321.pdf
[12] UNOCHA Fact Sheet November 2011: Israeli Settler violence in the West Bank:
http://reliefweb.int/sites/reliefweb.int/files/resources/Full%20Report_321.pdf
Oxfam: On the brink: Israeli settlements and their impact in the Jordan Valley: July 2012
http://www.scribd.com/doc/99105987/On-the-Brink-Israeli-settlements-and-their-impact-on-Palestinians-in-the-Jordan-Valley
[13] Human Rights Watch: World Report 2012: Israel & the Occupied Palestinian Territories:
http://www.hrw.org/world-report-2012/world-report-2012-israeloccupied-palestinian-territories
[14] USSD Human Rights Report 2011: Israel & the Occupied Territories: Exec. Summary:
/www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?dynamic_load_id=186430
[15] UNOCHA: Humanitarian Monitor, Monthly Report December 2012:
http://www.ochaopt.org/documents/ocha_opt_the_humanitarian_monitor_2013_01_28_english.pdf
[16] UNOCHA: West Bank Movement & Access Update September 2012
http://www.ochaopt.org/documents/ocha_opt_movement_and_access_report_september_2012_english.pdf

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.[17]

2.2.9 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 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.[18] 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.[19]

2.2.10 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 previously criticised the practice of trying civilian defendants in military courts, and the PA has since mandated that civilians will appear before civilian courts.[20] During 2011, the U.S. Department of State highlighted a number of human right violations by the PA, including mistreatment in detention, arbitrary and prolonged detention, impunity, corruption, and lack of transparency.[21]

2.2.11 Laws governing Palestinians in the Gaza Strip derive from the previous British Mandate, plus Ottoman, Jordanian, Egyptian, PA and Sharia law, in addition to Israeli military orders (see Freedom House report).[22] The judicial system is not considered to be independent, and the judiciary lack appropriate training and experience. 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.[23] In

[17] USSD Human Rights Report 2011:Israel & the Occupied Territories (OPT, section 1d) /www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?dynamic_load_id=186430
[18] USSD Human Rights Report 2011:Israel & the Occupied Territories (OPT, section 1d) /www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?dynamic_load_id=186430
[19] USSD Human Rights Report 2011:Israel & the Occupied Territories (OPT, section 1d) /www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?dynamic_load_id=186430
[20] USSD Human Rights Report 2011:Israel & the Occupied Territories (OPT section 1e) /www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?dynamic_load_id=186430
[21] USSD Human Rights Report 2011:Israel & the Occupied Territories (OPT Executive Summary) /www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?dynamic_load_id=186430
[22] Freedom House: Freedom in the World: Gaza Strip 2012 http://www.freedomhouse.org/report/freedom-world/2012/gaza-strip
[23] USSD Human Rights Report 2011:Israel & the Occupied Territories (OPT section 1e) /www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?dynamic_load_id=186430

May 2011, Hamas and Fatah agreed to form a national unity-government that would organise presidential and parliamentary elections and increase coordination between Hamas- and Fatah- aligned security forces. By December 2011, no unity government had been formed, and no date set for elections. The Independent Commission for Human Rights reported 102 torture complaints against security forces in Gaza in 2011.[24] However, in January 2013 the leaders of the two rival groups finally agreed to implement the unity deal.[25]

2.2.12 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.[26] 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 (UNOCHA), 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.[27] UN statistics show that during 2011, deaths and injuries in Gaza and the West Bank continued to increase.[28]

2.2.13 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 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.[29] In 2011, 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.[30] 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.[31] Palestinian civilians have been shot dead by Israeli soldiers on a number of occasions during 2011 and 2012.[32]

UNWRA and Article 1D of the 1951 Convention

[24] Freedom House: Freedom in the World: Gaza Strip 2012
http://www.freedomhouse.org/report/freedom-world/2012/gaza-strip
[25] BBC News: Palestinian groups Hamas and Fatah agree on unity deal: 10 Jan 2013
http://www.bbc.co.uk/news/world-middle-east-20954633
[26] USSD Human Rights Report 2011:Israel & the Occupied Territories (OPT)
/www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?dynamic_load_id=186430
[27] Amnesty International: Israel & OPT Report 2011:
http://www.amnesty.org/en/region/israel-occupied-palestinian-territories/report-2011
[28] UNOCHA:UN Statistics shows that Israel's occupation is more aggressive: 3 October 2011
http://www.middleeastmonitor.com/component/jcomments/feed/com_content/2890
[29] USSD Human Rights Report 2011:Israel & the Occupied Territories (OPT)
/www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?dynamic_load_id=186430
[30] US Department of State: Country Report on Human Rights Practices 2011:Israel & the Occupied Palestinian Territories (OPT, section 1d)
/www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?dynamic_load_id=186430
[31] USSD Human Rights Report 2011:Israel & the Occupied Territories (OPT Executive Summary)
/www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?dynamic_load_id=186430
[32] Human Rights Watch: World Report 2012: Israel & the Occupied Palestinian Territories:
http://www.hrw.org/world-report-2012/world-report-2012-israeloccupied-palestinian-territories

2.2.14 Before assessing an individual's protection needs, caseworkers should first establish whether Article 1D of the 1951 UN Refugee Convention applies. Article 12(1)(a) of the Qualification Directive reflects Article 1D.

2.2.15 UNRWA was established by a UN General Assembly resolution on 8 December 1949 to carry out direct relief and works programmes for Palestinian refugees. The Agency commenced operations on 1 May 1950. The Agency's services comprise education, health care, relief, camp infrastructure and improvement, community support, microfinance and emergency response, including in times of armed conflict. It currently provides assistance, protection and advocacy for some 5 million registered Palestinian refugees in the Middle East. UNRWA operates in five areas: Jordan, Lebanon, Syria, the West Bank (including East Jerusalem), and Gaza. UNWRA's mandate was most recently extended until 30 June 2014 by the UN General Assembly.[33]

2.2.16 Article 1D of is one of the exclusion clauses in the Convention, but there is a significant inclusory element in the second paragraph.

> "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."

2.2.17 Article 1D was drafted so as to exclude from the Convention those Palestinian refugees assisted by UNRWA, on the grounds that they did not need the Convention's protection and also to ensure there was no overlap between the responsibilities of two UN agencies, UNRWA and UNHCR. The second paragraph 'When such protection or assistance has ceased….' was intended to ensure the continuation of refugee protection in the event that UNRWA assistance ceased to be available before the settlement of the Palestinian refugee question. In the absence of a solution, the General Assembly has repeatedly renewed UNRWA's mandate.

2.2.18 Article 1D therefore means, in effect, that Palestinians who have not received UNRWA assistance are not excluded from refugee status if they seek asylum outside the areas in which UNRWA operates. Article 1D does not apply to them and they are required to establish a need for protection under the Convention as with any other claimant. Conversely, those who have been in receipt of assistance are not eligible for refugee status. Exclusion from refugee status does not however exclude from subsidiary protection.

Case law on Article 1D and Palestinian cases

2.2.19 The domestic case law on the interpretation of Article 1D was established by the Court of Appeal in the case of El-Ali v Secretary of State for the Home Department [2002] EWCA Civ 1103 (26 July 2002). The Court took the words 'at present receiving' in the first paragraph of Article 1D, to exclude from the Convention only those Palestinians who were receiving UNRWA assistance when the Convention

[33] UNWRA: Overview of UNWRA accessed 1 Feb 2013 http://www.unrwa.org/etemplate.php?id=85

was adopted on 28 July 1951. In practice, this judgment severely limited the applicability of Article 1D exclusion to Palestinian applicants and almost all have been considered on their individual merits under the Convention.

2.2.20 The El-Ali judgment was however disapproved by the Court of Justice of the European Union (CJEU), on 17 June 2010 in the case of Nawras Bolbol v Bevándorlási és Állampolgársági Hivatal (Hungary)**.** It found that Article 1D (and therefore by extension Article 12(1)(a) of the Directive) applies in the present and therefore could not apply only to those Palestinians who became refugees as a result of the 1948 conflict and who were receiving protection or assistance from UNRWA at the time when the Refugee Convention was concluded in 1951. The CJEU's other principal finding was that only those persons who had availed themselves of the assistance provided by UNRWA could come within the exclusion clause.

2.2.21 The interpretation of the second paragraph of Article 1D ('When such protection or assistance has ceased for any reason…') was clarified in a further judgment by the CJEU on 19 December 2012, in the case of Mostafa Abed El Karem El Kott and others (C-364/11). The CJEU decided that cessation of UNRWA protection or assistance 'for any reason' should not only refer to the cessation of UNRWA itself but should include the situation in which a person ceased to receive assistance for a reason beyond his control and independent of his volition. It would be for the Member State responsible for examining the asylum application to ascertain whether that person had been forced to leave the UNRWA area of operations.

2.2.22 The CJEU went on to decide that where the condition relating to the cessation of the protection or assistance provided by UNRWA was satisfied, the applicant must be recognised as a refugee within the meaning of Article 2(c) of the Directive ('ipso facto entitled to the benefits'), provided always that he was not excluded by virtue of Article 12(1) (b) or (2) and (3) of the Directive (equivalent to Articles 1E and 1F of the Convention)

2.2.23 In reaching this judgment, the CJEU rejected the claimant's interpretation, which was that a Palestinian in receipt of UNRWA assistance would be entitled to Convention refugee status simply by leaving the UNRWA-protected areas of operation and claiming asylum elsewhere.

2.2.24 The CJEU's judgments are effectively binding on the UK courts. In practice, they mean that, aside from those who had already been receiving assistance from the UN, Palestinian asylum claims will continue to be dealt with in the same way as asylum claims from individuals from other countries. Those individuals previously assisted by UNRWA must show that the assistance or protection is no longer being received for reasons beyond his control and independent of his volition. Exclusion from refugee status does not however also exclude from Humanitarian Protection, since there are no parallel exclusion clauses in the Directive's provisions for subsidiary protection. These cases will therefore, as now, be considered on their individual merits.

2.2.25 In light of the above, the assessment of whether effective protection is available should be considered in relation to the particular circumstances and profile of the claimant and the latest country of origin information. Any enquiries on the interpretation of Article 1D/Article 12(1) (a) should be referred to the Decisions & Appeals Team within Operational Policy and Rules Unit.

2.3 Internal relocation.

2.3.1 Case owners must refer to the Asylum Instruction on Internal Relocation and in the case of a female applicant, the Asylum Instruction on Gender Issues in the Asylum Claim, for guidance on the circumstances in which internal relocation would be a 'reasonable' option, so as to 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. Case owners must refer to the Gender Issues in the asylum claim where this is applicable. The fact that there may be technical obstacles to return, such as re-documentation problems, does not prevent internal relocation from being applied.

2.3.2 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. If an applicant who faces a real risk of ill-treatment/persecution in their home area would be able to relocate to a part of the country where they would not be at real risk, whether from state or non-state actors, and it would not be unduly harsh to expect them to do so, then asylum or humanitarian protection should be refused.

2.3.3 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. 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.[34]

2.3.4 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. Palestinians with

[34] UNOCHA: West Bank Movement & Access Update September 2012
http://www.ochaopt.org/documents/ocha_opt_movement_and_access_report_september_2012_english.pdf

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 immediate family members are allowed to pass in vehicles through any of the crossings.[35]

2.3.5 The barrier was deemed to be contrary to international law by an International Criminal Court advisory body in 2004. 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.[36] [37]

2.3.6 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.[38]

2.3.7 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 residents of Gaza to communicate with family and friends outside the Gaza Strip.[39] However, the Israeli authorities did allow a large consignment of building materials to enter Gaza at the end of 2012, the first easing of the Blockade since its imposition in 2007.[40]

2.3.8 The PA Basic Law provides for freedom of movement, and the PA generally did not restrict freedom of movement. The Basic Law does not specify regulations

[35] UNOCHA:West Bank Movement & Access Update September 2012
http://www.ochaopt.org/documents/ocha_opt_movement_and_access_report_september_2012_english.pdf
[36] UNOCHA: West Bank Movement & Access Update September 2012
http://www.ochaopt.org/documents/ocha_opt_movement_and_access_report_september_2012_english.pdf
[37] US Department of State: Country Report on Human Rights Practices 2011:Israel & the Occupied Palestinian Territories (OPT, section 1d)
/www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?dynamic_load_id=186430
[38] B'Tselem: Background on the Restriction of Movement 15 July 2012
http://www.btselem.org/freedom_of_movement
[39] GlobalSecurity.org: Blockade of Gaza accessed 4 January 2012:
http://www.globalsecurity.org/military/world/palestine/gaza-blockade.htm
[40] Reuters News Agency: Israel eases ban on building materials for Gaza 30 December 2012:
http://www.reuters.com/article/2012/12/30/us-palestinians-israel-gaza-idUSBRE8BT02U20121230

regarding foreign travel, emigration or repatriation. The Hamas authorities in the Gaza Strip do restrict foreign travel to some extent; in June and August 2011 they increased restrictions on the entry, exit and length of stay of foreigners, including aid workers. They also prevent the exit of some Palestinians if they have outstanding fines or taxes to pay.[41]

2.3.9 The Israeli Defence Force continues to restrict the movement of Palestinians within the occupied territories, and for foreign travel, and at times increases such restrictions on the grounds of military necessity. Barriers to movement include checkpoints, the separation barrier between the West Bank and Israel, internal road closures, and restrictions on the entry of persons and goods into and out of the Gaza Strip. These restrictions affect virtually all aspects of life, including access to places of worship, schools, agricultural lands, hospitals and employment, in addition to the conduct of journalistic, humanitarian and NGO activities.[42] [43]

2.3.10 Hamas authorities in the Gaza Strip enforce movement restrictions on Gaza residents 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. The Rafah Crossing was opened by Egypt in May 2011, but the Egyptians strictly control movement in or out of Gaza.[44] Regular clashes between Israeli forces and militants in Gaza restrict freedom of movement within the Gaza Strip, as does the incidence of unexploded ordinance.[45] [46]

2.3.11 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 accessed by Israeli officials at checkpoints and border crossings, giving Israel control over the movements of Palestinians.[47]

2.3.12 Very careful consideration must be given to whether internal relocation would be a viable 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.

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[41] US Department of State: Country Report on Human Rights Practices 2011:Israel & the Occupied Palestinian Territories (OPT, section 1d) /www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?dynamic_load_id=186430

[42] US Department of State: Country Report on Human Rights Practices 2011:Israel & the Occupied Palestinian Territories (OPT, section 1d) /www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?dynamic_load_id=186430

[43] B'Tselem: Human Rights in the occupied Territories Annual Report 2011: http://www.btselem.org/press_releases/20120321_2011_annual_report

[44] Amnesty International: http://www.amnesty.org/en/region/israel-occupied-palestinian-territories/report-2012

[45] Freedom House: Annual Report 2012: http://www.freedomhouse.org/report/freedom-world/2012/gaza-strip

[46] B'Tselem: Background on the Restriction of Movement 15 July 2012 http://www.btselem.org/freedom_of_movement

[47] Freedom House: Annual Report 2012 http://www.freedomhouse.org/report/freedom-world/2012/west-bank

2.4 Country guidance caselaw

RT (Zimbabwe) & Ors v Secretary of State for the Home Department [2012] UKSC 38 (25 July 2012)

The Supreme Court ruled that the rationale of the decision in HJ (Iran) applies to cases concerning imputed political opinion. Under both international and European human rights law, the right to freedom of thought, opinion and expression protects non-believers as well as believers and extends to the freedom not to hold and not to express opinions. Refugee law does not require a person to express false support for an oppressive regime, any more than it requires an agnostic to pretend to be a religious believer in order to avoid persecution. Consequently an individual cannot be expected to modify their political beliefs, deny their opinion (or lack thereof) or feign support for a regime in order to avoid persecution.

HS (Palestinian - return to Gaza) Palestinian Territories CG [2011] UKUT 124 (IAC) (11 April 2011).

In this country guidance case 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 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.

MA (Palestinian Arabs – Occupied Territories – Risk) Palestinian Territories CG [2007] UKAIT 00017 .

In this country guidance case (which was upheld by the Court of Appeal - MA (Palestinian Territories) v S of S for the Home Department [2008] EWCA Civ 304), the Tribunal found that merely being a Palestinian Arab in the Occupied Territories , even if male aged between 16-35 from the northern part of the West Bank, does not mean that a person would face on return a real risk of persecution, serious harm

under paragraph 339C of the amended Immigration Rules or ill-treatment contrary to Article 3 of the ECHR. The Tribunal found that:

'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 121 of the determination).

'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 124.of the determination).

'…..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 129.of the determination).

'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 128.of the determination).

'……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' (para 122.of the determination).

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

http://www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/asylumpolicyinstructions/

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 Instruction 'Considering the asylum claim and assessing credibility').

3.3 For any asylum cases which involve children either as dependents or as the main applicants, case owners must have due regard to Section 55 of the Borders, Citizenship and Immigration Act 2009. The UK Border Agency instruction 'Every Child Matters; Change for Children' sets out the key principles to take into account in all Agency activities.

3.4 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 does not qualify for asylum or Humanitarian Protection, consideration must be given to any claim as to whether he/she qualifies for leave to remain on the basis of their family or private life. Case owners must also consider if the applicant qualifies for Discretionary Leave, either on the basis of the particular categories detailed in Section 4 or on their individual circumstances.

Consideration of Articles 15(a) and (b) of the Directive/Articles 2 and 3 ECHR

3.5 An assessment of protection needs under Article 15(c) of the Directive should only be required if an applicant does not qualify for refugee protection, and is ineligible for subsidiary protection under Articles 15(a) and (b) of the Directive (which broadly reflect Articles 2 and 3 of the ECHR). Case owners are reminded that an applicant who fears a return to a situation of generalised violence may be entitled to a grant of asylum where a connection is made to a Refugee Convention reason or to a grant of Humanitarian Protection because the Article 3 threshold has been met.

Other severe humanitarian conditions and general levels of violence.

3.6 There may come a point at which the general conditions in the country – for example, absence of water, food or basic shelter – are unacceptable to the point

that return in itself could, in extreme cases, constitute inhuman and degrading treatment. Decision makers need to consider how conditions in the country and locality of return, as evidenced in the available country of origin information, would impact upon the individual if they were returned. Factors to be taken into account would include age, gender, health, effects on children, other family circumstances, and available support structures. It should be noted that if the State is withholding these resources it could constitute persecution for a Convention reason and a breach of Article 3 of the ECHR.

3.7 As a result of the Sufi & Elmi v UK judgment in the European Court of Human Rights (ECtHR), where a humanitarian crisis is predominantly due to the direct and indirect actions of the parties to a conflict, regard should be had to an applicant's ability to provide for his or her most basic needs, such as food, hygiene and shelter and his or her vulnerability to ill-treatment. Applicants meeting either of these tests would qualify for Humanitarian Protection.

3.8 Credibility

3.8.1 This guidance is not designed to cover issues of credibility. Case owners will need to consider credibility issues based on all the information available to them. For guidance on credibility see 'Section 4 – Making the Decision in the Asylum Instruction 'Considering the asylum claim and assessing credibility'. Case owners 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 UK Border Agency file. In all other cases, the case owner should satisfy themselves through CRS database checks that there is no match to a non-biometric visa. Asylum applications matches 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.

3.9 General country situation

3.9.1 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.

3.9.2 **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.[48] [49] The current humanitarian operation in the OPT launched in November 2009, is one of the largest in the world. Through the Consolidated Appeal Programme (CAP), various UN agencies, international and national NGOs requested over US$660 million for 2010. This support was intended to mitigate the worst effects of the on-going conflict on the most vulnerable Palestinians. According to the FCO, before the November 2012 escalation in violence in Gaza and southern and central Israel which exacerbated the humanitarian situation, 80% of households in Gaza relied on humanitarian assistance and 44% of the population were food insecure.[50]

[48] UNOCHA: West Bank Movement & Access Update September 2012 http://www.ochaopt.org/documents/ocha_opt_movement_and_access_report_september_2012_english.pdf
[49] UNOCHA: Humanitarian impact of Israeli settlement policies December 2012: http://www.ochaopt.org/documents/ocha_opt_settlements_FactSheet_December_2012_english.pdf
[50] FCO, Human Rights and Democracy: The 2011 Foreign & Commonwealth Office Report - Quarterly Updates: Occupied Palestinian Territories, 31 December 2012

Unemployment levels in the West Bank and in the Gaza Strip are high.[51] 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, workplaces and essential services.[52]

3.9.3 In June 2012, Amnesty International highlighted a number of Israeli human rights concerns, including the expansion of illegal settlements and demolition of Palestinian homes and infrastructure in the OPT; the failure to protect Palestinian civilians from frequent attacks by Israeli settlers or prosecute those responsible for such attacks; arbitrary restrictions on movement which affect access to livelihoods and basic services such as water, education and medical care; and the indiscriminate and disproportionate use of force against demonstrators. Stringent restrictions imposed by Israel on the movement of Palestinians within the OPT, and an ongoing military and economic blockade imposed on Gaza, have stifled the Palestinian economy and caused high unemployment and poverty. Many Palestinians in the OPT – including most of the 1.6 million people living in the Gaza Strip – depend on international aid to meet at least some of their basic needs.[53] Throughout 2011 and 2012, the International Committee of the Red Cross (ICRC) continued to monitor humanitarian conditions and provide medical supplies, fuel and emergency supplies to relieve precarious living conditions, particularly in the Gaza Strip. [54], [55]

3.9.4 The Foreign & Commonwealth Office has reiterated its concern at reports of human rights abuses under the de facto Hamas authorities in Gaza. These include arbitrary detention, restrictions of religious freedom for non-Muslims, and the use of the death penalty.[56] Three men were executed in Gaza during 2011, and 14 have been executed by Hamas since 2010.[57] Israeli forces regularly shot at Gaza residents up to 1.5 kilometers from the armistice line between Gaza and Israel, creating a "no-go" zone that comprises 35 percent of Gaza's agricultural land, according to the UN. The Israeli navy shot at and confiscated Palestinian fishing boats that sailed more than two nautical miles from the coast, prohibiting access to some 85 percent of Gaza's maritime area.[58]

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http://fcohrdreport.readandcomment.com/human-rights-in-countries-of-concern/israel-and-the-opts/quarterly-updates-israel/

[51] UN Office for the Coordination of Humanitarian Affairs (OCHA): Displacement and Insecurity in Area C of the West Bank Aug. 2011
http://www.ochaopt.org/documents/ocha_opt_area_c_report_august_2011_english.pdf

[52] UNOCHA: The Humanitarian Impact of the Barrier, July 2012:
http://www.ochaopt.org/documents/ocha_opt_barrier_factsheet_July_2012_english.pdf

[53] Amnesty International, Starved of justice; Palestinians detained without trial in Israel, 6 June 2012, 1. Introduction
http://www.amnesty.org/en/library/asset/MDE15/026/2012/en/d33da4e1-b8d2-41fe-a072-ced579ba45c7/mde150262012en.pdf

[54] ICRC:Providing support in Gaza and monitoring detainees on hunger strike: 15 August 2012
http://www.icrc.org/eng/resources/documents/update/2012/palestine-israel-update-2012-08-15.htm

[55] ICRC:ICRC and national societies carry on: 5 December 2012:
http://www.icrc.org/eng/resources/documents/update/2012/palestine-israel-update-2012-08-15.htm

[56] FCO, Human Rights and Democracy: The 2011 Foreign & Commonwealth Office Report - Quarterly Updates: Occupied Palestinian Territories, 31 December 2012
http://fcohrdreport.readandcomment.com/human-rights-in-countries-of-concern/israel-and-the-opts/quarterly-updates-israel/

[57] Amnesty International: Gaza: executions flout legal process 18 July 2012:
http://www.amnesty.org/en/news/gaza-executions-flout-legal-process-2012-07-18

[58] Human Rights Watch, World Report 2012: Israel/Occupied Palestinian Territories, 22 January 2012
http://www.hrw.org/world-report-2012/world-report-2012-israeloccupied-palestinian-territories

Current security and humanitarian situation in Gaza

3.9.5 On May 31 2010, Israeli troops intercepted an international aid flotilla aiming to break the blockade of Gaza. 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.[59] The Israeli government made an announcement early in 2011 that the restrictions would be eased, but this has not yet happened.[60]

3.9.6 In 2012, 39 children were killed by Israeli air strikes on Gaza, 33 of which occurred during the Israeli offensive Operation Pillar of Defence, which started on 14 November 2012. During this offensive more than 400 children were injured, two were killed by Palestinian rockets falling short of their intended targets, and one child was killed whilst participating in hostilities. During 2012, Defence for Children International (DCI) documented 42 cases of settler violence against children in the Occupied Palestinian Territory. Israeli authorities have consistently failed to prevent settler attacks against Palestinians or to take adequate enforcement measures against settlers for their actions. In 2012, a total of nine children were detained whilst fishing in the new fishing limit set by Israeli authorities, two of which (14 and 17) occurred in December.[61]

3.9.7 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".[62] On 29-30 October 2011, 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.[63] 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.[64] During 2011, the IDF continued to launch attacks on Gaza, against smuggling tunnels and also in response to rocket attacks, and by October 2011, 32 Palestinian civilians had been killed in Gaza.[65] According to Freedom House, "Fighting between Israel and Gazan militants broke out regularly during 2011. In most cases, rocket and mortar fire into Israel from Gaza prompted Israeli air strikes and artillery bombardments, killing both combatants and civilians, including children. According to the Israeli nongovernmental organization (NGO) B'Tselem, in 2011 the IDF killed a total of 105 Palestinians in the Gaza Strip, 37 of whom were non-combatants".[66] B'Tselem and other human rights organizations have documented hundreds of cases in which soldiers and police

[59] Amnesty International: Israel & OPT Report 2011:
http://www.amnesty.org/en/region/israel-occupied-palestinian-territories/report-2011
[60] World Food Programme: Occupied Palestinian Territory Overview Feb 2011:
State of Palestine | WFP | United Nations World Food Programme - Fighting Hunger Worldwide
[61] Relief-Web: OPT Violations Bulletin December 27 2012:
http://reliefweb.int/report/occupied-palestinian-territory/opt-violations-bulletin-issue-27-december-2012
[62] Radio Free Europe/Radio Liberty: Six Palestinians Reported Killed in Israeli Air Strikes: 25/08/2011:
http://www.rferl.org/content/six_palestinians_reported_killed_in_israeli_air_strikes/24307449.html
[63] Agence France-Presse: One killed in Israeli air raids: 07/12/2011
http://reliefweb.int/report/occupied-palestinian-territory/one-killed-israeli-air-raids-palestinians
[64] Agence France-Presse: Father, daughter hurt in Israeli Gaza raid, 11/12/2011
http://reliefweb.int/report/occupied-palestinian-territory/father-daughter-hurt-israeli-gaza-raid
[65] Human Rights Watch Country Summary Israel & Occupied Palestinian Territories: Jan 2012:
http://www.hrw.org/sites/default/files/related_material/israel_opt_2012.pdf
[66] Freedom House: Freedom in the World: Gaza 2012, May 2012
http://www.freedomhouse.org/report/freedom-world/2012/gaza-strip

have slapped and kicked Palestinians, insulted and humiliated them, and delayed them at checkpoints for no reason.[67]

3.9.8 The FCO reports that November 2012 "saw a severe escalation of violence in Gaza and southern and central Israel. Between 14 and 21 November, 1,506 rockets were fired by Gazan militant groups towards Israel, of which 58 struck urban areas in Israel killing six Israelis, including two children. Some 420 rockets which were heading for urban areas were intercepted by the Iron Dome Missile System. 1,500 IDF strikes from air and sea in Gaza killed 158 Palestinians, including 43 children. UN figures also reported 1,269 people wounded in Gaza and 244 in Israel. In Gaza, 298 buildings were destroyed and 8,000 buildings were damaged, including a significant amount of public infrastructure. 80 houses were destroyed in Israel".[68]

3.9.9 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. Amnesty International reported that more than 70% of Gaza's 1.6 million residents were dependent on humanitarian aid by the end of 2011.[69]

3.9.10 Israel continues to operate its closure policy in Gaza.[70] 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 projects by international agencies. Israel also bars virtually all exports from Gaza, which has significantly hindered its economic recovery.[71] Amnesty International, in their annual report, stated that the Israeli authorities continued to blockade the Gaza Strip, prolonging the humanitarian crisis there, restricting the movement of Palestinians in the OPT, and also continued to build illegal settlements on Palestinian land.[72]

3.9.11 The December 2012 Report of the Special Rapporteur on adequate housing noted that, "Since June 2007, the Gaza Strip has been subject to an intensified blockade, with severe restrictions on the movement of people, goods and services, resulting in severe shortages of electricity, fuel and consumer products. The Gaza Strip's isolation and the continued hostilities also have a profound impact on the urban infrastructure. It is estimated that only 10 per cent of the water in the Gaza Strip is safe for human consumption. Severe fuel and electricity shortages result in regular power outages". [73] The May 2012 report of the Special Rapporteur on the situation

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[67] B'Tselem: Not just 'rotten apples' violence against Palestinians by Israeli security forces: Annual Report 211 published 21 March 2012:
http://www.btselem.org/press_releases/20120321_2011_annual_report

[68] FCO, Human Rights and Democracy: The 2011 Foreign & Commonwealth Office Report - Quarterly Updates: Occupied Palestinian Territories, 31 December 2012
http://fcohrdreport.readandcomment.com/human-rights-in-countries-of-concern/israel-and-the-opts/quarterly-updates-israel/

[69] Amnesty International: Annual Report 2012: Israel & Occupied Palestinian Territories:
http://www.amnesty.org/en/region/israel-occupied-palestinian-territories/report-2012

[70] ReliefWeb: What is the Closure of Gaza? 19 November 2012
http://reliefweb.int/report/occupied-palestinian-territory/what-closure-gaza

[71] Human Rights Watch: Israel: Follow prisoner exchange by ending Blockade 18 October 2011:
http://www.ecoi.net/local_link/204057/309079_en.html

[72] Amnesty International: Annual Report 2012: Israel & the Occupied Palestinian Territories, 24/5/2012:
http://www.amnesty.org/en/region/israel-occupied-palestinian-territories/report-2012

[73] United Nations, Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context, Raquel Rolnik; Addendum; Mission to Israel and the Occupied Palestinian Territory, 24 December 2012, paragraph 87
http://www.ecoi.net/file_upload/1930_1358957433_a-hrc-22-46-add1-en.pdf

of human rights in the Palestinian territories occupied since 1967 notes that power cuts have caused acute danger to hospital patients, particularly cardiac and dialysis patients and babies dependent on incubators.[74] The UN News Service also highlighted these problems in August 2012, noting that the situation was set to get significantly worse, due to the continuing blockade combined with rapid population growth.[75]

Current security and humanitarian situation in the West Bank

3.9.12 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.[76] 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.[77] Since then, the destruction of water cisterns and olive trees has continued throughout 2012, despite international criticism.[78] [79]

3.9.13 During 2011, the total number of homes and other structures demolished increased on previous years.[80] The Israeli authorities generally withheld construction permits from Palestinian residents of East Jerusalem and Area C of the West Bank, where Israel retains full authority for planning and zoning, impeding their right to adequate housing. The Israeli authorities intensified their demolition of Palestinian homes and other facilities in the West Bank that had been built without permits, demolishing more than 620 structures during 2011. Almost 1,100 Palestinians were displaced as a result, an 80 per cent increase over 2010; more than 4,200 others were affected by demolitions of 170 animal shelters and 46 cisterns. Amnesty International reported that the Israeli government had authorized an additional 3,000 housing units to be built or settlements expanded in unidentified locations in the occupied West Bank.[81]

3.9.14 The UN Special Reporter noted in May 2012 the continuing practice of 'price tag' reprisals by Israeli settlers against Palestinians, i.e. the burning of Palestinian olive groves, destruction of agricultural land, or attacking Palestinian residents or their houses, mosques, water cisterns etc. as the "price tag" for actions taken by the IDF and the Government of Israel against the outposts. The report further notes the

[74] UN Human Rights Council: Report of the Special Rapporteur on the situation of Human Rights in the Palestinian Territories occupied since 1967, (Richard Falk) 25 May 2012, paragraph 35
http://reliefweb.int/sites/reliefweb.int/files/resources/A-HRC-20-32_en.pdf
[75] UN News Service: Lack of sufficient services in Gaza could get worse: 27 August 2012
http://www.unhcr.org/refworld/country,,,,PSE,,5049ec972,0.html
[76] Red Cross: ICRC maintains humanitarian effort: March 2011
http://www.icrc.org/eng/resources/documents/update/2011/palestine-israel-update-2011-03-18.htm
[77] UNHCR Ref-world OPT:UN News Service: 5 April 2011:
http://www.unhcr.org/refworld/country,,,,PSE,,4d9eaeaac,0.html
[78] International Solidarity Movement: Another water cistern demolished 3 May 2012
http://palsolidarity.org/2012/05/another-water-cistern-demolished-another-violation-of-human-rights
[79] International Solidarity Movement: Water cistern demolitions in Hebron 23 April 2012
http://palsolidarity.org/2012/04/the-right-to-water-water-cistern-demolitions-in-hebron-area
[80] USSD Human Rights Report 2011: Israel & the Occupied Territories:section 1f
/www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?dynamic_load_id=186430
[81] Amnesty International, Israel must halt construction of West Bank settlements, 3 December 2012
http://www.amnesty.org/en/news/israel-must-halt-construction-west-bank-settlements-2012-12-03

tendency of the Israeli military forces to protect the settlers during their violent rampages, and to fail to investigate and apprehend Israeli settlers responsible for violent assault and destruction of property. [82]

3.9.15 B'Tselem also reports that "The Israel Police, which is charged with investigating settler violence against Palestinians, does not properly investigate the claims of violence and does not carry out its law-enforcement obligations".[83] The December 2012 Report of the Special Rapporteur on adequate housing highlighted that "Settlement activity is also a regular source of violence and permanent tension. In Hebron, for example, the Special Rapporteur received testimonies from several persons of attacks by settlers on infrastructure, such as water tanks, and other violence against the Palestinian population. The heavy presence of soldiers in the heart of the city to protect the settlers contributes to a climate of fear and mistrust".[84]

3.9.16 Complaints of torture committed by West Bank Palestinian Authority (PA) security services (under the aegis of Fatah) continued in 2011, and also in 2012, although in smaller numbers. Detainees were tortured and otherwise ill-treated, particularly by Preventive Security and the General Intelligence Service in the West Bank; the Independent Commission on Human Rights (ICHR) reported receiving more than 120 such allegations in the West Bank (and over 100 in Gaza). The ICHR also received over 50 complaints of torture and other ill-treatment of suspects by police (and over 100 in Gaza).[85] [86] The PA courts have failed to find any security officer responsible for torture or arbitrary detention or other abuses.[87] The Palestinian Authority's (PA) security services arbitrarily detained hundreds of Hamas supporters as well as politically unaffiliated protesters who supported the pro-democracy Arab Spring movements and reconciliation between Hamas and Fatah. The PA also arrested journalists who were critical of the authorities. Credible allegations of torture by the PA's security services continued.[88]

3.9.17 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.[89] [90] Human Rights Watch reported that the number of settler attacks between January and 31

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[82] UN General Assembly: Report of Special Rapporteur on human rights in the Palestinian territories 25 May 2012,paragraph 27
http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session20/A-HRC-20-32_en.pdf

[83] B'Tselem: Human Rights in the Occupied Territories: 2011 Annual Report 21 March 2012,Turning a blind eye: Failure to protect Palestinians from settler violence:
http://www.btselem.org/press_releases/20120321_2011_annual_report

[84] United Nations, Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context, Raquel Rolnik; Addendum; Mission to Israel and the Occupied Palestinian Territory, 24 December 2012, paragraph 83
http://www.ecoi.net/file_upload/1930_1358957433_a-hrc-22-46-add1-en.pdf

[85] Amnesty International: Annual Report 2012: Israel & Occupied Palestinian Territories 24 May 2012
http://www.amnesty.org/en/region/israel-occupied-palestinian-territories/report-2012

[86] Human Rights Watch, World Report 2012: Israel/Occupied Palestinian Territories, 22 January 2012
http://www.hrw.org/world-report-2012/world-report-2012-israeloccupied-palestinian-territories

[87] Human Rights Watch, World Report 2012: Israel/Occupied Palestinian Territories, 22 January 2012
http://www.hrw.org/world-report-2012/world-report-2012-israeloccupied-palestinian-territories

[88] Human Rights Watch, World Report 2012: Israel/Occupied Palestinian Territories, 22 January 2012
http://www.hrw.org/world-report-2012/world-report-2012-israeloccupied-palestinian-territories

[89] Human Rights Watch: Separate & Unequal December 2010
http://www.hrw.org/print/news/2010/12/18/israelwest-bank-separate-and-unequal

[90] UNOCHA: Humanitarian Monitor, Monthly Report December 2012:
http://www.ochaopt.org/documents/ocha_opt_the_humanitarian_monitor_2013_01_28_english.pdf

October 2011 was 42 per cent higher than in the same period in 2010 (which saw 266 settler attacks).[91] B'Tselem, via 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".[92] [93]

3.9.18 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.[94] 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.[95] The UN Committee on Economic, Social and Cultural Rights 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.[96] UNOCHA reports that in 2012, one Palestinian was killed and approximately 1,300 injured by Israeli settlers or security forces in incidents directly or indirectly related to settlements, including demonstrations.[97] Approximately 540 internal checkpoints, roadblocks and other physical obstacles impede Palestinian movement within the West Bank; these obstacles exist primarily to protect settlers and facilitate their movement, including to and from Israel.[98]

3.9.19 The Israeli forces reportedly used live fire and other excessive force against Palestinian demonstrators in the West Bank and protesters at the Lebanese and Syrian borders. They also did so in order to enforce the 'exclusion zone' within Gaza and along its coast. In 2011 they killed 55 Palestinian civilians in the Occupied Territories, including 11 children. Among these were 22 civilians, including 9 children, killed by Israeli fire in Gaza's land and sea restricted areas. The army initiated internal investigations into some of these incidents, but these were not independent or transparent.[99] See section 3.7 for information on the arbitrary arrest of demonstrators and other persons under the Israeli security laws.

See also: **Actors of protection (section 2.3 above)**

Internal relocation (section 2.4 above)

Caselaw (section 2.5 above)

[91] Human Rights Watch: New Commander Should Protect Palestinians From Settler Violence, 21/11/2011 http://www.ecoi.net/local_link/205986/311204_en.html
[92] BBC News: Concerns over rising settler violence in the West Bank, 17/11/2011 http://www.bbc.co.uk/news/world-middle-east-15753945
[93] B'Tselem: Information for the Consideration of Israel 2 December 2011: http://www2.ohchr.org/english/bodies/cescr/docs/ngos/BTselem_Israel_CESCR47.pdf
[94] Human Rights Watch: New Commander Should Protect Palestinians From Settler Violence, 21/11/2011 http://www.ecoi.net/local_link/205986/311204_en.html
[95] Human Rights Watch: Investigate Killings During Border Protests, 20/05/2011: http://www.ecoi.net/local_link/160650/264083_en.html
[96] B'Tselem: Information for the Consideration of Israel 2 December 2011: http://www2.ohchr.org/english/bodies/cescr/docs/ngos/BTselem_Israel_CESCR47.pdf
[97] UNOCHA: Humanitarian impact of Israeli settlement policies December 2012: http://www.ochaopt.org/documents/ocha_opt_settlements_FactSheet_December_2012_english.pdf
[98] UNOCHA: Humanitarian impact of Israeli settlement policies December 2012: http://www.ochaopt.org/documents/ocha_opt_settlements_FactSheet_December_2012_english.pdf
[99] Amnesty International: Annual Report 24 May 2012: Israel & Occupied Palestinian Territories: http://www.amnesty.org/en/region/israel-occupied-palestinian-territories/report-2012

3.9.20 Conclusion There is a generalised state of insecurity in the OPT, 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.

3.9.21 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. Case owners must consider the particular humanitarian and security situation in the relevant territory, together with the individual circumstances of the applicant.

3.9.22 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.

3.9.23 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.[100]

3.9.24 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 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.

3.10 Members of militant groups and those perceived to be involved in security offences by the Israeli security services

3.10.1 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.

3.10.2 Treatment: In July 2012, 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 requires their detention”. A detention order

[100] UK Border Agency Interim Instruction: Article 15c of the Qualification Directive

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. [101]

3.10.3 The UN Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967 notes that "It is the judgment of the Special Rapporteur that the use of administrative detention, other than in rare circumstances where a demonstration of extraordinary and imminent security justification supported by evidence is made before a judge in conference with the lawyer of the defendant, who is given an opportunity to contest evidence and charges, constitutes a violation of the rights of a protected person under international law".[102]

3.10.4 Amnesty International states that an order can be issued if there are "reasonable grounds" to presume that an individual presents a risk to "the security of the area" or to "public security", but these terms are not defined and their interpretation is left to the discretion of military commanders.[103] It further notes that it "has collected evidence over many years indicating that administrative detention is used regularly by the Israeli authorities as a form of political detention, enabling the authorities to arbitrarily detain political prisoners, including prisoners of conscience, and that the practice is used to punish them for their views and suspected political affiliations when they have not committed any crime".[104] According to the NGO, Addameer – Prisoner Support and Human Rights Association, "In practice, Palestinians can be detained for months, if not years, under administrative detention orders, without ever being informed about the reasons or length of their detention. Detainees are routinely informed of the extension of their detention on the day that the former order expires. Under the existing administrative detention procedures, Palestinians have no effective means by which to challenge their administrative detention".[105]

3.10.5 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.[106]

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[101] World Organisation Against Torture (OMCT), Israel: Concern about health of Palestinian hunger strikers, 26 July 2012 http://www.omct.org/urgent-campaigns/urgent-interventions/israel/2012/07/d21916/

[102] UN Human Rights Council: Report of the Special Rapporteur on the situation of Human Rights in the Palestinian Territories occupied since 1967, (Richard Falk) 25 May 2012, paragraph 13: http://reliefweb.int/sites/reliefweb.int/files/resources/A-HRC-20-32_en.pdf

[103] Amnesty International: Starved of justice; Palestinians detained without trial in Israel, 6 June 2012, 3.1 Military Order 1651 http://www.amnesty.org/en/library/asset/MDE15/026/2012/en/d33da4e1-b8d2-41fe-a072-ced579ba45c7/mde150262012en.pdf

[104] ibid

[105] Addameer – Prisoner Support and Human Rights Association, Administrative Detention, Undated (accessed 30 January 2013) http://www.addameer.org/etemplate.php?id=293

[106] OHCHR: Human rights chief concludes visit to Israel & Occupied Palestinian Territories Feb 2011: http://www.ohchr.org/EN/NewsEvents/Pages/HCConcludesVisitIsraelOPT.aspx

3.10.6 In its report covering 2011, the FCO expressed concern over "the widespread use of administrative detention by the Israeli authorities".[107] Reporters Without Borders submitted to the UN Human Rights Council that "Palestinian media located in the Occupied Territories have been arbitrarily and illegally closed down; and administrative detention orders are regularly used to detain and hold Palestinian journalists without a charge".[108] The June 2012 Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression notes that local journalists in the occupied Palestinian territory face difficulties in undertaking their work as a result of the restrictions on their movement, arbitrary arrests and detention, physical attacks and raids on their offices by the security personnel of both Israel and the Palestinian Authority in the West Bank and the de facto authorities in Gaza.[109] The report also notes with concern that journalists are among those held in administrative detention by the Israeli authorities.[110]

3.10.7 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.[111] 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.[112]

3.10.8 Persons detained on security grounds are likely to fall under one or more of three legal systems. These are: (a) a 'temporary law' on criminal procedures which has been repeatedly renewed, 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 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

[107] FCO: Human Rights & Democracy Report 2011, 20 April 2012
http://fcohrdreport.readandcomment.com/wp-content/uploads/2011/02/Cm-8339.pdf
[108] United Nations, Summary prepared by the Office of the High Commissioner for Human Rights in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21; Israel, 8 November 2012, paragraph 20
http://www.unhcr.org/refworld/docid/50c9d2be2.html
[109] United Nations, Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Frank La Rue, 11 June 2012 paragraph 66
http://www.ohchr.org/EN/Issues/FreedomOpinion/Pages/Visits.aspx
[110] ibid, paragraph 70
[111] Human Rights Watch 2011 World Report 2011: 22 January 2012:
http://www.hrw.org/world-report-2011/israel-occupied-palestinian-territories
[112] US Department of State: Country Report on Human Rights Practices 2011:Israel & the Occupied Palestinian Territories (OPT, section 1d)
/www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?dynamic_load_id=186430

found to have been held for more than two years;[113] (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. As of November 2011, authorities held only one Palestinian resident of the Gaza Strip in detention under the Illegal Combatant Law.[114]

3.10.9 Various NGOs have stated that Israel continues to make excessive use of the administrative detention process, including in non-security cases. B'Tselem (Israeli Information Service for Human Rights in the Occupied Territories) reported that as of 30 November 2011, 4,803 Palestinians were being held in Israeli Prison Service facilities. This included 3,720 prisoners and 630 detainees who had been remanded until the end of the criminal proceedings against them.[115] Addameer reported that, as of January 2013, there were 4,743 Palestinian political prisoners in Israeli detention, including 178 administrative detainees.[116] Amnesty International considers that administrative detention, if prolonged or repeated, "can amount to cruel, inhuman and degrading treatment or punishment."[117] See section 3.13 for further information on detention conditions.

3.10.10 CIVICUS submitted to the Human Rights Council that Palestinian civil society activists were subject to arbitrary arrest and detention for organising or participating in nonviolent protests in the occupied territories.[118] Human Rights Watch reports that "Israeli forces have repeatedly harassed Palestinian human rights defenders and civil society activists in the West Bank. On October 15, the Israeli military arrested and detained without charge Ayman Nasser, a researcher at Addameer. The group alleges that during the course of 39 days, Israeli interrogators questioned Nasser for as long as 20 hours per day while his hands were shackled behind his back".[119]

3.10.11 According to B'Tselem, "the military treats every demonstration as an unlawful breach of public order that must be dispersed by various means".[120] It further notes that hundreds of Palestinians from the various villages have been arrested and tried

[113] 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.
http://www.state.gov/j/drl/rls/hrrpt/2010/nea/154463.htm
[114] USSD Human Rights Report 2011: Israel & the Occupied Territories (Israel), 24 May 2012 section 1d Arrest Procedures and Treatment While in Detention:
http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm
[115] B'Tselem: Human Rights in the Occupied Territories 2011 Annual Report, 21 March 2012:
http://www.btselem.org/press_releases/20120321_2011_annual_report
[116] Addameer, Quarterly Update on Palestinian Prisoners, 1 September 2012–15 January 2013
http://www.addameer.org/files/Quarterly%20Update%2001_09_12%20to%2015_01_13%281%29.pdf
[117] Amnesty International, Starved of justice; Palestinians detained without trial in Israel, 6 June 2012, 1 Introduction
http://www.amnesty.org/en/library/asset/MDE15/026/2012/en/d33da4e1-b8d2-41fe-a072-ced579ba45c7/mde150262012en.pdf
[118] United Nations, Summary prepared by the Office of the High Commissioner for Human Rights in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21; Israel, 8 November 2012, paragraph 19
http://www.unhcr.org/refworld/docid/50c9d2be2.html
[119] Human Rights Watch, Israel: Stop Raids on West Bank Rights Groups, 12 December 2012
http://www.hrw.org/news/2012/12/12/israel-stop-raids-west-bank-rights-groups
[120] B'Tselem: Human Rights in the Occupied Territories 2011 Annual Report 21 March 2012, Suppression of weekly demonstrations in the West Bank:
http://www.btselem.org/press_releases/20120321_2011_annual_report

for stone-throwing, and often for taking part in an unlawful demonstration.[121] Amnesty International notes that "Palestinian activists in the West Bank who mounted protests, some peaceful, against the fence/wall and the presence of illegal Israeli settlements continued to face arrest and trial before Israeli military courts. The Israeli authorities arrested at least 14 Palestinian journalists, two of whom were held as administrative detainees".[122] Addameer reports that following the demonstrations against the Israeli aerial attack on the Gaza Strip in November 2012, in which 162 Palestinian were killed, the IOF detained over 200 Palestinians, including dozens of children".[123] For further information on the Israeli forces use of excessive force against Palestinian demonstrators, see section 3.6.

3.10.12 According to the U.S. State Department, rocket and mortar fire from Gaza was the most prevalent form of attack by Palestinian terrorist organisations in 2011. 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 Palestinian Islamic Jihad (PIJ) and other Popular Resistance Committees from inside Gaza.[124]

See also: **Actors of protection (section 2.3 above)**
Internal relocation (section 2.4 above)

Caselaw (section 2.5 above)

3.10.13 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 is likely to be appropriate.

3.10.14 Case owners 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.

3.11 Fatah members and perceived supporters residing in Gaza

3.11.1 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.

3.11.2 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

[121] B'Tselem: Human Rights in the Occupied Territories 2011 Annual Report 21 March 2012, Suppression of weekly demonstrations in the West Bank: http://www.btselem.org/press_releases/20120321_2011_annual_report
[122] Amnesty International Annual Report 2012: The Occupied Palestinian Territory 24 May 2012: http://www.amnesty.org/en/region/palestinian-authority/report-2012
[123] Addameer, Quarterly Update on Palestinian Prisoners, 1 September 2012–15 January 2013 http://www.addameer.org/files/Quarterly%20Update%2001_09_12%20to%2015_01_13%281%29.pdf
[124] USSD Report: Report on Terrorism 2011 July 2012 http://www.state.gov/j/ct/rls/crt/2011

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.[125]

3.11.3 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.[126] Similarly, it was reported by the annual report of the World Organisation Against Torture (OMCT) that in Gaza, the Hamas Internal Security Agency prevented and/or banned numerous meetings on human rights, as well as violently assaulting a large number of women and journalists who were gathering to demand an end to political fragmentation between Gaza and the West Bank.[127]

3.11.4 The Hamas police and security services are reported to have tortured numerous detainees throughout 2011, and to have carried out judicial executions. At least one of these followed an unfair military court trial which did not address evidence of torture. They continued to routinely arrest, detain, harass and ill-treat peaceful protesters, activists and others during 2011.[128] Human Rights Watch reported on extensive human rights abuses by the Hamas Criminal Justice system, which included arbitrary arrest, lengthy detention and widespread use of torture. They also referred to at least three individuals who had been executed, allegedly on the basis of 'evidence' obtained by torture.[129] Hamas reportedly took little or no action to investigate reports of torture, and documentation of abuses was limited, due to victims' fear of retribution and to lack of access to Gaza Strip prisoners by NGOs or PA officials.[130]

3.11.5 Residents of the Gaza Strip have no right to political participation or to choose their government. Hamas security forces continue to kill, torture, kidnap, and arbitrarily detain or otherwise harass Palestinians (particularly Fatah members) with impunity. 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.[131] The media are not free in Gaza. In 2008, Hamas replaced the PA Ministry of Information with a government Media Office, banning all journalists not accredited by it. In 2011, the ban on three

[125] US Congressional Research Service: Israeli - Arab Negotiations: Background, Conflicts & US Policy January 2010
http://www.fas.org/sgp/crs/mideast/RL33530.pdf
[126] US Congressional Research Service: Background and Issues for Congress: Overview, and Leadership & Organisation December 2010
http://www.fas.org/sgp/crs/mideast/R41514.pdf
[127] OMCT: Annual Report: Israel & Occupied Palestinian Territory October 24 2011:
http://www.omct.org/human-rights-defenders/reports-and-publications/2011/10/d21443
[128] Human Rights Watch, World Report 2012: Israel/Occupied Palestinian Territories, 22 January 2012
http://www.hrw.org/world-report-2012/world-report-2012-israeloccupied-palestinian-territories
[129] Human Rights Watch: Gaza: Arbitrary arrests, torture and unfair trials 3 October 2012:
http://www.hrw.org/node/110517
[130] US Department of State: Country Report on Human Rights Practices 2011:Israel & the Occupied Palestinian Territories (OPT, section 1c)
/www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?dynamic_load_id=186430
[131] Committee to Protect Journalists: Israel & OPT: Attacks on the Press in 2010:Feb 15 2011:
http://cpj.org/2011/02/attacks-on-the-press-2010-israel-and-the-opt.php

imported West Bank newspapers continued; these are generally associated with Fatah.[132]

3.11.6 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.[133] Recently, there have been further attempts to renew efforts to implement a two-year old unity deal between Hamas and Fatah. In the first weeks of 2013, Mahmood Abbas of Fatah and exiled Hamas leader Khaled Meshaal have agreed to renew their efforts to implement a two-year old unity deal. There have been some signs of increased tolerance between the two rival groups, and both sides have been allowed to hold political rallies. However, there is a long history of conflict between the two sides, who fundamentally disagree in their approach towards Israel.[134]

See also: **Actors of protection (section 2.3 above)**

Internal relocation (section 2.4 above)

Caselaw (section 2.5 above)

3.11.7 **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. The Supreme Court held in RT (Zimbabwe) that the rationale of the decision in HJ (Iran) extends to the holding of political opinions. An individual should not be expected to modify or deny their political belief, or the lack of one, in order to avoid persecution. For such applicants, a grant of asylum is likely to be appropriate.

3.11.8 Case owners 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.

3.12 Hamas members and perceived supporters residing in the West Bank

3.12.1 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.

3.12.2 **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

[132] Freedom House: Freedom in the World 2012 - West Bank 10 September 2012: http://www.unhcr.org/refworld/country,,,,PSE,,504ef9831a,0.html
[133] USSD Human Rights Report 2011: Israel & the Occupied Territories: Exec. Summary: /www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?dynamic_load_id=186430
[134] BBC News:Palestinian groups Hamas & Fatah agree on unity deal 10 January 2013: http://www.bbc.co.uk/news/world-middle-east-20954633

and sympathisers in the West Bank.[135] 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.[136] 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.[137]

3.12.3 The PA Basic Law prohibits torture or use of force against detainees; however, international human rights groups reported that abuse and torture remained a problem across the occupied territories. Palestinian detainees held by PA security forces registered more than 816 complaints of abuse and torture with the ICHR during 2011. Abuses included forcing prisoners to sit in a painful position for long periods, beating, punching, flogging, intimidation and psychological pressure.[138] Human Rights Watch stated that credible reports of torture by PA security services continued during 2011.[139]

3.12.4 In February 2011, Human Rights Watch reported that the PA was 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.[140]

3.12.5 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". The media are not free in the West Bank. Journalists may be fined and jailed, and newspapers closed, for publishing 'secret information' on PA security forces or news that might harm national unity or incite violence. Small media outlets are routinely pressured to provide favourable coverage of the PA and Fatah. Journalists who are critical of the PA or Fatah face arbitrary arrest, threats, and physical abuse. Most Hamas-affiliated radio and television stations in the West Bank have been shut down by the PA authorities.[141]

See also: **Actors of protection** **(section 2.3 above)**

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[135] US Congressional Research Service: Background and Issues for Congress: Overview, and Leadership & Organisation December 2010
http://www.fas.org/sgp/crs/mideast/R41514.pdf

[136] Inter Press Service News Agency: Mideast: Palestinian Patients Suffer from political rivalry 24/08/2010
http://www.ipsnews.net/2010/08/mideast-palestinian-patients-suffer-from-political-rivalry/feed

[137] Freedom House: Freedom in the World: Country Report 2011: West Bank, May 2011:
http://www.freedomhouse.org/report/freedom-world/2011/west-bank

[138] USSD Human Rights Report 2011: Israel & the Occupied Territories:section 1c
/www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?dynamic_load_id=186430

[139] USSD Human Rights Report 2011: Israel & the Occupied Territories:section 1c
/www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?dynamic_load_id=186430

[140] HRW: No Justice for torture death in custody 16/02/2011:
http://www.hrw.org/news/2011/02/16/palestinian-authority-no-justice-torture-death-custody

[141] Freedom in the World: Freedom in the World 2012 - West Bank 10 September 2012:
http://www.unhcr.org/refworld/country,,,,PSE,,504ef9831a,0.html

Internal relocation (section 2.4 above)

Caselaw (section 2.5 above)

3.12.6 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. The Supreme Court held in RT (Zimbabwe) that the rationale of the decision in HJ (Iran) extends to the holding of political opinions. An individual should not be expected to modify or deny their political belief, or the lack of one, in order to avoid persecution. For such applicants a grant of asylum is likely to be appropriate. Case owners 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.

3.12.7 Case owners 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. Case owners should refer such cases to a Senior Caseworker in the first instance.

3.13 Forced recruitment by armed groups

3.13.1 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.

3.13.2 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.[142] 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. 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.[143]

3.13.3 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 budget to 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. [144]

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[142] ICG:Radical Islam in Gaza: section 11,D. Salafi – Jihad groups in Gaza today. 29 March 2011: http://www.ecoi.net/file_upload/1226_1301926747_104-20radical-20islam-20in-20gaza.pdf

[143] U.S. Department of Labour, 2010 Findings on the Worst Forms of Child Labor, 03/10/2011 http://www.ecoi.net/file_upload/90_1317902661_2011-10-03-usdol-child-labor-2010.pdf

[144] The New York Times: Hamas Overview 4 January 2013: http://topics.nytimes.com/top/reference/timestopics/organizations/h/hamas/index.html

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. Its military wing is believed to have more than 1,000 active members in addition to thousands of supporters and sympathizers.[145]

3.13.4 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 linked to Fatah.[146]

3.13.5 Hamas has continued to consolidate its control over Gaza, eliminating or marginalising potential rivals. Hamas, and other armed groups in Gaza are reported to continue to smuggle weapons, cash, and other items into Gaza through the extensive network of tunnels from Egypt. Gaza remains an operational base for several terrorist organisations, including Hamas, various Salafist splinter groups, Palestinian Islamic Jihad (PIJ), and clan-based criminal groups.[147] The Popular Front for the Liberation of Palestine (PFLP) and the al-Aqsa Martyrs Brigade remain present in the West Bank, as does Hamas and PIJ. However, the increased capacity of the Palestinian Authority to deal with terrorism has reportedly constrained the ability of such organisations to carry out attacks inside or from the West Bank.[148] The improvement in security in the West Bank has been noted in Israeli Defence Force statistics (in 2011), which reported a 96% reduction in the number of terrorist incidents in the West Bank over the previous five years.[149]

See also: **Actors of protection (section 2.3 above)**

Internal relocation (section 2.4 above)

Caselaw (section 2.5 above)

3.13.6 **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. The Supreme Court held in RT (Zimbabwe) that the rationale of the decision in HJ (Iran) extends to the holding of political opinions. An individual should not be expected to modify or deny their political belief, or the lack of one, in order to avoid persecution. 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

[145] Council on Foreign Relations: Background: Hamas: 27 November 2012 http://www.cfr.org/israel/hamas/p8968
[146] BBC News: Khaled Meshaal rallies Gazans on Hamas anniversary 8 December 2012 http://www.bbc.co.uk/news/world-middle-east-20649583
[147] US State Department: Country Report on Terrorism: Middle East July 2012 (OPT section) http://www.state.gov/j/ct/rls/crt/2011/195544.htm
[148] US State Department: Country Report on Terrorism: Middle East July 2012 (OPT section) http://www.state.gov/j/ct/rls/crt/2011/195544.htm
[149] US State Department: Country Report on Terrorism: Middle East July 2012 (OPT section) http://www.state.gov/j/ct/rls/crt/2011/195544.htm

may not be willing or able to provide protection, a grant of asylum or Humanitarian Protection may be appropriate.

3.13.7 Case owners 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.

3.14 Israeli collaborators

3.14.1 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.

3.14.2 **Treatment**: In September 2010, the UN found that "Hamas had failed to conduct credible investigations into […] killings or mistreatment of alleged collaborators".[150] 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.[151] Various human rights organisations have reported on individuals who have been sentenced to death for collaboration in 2011-12.[152] 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.[153] An 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.[154] 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.[155]

3.14.3 Collaboration with the Israeli security forces is a serious offence under Palestinian law, and the likelihood of reprisals against those known to have acted as informers, or suspected of collaboration, is high.[156] An International Crisis Group report stated

[150] Human Rights Watch 2011: World Report 2011
http://www.hrw.org/world-report-2011/israel-occupied-palestinian-territories
[151] PCHR Position Paper: Death Penalty under the Palestinian Authority October 2010:
http://pchrgaza.org/files/2010/death-penalty%20-2010.pdf
[152] Human Rights Watch 2011: World Report 2011
http://www.hrw.org/world-report-2011/israel-occupied-palestinian-territories
[153] FCO, Human Rights and Democracy: The 2010 Foreign & Commonwealth Office Report -Occupied Palestinian Territories, 31 March 2011
http://s3-eu-west-1.amazonaws.com/htcdn/Human-Rights-and-Democracy-The-2010-Foreign-Commonwealth-Report.pdf
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:
http://pchrgaza.org/files/2010/death-penalty%20-2010.pdf.
http://www.ecoi.net/local_link/160191/263370_en.html
[154] BBC News: Hamas executes Palestinians convicted of collaboration 26 July 2011:
http://www.bbc.co.uk/news/world-middle-east-14294059
Human Rights Watch, Hamas Should Stop Executions: Due Process Violations Common in Territory's Criminal Justice System, 01/08/2011
http://www.ecoi.net/local_link/200133/304730_en.html.
[156] New York Times: Suspected Gaza Collaborators face a grisly fate 2 December 2012

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".[157] According to the Palestinian Human Rights Monitoring Group, alleged collaborators are routinely tortured in Palestinian jails. These practices are not prohibited under Palestinian law.

3.14.4 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.[158] In November 2012, the military wing of Hamas publicly and arbitrarily executed six Palestinians accused of being informants and collaborators for the Israeli security services. They asserted that the men had given information about fighters and rocket launching sites.[159]

3.14.5 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 to cooperate. 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.[160] This has been corroborated by the NGO 'Physicians for Human Rights (PHR) and by individual Palestinians.[161]

3.14.6 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.[162]

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http://www.nytimes.com/2012/12/03/world/middleeast/preyed-on-by-both-sides-gaza-collaborators-have-grim-plight.html?pagewanted=all&_r=2&

[157] International Crisis Group: Squaring the Circle: September 2010 http://www.crisisgroup.org/~/media/Files/Middle%20East%20North%20Africa/Israel%20Palestine/98%20Squaring%20the%20Circle%20--%20Palestinian%20Security%20Reform%20under%20Occupation.ashx

[158] B'Tselem: Harm to Palestinians suspected of collaborating with Israel accessed 7/12/2011 http://www.btselem.org/collaboration

[159] The Telegraph: Gaza: Palestinians executed for collaborating with Israel 20 November 2012
The Guardian: Hamas executes six suspected informants 20 November 2012 http://www.guardian.co.uk/world/2012/nov/20/hamas-executes-informants-israel-gaza

[160] B'Tselem: Information Sheet 2007http://www.btselem.org/publications/summaries/200703_crossing_the_line

[161] The Guardian: Palestinians hoping to leave Gaza Strip 28 December 2011 http://www.guardian.co.uk/world/2011/dec/28/palestinians-gaza-strip-collaborate-israel

[162] Jews for Justice for Palestinians: The tragedy of Palestinian collaborators 27/8/2010 http://jfjfp.com/?feed=rss2&p=17107

See also: **Actors of protection (section 2.3 above)**

Internal relocation (section 2.4 above)

Caselaw (section 2.5 above)

3.14.7 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.

3.15 Statelessness and the right of re-entry

3.15.1 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.

3.15.2 **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.'

3.15.3 The great majority of Palestinians are stateless. Following the war in 1948, more than 750,000 Palestinians were displaced and took refuge in neighbouring Arab States and in the lands now occupied by Israel in 1967. Over the succeeding years, the number of Palestinians worldwide has grown to an estimated 8 - 91/2 million people. While the Palestinian population theoretically has had a state since the approval of UN General Assembly Resolution 1984 (1947), 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 the Palestinian refugee population in their countries, leaving around 4 million individuals as de jure stateless persons.[163][164]

3.15.4 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

[163] Refugees International: Lives on hold, the scope of statelessness Accessed 20 December 2012 http://www.globalaging.org/armedconflict/countryreports/asiapacific/hold.pdf
[164] IRIN: Israel/OPT: Aid agencies tread gingerly in the West Bank's Area C 11 January 2013

to obtain or sustain. Palestinians are the largest stateless community in the world.[165]

3.15.5 **Conclusion**: The fact of being stateless does not in itself give rise to a grant of asylum or Humanitarian Protection unless the individual is able to establish a need for international protection under the terms of the Refugee Convention and the Qualification Directive. 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 as yet, 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. Case owners should note that a new, limited route to grant stateless persons limited leave in the UK is being developed; this could be in place as early as April 2013.

3.16 Prison conditions

3.16.1 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.

3.16.2 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

3.16.3 **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.[166] The government did acknowledge the necessity to improve conditions for Palestinian security prisoners in response to an earlier Israeli Bar Association (IBA) report.[167] The Israeli Prison Service increased staff training and monitoring of cells, in order to combat the incidence of deaths in detention due to suicide, murder or neglect in prisons.[168]

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[165] IRIN Middle East News: Palestinian refugee numbers & whereabouts July 2010
http://www.irinnews.org/Report/97228/Aid-agencies-tread-gingerly-in-the-West-Bank-s-Area-C

[166] US Department of State: Country Report on Human Rights Practices 2011:Israel & the Occupied Palestinian Territories (OPT, section 1c)
/www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?dynamic_load_id=186430

[167] US Department of State: Country Report on Human Rights Practices 2010: Israel and the occupied territories, 08/04/2011, Section 1c
http://www.state.gov/j/drl/rls/hrrpt/2010/nea/154463.htm

[168] US Department of State: Country Report on Human Rights Practices 2011:Israel & the Occupied Palestinian Territories (OPT, section 1c)
/www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?dynamic_load_id=186430

3.16.4 In 2011, the U.S. Department of State noted that NGOs filed numerous complaints alleging that Israeli security forces tortured or abused Palestinian detainees in prisons and detention centres. Although such practices are illegal, Israeli Security Agents may be exempt from criminal prosecution in cases involving an imminent threat or "ticking bomb" scenario.[169] 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.[170]

3.16.5 By the end of December 2012, there were 4,517 Palestinian security detainees within the Israeli Prison Service.[171] 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. Travel restrictions into the country also affected some Palestinian prisoners' access to visitors and lawyers.[172] There remain a significant number of prisoners maintaining protracted hunger strikes in Israeli prisons, protesting at their lengthy administrative detention without charge.[173] Amnesty International notes that "Administrative detention is a form of detention without charge or trial. Its use may result in arbitrary detention and if prolonged or repeated can amount to cruel, inhuman and degrading treatment or punishment. Other violations to which administrative detainees – as well as other Palestinian prisoners held by Israel – are routinely subjected include the use of torture and other ill-treatment during arrest and interrogation; poor prison conditions, including inadequate medical care; detention in prisons inside Israel rather than in the Occupied Palestinian Territories (OPT); and prohibitions on family visits".[174] It also reported that on 17 April 2012, a mass hunger strike began, with an estimated 2,000 prisoners and detainees demanding improved detention conditions, an end to solitary confinement, family visits for all detainees, and an end to administrative detention.[175] The number of administrative detainees has been rising in recent years. This was noted with concern by the UN Special Rapporteur in May 2012, who described the abusive use of administrative detention procedures by Israel, including the prolonged confinement of people who seemingly do not pose security threats and exceedingly harsh treatment amounting to cruel and unusual punishment. The Special Rapporteur also commented on numerous individual

[169] US Department of State: Country Report on Human Rights Practices 2010: Israel and the occupied territories, 08/04/2011, Section 1c
http://www.state.gov/j/drl/rls/hrrpt/2010/nea/154463.htm
[170] Amnesty International Report 2012: Israel & the Occupied Palestinian Territories, 24 May 2012, http://www.amnesty.org/en/region/israel-occupied-palestinian-territories/report-2012
[171] B'TSelem: Statistics on Palestinians in the custody of the Israeli security forces, December 2012
http://www.btselem.org/statistics/detainees_and_prisoners
[172] US Department of State: Country Report on Human Rights Practices 2011:Israel & the Occupied Palestinian Territories (OPT, section 1c)
/www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?dynamic_load_id=186430
[173] Open Democracy: Palestinian Prisoners: the battle of empty stomachs 22 January 2013
http://www.opendemocracy.net/patrick-keddie/palestinian-prisoners-battle-of-empty-stomachs
[174] Amnesty International: Palestinians detained without trial in Israel, 6 June 2012, 1 Introduction
http://www.amnesty.org/en/library/asset/MDE15/026/2012/en/d33da4e1-b8d2-41fe-a072-ced579ba45c7/mde150262012en.pdf
[175] Amnesty International, Starved of justice; Palestinians detained without trial in Israel, 6 June 2012, 1. Introduction http://www.amnesty.org/en/library/asset/MDE15/026/2012/en/d33da4e1-b8d2-41fe-a072-ced579ba45c7/mde150262012en.pdf

cases including a small number of women, and drew attention to the violence and poor treatment they were given.[176]

3.16.6 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.[177] 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. The report stated that child detainees are not treated well, being subject to blind-folding, being interrogated without a lawyer or parent present, and being denied bail in most cases, amongst other abusive practices.[178] Freedom House notes that "Human rights groups criticize Israel for continuing to engage in what they consider torture. Interrogation methods include binding detainees to a chair in painful positions, slapping, kicking, and threatening violence against detainees and their relatives".[179]

3.16.7 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 2011. 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.[180]

3.16.8 **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 prolonged administrative detention without trial and inhuman and degrading treatment, including 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 is likely to be appropriate.

3.16.9 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.

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[176] UN Human Rights Council: Report of the Special Rapporteur on the situation of Human Rights in the Palestinian Territories (Richard Falk) 25 May 2012, paragraph 8
http://reliefweb.int/sites/reliefweb.int/files/resources/A-HRC-20-32_en.pdf

[177] IPS Inter Press Service 2011: Women are shackled during childbirth; 10 March 2011
http://www.ipsnews.net/2011/03/qa-lsquowomen-are-shackled-during-childbirthrsquo/feed

[178] Integrated Regional Information Network: Concerns over Palestinian children in Israeli custody, 19/10/2011
http://www.ecoi.net/local_link/204058/309081_en.html

[179] Freedom House: Freedom in the World: Israel 2012, May 2012,
http://www.freedomhouse.org/report/freedom-world/2012/israel

[180] USSD Human Rights Report 2011: Israel & the Occupied Territories, 24 May 2012, section 1c Prison and Detention Center Conditions
http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm

West Bank

3.16.10 Palestinian Authority (PA) prison conditions have improved in recent years, although the PA prison system remains significantly inadequate and overcrowded for the population it serves. The PA Ministry of Health reported that prisoners in PA facilities, including in the West Bank, suffered from "extremely bad detention conditions". In the West Bank some facilities did not have enough beds for all inmates, forcing some to sleep on mattresses on the floor. Most prisons continued to lack ventilation, heating, cooling, and lighting that conformed to international standards. Inmates had sufficient access to potable water. Space and capacity issues also reduced the availability of medical care and vocational or other programs for inmates in civil police prisons.

3.16.11 There were no deaths reported in PA prisons from adverse conditions. PA civil police prisons held 967 prisoners at the end of the year, approximately 30 percent more than capacity. Male juveniles were at times housed with adult male prisoners. Security services used separate detention facilities. Conditions for women were virtually identical to those for men; however, some detention centers for women had limited outdoor recreation space.

3.16.12 The PA Basic Law prohibits torture or use of force against detainees; however, international human rights groups reported that abuse and torture remained a problem across the occupied territories. Reported abuse by PA authorities in the West Bank included forcing prisoners to sit in a painful position for long periods, beating, punching, flogging, intimidation, and psychological pressure. Independent observers noted that abuse was not systematic or routinely practiced in PA prisons, although some prisoners experienced abuse during arrest or interrogation. [181]

3.16.13 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. According to HRW, complaints of torture committed by West Bank PA security services decreased slightly in comparison with 2010, with the Independent Commission for Human Rights having received 91 complaints by September 2011. 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.[182] 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.[183] Amnesty International noted in May 2012, that it had received reports that torture and other ill-treatment of detainees were committed by the Palestinian Authority's Preventive Security force and the General Intelligence Service with impunity and that the Independent Commission for Human Rights (ICHR) had also received complaints of torture and other ill-treatment of suspects by police.[184]

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[182] Human Rights Watch World Report 2012: Israel & Occupied Palestinian Territories (West Bank), 22 January 2012:
http://www.hrw.org/world-report-2012/world-report-2012-israeloccupied-palestinian-territories
[183] Palestinian Centre for Human Rights, 11 October 2010:
Arbitrary Arrests Continue in West Bank
[184] Amnesty International Annual Report 2012: Palestinian Authority, 24 May 2012,
http://www.amnesty.org/en/region/israel-occupied-palestinian-territories/report-2012

3.16.14 Conclusion: Prison conditions in Palestinian Authority run prisons are extremely poor, and may for some individuals be sufficiently severe to breach the Article 3 threshold. Some detainees, particularly 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.

3.16.15 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.

3.16.16 Case owners 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.

Gaza

3.16.17 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).[185] The ICRC has continued to monitor conditions, visit detainees and carry out relief work where possible throughout 2012.[186]

3.16.18 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.[187] Detainees held by Hamas filed at least 304 claims of abuse and torture with the ICHR during the year. In the Gaza Strip, security elements under the Hamas ministry of interior tortured and abused purported security detainees, persons associated with the PA or the Fatah political party, those held on suspicion of "collaboration" with Israel, civil society activists, journalists, and those who had reportedly engaged in "immoral" activity. The Office of the UN High Commissioner on Refugees (UNHCR) reported three deaths in detention as a result of Hamas torture between December 2010 and November 2011. The ICHR reported that complaints of abuse included being forced to stand in uncomfortable stress positions, flogging, hand binding, suspension, blindfolding, punching, and

[185] USSD Human Rights Report 2011:Israel & the Occupied Territories (OPT section 1c) /www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?dynamic_load_id=186430
[186] ICRC: Providing support in Gaza & monitoring hunger strikers 15 August 2012 http://www.icrc.org/eng/resources/documents/update/2012/palestine-israel-update-2012-08-15.htm
[187] Human Rights Watch: Gaza: Halt Morality Enforcement Campaign 2011, 2 March 2011 http://www.hrw.org/print/news/2011/03/02/gaza-halt-morality-enforcement-campaign

beatings with clubs or hoses. The PA Ministry of Health reported that prisoners in PA facilities in the Gaza Strip, suffered from "extremely bad detention conditions."[188]

3.16.19 There are reliable reports 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.[189] Beatings, suspension by the wrists or ankles, sleep deprivation and the use of shabeh during interrogation of detainees in Gaza have been reported by Amnesty International.[190] The ICHR also received complaints of torture and other ill-treatment of suspects by police in Gaza.[191] Further to this, judicial executions have been carried out by the Hamas authorities in 2011, often after military trials conducted without due process of law. It is alleged that Hamas have tortured scores of detainees.[192] Both Amnesty International and Human Rights Watch reported on deaths in custody after Hamas security officials arrested individuals.[193]

3.16.20 In a report on the failure of the criminal justice system in Gaza, Human Rights Watch describes "credible evidence of widespread and gross violations of due process as well as systematic ill-treatment and torture".[194] It further reports that "The intra-Palestinian political rivalry is still the root cause of many abuses against detainees, but there have been increasing reports of custodial abuse in Gaza against detainees accused of non-political crimes. Victims of alleged abuse whom Human Rights Watch interviewed include persons detained on suspicion of collaborating with Israel or the Palestinian Authority in the West Bank, as well as alleged perpetrators of drug offenses and fraud".[195]

3.16.21 Conclusion: Reports indicate that prison and detention facilities in Gaza are extremely bad. Applicants who can demonstrate a real risk of imprisonment on return to Gaza are likely to be at risk of inhuman and degrading treatment, including torture. This applies particularly to individuals with actual or perceived allegiance to Fatah, those suspected of collaboration with Israel, civil society activists and journalists. These applicants may also be at risk of incurring the death penalty at the hands of the Hamas authorities.

3.16.22 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

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[188] USSD Human Rights Report 2011:Israel & the Occupied Territories (OPT section 1c) /www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?dynamic_load_id=186430

[189] USSD Human Rights Report 2011:Israel & the Occupied Territories (OPT section 1c) /www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?dynamic_load_id=186430

[190] Amnesty International: Israel & Palestinian Authority, 2010 http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain?page=printdoc&docid=4c03a821c and: Amnesty International Report 2011 - The State of the World's Human Rights: Palestinian Authority, 13/05/2011, Torture and other ill-treatment: http://www.ecoi.net/local_link/160191/263370_en.html

[191] Amnesty International, Annual Report 2012, Palestinian Authority, 24 May 2012 http://www.amnesty.org/en/region/palestinian-authority/report-2012#page

[192] Human Rights Watch: Israel & Occupied Palestinian Territories: Country Report 2012, 22 January 2012 http://www.hrw.org/sites/default/files/related_material/israel_opt_2012.pdf

[193] Amnesty International, Annual Report 2012, Palestinian Authority, 24 May 2012 http://www.amnesty.org/en/region/palestinian-authority/report-2012#page and: Human Rights Watch, Suspicious Death in Custody, 26/04/2011. http://www.ecoi.net/local_link/159298/262113_en.html

[194] Human Rights Watch, Abusive System; Failures of Criminal Justice in Gaza, 3 October 2012, Summary http://www.hrw.org/reports/2012/10/03/abusive-system-0

[195] Human Rights Watch, Abusive System; Failures of Criminal Justice in Gaza, 3 October 2012, Summary http://www.hrw.org/reports/2012/10/03/abusive-system-0

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 Instruction on Discretionary Leave)

4.2 With particular reference to 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 (4.3 – 4.4). 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 Instruction on Discretionary Leave.

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. Case owners should refer to the Agency's guidance on Family Tracing following the Court of Appeal's conclusions in the case of KA (Afghanistan) & Others [2012] EWCA civ1014. In this case the Court found that Regulation 6 of the Asylum Seekers (Reception Conditions) Regulations 2005 imposes a duty on the Secretary of State to endeavour to trace the families of Unaccompanied Asylum Seeking Children (UASCs).

4.3.2 At present there is insufficient information to be satisfied that there are adequate reception, support and care arrangements in place for minors with no family in Israel, Gaza and 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 Individuals whose asylum claims have been refused and who seek to remain on the grounds that they require medical treatment which is either unavailable or difficult to access in their countries of origin, will not be removed to those countries if this would be inconsistent with our obligations under the ECHR. Case owners should give due consideration to the individual factors of each case and refer to the latest available country of origin information concerning the availability of medical treatment in the country concerned. If the information is not readily available, an information request should be submitted to the COI Service (COIS).

4.4.2 The threshold set by Article 3 ECHR is a high one. It is not simply a question of whether the treatment required is unavailable or not easily accessible in the country of origin. According to the House of Lords' judgment in the case of N (FC) v SSHD [2005] UKHL31, it is "whether the applicant's illness has reached such a critical stage (i.e. he is dying) that it would be inhuman treatment to deprive him of the care which he is currently receiving and send him home to an early death unless there is care available there to enable him to meet that fate with dignity". That judgment was upheld in May 2008 by the European Court of Human Rights.

4.4.3 That standard continues to be followed in the Upper Tribunal (UT) where, in the case of GS and EO (Article 3 – health cases) India [2012] UKUT 00397(IAC) the UT held that a dramatic shortening of life expectancy by the withdrawal of medical treatment as a result of removal cannot amount to the highly exceptional case that engages the Article 3 duty. But the UT also accepted that there are recognised departures from the high threshold approach in cases concerning children, discriminatory denial of treatment, the absence of resources through civil war or similar human agency.

4.4.4 The improvement or stabilisation in an applicant's medical condition resulting from treatment in the UK and the prospect of serious or fatal relapse on expulsion will therefore not in itself render expulsion inhuman treatment contrary to Article 3 ECHR. All cases must be considered individually, in the light of the conditions in the country of origin, but an applicant will normally need to show exceptional circumstances that prevent return, namely that there are compelling humanitarian considerations, such as the applicant being in the final stages of a terminal illness without prospect of medical care or family support on return.

4.4.5 Where a case owner considers that the circumstances of the individual applicant and the situation in the country would make 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. Case owners must refer to the Asylum Instruction on Discretionary Leave for the appropriate period of leave to grant.

5. Returns

5.1 There is no policy which precludes the enforced return to 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 Residents of Gaza and the West Bank may return voluntarily to the OPT 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. Residents of Gaza and the West Bank wishing to avail themselves of this opportunity for assisted return to the OPT should be put in contact with Refugee Action. Details can be found on Refugee Action's web site at: www.choices-avr.org.uk.

Country Specific Litigation Team
Operational Policy & Rules Unit
Strategy & Asylum Group
UK Border Agency

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