

UK LAWYERS FOR ISRAEL



**SPECIFIC INSTANCE COMPLAINT
UNDER THE OECD GUIDELINES FOR MULTI-NATIONAL ENTITIES
REGARDING THE PwC GLOBAL NETWORK**

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A. Executive summary

1. Every year, the Palestinian Authority (“PA”) receives hundreds of millions of pounds in foreign aid. The PA uses some of its funds to incite terrorism, in particular via laws in 2004 and 2010 which provide lump sum payments, salaries and civil service / military positions to convicted terrorists.
2. One or more entities within the PwC global network (collectively, “PWC”) have acted as the auditors to the PA and its donors concerning various international aid programs and projects. When challenged on the extent to which aid is funding terrorism, donors have relied on the fact that the PA is audited by PWC to argue that no further scrutiny is needed of the aid directed to the PA. In consequence the PA continues to be able to fund the incitement of terrorism. This violates the human, economic and civil rights of the victims of terror, Palestinian citizens from whom funding is diverted as well as the taxpaying citizens of the donor nations.
3. Based on public statements by the UK Government, we understand that PWC has not alerted the donors relying on its audits to the fact that their aid has directly or indirectly funded terrorism and has not taken any other steps to discourage the PA from undertaking such actions.
4. The Complainant, UK Lawyers for Israel (“UKLFI”), therefore contends that PWC has breached the OECD Guidelines for Multi-National Entities (“the Guidelines”). In essence, this Complaint asks “who watches the watchmen?” The answer, we submit, is the UK NCP.
5. At the outset, we wish to make very clear that we are seeking to achieve a settlement in this matter through amicable discussions and if necessary mediation with PWC in order to better inform PWC of the duties incumbent upon it under the Guidelines. We hope that following such discussions PWC will amend its practices so as to avoid further breaches of the Guidelines and take appropriate steps to remedy or mitigate the negative human right consequences which have arisen in connection with the breaches. We are not seeking punishment for PWC, nor do we suggest that it should cease to audit international aid programmes benefitting the PA.

B. Details of Complainant and Objective in Making this Complaint

6. UKLFI is a non-governmental organisation which seeks to promote the proper and just application of laws in relation to Israel. UKLFI wishes to secure the application of the OECD Guidelines on an equal and impartial basis to all Multi-National Entities (“MNEs”) operating within Israel and the neighbouring

countries/ territories, and so as to protect the human rights of Israelis as well as Palestinians.

7. UKLFI may be contacted at: info@uklfi.com. For further details, please see www.uklfi.com.
8. The objective of UKLFI in making this Complaint is to prevent further violations of the human rights of stakeholders, in particular the victims of terror, Palestinian Citizens and taxpayers who contribute to international aid donations made to the Palestinian Authority (“PA”) via other countries or international organisations.
9. UKLFI therefore requests that the UK NCP facilitate a non-adversarial dialogue with PwC to discuss how to bring its operations into line with the Guidelines. Should a mediated dialogue not result in a mutually acceptable resolution, UKLFI requests that the UK NCP assess the allegations, determine whether a breach has occurred and issue a final statement with recommendations as to how to improve the implementation of and compliance with the Guidelines.

C. Details of Respondent and Connection with the UK

1. Company Overview

10. The Respondent, PwC, is a multinational professional services firm. PwC’s website describes it as follows:

“PwC is the brand under which the member firms of PricewaterhouseCoopers International Limited (PwCIL) operate and provide professional services. Together, these firms form the PwC network. ‘PwC’ is often used to refer either to individual firms within the PwC network or to several or all of them collectively.”

11. PwC is the second largest professional services firm in the world¹ and is one of the largest four auditors in the world, known colloquially as the “Big Four”. It had global revenues of US\$ 35.4 billion in 2015² and has a workforce of over 200,000 people.³
12. Although its website suggests that PwC “is not a global partnership, a single firm, or a multinational corporation”⁴, it clearly falls within the definition of

¹ Economia Website: <http://economia.icaew.com/news/october-2016/pwc-loses-top-spot-to-deloitte-as-worlds-largest-firm>.

² PwC Global Annual Review 2015: Facts and Figures (<http://www.pwc.com/gx/en/about/global-annual-review-2015/facts-and-figures.html>)

³ *Ibid.*

⁴ <http://www.pwc.com/gx/en/about/corporate-governance/network-structure.html>

MNE for the purposes of the Guidelines. Part I of the Guidelines “Concepts and Principles” records at paragraph 4 that:

“[a] precise definition of multinational enterprises is not required for the purpose of the *Guidelines*. These enterprises ... usually comprise companies or other entities established in more than one country and so linked that they may co-ordinate their operations in various ways ... their degree of autonomy within the enterprise may vary from one multinational enterprise to another.”

13. PwC has numerous features which demonstrate that it falls within the criteria for an MNE stipulated by the Guidelines. These include the presence of a “Network Leadership Board”, which “represents the interest of all members of the PwC Network. It has overall responsibility for the governance of PricewaterhouseCoopers International Limited and the PwC Network and for oversight of the Network Leadership Team”⁵, and a “Network Executive Team”, which “sets the strategy and standards that the PwC network will follow”.⁶ Moreover, another part of the PwC website makes it clear that, notwithstanding the description of the Network quoted in paragraph 10 (above):

“We are one firm, an extensively networked organisation that aims to bring the best of PwC to our clients each and every time. We combine rigour with fun and relish the most complex challenges. We create a flow of people and ideas. We will ... share knowledge and bring fresh insights [and] always act in the interest of the whole firm”⁷

2. Link between Respondent and UK

14. The common link between all entities within the PwC global network is an entity registered in the UK: PricewaterhouseCoopers International Limited (“PwCIL”), an English private company limited by guarantee, with company number 03590073. Its registered address is 1 Embankment Place, London, WC2N 6RH. The website of PwC provides:

“Firms in the PwC network are members in, or have other connections to PwCIL ... PwCIL does not practise accountancy or provide services to clients. Rather its purpose is to act as a coordinating entity for member firms in the PwC network. Focusing on key areas such as strategy, brand, and risk and quality, the Network Leadership Team and Board of PwCIL develop and implement policies and initiatives to achieve a common and coordinated

⁵ PwC: Governance Structures (<http://www.pwc.com/gx/en/about/corporate-governance/governance-structures.html>)

⁶ *Ibid.*

⁷ PwC, Who we are (<http://www.pwc.co.uk/who-we-are/index-more.html>)

approach among individual firms where appropriate. Member firms of PwCIL can use the PwC name and draw on the resources and methodologies of the PwC network.”⁸

15. PwC maintains representative entities/ offices in Jerusalem, Ramallah and Gaza.⁹ It is not clear which PwC entity or entities provided the relevant auditing services, and PwC has refused to confirm this matter when asked.¹⁰
16. Even if the relevant auditing services which form the subject matter of this Complaint were provided by an entity registered locally in the Middle East it is clear that PwC is the proper respondent in this situation, and that accordingly the UK is the relevant NCP, given that PwC’s overall coordination, including in areas of strategy, risk and quality, is administered from the UK on a global basis.
17. Furthermore, the PA is not a member of the OECD and it does not appear that any OECD NCP other than that of the UK would be appropriate.
18. The UK is therefore obliged by the Guidelines to have oversight of PwC by paragraph 8 of Chapter I of the Guidelines: “Governments have the right to prescribe the conditions under which multinational enterprises operate within their jurisdictions, subject to international law.” Paragraph 8 is supported by paragraph 11 of the same Chapter: “Governments adhering to the *Guidelines* will implement them and encourage their use”.
19. In the alternative, if the PwC entire global network is deemed either not to be an MNE or for any other reason is considered not to be the proper Respondent in this case, PwCIL would, as a separate entity, fulfil the criteria for an MNE by virtue of its global coordinating role and influence. In either case, it is appropriate that this complaint be made to the UK NCP.

3. Key individuals

20. PwC’s Global “Network Leadership Team”¹¹ is:
 - Kevin Ellis, Senior Partner
 - Robert E. Moritz, Chairman, PwCIL
 - Raymund Chao
 - Tim Ryan
 - Norbert Winkeljohann

⁸ How we are structured: ‘What is PwC?’ (<http://www.pwc.com/gx/en/about/corporate-governance/network-structure.html>)

⁹ PwC, The Palestinian Territories (<http://www.pwc.com/m1/en/about-us/palestinian-territories.html>)

¹⁰ See below at paragraphs 64 to 65 and correspondence at Appendix 2, in particular the email from Margaret Cole, General Counsel of PwC, to Julian Hunt, UKLFI Member, dated 29 April 2016.

¹¹ PwC Network Leadership Team, <http://www.pwc.com/gx/en/about/leadership.html>

21. Relevant members of PWC's UK Leadership Team¹² include:
- Kevin Ellis, Chairman and Senior Partner
 - Kevin Burrowes, Head of Clients and Markets
 - Laura Hinton, Head of People
 - Jon Andrews, Head of Technology and Investment
 - Stephanie Hyde, Head of Regions
 - Margaret Cole, Chief Risk Officer and General Counsel
 - Warwick Hunt, Chief Financial Officer and Managing Partner - International

4. Contact Details

22. The contact details of Emma Thorogood, Head of Communications are as follows:

Email: emma.thorogood@uk.pwc.com

Tel: 020 7213 8593

Mobile: 07990 563 100¹³

23. The "Press Room" section of the PWC website also provides the following contact number: +44 (0) 20 7213 1768.¹⁴

5. PWC's professed corporate values

24. On a page entitled "Who we are" and under a sub-heading "Do the right thing", PWC's website states that:

"We will deliver exceptional value with integrity, confidence and humility. We support one another and our communities. We have the courage to express our views, even when they may not be popular. We will:

- put ourselves in our clients' shoes
- never be satisfied with second best
- treat people in a way we would like to be treated
- always be brave enough to challenge the unacceptable
- act with integrity and enhance our reputation

We must all accept personal responsibility to play our part in driving our firm demonstrating these values and behaviours - opting out is not acceptable. Put simply, this is how we define success."¹⁵ (emphases added)

¹² PWC UK: Leadership, Executive Board, <http://www.pwc.co.uk/who-we-are/executive-board.html>

¹³ PWC: A Brief History of PWC, http://pwc.blogs.com/press_room/a-brief-history-of-pwc.html.

¹⁴ PWC, Press Room, http://pwc.blogs.com/press_room/.

¹⁵ PWC, Who we are, <http://www.pwc.co.uk/who-we-are/index-more.html>.

25. Despite these laudable aims, PWC has failed in these circumstances to live up to the standards which it sets itself, as well as those mandated by the Guidelines.

6. The UK NCP is the appropriate forum for this complaint

26. Due to PWC's unreasonable refusal to provide any information on whether it audits the relevant aid programmes, as to which there is no doubt,¹⁶ we have been unable to discover which entity or entities within its Global Network is actually providing the auditing services. In consequence we have been unable to ascertain the relevant regulatory regimes (including whether the entity is regulated by, for instance, the International Accounting Standards Board, the Chartered Institute of Accountants of England and Wales etc.)
27. It is possible that PWC is in breach of certain regulatory standards as a result of the issues raised in this complaint. Further information voluntarily provided by PWC as part of any settlement process facilitated by the UK NCP will be invaluable in ensuring that PWC is able to comply with all of the relevant requirements. It is possible that at present PWC's internal compliance officers are not aware that they are in breach; to the extent that the UK NCP is able to 'concentrate their mind' on the topic this will enable PWC to rectify the situation.
28. However, we note that there is no requirement that a complainant in a Specific Instance Complaint to the UK NCP must exhaust all other possible remedies or avenues for enforcement of the relevant business conduct standards. We believe that the UK NCP is an entirely appropriate forum for this complaint on the basis that, regardless of the position under any other regulatory scheme, the breaches of the Guidelines are clear and manifest, and (as noted above) we seek an amicable and negotiated resolution of the issue rather than any form of punishment of PWC.

D. Details of complaint

1. Background information

29. On 13 September 1993, as part of a series of negotiations known as the "Oslo Process", Israel and the Palestinian Liberation Organisation ("PLO") (which was deemed to be acting as representative of the Palestinian people)¹⁷ signed the Declaration of Principles (the "DOP" or "Oslo I"), a binding agreement in which both sides agreed to recognise "their mutual legitimate and political rights, and strive to live in peaceful coexistence and mutual dignity and security and achieve

¹⁶ See below at paragraphs 53 to 6563.

¹⁷ DOP, Preamble, available on the website of the Israel Ministry of Foreign Affairs, <http://www.mfa.gov.il/mfa/foreignpolicy/peace/guide/pages/declaration%20of%20principles.aspx> .

a just, lasting and comprehensive peace settlement and historic reconciliation through the agreed political process”.¹⁸ The overall aim of the negotiations was set out in Article I: “the interim arrangements are an integral part of the whole peace process” between Israel and the Palestinian people.

30. The arrangements envisaged in the DOP were expressly on an “interim” basis, pending the resolution of “Permanent Status Negotiations” covering “Jerusalem, refugees, settlements, security arrangements, borders, relations and cooperation with other neighbours, and other issues of common interest.”¹⁹
31. The DOP provided that certain government functions of some parts of disputed territories, known as the West Bank and Gaza Strip (the “Territories”) would be divided between Israel and the Palestinian people.²⁰ Pursuant to the DOP, the PA was formed in 1994, initially on an interim basis,²¹ in order to administer certain geographical and administrative areas of the territories.²² The administrative mandate of the PA included “education and culture, health, social welfare, direct taxation, and tourism”.²³ The Interim Agreement on the West Bank and the Gaza Strip (“Oslo II”) was signed on 28 September 1995 and clarified further the PA’s interim administrative powers over parts of the West Bank and Gaza Strip known as Areas A and B.
32. Although the PA initially exercised administrative and civil powers over all areas within the Territories placed under PA control by the DOP and Oslo II, following elections in 2006 a faction called Hamas took control of the Gaza strip in 2007.²⁴ The PA remains under the control of a different faction, Fatah. In consequence of this schism, effectively Fatah and the PA maintain control only over the aforementioned areas of the West Bank.
33. Since its establishment in 1994, the PA has received the majority of its funding from international donors (most of the balance is provided by duties and taxes on imports collected by Israel and remitted to the PA).
34. The present complaint concerns only the activities of the PA, and the extent to which these are caused, contributed to or associated with the provision of services by PWC in its auditing and reporting role.²⁵

¹⁸ *Ibid.*, DOP, Preamble.

¹⁹ *Ibid.*, DOP, Article V.3.

²⁰ *Ibid.*, DOP, Article IV and Annex II.

²¹ *Ibid.*, DOP, Articles I, IV.

²² *Ibid.*, DOP, Article VI.2

²³ *Ibid.*

²⁴ Freedom House, Freedom in the World, West Bank, <https://freedomhouse.org/report/freedom-world/2016/west-bank>.

²⁵ Hamas has been declared a terrorist organisation by the US, EU, Canada and Japan, amongst others. It does not receive funding from the EU, Canada or the US.

2. The 2004 Terrorist Payment Law

35. The mandate of the PA includes the payment of salaries to civil servants. A law passed in 2004 by the PA and which is still in force, entitled The Law for Detainees and Released Detainees, its Systems and Regulations, as approved by the Palestinian Council of Ministers, No 19 of 2004 (the “2004 Terrorist Salary Law”) defines a “prisoner” as:

“(Article 1) Anyone who is kept in prisons of the occupation for offences of participating in the struggle against the occupation.”²⁶

36. The crimes referred to in the definition of prisoner above are crimes committed against Israel, Jews or Israelis. In a 2013 interview, Ministry of Prisoners spokesman Amr Nasser said of this definition that:

“It does not include common-law thieves and burglars. They are not included and are not part of the mandate of the ministry.”²⁷

37. The 2004 Terrorist Payment Law then provides:

“(Article 6) The National Authority [the PA] shall give each prisoner, without discrimination, a monthly allowance while he is in prison...”²⁸

38. The 2004 Terrorist Payment Law was amended in November 2005 to provide that:

“(Article 6 D) Released prisoners who spent five years or more shall receive titles as shown in the following chart and the corresponding salaries specified by the employee salary scale ...”²⁹

²⁶ See Appendix 3 for a certified translation given in evidence in legal proceedings in the United States. This is being provided for the convenience of the UK NCP and PWC, as it is not readily available online.

²⁷ As reported in Edwin Black, *How British and American aid subsidises Palestinian terrorism*, The Guardian, 11 November 2013, <https://www.theguardian.com/commentisfree/2013/nov/11/british-american-aid-subsidises-palestinian-terrorism>.

²⁸ See Appendix 3.

²⁹ *Ibid.*

Number of years in prison	Civilian Title	Military Rank
5 to 7 years	Section head	Lieutenant
7 to 8 years	Deputy Director	Captain
8 to 10 years	Director C	Major
10 to 15 years	Director B	Lieutenant Colonel + seniority
15 to 20 years	Director A	Colonel + seniority
20 to 23 years	Director General	Brigadier General
23 to 25 years	Assistant Undersecretary	Brigadier General
25 years and more	Undersecretary of the Ministry	Brigadier General with seniority

“(Article 6 G) Newly released prisoners shall receive immediate financial assistance to help them build their futures, according to the following table”³⁰

Less than one year, he shall receive	\$500
From 1 to 3 years, he shall receive	\$1,000
From 3 to 5 years, he shall receive	\$2,000
From 5 to 8 years, he shall receive	\$3,000
From 8 to 11 years, he shall receive	\$4,000
From 11 to 15 years, he shall receive	\$5,000
From 15 to 18 years, he shall receive	\$6,000
From 18 to 21 years, he shall receive	\$7,000
From 21 to 25 years, he shall receive	\$8,000
More than 25 years, he shall receive	\$10,000

39. The effect of the 2004 Terrorist Payment Law and its 2005 amendment is not just that the PA pays the salaries of terrorists in Israeli prisons but that the more serious the crime, the greater the rewards for the prisoners while serving their sentence and on their release. It is no coincidence that for the most heinous violators of human rights – those who have planned and perpetrated attacks that have maimed and killed tens of civilians – the reward on their release is a military rank. In so doing, the PA is clearly adopting for itself the terrorist attacks that these individuals have committed.
40. In practice, the generous rewards for terrorism provided by the legislation mentioned above are sometimes even exceeded. For example, Issa Abd Rabbo who murdered two Israeli hitchhikers in 1984 was reported to have received US\$50,000 on his release and a further US\$60,000 as the full cost of his wedding.³¹

³⁰ *Ibid.*

³¹ Paul Alster, *Freed Palestinian killers showered with cash, military promotions*, Fox News, 19 November 2013, <http://www.foxnews.com/world/2013/11/19/freed-palestinian-killers-showered-with-cash-military-promotions.html>.

41. In addition, as PMW has also shown, the PA provides funding for the promotion of terrorism by events glorifying terrorists and other activities that encourage terrorism.³²
42. A report of the UK's Overseas Development Institute ("ODI") of November 2015,³³ (the "ODI Report") found empirical evidence suggesting that the PA's payment of terrorists' salaries combined with its policy of holding open the jobs of convicted terrorists had encouraged them to engage in conflict:

"The study suggests that in the West Bank (but not Gaza), an increase in the number of public sector employees is associated with an increase in Palestinian fatalities due to conflict; although not with fatalities due to demonstrations. More specifically, an increase in public sector employment by 1% is associated with an increase in fatalities by 0.6% over this time period.
....

The conclusions from the study are consistent with the 'opportunity cost' hypothesis regarding decisions about engaging in active conflict. This states that conflict, and therefore fatalities, are more likely when the opportunity cost of engaging in conflict is lowered. For unemployed Palestinians, the opportunity cost of conflict is lowered, as the unemployed have no livelihood or job to lose. For public sector employees, the opportunity cost of conflict is also lowered as their employment will be kept open when they return from detention, and their family will continue to be paid their salary. For private sector employees, on the other hand, the opportunity cost of conflict appears more significant as if they are arrested, jailed or detained, they may lose their employment and family income.

This tentatively suggests that reducing unemployment overall does reduce conflict. Increasing private sector employment in particular may have some kind of conflict-reducing effect; but expanding public sector employment may not have the same level of conflict-reducing impact." (pages 75-76)

43. While the findings above were based on data in the period 1998-2011, there is no reason to suppose that there was a fundamental change between that period and the present.

³² See, for example, <http://www.palwatch.org/main.aspx?fi=455> and <http://www.palwatch.org/main.aspx?fi=448>.

³³ ODI, Evaluative review of the Statebuilding Grant and the Palestinian Governance Facility – DFID Palestinian Programme, https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/501216/Evaluation-Statebuilding-Grant-Palestinian-Gov-Facility.pdf

44. Salaries of convicted Palestinian terrorists are paid out of the un-earmarked funds in the PA's central treasury account as demonstrated by the NGO Palestinian Media Watch ("PMW").³⁴ As PMW has also shown, these payments are salaries paid into accounts of persons nominated by the terrorists, regardless of the financial position of the terrorist's family; they are not welfare payments made to impoverished families based on their need.³⁵
45. Until August 2014 these salaries were administered and paid directly by the PA. The department was then transferred from the PA to the PLO and the funds to cover the terrorists' salary payments are now paid by the PA out of the PA's general fund to the PLO which then dispenses the salaries to the terrorists.³⁶

3. The 2010 Terrorist Salary Law

46. In 2010, the PA added an additional law which has the effect that terrorists (and their families) do not just benefit from their crimes *at the end* of their sentences, but also during them. Under PA Government Resolution No. 23 of 2010 (the "2010 Terrorist Salary Law")³⁷ the base amounts of the terrorist salaries are as follows:

Number of years in prison	Amount per month (ILS) ³⁸
0-3	1400
3-5	2000
5-10	4000
10-15	6000
15-20	7000
20-25	8000
25-30	10000
30+	12000

47. The above monthly amounts are supplemented by an additional ILS 300 for married terrorists, ILS 50 for each child under 18 of the terrorist, ILS 300 for each terrorist from Jerusalem, and ILS 500 for each terrorist from Israel.³⁹

³⁴ See Palestinian Media Watch, PA Salaries to terrorists, <http://www.palwatch.org/main.aspx?fi=1005>.

³⁵ Palestinian Media Watch, Report on Salaries to Terrorists, http://palwatch.org/STORAGE/special%20reports/4_reports_PA_salaries_to_terrorists_Feb_13_2013.pdf

³⁶ Palestinian Media Watch https://www.palwatch.org/main.aspx?fi=1041&doc_id=5658.

³⁷ Al-Hayat Al-Jadida (PA Government Official Gazette) 15 April 2011, cited and translated by Palestinian Media Watch in Report on Salaries to Terrorists, http://palwatch.org/STORAGE/special%20reports/4_reports_PA_salaries_to_terrorists_Feb_13_2013.pdf, p.27-30.

³⁸ The current exchange rate is ILS 4.84 to £1 see <http://www.xe.com/currencyconverter/convert/?Amount=1&From=GBP&To=ILS>, accessed 18 December 2016.

³⁹ Al-Hayat Al-Jadida 15 April 2011, translated by Palestinian Media Watch https://www.palwatch.org/main.aspx?fi=1041&doc_id=5658.

48. According to information published by the official PA Gazette in 2011, the average monthly salary of Palestinian terrorist prisoners was ILS 3129, compared with ILS 2882 for Palestinian civil servants and ILS 2704 for Palestinian military personnel.⁴⁰ Thus Palestinian terrorists are very well rewarded under these provisions, and as with the 2004 Terrorist Payment Law, terrorists are better paid the more serious their crime. For example, it was reported in April 2016 that two terrorists, who left a British woman for dead after inflicting 13 stab wounds and over 30 broken bones, and murdered her American friend in a horrific attack in the Israeli countryside, were each receiving salaries of at least £9000 per year while serving their sentences.⁴¹
49. Separate sums are paid to cover prisoners' actual needs under PA Government Resolutions Nos. 21 and 22 of 2010,⁴² further demonstrating that the high salaries specified above are intended to reward and encourage terrorism against Israeli citizens. The PA Government currently intends to increase the salaries of terrorist prisoners as soon as it has the funds to do so.⁴³

4. Involvement of PWC

i. General role of external auditors in the provision of funds to the PA

50. Auditors such as PWC play a fundamental role in the flow of international aid. In order to provide for accountability as well as to improve the effectiveness of projects, it is standard practice for major donors – whether international organisations or governments – to instruct external auditors to audit their projects.
51. Several of the largest donors to the PA require that an external auditor be appointed to oversee the application of aid and the internal accounting procedures of the recipient. Put in plain terms, it is the express role of the auditor to ensure that the money donated to the PA is spent correctly, and *only* on projects which are supported explicitly or implicitly by the donor.

⁴⁰ Al-Hayat Al-Jadida, "Life and the Market" supplement, 19 June 2011, translated by Palestinian Media Watch, https://www.palwatch.org/main.aspx?fi=1041&doc_id=5658.

⁴¹ <http://www.dailymail.co.uk/news/article-3520852/You-pay-two-Palestinian-terrorists-left-Britain-woman-dead-killed-friend-9-000-year-reward.html>. At current exchange rates, these salaries would now be over £10,500 p.a.

⁴² Al-Hayat Al-Jadida 15 April 2011, translated by Palestinian Media Watch https://www.palwatch.org/main.aspx?fi=1041&doc_id=5658.

⁴³ Al-Hayat Al-Jadida 18 June 2016, translated by Palestinian Media Watch (<https://www.palwatch.org/main.aspx?fi=1005>).

52. The importance of external auditors in assessing that donations to the PA are directed towards appropriate ends is clear from the guidance on this topic provided by several of the PA's largest donors:

a. World Bank

The website of the World Bank, in its entry on the Palestinian Recovery and Development Program Trust Fund ("PRDP"), describes this as a "fund established by the World Bank in March 2008 at the request of the Palestinian Authority and several donors who wanted an independent supervised mechanism for channelling budget support funds to the West Bank and Gaza". Since its establishment in 2008, the World Bank has donated over US\$ 1.4 billion to the PA via the PRDP.⁴⁴ The World Bank explains, under the heading "Controls, Audit and Reporting" of the Overview provided on its website:⁴⁵

"The PRDP-MDTF relies on the PA's own fiduciary systems for public finance management. The IMF's assessment of the PA's Public Financial Management system is that cash control procedures have been restored to their pre-2006 levels, meaning that the PA's Central Treasury Account (CTA) is fit to receive donor transfers. As described, independently of whether there is a disbursement decision pending for the PRDP-MDTF, the PA issues quarterly progress reports on overall budget and NDP implementation. These reports are then reviewed by the World Bank in consultation with the IMF.

The parent PRDP-MDTF is audited by the World Bank's external auditors following regular World Bank TF management practice. In addition the PA has agreed that all funds transferred to the PA from the main PRDP-MDTF be placed in a Ministry of Finance Deposit Account and amounts be equally accounted for in the PA budget management system in a manner acceptable to the World Bank. The whole process is audited annually by external auditors selected and paid for by the World Bank as part of the cost of administering the PRDP-MDTF."

⁴⁴ World Bank, Palestinian Recovery and Development Program Trust Fund: Financials
<http://www.worldbank.org/en/programs/palestinian-recovery-and-development-program-trust-fund#3>

⁴⁵ World Bank, Palestinian Recovery and Development Program Trust Fund,
<http://www.worldbank.org/en/programs/palestinian-recovery-and-development-program-trust-fund#2>.

b. UK

The UK will provide up to £25m to the PA in the 2016-2017 financial year.⁴⁶ In a written answer to the questions: “which independent auditor vets UK aid to the Palestinian Territories; and whether that auditor is regulated by any UK regulator”, asked by Gordon Henderson MP on 22 November 2016, Rory Stewart MP, Minister of State at the Department for International Development (“DFID”) answered on behalf of the Government:

“All organisations which receive funding from DFID are required to provide independently audited financial statements. The United Nations Board of Auditors provides independent external audit services for UN programmes while competitive bidding processes are conducted to appoint auditors for other programmes.”⁴⁷

Similarly, in a Westminster Hall Debate concerning on Foreign Aid Expenditure on 13 June 2016, Ian Austin MP said:

“... The fact is that nearly all of DFID’s funding in the region goes directly to the Palestinian Authority. That is a matter of concern because of the allegation that the Palestinian Authority continue to fund payments to convicted terrorists and their families, which is in direct contradiction to the demands of the international community.”

Responding on behalf of the Government, The Minister of State for DFID (Sir Desmond Swayne MP) referred to the importance of auditors in preventing the flow of aid funding to terrorists:

“Of course we fund the Palestinian Authority. Our funds are paid to named civil servants and pensioners from an audited and scrutinised list for the delivery of public services. British taxpayers’ money does not fund terrorism.”⁴⁸

On 16 December 2016 the UK Government issued a statement which “confirmed that it will continue to provide funding to the Palestinian Authority with certain changes”.⁴⁹

⁴⁶ DFID and Foreign and Commonwealth Office Announcement, Future UK support to the Occupied Palestinian Territories, <https://www.gov.uk/government/news/future-uk-support-to-the-occupied-palestinian-territories>.

⁴⁷ Parliamentary records, Written Questions and answers and Written Statements: Written Question 54121, <http://www.parliament.uk/business/publications/written-questions-answers-statements/written-question/Commons/2016-11-22/54121/>.

⁴⁸ Westminster Hall debate on Foreign Aid Expenditure, 13 June 2016, Hansard Vol. 611, Col. 249WH.

⁴⁹ DFID and Foreign and Commonwealth Office Announcement, Future UK support to the Occupied Palestinian Territories, <https://www.gov.uk/government/news/future-uk-support-to-the-occupied-palestinian-territories>.

The changes are described in the 16 December statement as “critical”. They are as follows:

- “1. UK support will now focus solely on vital health and education services, in order to meet the immediate needs of the Palestinian people and maximise value for money. Funding will only go towards the salaries of health and education public servants on a vetted list.
2. UK funds will no longer be used to support the salaries of Palestinian Authority public servants in Gaza who have not been able to work.
3. The UK will assess fiscal and public financial management reforms that the Palestinian Authority will need to show progress against in order to secure full future payments from the UK.”

As to the meaning of “EU Vetted list” the 16 December statement specifies:

“The UK’s financial aid to the PA will now be channelled directly through the EU’s PEGASE mechanism (Palestinian-European Socio-Economic Management Assistance) ... The PA payroll is checked by independent auditors and payments made to all eligible beneficiaries are traced through the verification process. The list of eligible beneficiaries is subject to a vetting process that includes screening against international and ad hoc sanctions lists, covering a large number of different risk categories including terrorism financing. The verification processes are conducted in very close collaboration with internationally recognised independent audit companies.” (emphases added).

The 16 December statement may be taken as a tacit acknowledgement by the UK that some of the funds provided to the PA have been misused. However, the UK continues to rely in its own right and via the EU on the role of independent auditors such as PWC to ensure the integrity of the system.

c. EU

The European Commission’s website provides that a body called EuropeAid “implements the external aid instruments of the European Commission which are funded by the General Budget of the European Communities and the European Development Fund”. The website says as regards auditing of EuropeAid:

“Audits/verifications of external operations in EuropeAid's portfolio must in principle be carried out by professional external Auditors ...

EuropeAid operates a system of annual audit planning. The main purpose of the planned audits/verifications is to provide assurance on the legality and regularity of the external aid operations financed by EuropeAid. Assurance is essentially related to compliance with the applicable regulations and rules and it can also relate to sound financial management and the principles of economy, efficiency and effectiveness.

Compliance with criteria for legality and regularity is essential for all external aid operations. These criteria vary with the engagement type and with the documents constituting the legal and regulatory bases for the operations.”⁵⁰

ii. Specific role of PWC with regard to aid to the PA

53. Although PWC itself has refused to confirm its role with regards to the PA,⁵¹ publicly available documents⁵² as well as the UK Government have confirmed that PWC was appointed to audit the accounts of the PA and/or the individual programmes of donations to the PA from external donors.

54. For instance, as part of the UK Government’s answer to the written question of Gordon Henderson MP above, Rory Stewart MP said:

“Recent audits of DFID’s programmes in the Occupied Palestinian Territories (OPTs) have been conducted by Talal Abu Ghazaleh & Co, El Wafa and Price Waterhouse Cooper. Price Waterhouse Cooper is regulated by the UK’s Financial Reporting Council.”⁵³

55. In 2015, in response to a written question asked on 9 October 2015 by Mark Pritchard MP to the Secretary of State for Foreign and Commonwealth Affairs, “what steps the Government has taken to stop UK funding being used to pay the wages of convicted terrorists from the Palestinian Territories in custody in Israeli prisons” the UK Government responded on 15 October 2015:

⁵⁰ Website of the European Commission, International Cooperation and Development, Audit of External Operations, http://ec.europa.eu/europeaid/funding/framework-contracts/audit-framework-contract-2014_en.

⁵¹ See, for example, correspondence between Julian Hunt and PWC, set out at Appendix 2.

⁵² See, for example, *The International Monetary Fund: West Bank and Gaza, Report to the Ad Hoc Liaison Committee*, 26 August 2016, p. 7:

⁵³ Parliamentary records, Written Questions and answers and Written Statements: Written Question 54121, <http://www.parliament.uk/business/publications/written-questions-answers-statements/written-question/Commons/2016-11-22/54121/>.

“No UK money is used for payments to Palestinian prisoners in Israeli jails. The UK’s direct financial assistance to the Palestinian Authority (PA) is used to pay the salaries of PA public sector workers only. Our support is provided through a World Bank trust fund which carries out close monitoring of PA expenditure. The whole process is independently audited, which means we know exactly how our money is spent. We also have robust accounting procedures in place which mean we are confident that our funds do not benefit terrorist groups, and we ensure that our partners do the same.”⁵⁴

56. The 15 October 2015 response above makes clear that the UK Government outsources the supervisory function concerning the payment of terrorist salaries to the World Bank. As shown below, the World Bank in turn outsources this key supervisory function to PWC.
57. The UK government grant to the PA is currently paid to the World Bank’s PRDP. It appears that following the December 2016 statement, “[t]he UK’s financial aid to the PA will now be channelled directly through the EU’s PEGASE mechanism”. It is unclear when this change will be implemented.
58. In any case, the UK is far from the only donor to the PRDP. The World Bank lists the following other countries as donors: Australia, France, Japan, Kuwait and Norway.⁵⁵
59. From the PRDP, funding is paid, untied and unearmarked, into the Central Treasury Account of the Palestinian Authority’s Ministry of Finance, albeit linked to the execution of a specified policy agenda. This position is clearly stated on the World Bank’s website: “The budgetary support is provided directly to the Central Treasury Account of the Ministry of Finance. Funds provided by donors are untied and un-earmarked, linked to the execution of the policy agenda in the PRDP.”⁵⁶
60. The same point is noted in the ODI Report,⁵⁷ for example at page 36: “The PRDP provides unearmarked finance for recurrent expenditure in support of the priorities of the PA’s national development plan...”

⁵⁴ Parliamentary records, Written Questions and answers and Written Statements: Written Question 11067, <http://www.parliament.uk/business/publications/written-questions-answers-statements/written-question/Commons/2015-10-09/11067>.

⁵⁵ World Bank, Palestinian Recovery and Development Program Trust Fund, Donors, <http://www.worldbank.org/en/programs/palestinian-recovery-and-development-program-trust-fund#5>.

⁵⁶ World Bank, Palestinian Recovery and Development Program Trust Fund, <http://www.worldbank.org/en/programs/palestinian-recovery-and-development-program-trust-fund#2>.

⁵⁷ See note 33 above.

61. The World Bank has confirmed in correspondence with UKLFI that the external auditor appointed concerning its PRDP program was PWC. In a letter dated 17 March 2016, Steen Jorgensen, Country Director of the World Bank in Israel, informed Mr Hunt of UKLFI that the PA had appointed PWC as its auditor in the period September 2014 to September 2015. Mr Jorgensen wrote:

“Under the terms of the PRDP- TF, the PA is required to hire an independent external auditor acceptable to the Bank to perform an audit of the Deposit Account into which the Trust Fund grant proceeds are disbursed. The last audit, for the period September 1, 2014 to September 30, 2015, was undertaken by Price Waterhouse Coopers.”⁵⁸

62. Mr Jorgensen noted further that although certain contributing donors have separate agreements with the PA regarding the administration of their contribution, “these separate agreements do not form part of the World Bank agreements with donors or with the Palestinian Authority.”⁵⁹
63. It is also apparent from publicly available documents that the PA has instructed PWC to audit external aid funded projects in the past. For instance, a PWC Report into one specific project funded by the World Bank, dated June 9, 2016 is addressed “To the Ministry of Finance, Ramallah – Palestine”.⁶⁰

iii. Correspondence between UKLFI and PWC

64. Following the confirmation of PWC’s role by the World Bank in Mr Jorgensen’s email of 26 March 2016, Mr Hunt wrote to PWC on 30 March, 19 April and 26 April 2016 requesting copies of the audit reports prepared by PWC and inquiring whether PWC continued to audit UK development money going to the PA.⁶¹ Following the third letter, Margaret Cole, General Counsel responded on 29 April 2016 as follows:⁶²

“Each member firm of the PricewaterhouseCoopers network of firms owes confidentiality obligations to its clients. We therefore cannot confirm or deny who is or who is not a client and the services that we render to them unless it is available in the public domain.

⁵⁸ See Correspondence at Appendix 1, letter from Steen Jorgensen to Julian Hunt dated 17 March 2016.

⁵⁹ *Ibid.*

⁶⁰ PWC, Independent Auditor’s Report, Higher Council for Solid Waste Management for Hebron and Bethlehem, <http://documents.banquemondiale.org/curated/fr/196751472716615574/pdf/108115-AD-P154102-PUBLIC.pdf>.

⁶¹ See Appendix 2

⁶² See Appendix 2

We are unable to therefore provide any information requested in your letter.”

65. Mr Hunt wrote again to Ms. Cole on 1 May 2016, pointing out that PWC’s client could waive confidentiality in the interest of openness and requesting that she ask the PA to waive confidentiality in the audit reports, given that the audits relate to large sums of public money, the public interest in ensuring through openness that the audits are undertaken properly, and the compelling public interest that the funds in question are not diverted to pay wages to convicted terrorists.⁶³ Ms Cole responded on 4 May 2016 that PWC would not engage in any further correspondence on the matter.

iv. Consequences of PWC’s failure to warn

66. It is apparent from the statements above of the UK Government that PWC has not raised concerns with regards to the incitement of terrorism by the PA which is either directly or indirectly funded by UK, EU and World Bank aid.
67. Because of the unwillingness of PWC to subject its audit reports to public scrutiny, it is unclear whether the funds from donors who rely on PWC’s guidance are directly funding the incitement of terrorism, or whether such funds, given uncritically, are liberating other resources that the PA can devote to the incitement of terrorism. Either way, we submit that PWC remains in breach of the Guidelines for its failure to warn the donors in question that the PA is directing its funds in this manner.
68. In a situation where the PA chooses to earmark money donated to it by a donor for projects which the donor supports, but then spends non-earmarked funds on ends which would not be so supported (such as corruption or the promotion of terrorism), it is inaccurate to suggest that the donor’s funds are separated from those spend on illegitimate ends. Where donations are made to the PA they are then able to off-set these against the cost of making their illegitimate payments.
69. Thus, donations which are spent on legitimate projects liberate funds for the illegitimate ones. This is particularly so in a situation where the “legitimate” project in question is one fundamental to the administrative role of the PA, such as paying the salaries of schoolteachers or policemen.⁶⁴ In any situation where money is donated to the PA, and the PA has practical discretion as to how it is to

⁶³ See Appendix 2.

⁶⁴ Though even these activities could be tainted by illegitimacy, such as where the schoolteachers are being paid to promote hatred of Jews as part of the PA-sponsored curriculum, or indeed where the policemen provide paramilitary training and resources to terrorists.

be spent, the use of *any* of the PA's funds for illegitimate means taints the entirety of the donation, even if the PA has received funds from other sources.⁶⁵

70. We appreciate the conclusion of the ODI Report⁶⁶ that “while donor support to the PA is fundamental to prevent the Palestinian economy and government from collapsing, it does not seem to promote peace or peaceful public attitudes in itself. To the extent that such a collapse would increase the chance of a violent escalation, donor – and DFID – support to the PA is instrumental to avoiding that outcome. This suggests that donors’ financial support to the PA and its public spending ‘buys time’ while at the same time not materially changing the Palestinian attitude towards conflict.”
71. However, there is good reason to believe that insistence by the UK and other donors that aid will not be paid to the PA while it continues to fund salaries of convicted terrorists will result in a cessation of those salaries rather than a collapse of the PA. On the only occasion on which funds were withheld by the World Bank, the PA moved rapidly to comply with the World Bank’s conditions. As the ODI Report observed: “For the first time in 2014, the World Bank withheld PRDP funding because of poor reform progress. This has stimulated a rapid response by the PA to deliver the missing reforms, suggesting the existence (in this admittedly single example) of an incentive effect.” (page 9; see also page 44).
72. Therefore, notwithstanding the stonewalling approach from PWC, it is clear from the foregoing that PWC plays a major role in facilitating the provision of foreign aid to the PA from several of its major donors and in providing justification for the donors to avoid additional scrutiny of the end-recipients or effect of that aid. As set out in Sections E-G below, in so doing PWC has breached the Guidelines.

E. Breaches of the Guidelines

1. Breaches generally

73. PWC has violated multiple provisions of the Guidelines through its failure to convey to the organisations for whom it prepares the audit report that the PA is consciously expending funds on the salaries of terrorists and their families, with the deliberate aim and/or effect of promoting and glorifying acts of terrorism and

⁶⁵ The link between external funding to the PA and PA payments of terrorist salaries is set out by Edwin Black in How British and American aid subsidises Palestinian terrorism, The Guardian, 11 November 2013 <https://www.theguardian.com/commentisfree/2013/nov/11/british-american-aid-subsidises-palestinian-terrorism>.

⁶⁶ See note 33 above.

thereby (i) harming the peace process between Israel and Palestine, as well as (ii) the prospects of Palestinian citizens to establish flourishing civil institutions.

74. The parts of the Guidelines breached include at least:

- Chapter II, General Policies, paragraphs A.1, 7, 10, 11, 12, 13
- Chapter III, Disclosure, paragraphs 1, 3(c), 3(d), 3(e)
- Chapter IV, Human Rights, paragraphs 1, 2, 3, 5, 6

75. Although we believe that the conduct of PWC has breached each of the above provisions, in particular we urge the UK NCP to focus on Chapter II, paragraph A.11:

“Enterprises should avoid causing or contributing to adverse impacts on matters covered by the Guidelines, through their own activities, and address such impacts when they occur”

and Chapter II, paragraph A.12:

“Enterprises should seek to prevent or mitigate an adverse impact where they have not contributed to that impact, when the impact is nevertheless directly linked to their operations, products or services by a business relationship. This is not intended to shift responsibility from the entity causing an adverse impact to the enterprise with which it has a business relationship. “

76. Broadly speaking those Guidelines breached by PWC can be grouped into two main parts. *First* PWC has caused or contributed to human rights violations and failed to address them (Chapter II, A.11). *Second* PWC is in breach of Guidelines which oblige MNEs to take steps to prevent or mitigate human rights breaches which are directly linked to their operations, products or services (Chapter II, A.12). The other Guidelines breached are largely iterations of these two cardinal principles. However, we invite the UK NCP to select from these whichever Guidelines it considers to be most closely suited to PWC’s actions.

2. Nature of Rights Infringed

77. Guidelines Chapter II, General Policies, paragraph A.2 provides: “Enterprises should ... Respect the internationally recognised human rights of those affected by their activities.”

78. Similarly, Guidelines Chapter IV, Human Rights, paragraph 1 provides: “Enterprises should ... Respect human rights, which means they should avoid infringing on the human rights of others and should address adverse human rights

impacts with which they are involved.” The following paragraph 2 states:
“Enterprises should Within the context of their own activities, avoid causing or contributing to adverse human rights impacts and address such impacts when they occur.” Paragraphs 3-6 contain further provisions regarding human rights that reflect the General Policies in Chapter II.

79. The content of the human rights protected is to be determined with reference to the term “internationally recognised human rights”, which is defined in the Commentary to Chapter IV, as:

“In all cases and irrespective of the country or specific context of enterprises’ operations, reference should be made at a minimum to the internationally recognised human rights expressed in the International Bill of Human Rights, consisting of the Universal Declaration of Human Rights and the main instruments through which it has been codified: the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, and to the principles concerning fundamental rights set out in the 1998 International Labour Organisation Declaration on Fundamental Principles and Rights at Work.”

80. It is noteworthy that by encompassing instruments such as the International Covenant on Civil and Political Rights (“ICCPR”), the International Covenant on Economic, Social and Cultural Rights (“ICESCR”) and International Labour Organisation Declaration on Fundamental Principles and Rights at Work (“ILO Declaration”) the Guidelines provide protection which goes beyond a “core” or “narrow” conception of human rights that might merely protect security of the person and property. In addition, the human rights protected by the Guidelines promote a wide range of civic rights including the fiduciary duty of a government to its citizens.

3. Identity of Victims

81. As a result of PWC’s actions and omissions, the human rights of three groups are being infringed: (i) victims of terrorist attacks; (ii) Palestinian Citizens; (iii) taxpayers in donor countries.

i. Terror victims

82. The Universal Declaration of Human Rights (“UDHR”) Article 3 provides:
“Everyone has the right to life, liberty and security of person”.

83. ICCPR Article 6.1 provides: “Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.”
84. ICCPR Article 5.1 provides: “Nothing in the present Covenant may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms recognized herein or at their limitation to a greater extent than is provided for in the present Covenant.”
85. ICCPR Article 20.2 provides: “Any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law.”
86. The above provisions make clear that incitement to racial or nationalistic hatred is prohibited. Terrorist attacks by Palestinian militants on civilians are motivated by such hatred. The role of PWC in sanitising payments made to terrorists and their families acts as an encouragement to such hatred, or at the very least fails to discharge PWC’s responsibility to discourage such hatred.
87. Attacks by Palestinian terrorists are intended to, and do, kill and maim innocent civilians. Accordingly the rights of these victims to life, liberty and security of person are being infringed. The PA’s payment of generous salaries to terrorists and its expenditure on glorifying them undermine the deterrence of such attacks that might otherwise be achieved by the prison sentences passed on the perpetrators of previous attacks. This makes further such attacks more likely. As noted in paragraph 36 above, the ODI report provides empirical evidence that the salaries paid by the PA to imprisoned terrorists, combined with its policy of holding jobs open for terrorists on their release, have encouraged Palestinians to engage in conflict.
88. By apparently not reporting on the impropriety of this expenditure and not attempting to dissuade the PA from it, PWC has facilitated and failed to discourage conduct that rewards and encourages terrorist attacks on innocent civilians.

ii. Palestinian Citizens

89. The human rights protected by the Guidelines encompass a wide variety of economic and civic rights, which broadly require that economies be managed for the benefit of their citizens and that governments spend money prudently.

90. In this regard, UDHR Article 22 provides: “Everyone, as a member of society, has the right to social security and is entitled to realization, through national effort and international co-operation and in accordance with the organization and resources of each State, of the economic, social and cultural rights indispensable for his dignity and the free development of his personality.”
91. ICESCR Article 1.2 provides: “All peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic co-operation, based upon the principle of mutual benefit, and international law.” (emphasis added).
92. By failing to raise concerns over the diversion of PA funding for terrorists, PWC is contributing to an infringement of the rights of Palestinian Citizens to prudent governance. Although nations or sub-national entities such as the PA are given a considerable amount of leeway to spend their resources as they see fit, this is within certain limits, namely that the resources be spent “based on the principle of mutual benefit” and in order to secure “the economic, social and cultural rights indispensable for his dignity and the free development of his personality”.
93. The payment of terrorists by the PA clearly falls outside even the wide boundaries of what is deemed to be acceptable by the relevant international human rights instruments and the Guidelines. The money spent on terrorist salaries and stipends for their families would clearly better be spent on improving education, healthcare or civil infrastructure, as is presumably the aim of donors.
94. The right to own property, both individually and collectively is protected by UDHR Article 17: “Everyone has the right to own property alone as well as on association with others.”
95. The diversion of funds to pay terrorists infringes also the rights of Palestinian Citizens to own property on a collective basis. The funds possessed by the PA are held on a fiduciary basis for the benefit of Palestinian Citizens. To the extent that these funds are diverted to ends which do not benefit those citizens – or in this case – which actively harm their interests, then the right to own property collectively is breached.
96. Although it is not the purpose of an auditor to step into the shoes of the PA in administering aspects of the disputed territories, nonetheless PWC has a unique ability to inculcate good governance by (i) properly discharging its duties as an auditor under the IAS and/or (ii) by adhering to the Guidelines.

97. ICCPR Article 10.3 provides: “The penitentiary system shall comprise treatment of prisoners the essential aim of which shall be their reformation and social rehabilitation.”
98. By paying terrorists salaries, the PA is not merely failing to secure their reform and social rehabilitation, it is actively encouraging recidivism. As noted above, the payment of salaries to terrorists rewards this behaviour and glorifies it. This encourages not just future offending by the individuals concerned but also by other members of society, thus undermining the purpose of the criminal justice system, as set out in ICCPR Article 10.3.

iii. Citizens of Donor Countries

99. As with the civic rights of Palestinian citizens detailed above, the citizens of donor countries are taxpayers who have a right to see their money spent wisely and prudently, in furtherance of the advertised aims of their governments. To the extent that money donated to the PA is not spent in promoting development, social cohesion and the peace process, then the legitimate expectations of taxpayers are thereby frustrated. It is clear from Section D.4 above that the relevant governments and international organisations purport to rely on assurances from PWC that their money is being spent in an appropriate manner.
100. Such mis-spending of international aid contributions is obviously unpopular within donor nations and may even contribute to calls for such nations to reduce their aid spending overall. This effect is demonstrated by various articles in the UK and international press which have covered the PA payments to terrorists using donor money,⁶⁷ as well as the recent debate in the UK Parliament concerning the country’s 0.7% foreign aid budget during which several questions were asked regarding the PA’s payment to terrorists.⁶⁸
101. Any effect that the diversion of funds to terrorists has on discouraging foreign aid generally is deeply regrettable. PWC is in a unique position to allay these concerns by bringing the matter to the attention of the donor governments and international organisations so as to discourage or prevent the misuse of funds in this manner.

⁶⁷ See, for example, Mark Wood and Nick Craven, *Revealed, how UK aid funds TERRORISTS: After yet more budget cuts, another £12bn of your taxes are being splurged on foreign hand-outs for militants, killers, Palestinian palaces and jobs that don't exist*, Mail on Sunday, <http://www.dailymail.co.uk/news/article-3510827/Revealed-UK-aid-funds-TERRORISTS-budget-cuts-12bn-taxes-splurged-foreign-hand-outs-militants-killers-Palestinian-palaces-jobs-don-t-exist.html#ixzz4SZdOfwot>.

⁶⁸ Westminster Hall debate on Foreign Aid Expenditure, 13 June 2016, Hansard Vol. 611, Col. 249WH, and in particular the contributions of Ian Austin MP and Andrew Percy MP. See also an article by Ian Austin MP, *Let’s use the aid budget to promote peace in the Middle East and ensure our money never funds violence*, LabourList, 14 June 2016, <http://labourlist.org/2016/06/ian-austin-lets-use-our-aid-budget-to-promote-peace-and-ensure-it-never-funds-violence/>.

F. Causation and Transparency

1. Causation

102. As noted above, pursuant to the Guidelines, MNEs are not expected merely to avoid causing or contributing to adverse impacts on human rights; they are also expected to seek to prevent or mitigate adverse impacts even when the MNE in question has not contributed to them, where they are directly linked to its operations, products or services by a business relationship.
103. PWC may argue that (i) any human rights breaches are caused by independent actors, not affiliated to the PA, and (ii) even if the human rights breaches are attributed to the PA, the PA's actions/ omissions cannot be attributed to PWC.
104. Both of these objections would be inaccurate. As to (i), in addition to the findings made by the ODI Report concerning the nexus between funding and the incitement of terrorism (see Section D.2 above), in the landmark US case *Sokolow v Palestine Liberation Organization and Palestinian Authority* (2015) the Southern District of New York Court held the PLO and PA responsible for numerous acts of terrorism and awarded the terror victims \$655 million.⁶⁹ Although the Court of Appeals later overturned the verdict, this was on the basis that the lower court lacked jurisdiction; the finding on causation was not disturbed.⁷⁰
105. Even if the PA cannot be shown to have directed the individual attacks, its prior encouragement of their commission – both through propaganda and the continued policy of making payments to terrorists and their families – as well as the PA's *post hoc* adoption of such actions, indicated by each decision to begin payments to jailed terrorists, certainly surpasses the causal thresholds under the Guidelines.
106. As to (ii), the Guidelines lay down a duty which goes beyond mere causal connection. Thus, Chapter II, paragraph 11 provides that "Enterprises should ... Avoid causing or contributing to adverse impacts on matters covered by the *Guidelines*, through their own activities, and address such impacts when they occur". Paragraph 12 of the same chapter provides: "Enterprises should ... Seek to prevent or mitigate an adverse impact where they have not contributed to that impact, when the impact is nevertheless directly linked to their operations,

⁶⁹*Sokolow v Palestine Liberation Organization and Palestinian Authority* Case 1:04-cv-00397-GBD-RLE <http://israelawcenter.org/wp-content/uploads/2014/11/Sokolow-et-al-v.-PLO-District-Court-Opinion.pdf>.

⁷⁰ A case summary of the Court of Appeals judgment is available at: https://www.sullcrom.com/siteFiles/Publications/SC_Publication_Sokolow_v_Palestine_Liberation_Organization.pdf.

products or services by a business relationship. This is not intended to shift responsibility from the entity causing an adverse impact to the enterprise with which it has a business relationship.” (emphases added). This language is replicated in paragraphs 2 and 3 of Chapter IV with regard to human rights.

107. Further clarification of the ambit of this duty is provided by the relevant Commentary. In discussing the requirement that MNEs undertake due diligence to “identify, prevent, mitigate and account for how they address their actual and potential adverse impacts”, paragraph 14 of the Commentary to Chapter II provides:

“‘contributing to’ an adverse impact should be interpreted as a substantial contribution, meaning an activity that causes, facilitates or incentivises another entity to cause an adverse impact and does not include minor or trivial contributions. The term ‘business relationship’ includes relationships with business partners, entities in the supply chain and any other non-State or State entities directly linked to its business operations, products or services.” (emphasis added).

108. In the same vein, the Commentary to Chapter IV explains the nature of the connections covered by the human rights aspects of the Guidelines:

“42. Paragraph 2 recommends that enterprises avoid causing or contributing to adverse human rights impacts through their own activities and address such impacts when they occur. ‘Activities’ can include both actions and omissions...

43. Paragraph 3 addresses more complex situations where an enterprise has not contributed to an adverse human rights impact, but that impact is nevertheless directly linked to its operations, products or services by its business relationship with another entity. Paragraph 3 is not intended to shift responsibility from the entity causing an adverse human rights impact to the enterprise with which it has a business relationship ... ‘Business relationships’ include relationships with business partners, entities in its supply chain, and any other non-State or State entity directly linked to its business operations, products or services...”

109. It is clear from the statements made by donor countries and/ or international organisations that PWC’s provision of the audit report of the PA’s activities absent any caveat concerning payments to terrorists and their families is crucial to (i) the continued flow of funds from donors, via the PA, to the terrorists, and (ii) the lack of scrutiny and pressure by those donors on the PA to cease such

payments. Essentially the donors have outsourced their human rights due diligence function to PWC, which is failing to discharge it.

110. Even if PWC's failure to raise this issue with donors is not a *sine qua non* to the PA's payments to terrorists, PWC's provision of the reports absent caveats certainly facilitates and/ or incentivises the PA's continued actions in this regard.
111. Furthermore, PWC clearly has the requisite "business relationship" with the PA to trigger application of the Guidelines, pursuant to Chapter II paragraph A.12 and Chapter IV paragraph 3, and as described in paragraph 14 of the Commentary to Chapter II and paragraph 43 of the Commentary to Chapter IV. The PA is an "entity... directly linked to its business operations... or services", by virtue of PWC's provision of audit reports and/ or associated advice.

2. Transparency

112. PWC may object to this Complaint on the additional ground that its obligations of confidentiality to its clients prevent it from disclosing whether it has had any discussions with the PA or the donor countries/ organisations concerning the matters raised herein. Indeed PWC may even refuse to acknowledge that it has acted in these matters (despite clear information on public record confirming PWC's role).⁷¹
113. Though such extreme confidentiality may perhaps be mandated by PWC's contractual arrangements, it is out of step with the Guidelines. Chapter III lays down requirements on Disclosure, and provides at paragraph 1: "Enterprises should ensure that timely and accurate information is disclosed on all material matters regarding their activities..." and at 3(e): "Enterprises are encouraged to communicate additional information that could include... information on relationships with workers and other stakeholders."
114. Confidentiality obligations to a client must be balanced against countervailing obligations on an MNE to avoid the infringement of human rights of stakeholders, and to enable those stakeholders to seek remediation. Given the gravity of the human rights infringed, the duty to disclose relevant details outweighs any contractual confidentiality. The entire purpose of the Guidelines would be undermined if MNEs could rely in such situations on confidentiality to avoid even discussing an alleged human rights breach, let alone addressing it.
115. The Commentary to Chapter III explains at paragraph 28:

⁷¹ See Section D.4.ii above.

“The purpose of this chapter is to encourage improved understanding of the operations of multinational enterprises. Clear and complete information on enterprises is important to a variety of users ranging from shareholders and the financial community to other constituencies such as workers, local communities, special interest groups, governments and society at large. To improve public understanding of enterprises and their interaction with society and the environment, enterprises should be transparent in their operations and responsive to the public’s increasingly sophisticated demands for information.

116. It is therefore unreasonable for PWC to refuse provide the relevant information, either to UKLFI and other interested parties, or to the UK NCP. Although UKLFI has in the past requested copies of the audit reports, this Complaint does not do so. Rather, PWC should provide such information as is necessary to facilitate non-adversarial discussions with UKLFI and other stakeholders, with a view to eliminating the human rights abuses in question. The information requested is detailed in Section I below.
117. If PWC has adhered to all of the relevant human rights obligations then it should have nothing to hide. If, on the contrary, PWC has failed to adhere to its obligations then it can be no defence for it to attempt to cloak such breaches in secrecy.

G. PWC’s breaches of Guidelines by failure to prevent and mitigate

118. Given that the relevant nexus exists between PWC and the human rights infringements, PWC has a responsibility to act as set out in the Guidelines. There are two aspects to this responsibility. *First*, on a prophylactic basis, the MNE should engage in risk-based due diligence so as to create systems which identify and prevent human rights breaches occurring, or at the very least discourage such breaches. *Second*, on a reactive basis, the MNE should seek to address and mitigate human rights breaches which it knows to have already occurred in connection with its business relationships.

1. Inadequate Due Diligence/ Training

119. As to the first duty, Guidelines Chapter II, General Principles, paragraph A.10 provides: “Enterprises should ... Carry out risk-based due diligence, for example by incorporating it into their enterprise risk management systems, to identify, prevent and mitigate actual and potential adverse impacts ... and account for how these impacts are addressed. The nature and extent of due diligence depend on the circumstances of a particular situation.”

120. Chapter IV, Human Rights, paragraph 5 provides: “Enterprises should ... Carry out human rights due diligence as appropriate to their size, the nature and context of operations and the severity of the risks of adverse human rights impacts.”
121. Paragraph 15 of the Commentary to Chapter II provides: “The nature and extent of due diligence, such as the specific steps to be taken, appropriate to a particular situation will be affected by factors such as the size of the enterprise, context of its operations, the specific recommendations in the Guidelines, and the severity of its adverse impacts.”
122. PWC is an enormous enterprise, with vast resources. It can be expected to have a very high degree of knowledge and expertise in the area of human rights due diligence given its wide range of operations, including in certain Less Economically Developed Countries, working in areas where human rights violations are more common. Moreover, its field of operations is directly related to compliance with external obligations, whether based on financial, tax or other areas of national and international law. Indeed it is for precisely this reason that the various donor countries and organisations have relied on PWC’s reports to justify their own failure to investigate more closely the payments of the PA to terrorists.
123. Pursuant to the Guidelines, and the values that it professes,⁷² PWC can be expected to act to the very highest standards. Indeed it is difficult to conceive of an organisation which has greater expertise or resources at its disposal to undertake risk-based due diligence. And yet this is appears to be precisely what PWC has failed to do in the matters covered by this Complaint.
124. Although UKLFI does not have details of PWC’s training of the individuals concerned in the preparation of the reports, or the human rights due diligence undertaken, the fact that such systems (to the extent that they are in place) have failed to cause PWC to raise concerns with regards to the diversion of funds to terrorists is indication enough that its systems are inadequate.

2. Failure to use leverage to discourage human rights breaches

125. As to the second part of the responsibility, to mitigate adverse human rights impacts *during and after* they have occurred, Chapter II, General Policies, paragraph A.11 states that Enterprises should “address such impacts when they occur”. Paragraph A.12 adds that they should “Seek to prevent or mitigate an adverse impact ... when the impact is ... directly linked to their operations, products or services by a business relationship”, and paragraph A.13 provides

⁷² See Section C.5 of this submission

that: “Enterprises should... In addition to addressing adverse impacts in relation to matters covered by the *Guidelines*, encourage, where practicable, business partners, including suppliers and sub-contractors, to apply principles of responsible business conduct compatible with the *Guidelines*.”

126. Likewise, Chapter IV, Human Rights, paragraph 1 states: “Enterprises should ... Respect human rights, which means they should avoid infringing on the human rights of others and should address adverse human rights impacts with which they are involved.” Paragraph 2 reiterates that they should “address such impacts when they occur” and paragraph 3 adds that they should “Seek ways to prevent or mitigate human rights impacts that are directly linked to their operations, products or services by a business relationship”. Paragraph 6 further states: “Enterprises should ... Provide for or co-operate through legitimate processes in the remediation of adverse human rights impacts where they identify that they have caused or contributed to these impacts.”
127. Chapter II, General Policies, paragraph A.7 also points out that: “Enterprises should ... Develop and apply effective self-regulatory practices and management systems that foster a relationship of confidence and mutual trust between enterprises and the societies in which they operate.”
128. The ambit of the responsibility to mitigate is elaborated upon in the Commentary to Chapter II:
 - “19. If the enterprise identifies a risk of contributing to an adverse impact, then it should take the necessary steps to cease or prevent its contribution and use its leverage to mitigate any remaining impacts to the greatest extent possible. Leverage is considered to exist where the enterprise has the ability to effect change in the wrongful practices of the entity that causes the harm.
 20. Meeting the expectation in paragraph A.12 would entail an enterprise, acting alone or in co-operation with other entities, as appropriate, to use its leverage to influence the entity causing the adverse impact to prevent or mitigate that impact.
 21. factors relevant to determining the appropriate response to the identified risks include the severity and probability of adverse impacts and how crucial that supplier is to the enterprise.
 22. Appropriate responses with regard to the business relationship may include continuation of the relationship with a supplier throughout the course of risk mitigation efforts; temporary suspension of the relationship while pursuing ongoing risk mitigation; or, as a last resort, disengagement with the supplier

either after failed attempts at mitigation, or where the enterprise deems mitigation not feasible, or because of the severity of the adverse impact.”

129. The Commentary to Chapter IV provides similarly:

“42. ... Where an enterprise causes or may cause an adverse human rights impact, it should take the necessary steps to cease or prevent the impact. Where an enterprise contributes or may contribute to such an impact, it should take the necessary steps to cease or prevent its contribution and use its leverage to mitigate any remaining impact to the greatest extent possible. Leverage is considered to exist where the enterprise has the ability to effect change in the practices of an entity that cause adverse human rights impacts.

43. ... Meeting the expectation in paragraph 3 would entail an enterprise, acting alone or in co-operation with other entities, as appropriate, to use its leverage to influence the entity causing the adverse human rights impact to prevent or mitigate that impact. ‘Business relationships’ include relationships with business partners, entities in its supply chain, and any other non-State or State entity directly linked to its business operations, products or services. Among the factors that will enter into the determination of the appropriate action in such situations are the enterprise’s leverage over the entity concerned, how crucial the relationship is to the enterprise, the severity of the impact, and whether terminating the relationship with the entity itself would have adverse human rights impacts.

[...]

46. When enterprises identify through their human rights due diligence process or other means that they have caused or contributed to an adverse impact, the *Guidelines* recommend that enterprises have processes in place to enable remediation....”

130. Further details of the specific content of the duty to mitigate and the actions which PWC ought to take are provided in Section I below. To date PWC has failed even to acknowledge the problem raised in this Complaint, let alone undertake remedial action. To the extent that it has failed to do either, PWC is therefore in breach of the above provisions.

H. Consistency with Other Cases

131. In order that the OECD Guidelines will be applied on an equal and impartial basis to all multinational corporations operating within Israel and the neighbouring countries/ territories, UKLFI urges the UK NCP to approach this complaint

consistently with the approach taken in previous complaints where violations of human rights were alleged to have been carried out by Governmental entities rather than directly by the respondents.

132. In this regard we refer in particular to the complaint made by Lawyers for Palestinian Human Rights against the MNE G4S relating to the operations of G4S in Israel and the Disputed Territories (the “G4S Complaint”), as well as the complaint by Americans For Democracy & Human Rights In Bahrain against Formula One World Championship Limited and others (the “Formula One Complaint”).
133. As in the G4S Complaint, at least part of the allegations in the present complaint relate to the adverse human rights impacts which are directly linked to the business operations or services of PWC, even if those operations or services do not contribute to those impacts. Indeed it is submitted that the relationship between the services of PWC in this situation are linked even more closely to the violations of human rights, and the ability of PWC to discourage such violations is far stronger than it was in the G4S Complaint.
134. In the G4S Complaint the principal business relationship was constituted by the supply of equipment and services at certain borders and checkpoints.⁷³ G4S was not relied upon by the Israeli Government for its advice or guidance as to how to use such equipment, nor was there any contractual duty on G4S to provide such advice or guidance.⁷⁴ Nevertheless, in its Final Statement the UK NCP considered that adverse human rights impacts resulting from the use of the equipment were sufficiently directly linked by the business relationship to the operations, products or services of G4S for Chapter IV, Paragraph 3 of the Guidelines to apply; and that G4S had failed to act in accordance with its responsibility under this paragraph to address these impacts.
135. In the present complaint, PWC is expressly being relied upon by donor governments to undertake the appropriate due diligence concerning *inter alia* the avoidance of contributions to terrorists or terrorism. The leverage and ability of PWC to influence the actions of the PA and its donors are all the greater, considering that it holds itself out as providing its compliance and auditing services in an ethical manner. The linkage between the services provided by PWC and the adverse impacts on human rights is thus considerably more direct than in the G4S case.

⁷³ Final Statement on G4S Complaint, paragraphs 27-29, 59-63

⁷⁴ Final Statement on G4S Complaint, paragraph 72

136. In the Formula One Complaint it was alleged that the respondent held racing events in Bahrain which "... have given rise to new human rights abuses, because of the response of security forces to protests associated with the events."⁷⁵
137. In its Initial Assessment in the Formula One Complaint, the UK NCP "...accepts as meriting further examination issues relating to FOWC's and FOM's management systems, due diligence, human rights policy and communications with stakeholders and business partners (Issues under Chapter II, Paragraphs 7, 10, 13 and 14 and Chapter IV, Paragraphs 4 and 5)."⁷⁶

I. Actions that PWC should take

138. In light of the above, it is requested that PWC undertake actions to avoid, prevent and mitigate adverse human rights impacts including but not limited to the following:
- Confirm that human rights due diligence policies and training for its own personnel are in place and/ or utilised effectively in this context to make PWC employees and agents aware of their responsibilities under the Guidelines and disclose the nature of such training given in this particular situation to the relevant individuals involved in preparing the audits of the PA.
 - Disclose communications with the PA and/or international donors (whether in email, written or any other format) which discuss the payment of salaries to terrorists.
 - Disclose any material gathered or prepared by PWC concerning the payment of salaries to terrorists by the PA, whether or not shared externally.
 - Use its considerable leverage to discourage the PA from funding terrorists by making representations to the PA that in so doing it is in breach of various international human rights instruments and that this funding must be disclosed in audit reports.
 - Alert foreign donors to the breaches of human rights caused by the PA, by adding clear and specific qualifications to this effect in its audit reports and through other recorded communications with such donors.
 - In the event that either the foreign donors or the PA fail to act to prevent the payments to terrorists continuing, to consider temporary suspension of its relationships with the PA and/or the foreign donors and, as a last resort, disengagement from these relationships in the event that such parties fail to adhere to the warnings made by PWC.
 - Engage with relevant stakeholders regarding PWC's fulfilment of the above obligations, including representatives of the victims of terror, the UKLFI and

⁷⁵ Formula One Complaint Initial Assessment, paragraph 2

⁷⁶ Formula One Complaint Initial Assessment, paragraph 17

the Government of Israel, as well as representatives of taxpayers in donor countries, so as to develop a collaborative framework whereby meaningful opportunities are given for these stakeholders' views to be taken into account in relation to the fulfilment of any future contracts between PWC and the PA/ its donors.

J. Requests to the UK NCP

139. It is requested that the UK NCP facilitate a non-adversarial dialogue with PWC to discuss how to bring PWC's operations into compliance with the Guidelines.
140. Should a mediated dialogue not result in a mutually-acceptable resolution, it is requested that the UK NCP assess the allegations to determine whether breaches have occurred, and issue a final statement with recommendations as to how to improve the implementation of and compliance with the Guidelines.
141. Attention is also drawn to the UK Government's Publication "Good Business: Implementing the UN Guiding Principles on Business and Human Rights" ("Good Business"), published September 2013. In that document, the UK Government reiterates its commitment to the Guidelines and also to the facilitation of dispute resolution, in particular by elevating the risk of causing or contributing to gross human rights abuses by MNEs to a "legal compliance issue", rather than as a mere moral obligation (Good Business, p.13).

Appendix 1

Selected Correspondence between UKLFI and the World Bank

Letter from Julian Hunt to the World Bank, dated 6 November 2015

Letter from Steen Jorgensen to Julian Hunt, dated 17 March 2016

Letter from Julian Hunt to Steen Jorgensen, dated 4 May 2016

Letter from Julian Hunt to Steen Jorgensen, dated 10 May 2016

The contents of this Appendix will be provided on request.

Appendix 2

Selected Correspondence between UKLFI and PWC

Letter from Julian Hunt to Ian Powell, dated 19 April 2015

Letter from Julian Hunt to Ian Powell, dated 26 April 2015

Letter from Julian Hunt to PricewaterhouseCoopers, dated 30 March 2016

Email from Margaret Cole to Julian Hunt, dated 28 April 2016

Letter from Julian Hunt to Margaret Cole, dated 28 April 2016

Email from Margaret Cole to Julian Hunt, dated 29 April 2016

Email from Julian Hunt to Margaret Cole, dated 1 May 2016

Email from Margaret Cole to Julian Hunt, dated 4 May 2016

The contents of this Appendix will be provided on request.

Appendix 3

Certified translation of The Law for Detainees and Released Detainees, its Systems and Regulations, as approved by the Palestinian Council of Ministers, No 19 of 2004

taken from the Trial Record in *Sokolow v Palestine Liberation Organization and Palestinian Authority* (SDNY, 2015, Case 1:04-cv-00397-GBD-RLE)

The contents of this Appendix will be provided on request.