

## **Submission to the Parliamentary Joint Committee on Intelligence and Security on its Review of the re-listing of al-Shabaab, Hamas' Izz al-Din al-Qassam Brigades ( Hamas Brigades), the Kurdistan Workers Party (PKK), Lashkar-e-Tayyiba (LeT) and Palestinian Islamic Jihad (PIJ) as terrorist organisations under the Criminal Code.**

### **Introduction**

This document forms the submission by the Australia/Israel & Jewish Affairs Council (AIJAC) to the Parliamentary Joint Committee on Intelligence and Security (PJCIS) on its review into the relisting of al-Shabaab, Hamas' Izz al-Din al-Qassam Brigades ( Hamas Brigades), the Kurdistan Workers Party (PKK), Lashkar-e-Tayyiba (LeT) and Palestinian Islamic Jihad (PIJ) as terrorist organisations under the *Criminal Code 1995*.

This submission will focus on the relisting of Hamas' Izz al-Din al-Qassam Brigades, though AIJAC also strongly supports the relisting of Palestinian Islamic Jihad:

- It recommends that the PJCIS not disallow the listing of the Hamas Brigades.
- It also recommends that the PJCIS advise the Minister for Home Affairs to extend the listing of Hamas' Izz al-Din al-Qassam Brigades to Hamas in its entirety.

There are three reasons why AIJAC makes these recommendations:

1. There is compelling and publicly available evidence to suggest all of Hamas, not just the Hamas Brigades, is engaged in activity that meets ASIO's criteria for selecting an organisation to be listed under the *Criminal Code 1995*.
2. Last year, Yahya Sinwar, a long-time leader of the Hamas Brigades, was nominated Hamas leader in Gaza. This nomination provides recent and compelling evidence that there is no separation between Hamas and the Hamas Brigades.
3. There is a recent precedent to the PJCIS making a similar recommendation in its review of the relisting of Hizballah's External Security Organisation earlier this year.

### **Hamas as a terrorist organisation**

The criteria ASIO uses when evaluating an organisation for listing in subsection 102.1 (2) of the *Criminal Code* are outlined in the document "Protocol for listing terrorist organisation" on the Australian National Security website<sup>1</sup>. There are six legislative requirements and seven non-legislative factors.

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<sup>1</sup> Australian National Security, *Protocol for listing terrorist organisations* [website], 2018, <https://www.nationalsecurity.gov.au/Listedterroristorganisations/Pages/ProtocolForListingTerroristOrganisations.aspx> (accessed 29 Aug 2018)

There is compelling and publicly available evidence to suggest that all of Hamas, not just the Hamas Brigades, is engaged in activity that meets ASIO's criteria for selecting an organisation to consider listing under the *Criminal Code 1995*.

This submission will provide evidence that representatives of Hamas, not just the Hamas Brigades, have breached certain criteria.

Information that the organisation is directly or indirectly engaged in the doing of a terrorist act

In the *Criminal Code Amendment (Terrorism) Act 2003*, there is a comprehensive definition of a terrorist act<sup>2</sup>. To paraphrase and summarise, this definition provides that terrorism is an act undertaken to advance political, religious or ideological causes and causes serious harm to a person, to property or creates a serious risk to public safety.

In recent months, at the border between Gaza and Israel there has been ongoing violence against people and against property, as well as attacks that cause a serious risk to public safety<sup>3</sup>. This activity has been encouraged and supported by senior figures in Hamas who are not necessarily affiliated with the Hamas Brigades<sup>4</sup>.

Despite cross-border demonstrators having been described in media reports as "unarmed", there is evidence Gazan protesters used light weapons, explosives, Molotov cocktails, large catapults and sling shots used to fling ball bearings and stones, burning tyres to create a thick smokescreen and tools used to cut through fencing<sup>5</sup>. Hamas, not the Hamas Brigades, took responsibility, as did other jihadist groups<sup>6</sup>.

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<sup>2</sup> Criminal Code Amendment (Terrorism) Act 2003 (Cwth) s100.1

<sup>3</sup> 'Briefing Number 60: Averting war in Gaza', *International Crisis Group* [website], 20 July 2018 <https://www.crisisgroup.org/middle-east-north-africa/eastern-mediterranean/israelpalestine/b60-averting-war-gaza> (accessed 29 Aug 2018)

<sup>4</sup> 'Text of press conference – Arabic language' *Hamas Izz al-Din, al-Qassam Brigades* [website] May 14 2018, <https://hamas.ps/ar/post/9139/> (accessed 29 Aug 2018) or For analysis and translation see Halevi, J 'Why is Hamas interested in Palestinian deaths?' *Jerusalem Centre for Public Affairs*, May 16 2018 [http://jcpa.org/article/why-hamas-interested-palestinian-deaths/#\\_edn1](http://jcpa.org/article/why-hamas-interested-palestinian-deaths/#_edn1) (accessed 29 Aug 2018)

<sup>5</sup> Halevi J 'Hamas' warfare tactics in the 'Great March of Return'' *Jerusalem Centre for Public Affairs*, April 30 2018 <http://jcpa.org/article/hamas-warfare-tactics-in-the-great-return-march/> (accessed 29 Aug 2018)

<sup>6</sup> Text of press conference – Arabic language' *Hamas* [website] May 14 2018, <https://hamas.ps/ar/post/9139/> (accessed 29 Aug 2018) or For analysis and translation see Halevi, J 'Why is Hamas interested in Palestinian deaths?' *Jerusalem Centre for Public Affairs*, May 16 2018 [http://jcpa.org/article/why-hamas-interested-palestinian-deaths/#\\_edn1](http://jcpa.org/article/why-hamas-interested-palestinian-deaths/#_edn1) (accessed 29 Aug 2018)

There have also been numerous rocket attacks from within Gaza into Israeli territory, of which Hamas Brigades and other groups have claimed responsibility<sup>7</sup>. These rockets have been fired indiscriminately and landed in towns, on homes and on farms. The rockets have caused damage to property, have caused casualties and pose a serious risk to public safety.

Hamas is also supporting the launch of burnings kites and other similar incendiary devices, which they fly over the border from Gaza and then land on the Israeli side, setting fire to agricultural and forested land, destroying property and risking public safety. These kites are often emblazoned with Palestinian national symbols and swastikas.

While it is the Hamas Brigades that have claimed responsibility for the rocket attacks, Hamas officials have certainly not distanced themselves from the kite attacks or border clashes. Additionally, the Brigades are funded via the broader Hamas organisation. Hamas continues to receive funding from external sources, including known terrorist sponsor Iran, which it funnels to its militia<sup>8</sup>. As evidence of the improving political and financial links between Hamas and Iran, in July 2018, Hamas Minister for Religious Endowment Ismail Radwan participated in a tele-conference on the topic of resistance with Gholamhossein Gheybparvar, deputy to Qassem Sulaimani, commander of the Iranian Revolutionary Guard Corps<sup>9</sup>.

A further criterion when assessing Hamas' activity is motivation. The motivation for Hamas' attacks is ideological. The Hamas Charter<sup>10</sup> calls for the destruction of Israel. While the international community recognises the right of Israel to exist as a state, Hamas does not. Hamas believes a Palestinian state should extend from the "River Jordan in the east to the Mediterranean in the west and from Ras al-Naqurah in the north to Umm al-Rashrash in the south, [it] is an integral territorial unit". In addition to Hamas' openly racist Charter<sup>11</sup>, which is still in effect, a new "document of general principles and policies" released by Hamas last

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<sup>7</sup> 'Military statement issued by the Joint Chamber of Palestinian Resistance Factions – Arabic language', *Hamas Izz al-Din, al-Qassam Brigades* [website] June 27 2018, <https://www.alqassam.net/arabic/الغرفة-عن-صادر-بيان/5367/القسام-بلاغات-بيانات> (accessed Aug 29 2018)

<sup>8</sup> Levitt, M 'Iran's support for terrorism under the JCPOA' *The Washington Institute*, [website] July 8 2018, <https://www.washingtoninstitute.org/policy-analysis/view/irans-support-for-terrorism-under-the-jcpoa> (accessed Aug 29 2018)

<sup>9</sup> Amer A A 'What is behind the Hamas-Iran rapprochement?' *Al-Jazeera* [website], July 26 2018, <https://www.aljazeera.com/indepth/opinion/hamas-iran-rapprochement-180725150509789.html> (accessed Aug 29 2018)

<sup>10</sup> Hamas Document of General Principles and Policies, 2017, <https://www.middleeasteye.net/news/hamas-charter-1637794876> (accessed Aug 29 2018) - Note this is a translation of the Arabic language Charter

<sup>11</sup> Hamas Charter, 1988, <https://fas.org/irp/world/para/docs/880818.htm> (accessed Aug 29 2018) - Note this is a translation of the Arabic language Charter

year<sup>12</sup> reiterated that “the Zionist project [Israel] is a racist, aggressive, colonial and expansionist project based on seizing the property of others” and Hamas “rejects any alternative to the full and complete liberation of Palestine, from the river to the sea.”

These documents represent the official position of Hamas as an organisation, not just the Hamas Brigades. They reveal clearly that Hamas’ current violence is motivated by a desire to kill or drive out the citizens of a legitimate nation-state, Israel.

#### Information that the organisation advocates the doing of a terrorist act

Since March 2018, Gazans have engaged in a variety of activities against Israel including: attempting to breach the border with Israel and carrying weapons in an attempt to injure or kill Israelis, setting the main border crossing alight<sup>13</sup>, creating diversions and chaos by burning tyres and other activities<sup>14</sup>, many of which meet the criteria of terrorism. This activity continued despite warnings from the Israeli Government and Israel Defence Forces to protesters to maintain a safe distance from the border.

During this time, Hamas leaders have encouraged and participated in this activity.

In March 2018, Hamas leader Yahya Sinwar said the demonstrations would continue “until we remove the transient border”. At the same time, it was reported that Sinwar’s colleague, Ismail Haniyeh, said the protests marked the start of Palestinians’ return to all of Palestine, that is, territory on which Israel is the legitimate and recognised sovereign<sup>15</sup>.

In April 2018, Haniyeh called on Gazans to participate in the border clashes and not let up until “we will break the walls of the blockade, remove the occupation entity and return to all of Palestine”<sup>16</sup>. He also made it clear he was calling for violence against Israelis, saying

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<sup>12</sup> Hamas Document of General Principles and Policies, 2017, <https://www.middleeasteye.net/news/hamas-charter-1637794876> (accessed Aug 29 2018)

- Note this is a translation of the Arabic language Charter

<sup>13</sup> al-Mughrabi, N ‘Israel closes Gaza border crossing damaged by Palestinians’ *Reuters*, May 12 2018, <https://www.reuters.com/article/us-israel-palestinians-crossing/israel-closes-gaza-border-crossing-damaged-by-palestinians-idUSKCN1ID0FM> (accessed Aug 29 2018)

<sup>14</sup> Frantzman S J ‘Reporter’s notes: Palestinians burn tyres as second ‘great march’ protest heats up, *Jerusalem Post*, April 6 2018, <https://www.jpost.com/Israel-News/WATCH-Smoke-on-Gazas-border-549030> (accessed Aug 29 2018)

<sup>15</sup> Toameh K A ‘Hamas head Sinwar says Gaza protests will continue until border is erased’ *Times of Israel*, March 30 2018, <https://www.timesofisrael.com/hamas-head-sinwar-says-gaza-protests-will-continue-until-border-erased/> (accessed Aug 29 2018)

<sup>16</sup> Toameh K A ‘Hamas vows Gaza protests to last until Palestinians ‘return to all of Palestine’ *Times of Israel*, April 9 2018 <https://www.timesofisrael.com/hamas-vows-gaza-protests-to-continue-until-they-return-to-all-of-palestine/> (accessed Aug 29 2018)

“We will tear down the border [with Israel] and we will tear out their hearts from their bodies.”<sup>17</sup>

On May 13 2018, ahead of the most violent border clashes, Hamas founder and current day leader Mahmoud Zahar gave an interview to *Al Jazeera Arabic* and rejected the hosts' claim that Hamas was engaged in “peaceful resistance”. He said (translated to English): “So when we talk about 'peaceful resistance,' we are deceiving the public. This is a peaceful resistance bolstered by a military force and by security agencies, and enjoying tremendous popular support.”<sup>18</sup>

### The organisation's ideology

As explored earlier, Hamas' Charter calls for the destruction of Israel and the replacement of Israel with an Islamic Palestinian state. It does not recognise the legitimacy of the Israeli state. As well as being politically motivated, Hamas also subscribes to a version of Islam that sees no place for people of other faiths in Israel or Jerusalem<sup>19</sup>.

Hamas does not self-describe as a terrorist organisation, preferring to refer to itself as a resistance movement, specifically a movement of “armed resistance”<sup>20</sup>. As we have noted earlier in this submission, this “armed resistance” is indiscriminately directed at Israeli civilians in their homes, workplaces and in recreational spaces – in other words, it is clearly terrorism according to the definition in the *Criminal Code Amendment (Terrorism) Act 2003*

### Listing by the United Nations or like-minded countries

Hamas is listed in its entirety by Australia's key allies the United States (since 1997), the European Union (since 2001) and Canada (since 2002).

According to the US Bureau of Counterterrorism, which is responsible for designating foreign terrorist organisations, this listing is critical in the fight against terrorism<sup>21</sup>. As well as protecting US interests, designations – like an Australian listing - support global efforts to curb terrorism financing, isolate terrorist organisations internationally, deter donations to these terrorist groups, heighten public awareness of the terrorist organisation, and,

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<sup>17</sup> Sinwar, Y, *Al Jazeera*, April 6 2018 (video), <https://www.youtube.com/watch?v=kIFbf6VG7uA&feature=youtu.be> (accessed Aug 29 2018)

<sup>18</sup> Senior Hamas official Mahmoud al-Zahar on Gaza protests: This is not peaceful resistance, it is supported by our weapons' *MEMRI*, May 13 2018, <https://www.memri.org/tv/senior-hamas-official-mahmoud-zahhar-on-gaza-protests-this-is-not-peaceful-resistance/transcript> (accessed Aug 29 2018)

<sup>19</sup> Hamas Charter, 2017, <https://www.middleeasteye.net/news/hamas-charter-1637794876> (accessed Aug 29 2018) - Note this is a translation of the Arabic language Charter

<sup>20</sup> Ibid

<sup>21</sup> Bureau of Counterterrorism, ' Foreign terrorist organisations', (website) <https://www.state.gov/j/ct/rls/other/des/123085.htm> (accessed Aug 29 2018)

importantly, in the US case, signal its concerns to other governments about a particular organisation's activities<sup>22</sup>.

## **Yahya Sinwar – evidence of the lack of distance between Hamas and Hamas Brigades**

In early 2017, a secretive internal election was held in Gaza. The outcome of that election was the rise of Yahya Sinwar, a founder of Hamas' security services, as Hamas leader in Gaza.

Now a so-called "civilian" leader, according to the US State Department – which designated Sinwar a terrorist in 2015 – Sinwar was a founder of the forerunner to the Izz al-Din al-Qassam Brigades. In 1988, he was arrested for his terrorist activity and was sentenced to serve four life terms due to his terrorism and the murder of two Israeli soldiers. He served 23 years before being released by Israel under a prisoner swap arrangement<sup>23</sup>.

Upon his election, a former Israeli intelligence agent Yaron Blum told media "he will do all he can to carry out terror attacks"<sup>24</sup>.

Despite his lengthy prison stint, it seems Sinwar has not relinquished violence. The former militia man was seen at the violent border demonstrations encouraging young Gazans into battle.

*The New York Times* reported Sinwar told youngsters: "We would rather die as martyrs than die out of oppression and humiliation ... We are ready to die, and tens of thousands will die with us." He did not deny that Hamas had sent its militia to the border to face Israeli soldiers and compared Gaza to a "time bomb" ready to explode<sup>25</sup>.

It seems incongruous that an organisation with Hamas' history of activity and a key leader like Sinwar, whose background is completely in the banned military wing, is not listed.

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<sup>22</sup> Ibid

<sup>23</sup> Office of the Spokesperson 'Terrorist designations of Yahya Sinwar, Rawhi Mushtaha and Muhammed Deif' *US Department of State*, September 8 2015  
<https://web.archive.org/web/20170114025502/https://www.state.gov/r/pa/prs/ps/2015/09/246686.htm> (accessed Aug 29 2018)

<sup>24</sup> Beaumont, P 'Election of new Hamas Gaza Strip leader increases fear of confrontation' *The Guardian*, February 14 2017,

<sup>25</sup> Halbfinder DM and Abuheweila, I 'As Gaza teeters on precipice, a Hamas leader speaks out' *New York Times*, May 10 2018

<https://www.nytimes.com/2018/05/10/world/middleeast/gaza-protests-yehya-sinwar.html> (accessed Aug 29 2018)

## Hezbollah report as a precedent

AIJAC, in its submission, is calling on the PJCIS to recommend that the Minister for Home Affairs extends the listing of Hamas' Izz al-Din al-Qassam Brigades to the entirety of Hamas.

There is a recent precedent for such a recommendation. In the PJCIS's *Review of the re-listing of Hizballah's External Security Organisation as a terrorist organisation under the Criminal Code* tabled in June 2018, the Committee made a recommendation that the "Government give further consideration to extending the listing to include the military wing of Hizballah".

AIJAC is calling on the PJCIS to make a similar recommendation to the Minister, encouraging the Government to extend the current, very limited, listing regarding Hamas.

## Conclusion

While much of the evidence provided in this submission comes from media and other public sources, AIJAC would call on the competent authority, in this case ASIO, to use its own resources to more seriously investigate the rationale behind listing only the Hamas' Izz al-Din al-Qassam Brigades rather than Hamas in its entirety, as a terrorist organisation under the *Criminal Code 1995*.

Even with publicly available information, it is clear that Hamas meets the criteria for listing an organisation. It continues to directly advocate, plan and engage in the undertaking of terrorist activities and terrorism. It is also proscribed by several like-minded countries.

Nor is there any evidence that the Hamas' Izz al-Din al-Qassam Brigades and its political leadership are in any way separate – to the contrary, the latter funds and controls the former according to all available public evidence.

AIJAC urges the PJCIS to recommend that the Minister of Home Affairs seeks additional information with a view to extending the listing of Hamas Brigade to the rest of Hamas.

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