

**The Economic Activity of Public Bodies (Overseas Matters) Bill**  
**International Centre of Justice for Palestinians**  
**Briefing to the Public Bill Committee**  
**September 2023**

**About the International Centre of Justice for Palestinians (“ICJP”)**

ICJP is an independent organisation of lawyers, academics and politicians that works to protect and support the rights of Palestinians and aims to protect their rights through the law.<sup>1</sup> ICJP was established with the objective of seeking justice and accountability for Israel’s longstanding, systematic violations of the rights of Palestinians under international law.

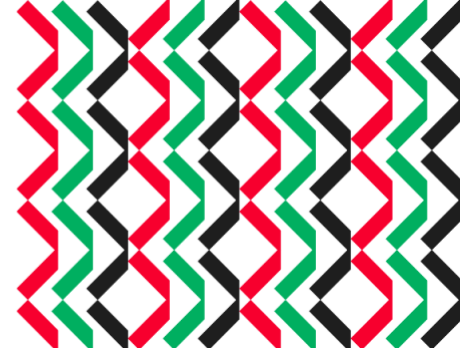
**SUMMARY**

1. This briefing provides a clause-by-clause analysis<sup>2</sup> of the Economic Activity of Public Bodies (Overseas Matters) Bill (the “Bill”). Is it intended to be used as a resource to assist the debate by members of the Public Bill Committee during the committee stage of the Bill between 5-14 September 2023. This briefing does not constitute legal advice and is not a legal opinion.
2. The briefing also sets out some supplementary background information relating to matters which ICJP wishes to bring to the attention of the Committee, and which may have not been dealt with elsewhere. These include the (1) origins and nature of the Palestinian Boycott, Divestment and Sanctions movement (Annex 1); (2) a summary of the recent UN and human rights organisations’ apartheid reports relating to Israel/Palestine (Annex 2); and (3) a brief overview of recent Anti-BDS legislation in the US (Annex 3).
3. The Bill was tabled on Monday 19 June 2023. It was debated at second reading on Monday 3 July 2023 and was subsequently sent to the Committee. The Committee is expected to report to the House by Thursday 14 September 2023.
4. The Bill is stated to be aimed at making “*provision to prevent public bodies from being influenced by political or moral disapproval of foreign states when taking certain economic decisions, subject to certain exceptions; and for connected purposes.*”

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<sup>1</sup> <https://www.icjpalastine.com/>

<sup>2</sup> Clauses 10, 11 and 13 have been omitted from the clause-by-clause analysis. This is because these clauses are procedural matters that explain how the new bill interacts with existing enforcement notices and legislation. As these matters deal primarily with administrative affairs, they do not warrant substantive analysis.



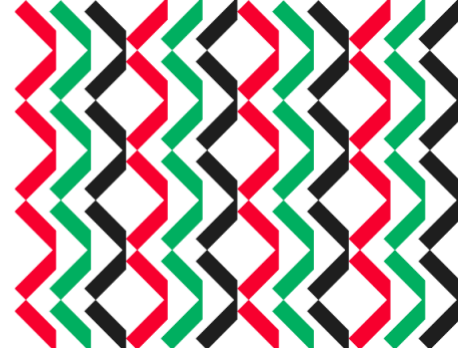
5. While the Bill is framed in such a way as to have general application to relevant procurement or investment decisions by public bodies, it is clear from clause 3 (7), as well as the public statements of the sponsors of the Bill <sup>3</sup> that the driving force behind the Bill is to:
  - (1) shield Israel from criticism for its longstanding occupation of the Occupied Palestinian Territory (the “OPT”) and the Occupied Syrian Golan Heights; <sup>4</sup> and
  - (2) suppress the Boycott, Divestment and Sanctions movement (the “BDS movement”), an anti-racist, non-violent movement initiated by over 170 Palestinian civil society organisations aimed at pressuring Israel to comply with its obligations under international law. <sup>5</sup> (For further information about the BDS movement, please see Annex 1 below).
6. It is ICJP’s view that the Bill is fundamentally and irredeemably antidemocratic. It is not possible to amend it to be compatible with human rights, international law and democratic values in a free society – the Bill which must be rejected in its entirety.
7. The Bill will prevent public bodies – including elected local councillors - from expressing their views and making ethical choices about how they spend and invest money, in violation of their rights to freedom of expression, conscience and belief. These freedoms are fundamental pillars of our democracy, and are guaranteed under European Convention on Human rights (“ECHR”), as incorporated into UK law by the Human Rights Act 1998 (“HRA 1998”).
8. There are widespread concerns that Bill would not only suppress campaigns in support of Palestinian rights, but could also stifle campaigns on a far wider range of issues such as the climate crisis, the arms trade, LGBTQ+ rights, environmental protection and the rights of oppressed minorities overseas, such as the Uyghur people. This is backed up by growing evidence from the US which shows that anti-BDS legislation is increasingly being used as a template to target the right to boycott more broadly (for further information on anti-BDS legislation in the US, please see Annex 3 below).
9. The Bill will permanently centralise power in the hands of Government ministers, stripping it from the wider public sector. This will enable ministers to maintain tight control over public bodies,

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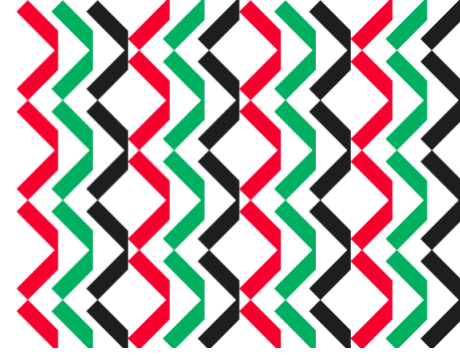
<sup>3</sup> Tory MPs voice concerns over tabled ban on public bodies boycotting Israel, Kiran Stacey, The Guardian, 24 June 2023, <https://www.theguardian.com/politics/2023/jun/24/tory-mps-michael-gove-bill-ban-public-bodies-israel-boycott>

<sup>4</sup> The Background Notes to the Queens Speech of May 2022 state that the Bill aims to prevent “public bodies from adopting their own approach to international relations” and “engaging in boycotts that undermine community cohesion”. The notes specifically mention Israel, stating, “There are concerns that such boycotts may legitimise and drive antisemitism as these types of campaigns overwhelmingly target Israel”. No evidence is provided for this claim. Background Briefing Notes to the Queen’s Speech, 10 May 2022, p.133  
[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/1074113/Lobby\\_Pack\\_10\\_May\\_2022.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1074113/Lobby_Pack_10_May_2022.pdf)

<sup>5</sup> ‘What is BDS?’, <https://bdsmovement.net/what-is-bds>.



essentially dictating to them which countries, territories, and issues they may take into account in their investment and procurement decisions. There is a significant risk that such decisions will be come to be based on the subjective political preferences and prejudices of individual Government ministers rather than objective and universally accepted norms of human rights and international law.



### Clause-by-clause analysis

#### **Clause 1: “Disapproval of foreign state conduct prohibited”**

10. Clause 1 sets out the general terms of the prohibition against public bodies taking procurement or investment decisions indicating “disapproval of foreign state conduct” (the “Clause 1 Prohibition”).

The relevant provisions state:

(2) “The decision-maker *must not have regard to a territorial consideration in a way that would cause a reasonable observer of the decision-making process to conclude that the decision was influenced by political or moral disapproval of foreign state conduct.*”

(3) A “*territorial consideration*” is a consideration that relates specifically or mainly to a particular foreign territory.

(4) “Foreign state conduct” means the conduct or policy of a foreign state authority.

(5) “Foreign territory” means a country or territory outside the United Kingdom.

(6) “Foreign state authority” means the government of, or any other public authority in, a foreign territory.

(7) The disapproval referred to in subsection (2) is disapproval on the part of—

(a) the decision-maker, or

(b) any person seeking to persuade the decision-maker to act in a certain way;

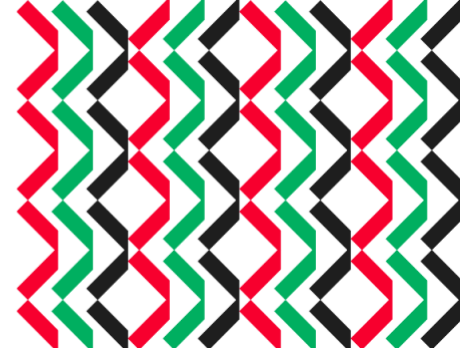
and those *references to the decision-maker include, in a case where the decision-maker is not an individual, the individuals who in fact make the decision for the decision-maker.*” [emphasis added].

11. This clause seeks to prevent public bodies from taking “moral or political disapproval” of foreign state conduct into account when making procurement or investment decisions. The clause is very poorly drafted and raises a number of questions and concerns.

#### **No definition of “moral or political disapproval”/conflation with human rights**

12. There is no definition in the Bill of what constitutes “moral or political disapproval”. It is odd that the drafters of the Bill chose not to define this key concept, which goes to the heart of how public bodies are supposed to act under the new legislation. No guidance is offered in the Explanatory Notes either as to its meaning. Moreover, clause 1 (2) introduces a “reasonable observer” test, which introduces even more uncertainty and subjectivity into what is already a badly drafted clause.

13. In many cases, boycott and divestment campaigns are driven by concerns over human rights abuses and other international law violations. It is of course possible that the Bill is actually aimed at preventing public bodies from complying with human rights (at least insofar as such compliance goes



against the foreign policy objectives of the current Government) without actually stating this explicitly – hence the use of the vague and nebulous term “moral or political disapproval”.

14. It is odd that the Bill makes no mention of human rights - universally agreed standards that the UK has committed to in numerous treaties.<sup>6</sup> Neither does it mention the UN Guiding Principles on Business and Human Rights (the “UNGPS”),<sup>7</sup> which the UK has committed to in its Action Plan of 2013.<sup>8</sup>
15. As organs of state, local authorities are required to comply with domestic and international human rights law, as well as the UNGPS, in the same way as central government.<sup>9</sup> The Bill is likely to seriously hamper the ability of public bodies to make ethical investment and procurement decisions, in compliance with their obligations under domestic and international law and policy.
16. Moreover, public bodies which procure from, or invest in, businesses that are potentially complicit in the commission of international crimes, such as those involved in the operation of illegal Israeli settlements in the OPT are in danger of providing material support to (aiding and abetting) the commission of war crimes. They also run the risk of benefitting from the proceeds of crime, which could mean they fall foul of the UK’s anti-money laundering legislation.
17. The Government needs clarify what it means by “moral or political disapproval”, and explicitly define this in the Bill. Specifically, it must distinguish “moral or political disapproval” from concern over human rights abuses and breaches of international law. The Bill must explicitly state that the Clause 1 Prohibition will not prevent public bodies from complying with human rights and international law, and indeed reaffirm the obligation of public bodies to do so.

### “Territorial considerations”

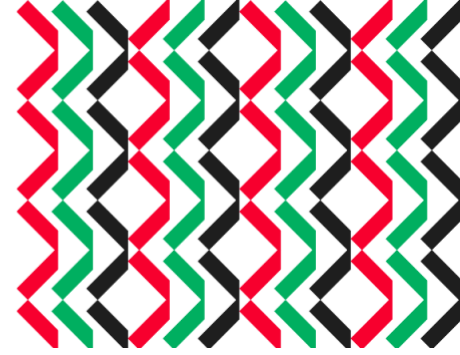
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<sup>6</sup> Human Rights: The UK’s international human rights obligations, Ministry of Justice, last updated 30 March 2022, <https://www.gov.uk/government/collections/human-rights-the-uks-international-human-rights-obligations>

<sup>7</sup> UN Guiding Principles on Business and Human Rights, available at: [https://www.ohchr.org/sites/default/files/documents/publications/guidingprinciplesbusinesshr\\_en.pdf](https://www.ohchr.org/sites/default/files/documents/publications/guidingprinciplesbusinesshr_en.pdf)

<sup>8</sup> UK National Action Plan on implementing the UN Guiding Principles on Business and Human Rights: progress update, May 2020, available at: <https://www.gov.uk/government/publications/implementing-the-un-guiding-principles-on-business-and-human-rights-may-2020-update/uk-national-action-plan-on-implementing-the-un-guiding-principles-on-business-and-human-rights-progress-update-may-2020>

<sup>9</sup> Lawyers for Palestinian Human Rights' briefing to local authorities on pensions investment and public procurement decision-making relating to companies operating in the occupied Palestinian territory and/or Israel, Lawyers for Palestinian Human Rights, July 2017, <https://lphr.org.uk/wp-content/uploads/2017/07/LPHR-briefing-to-LAPFs-and-LAs-on-pensions-investment-and-public-procurement-decision-making-relating-to-companies-operating-in-the-occupied-Palestinian-territory-and-or-Israel-July-2017.pdf>



18. Clause 1(3) further specifies that the foreign state conduct complained of must relate to a “territorial consideration”, that is, “*a consideration that relates specifically or mainly to a particular foreign territory*”.
19. The Bill therefore makes an arbitrary distinction between boycotts in respect of a foreign state’s conduct relating to territorial disputes, which are caught under the Bill, and conduct which does not relate to a territory, which are not. There is no logical explanation or justification under the Bill for why such a distinction should be drawn.
20. This provision leads to the illogical outcome that public bodies would be prevented from boycotting Myanmar for its persecution of the Rohingya people, or Israel for its crimes of apartheid and persecution in the Occupied Palestinian Territory (“OPT”) (as these relate to particular territories); however, there would be nothing to prevent public bodies from boycotting states such as Qatar for its repression of LGBTQ+ people, or Israel for its discrimination against Palestinians with Israeli citizenship (as such forms of internal repression do not relate to particular territories).

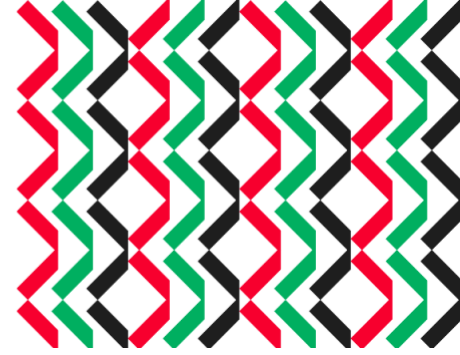
#### **No definition of a “decision-maker”**

21. There is no definition in the Bill of what constitutes a “decision-maker”. There is no guidance in the Explanatory Notes either on this point. As such, it is not at all clear from the Bill as currently drafted whether the Clause 1 Prohibition applies to (1) only public bodies; or (2) both public bodies and their employees or local councillors.
22. This is extremely important because if the Bill applies to individual employees, then such employees could potentially become individually liable for the regime of monetary penalties set out under clauses 6-11. This is likely to have a significant chilling effect on the human rights compliance of public bodies, since employees are likely to over-comply to avoid what could amount to potentially huge fines.<sup>10</sup>
23. Michael Gove has stated that the Bill will not apply to individuals;<sup>11</sup> however, this is in direct contradiction to clause 1(7), which provides “The disapproval referred to in subsection (2) is disapproval on the part of—(a) the decision-maker, or (b) any person seeking to persuade the decision-maker to act in a certain way, and those references to the decision-maker include, in a case

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<sup>10</sup> Council fined £145k for disclosing sensitive personal data about alleged gang members, Local Government Lawyer, 4 April 2019 [https://www.localgovernmentlawyer.co.uk/information-law/398-information-law-news/40248-council-fined-145k-for-disclosing-sensitive-personal-data-about-alleged-gang-members#:~:text=The%20Information%20Commissioner's%20Office%20\(ICO,Gangs%20Matrix'%20police%20intelligence%20database\).](https://www.localgovernmentlawyer.co.uk/information-law/398-information-law-news/40248-council-fined-145k-for-disclosing-sensitive-personal-data-about-alleged-gang-members#:~:text=The%20Information%20Commissioner's%20Office%20(ICO,Gangs%20Matrix'%20police%20intelligence%20database).)

<sup>11</sup> Letter from Michel Gove MP to Lisa Nandy MP, 23 June 2023, [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/1165458/SoS\\_DLUHC\\_to\\_Lisa\\_Nandy\\_-\\_23\\_June\\_2023.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1165458/SoS_DLUHC_to_Lisa_Nandy_-_23_June_2023.pdf)



*where the decision-maker is not an individual, the individuals who in fact make the decision for the decision-maker.” [emphasis added].*

24. While this clause is very poorly drafted and - perhaps intentionally - ambiguous, it implies that the decision-maker can indeed be an individual, or a group of individuals. Moreover, the monetary penalties scheme under clauses 6-11 refer to “a person” throughout. A “person” is not defined in the Bill; as such, this is likely to be interpreted by the courts to mean that the Bill will apply to natural persons, i.e., individual employees, as well as public bodies.

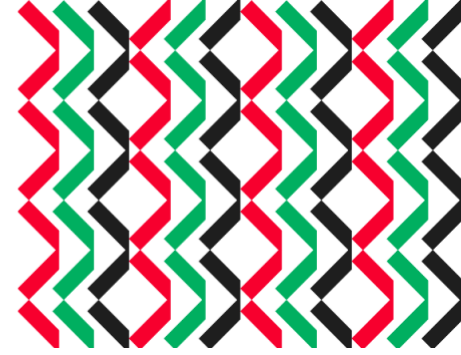
## **Clause 2: Application to procurement and investment decisions**

25. Clause 2 provides that the prohibition applies to procurement or investment decisions made by public bodies. Public bodies are defined as those to which Section 6 of the HRA 1998 applies.
26. The HRA 1998 defines public bodies widely to include “(a) a court or tribunal, and (b) any person certain of whose functions are functions of a public nature, but does not include either House of Parliament or a person exercising functions in connection with proceedings in Parliament” (s. 6 (3) HRA 1998).
27. This clause is very widely constructed. Accordingly, the Bill will catch the procurement and investment decisions of central government departments, local authorities, NHS trusts and universities, amongst others. It will also apply to anyone deemed to be exercising a public function, such as private sector companies, consultancies and individuals providing services to public bodies.
28. The Bill is therefore likely to have a severe and far-reaching impacts on the entire public sector and beyond, preventing public bodies from taking ethical considerations into account in their decision-making, and reversing decades of work in human rights due diligence and compliance and the development of a human rights culture.
29. Local authorities in the UK have a longstanding tradition of campaigning in support of human rights issues overseas, most notably during the South African Anti-Apartheid movement of the 1960-1980s.<sup>12</sup> As Richard Hermer KC put it in his opinion on the Bill, “had this Bill been in force during the 1980s this would have been very likely deemed unlawful and no exemption granted in light of the position of the then Prime Minister that Nelson Mandela was a terrorist and the apartheid regime was an ally.”<sup>13</sup>

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<sup>12</sup> BDS movement: Lessons from the South Africa boycott, Al Jazeera, 23 February 2016, [BDS movement: Lessons from the South Africa boycott | Human Rights | Al Jazeera](#)

<sup>13</sup> Richard Hermer KC publishes an opinion on the legal implications of the Economic Activity of Public Bodies (Overseas Matters) Bill, Matrix Chambers, 3 July 2023, para 22, <https://www.matrixlaw.co.uk/news/richard-hermer-kc-publishes-opinion-on-economic-activity-of-public-bodies-overseas-matters-bill/>



30. The Bill also puts the UK on a deeply regressive path compared to the rest of Europe, where there is now a ‘race to the top’ to enact mandatory due diligence for human rights and environmental, social, and corporate governance (“ESG”). Notably, this includes the new landmark EU Directive on corporate sustainability due diligence.<sup>14</sup>
31. Moreover, the Bill leads to the illogical outcome whereby public bodies will be prohibited from taking ethical or human rights concerns into account in their procurement decisions, while private sector companies will be free to comply with human rights and international law unfettered by the Bill (unless exercising a public function). This implies that the Government expects lower standards of corporate social responsibility from elected councils, public sector pension funds and other public bodies than they do of private businesses.<sup>15</sup>

### **Clause 3: Exceptions**

32. Clause 3 sets out exceptions to scheme, providing the Secretary of State and Cabinet Ministers with broad powers to regulate the subject matter of exceptions (clause 3 (2)); exempt certain public bodies from the Clause 1 Prohibition (clause 3 (3)); and exclude specific countries from the Clause 1 Prohibition under clause 3 (5).
33. This gives government ministers sole authority to decide which countries public authorities may boycott or divest from, removing such power from local authorities and the wider public sector. This is aimed at centralising power in the hands of government ministers and allowing them broad discretion over which countries and territories to boycott or divest from depending on their political views and foreign policy objectives. This has huge implications for the ability of public bodies to invest and procure ethically, in line with human rights and international law, resulting in the erosion of local democracy.
34. While clause 3 (5) allows ministers the power to exempt certain countries from the Bill, clause 3(7) creates an explicit carve-out for Israel – meaning that ministers cannot ever specify exceptions with regard to Israel, the OPT and the Occupied Syrian Golan Heights. Clause 3 (7) provides:

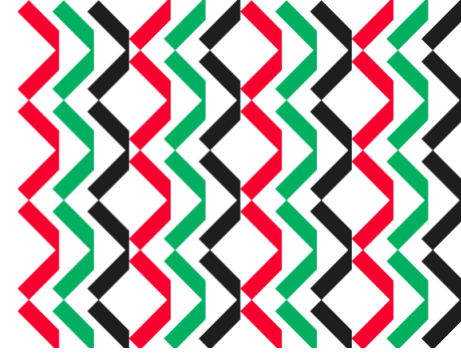
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<sup>14</sup> The EU Directive on [corporate sustainability due diligence](#), a proposal to introduce corporate environmental and human rights due diligence obligations, is currently at its final negotiation stages in the European Parliament. See also, the [French Duty of Vigilance Act](#) of 2017; the [German Supply Chain Due Diligence Act](#) which entered into force on 1 January 2023; and the [Dutch Responsible and Sustainable International Business Conduct Act](#).

<sup>15</sup> Will Sunak persevere with the Boycott Bill to outlaw local councils’ ethical investment decisions?

By Richard Burden, Balfour Project Trustee <https://balfourproject.org/boycott-bill-to-outlaw-local-councils-ethical-investment-decisions/>





“Regulations under subsection (5) may not specify, and regulations under subsection (2) may not result in a description of decision or consideration relating specifically or mainly to—

- (a) Israel,
- (b) the Occupied Palestinian Territories, or
- (c) the Occupied Golan Heights.”

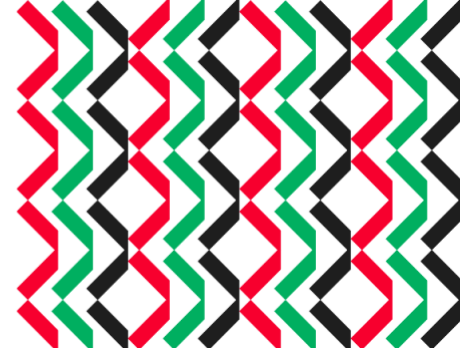
35. In effect, this is creating a permanent ban on public authorities ever boycotting Israel or its illegal settlements in the OPT and Occupied Syrian Golan Heights. In Gove’s own words, “it essentially ensures that primary legislation is required were the Government to seek to disapply the Bill from Israel or the Occupied Palestinian Territories.”<sup>16</sup>
36. This is deeply alarming and unprecedented. The Bill singles out Israel as the only country in the world that is granted special, and everlasting protection from boycotts in support of human rights regardless of whatever it may choose to do, or of the “facts on the ground” at any given time in future. Regardless of the Government’s assessment of the contemporary situation in Israel/Palestine, it is odd in the extreme for a government to fetter not only its own ability, but the ability of all future governments to institute boycotts against a particular a country, unless it introduces primary legislation.
37. This is particularly egregious in the context of the rapidly deteriorating human rights situation in the OPT. Palestinians continue to suffer from - *inter alia* - mass forced displacement; destruction and appropriation of their homes and land; denial of the right to return for millions of refugees and exiles; a 16 years long blockade and humanitarian crisis in Gaza, punctuated by repeated military assaults; a belligerent occupation in the West Bank characterised by military rule, discriminatory planning and zoning regimes, home demolitions, administrative detention, torture, unlawful killings, state-backed settler terrorism, severe movement and access restrictions and mass surveillance; and forced evictions and expulsions of Palestinians in East Jerusalem through discriminatory legal regimes aimed at maintaining a Jewish majority in the city.<sup>17</sup>
38. In March 2023, the Israeli Minister of Defence signed an agreement transferring a wide range of governmental powers, including control over land allocation and planning in the Occupied West Bank, to Israeli Finance Minister, Bezalel Smotrich. Smotrich is a far-right anti-Palestinian racist and extremist settler<sup>18</sup> who supports the complete annexation of the West Bank without citizenship rights

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<sup>16</sup> Supra, note 10.

<sup>17</sup> A Threshold Crossed; Israeli Authorities and the Crimes of Apartheid and Persecution, Human Rights Watch, 27 April 2022: [https://www.hrw.org/report/2021/04/27/threshold-crossed/israeli-authorities-and-crimes-apartheid-and-persecution#\\_ftn172](https://www.hrw.org/report/2021/04/27/threshold-crossed/israeli-authorities-and-crimes-apartheid-and-persecution#_ftn172).

<sup>18</sup> Lawmaker backs segregated Jewish, Arab maternity wards, Times of Israel, 5 April 2016, <https://www.timesofisrael.com/lawmaker-backs-segregated-jewish-arab-maternity-wards/>; Smotrich says there’s no Palestinian people, declares his family ‘real’ Palestinians, Times of Israel, 20 March 2023, <https://www.timesofisrael.com/far-right-lawmaker-bezalel-smotrich-declares-himself-his-family-real-palestinians/>



for Palestinians.<sup>19</sup> This has been deemed a dramatic shift in the structure of governance over the West Bank. Human rights organisations have asserted that, by transferring these powers to a civilian minister, Israel has quietly implemented *de jure* annexation of the West Bank.<sup>20</sup>

39. The human rights crisis in the OPT has become so severe and entrenched that, since 2017, the United Nations<sup>21</sup> and leading international human rights organisations such as Amnesty and Human Rights Watch<sup>22</sup> have concluded that Israel is guilty of the crime of apartheid against the Palestinian people (for further details on the contents of these reports, please see Annex 2 below).
40. However, instead of holding Israel to account for its gross human rights abuses and international crimes in the OPT, the UK Government has chosen to sacrifice local democracy in the UK in order to shield Israel, a foreign country, from accountability for its treatment of the Palestinians.
41. Moreover, the inclusion of the OPT and Golan Heights under clause 3 (7) conflates Israel with the territories it has illegally occupied since 1967. In effect, this section of the Bill demands that public bodies treat the settlements as a legitimate extension of Israel. If passed, it may well result in public bodies being forced to do business with Israeli settlements in the OPT.
42. Israeli settlements are illegal under the Fourth Geneva Convention of 1949. They are also a war crime under Additional Protocol 1 of the Geneva Conventions of 1977 and the Rome Statute of the International Criminal Court of 1998. The UK has incorporated the Geneva Conventions, Additional Protocol 1 and the Rome Statute into domestic law, thus establishing that the Israeli settlements are both illegal and constitute a war crime under domestic UK legislation. Accordingly, public bodies

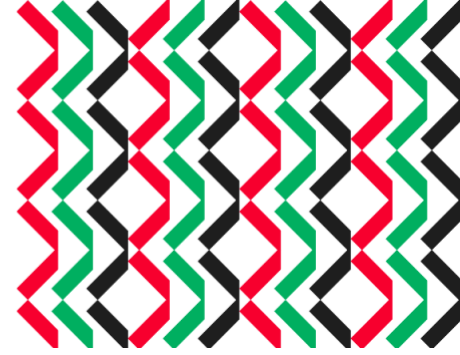
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<sup>19</sup> Smotrich is a staunch supporter of settlements, including the legalisation of settlement outposts on Palestinian private property, which are illegal even under Israeli law. He has recently spearheaded a plan to double the settler population in the West Bank, <https://www.haaretz.com/israel-news/2023-05-18/ty-article/.premium/far-right-israeli-minister-lays-groundwork-for-doubling-west-bank-settler-population/00000188-2de6-d6e4-ab9d-ed74a3e0000>; <https://www.972mag.com/israels-land-theft-law-is-just-the-tip-of-the-settlement-iceberg/>

<sup>20</sup> The agreement between Galant and Smotrich means legal annexation of the West Bank to Israel, Yesh Din, The Association for Civil Rights in Israel and Breaking the Silence, Press Release, 21 March 2023, <https://www.english.acri.org.il/post/joint-statement-on-transfer-of-power/>; Smotrich handed sweeping powers over West Bank, control over settlement planning, The Times of Israel, 23 February 2023, <https://www.timesofisrael.com/smotrich-handed-sweeping-powers-over-west-bank-control-over-settlement-planning/>

<sup>21</sup> Michael Lynk, *Report of the Special Rapporteur on the situation of Human Rights in the Palestinian territories occupied since 1967\**, 21 March 2022, available at: <https://www.un.org/unispal/document/report-of-the-special-rapporteur-on-the-situation-of-human-rights-in-the-palestinian-territories-occupied-since-1967-report-a-hrc-49-87-advance-unedited-version/>.

<sup>22</sup> Amnesty International, *Israel's apartheid against Palestinians: Cruel system of domination and crime against humanity*, available at: <https://www.amnesty.org/en/documents/mde15/5141/2022/en/>. For further reports see: B'Tselem, *A regime of Jewish Supremacy from the Jordan River to the Mediterranean Sea: This is Apartheid*, 12 January 2021, available at: [https://www.btselem.org/publications/fulltext/202101\\_this\\_is\\_apartheid](https://www.btselem.org/publications/fulltext/202101_this_is_apartheid); Human Rights Watch, *A Threshold Crossed: Israeli Authorities and the Crimes of Apartheid and Persecution*, April 2021, available at: [www.hrw.org/sites/default/files/media\\_2021/04/israel\\_palestine0421\\_web\\_0.pdf](https://www.hrw.org/sites/default/files/media_2021/04/israel_palestine0421_web_0.pdf).



which trade with or invest in Israeli settlements could potentially be complicit in the commission of war crimes.

43. This clause is in clear and flagrant violation of the UK's obligations under international law, including UN Security Council Solution 2334 of 2016, which requires all States to distinguish between the territory of the State of Israel and the territories occupied since 1967.<sup>23</sup>
44. The clause is also in direct breach of the UK's own longstanding official foreign policy position on Israeli settlements which is unequivocal:

*“The UK has a clear position on Israeli settlements: The West Bank, including East Jerusalem, Gaza and the Golan Heights have been occupied by Israel since 1967. Settlements are illegal under international law, constitute an obstacle to peace and threaten a two-state solution to the Israeli-Palestinian conflict. We will not recognise any changes to the pre-1967 borders, including with regard to Jerusalem, other than those agreed by the parties.”<sup>24</sup>*

45. This clause provides political support to Israeli annexationist goals towards the OPT and the Syrian Golan Heights, in violation of international criminal law.<sup>25</sup> As unequivocally stated by a group of independent UN experts, “Annexation or acquisition of territory by use of force or threat, is categorically prohibited under international law. It constitutes an act of aggression, a crime that falls under the jurisdiction of the International Criminal Court, and poses a threat to international peace and security.”<sup>26</sup>
46. As noted in the summary above, this is particularly egregious at a time when Israeli settler violence and terrorism in the West Bank has dramatically risen,<sup>27</sup> along with the mass forcible transfer of Palestinians from their homes and land. From the beginning of 2023 until 7 August 2023, Israel had

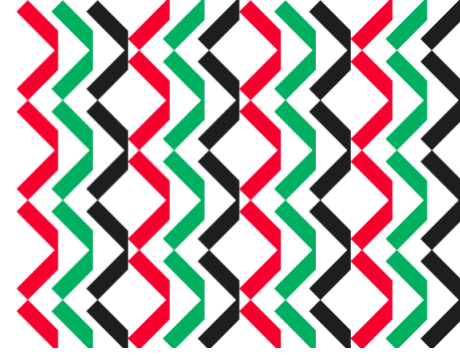
<sup>23</sup> UN Security Council Resolution 2334, S/RES/2334/2016, <http://unscr.com/en/resolutions/doc/2334>  
<http://unscr.com/en/resolutions/doc/2334>

<sup>24</sup> FCDO Guidance: Overseas business risk: Israel, Updated 16 June 2023 <https://www.gov.uk/government/publications/overseas-business-risk-israel/overseas-business-risk-israel-3#:~:text=The%20UK%20has%20a%20clear,to%20the%20Israeli%20Palestinian%20conflict>

<sup>25</sup> Judicial reform, boosting Jewish identity: The new coalition's policy guidelines, Times of Israel, 28 December 2022, which states that the top priority of Israel's governing coalition, as stated in its policy guidelines, is “*The Jewish people have an exclusive and inalienable right to all parts of the Land of Israel. The government will promote and develop the settlement of all parts of the Land of Israel — in the Galilee, the Negev, the Golan and Judea and Samaria* [emphasis added]”.  
<https://www.timesofisrael.com/judicial-reform-boosting-jewish-identity-the-new-coalitions-policy-guidelines/>

<sup>26</sup> International community must act to end Israel's annexation of occupied West Bank, including east Jerusalem, and defend international law: UN experts, UN Office of the High Commissioner for Human Rights, 26 July 2023,  
<https://www.ohchr.org/en/press-releases/2023/07/international-community-must-act-end-israels-annexation-occupied-west-bank>

<sup>27</sup> Palestinian fears grow amid rising Israeli settler attacks, BBC News, Yolande Knell, 28 August 2023,  
<https://www.bbc.co.uk/news/world-66620250>



demolished at least 626 Palestinian owned structures in the OPT, forcibly displacing at least 963 Palestinians.<sup>28</sup>

47. Entire Palestinian communities in the West Bank are now being ethnically cleansed as a direct result of Israeli state-backed settler terrorism. On 28 July, one of the two remaining Palestinian households of Al Baqa'a (in Jerusalem), comprising eight people, including five children and a pregnant woman, were forced to flee their homes after weeks of harassment, intimidation and physical assaults by Israeli settlers.<sup>29</sup> On 8 August, the remaining families of Ras al Tin, a herding community in Area C of the West Bank, also fled due to violence and intimidation by Israeli settlers. They were one of 12 households, or 89 people, including 39 children who were forced to leave the community.<sup>30</sup>

#### **Clause 4: Related prohibition on statements**

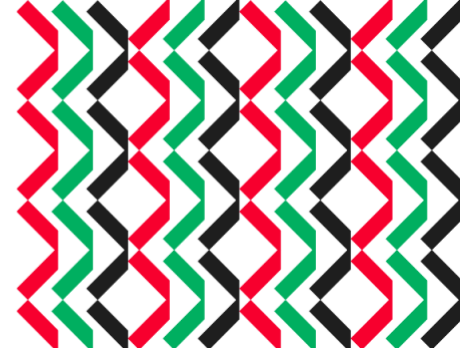
48. Under clause 4, public sector employees who are responsible for making decisions on procurement or investment are prohibited from making statements that they intend to support a boycott campaign, or even that they would support a boycott campaign were it legal to do so.
49. Clause 4 provides:
- (1) "A person who is subject to clause 1 must not publish a statement indicating (in whatever terms)—
    - (a) that the person intends to act in a way that would contravene clause 1, or
    - (b) that the person would intend to act in such a way were it lawful to do so."
50. This effectively creates an extraordinary, double-binding gagging order which not only prevents public sector employees and elected local representatives from expressing direct support for boycott or divestment campaigns, but even from expressing hypothetical support.
51. This clause is highly likely to violate Article 10 of the ECHR on freedom of expression. This is even more likely to be the case with respect to the ban on hypothetical statements under clause 4(1)(b), which is unprecedented.
52. The right to free expression is not absolute, and may be restricted under certain conditions as set out under Article 10 (2) ECHR, such as whether the interference is 'prescribed by law' and 'necessary in

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<sup>28</sup> Protection of Civilians Report | 25 July – 7 August 2023. UN OCHA, 11 August 2023, <https://www.ochaopt.org/poc/25-july-7-august-2023>

<sup>29</sup> Norwegian Refugee Council says Israeli settler attacks forcibly transfer Jerusalem community, Wafa, 13 July 2023, <https://english.wafa.ps/Pages/Details/136753>

<sup>30</sup> <https://ochaopt.org/content/ras-al-tin-s-remaining-89-residents-leave-amid-increasing-settler-violence>



a democratic society’.<sup>31</sup> However, Richard Hermer KC has opined in his legal opinion on the Bill that it is “vanishingly unlikely that the terms of Clause 4 could fall within an established Article 10(2) justification”.<sup>32</sup>

53. While the Government has indicated that the Bill will not apply to individuals, and therefore, that the ECHR does not apply, this is not reflected in the drafting of Clause 4 as it currently stands, which clearly refers to “a person”. Moreover, as noted above, the drafting of clause 1 (7) implies that decision-makers can indeed be individuals.

### **Clause 5: Legal proceedings**

54. Clause 5 explicitly provides that where a public body has made a decision or statement (i.e., in support of boycott) this decision may be enforced by judicial review brought by an interested third party. A judicial review may be brought by anyone who has been permitted by the court to make the application. Permission will only be given if the applicant is deemed to have “sufficient interest” in the matter (i.e., “standing”).
55. Judicial review is already available as a remedy where an affected party can show that they have been affected by a decision of a public authority. Moreover, there is already a comprehensive enforcement mechanism for breaches of the Clause 1 Prohibition under clauses 6-11 of the Bill.
56. The Bill takes the astonishing step of actually giving “interested” third parties, such as pressure groups, additional rights to bring judicial review claims (s. 5(2)). This would allow, for example, contractors affected by a boycott decision, and potentially also lobby groups to enforce penalties against public bodies and/or their employees as well as local councillors.
57. It is unclear why the Government is seeking to extend the scope of judicial review at a time when it is frequently critical of what it has deemed the “excessive use” of judicial review, and has sought to circumscribe access to judicial review.<sup>33</sup>

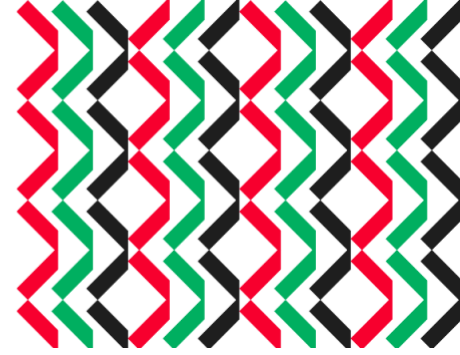
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<sup>31</sup> Article 10(2) ECHR provides: “The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.”

[https://www.echr.coe.int/documents/d/echr/convention\\_ENG](https://www.echr.coe.int/documents/d/echr/convention_ENG)

<sup>32</sup>Richard Hermer KC publishes an opinion on the legal implications of the Economic Activity of Public Bodies (Overseas Matters) Bill, Matrix Chambers, 3 July 2023, <https://www.matrixlaw.co.uk/news/richard-hermer-kc-publishes-opinion-on-economic-activity-of-public-bodies-overseas-matters-bill/>

<sup>33</sup> Why does the government want to reform judicial review? The Guardian, Haroon Siddique, 7 Aug 2022 <https://www.theguardian.com/law/2022/aug/07/why-does-the-government-want-to-reform-judicial-review>



58. The Bill extends judicial review rights and seems to be actively encouraging certain groups to bring court action. They are even given express powers under the Bill to access the high court where a case is not amenable to judicial review (clause 5 (3) to 5 (9)). These provisions may have been intended to permit interested third parties to bypass the enforcement mechanism under the Bill, due to the length of time it would take, and bring injunction proceedings aimed at preventing public bodies from making public statements or passing resolutions in support of boycott or divestments campaigns. It is unclear from the face of the Bill or the Explanatory Notes who these provisions are intended to support and why.

#### **Clause 6: Enforcement Authorities**

59. Clause 6 provides that the enforcement authority is the Secretary of State or the Treasury, with certain exceptions (e.g., for higher education, the enforcement authority is the Office for Students). This clause gives the Secretary of State and the Treasury new powers to police the procurement activities of public sector bodies, including individuals.

#### **Clause 7: Information notices:**

60. This clause provides that the enforcement authority may require an “offending” public sector employee or local councillor a written notice (an “information notice”) requiring him/her to provide the authority with information relating to the offence. The offender is required to hand over any and all information which “is likely to be useful to the enforcement authority” in determining whether the person has contravened the Clause 1 Prohibition (clauses 7 (3) (b) and 7 (4)(b)). As such, it is exceptionally broad.

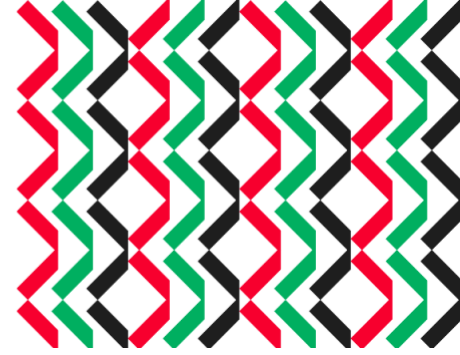
61. According to Richard Hermer KC, the Bill appears to provide enforcement authorities with “unprecedented powers to compel a person to hand over materials that would otherwise be protected by legal professional privilege...handing the enforcement authorities more powers than those enjoyed by anti-terrorism police and the security services”.<sup>34</sup>

#### **Clause 8: Compliance notices:**

62. This clause allows the Treasury to send a written notice to the person if it is satisfied that a person has contravened, or is likely to contravene the Clause 1 Prohibition.

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<sup>34</sup> Supra note. 21, para. 37.



### **Clause 9 Monetary penalties:**

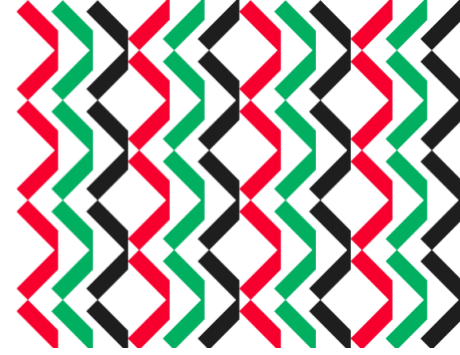
63. This clause gives the Treasury the power to impose a monetary penalty on the decision-makers at public authorities. The Secretary of State has the power to set the amounts of such penalties through secondary legislation under Clause 10 (1).
64. Clauses 6-11 introduce a new penalty scheme, analogous to that imposed by the Data Protection Act of 2018 (“DPA 2018”), which will allow the Secretary of State or the Treasury to impose fines on public bodies and individuals who are deemed to breach the Clause 1 Prohibition (sections 9-10). The Bill does not specify how much these fines could amount to, but if we look at fines under the DPA 2018, we see that these fines can be substantial, potentially run into hundreds of thousands of pounds.<sup>35</sup> This presents a powerful threat to free speech and debate in public bodies and has serious implications for the freedom of expression of elected local officials.
65. The Bill also appears to create individual liability on the part of public sector employees, which can be recovered as a civil debt with interest. This unfairly places them at personal financial risk during the course of their duties. Given the risk of individual penalties introduced by this Bill, decision-makers are likely to over-comply, resulting in a chilling effect and an erosion of human rights compliance and culture within the public sector as a whole.
66. It is notable that the penalty scheme under clauses 6-11 of the Bill does not include an appeal mechanism.

### **Clause 12: Application of prohibitions to local government pension schemes**

67. Clause 12 specifies that the Clause 1 Prohibition applies to fund investment decisions made by the scheme managers of funded local government schemes. Clause 13 (2) provides that the enforcement authority under the Bill for funded local government schemes will be the Pensions Regulator.
68. There have been previous attempts by the Government to prevent local government schemes from taking ethical investment decisions in support of human rights. Notably, the Secretary of State’s 2016 Guidance for Local Government Pension Schemes (LGPS) had included a provision that pension scheme fund managers should not pursue policies that were contrary to UK foreign or defence policy.

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<sup>35</sup> Council fined £145k for disclosing sensitive personal data about alleged gang members, Local Government Lawyer, 4 April 2019 ([https://www.localgovernmentlawyer.co.uk/information-law/398-information-law-news/40248-council-fined-145k-for-disclosing-sensitive-personal-data-about-alleged-gang-members#:~:text=The%20Information%20Commissioner's%20Office%20\(ICO,Gangs%20Matrix'%20police%20intelligence%20database\)](https://www.localgovernmentlawyer.co.uk/information-law/398-information-law-news/40248-council-fined-145k-for-disclosing-sensitive-personal-data-about-alleged-gang-members#:~:text=The%20Information%20Commissioner's%20Office%20(ICO,Gangs%20Matrix'%20police%20intelligence%20database).)).



In 2020, the Supreme Court overturned the guidance, ruling that ministerial guidance given to LGPS funds on how to discharge their investment duties was unlawful.<sup>36</sup>

69. However, the decision in this case was effectively reversed by the Public Service Pensions and Judicial Offices Act 2022 (“PSJOA 2022”), which amended the Public Service Pensions Act 2013 to expressly provide that the Government may give the scheme managers of public sector pension schemes guidance on investments, “including guidance or directions on investment decisions which it is not proper for the scheme manager to make in light of UK foreign and defence policy” (s. 100(2) PSJOA 2022).
70. As such, it appears that clause 12 of the Bill is intended to further bolster the power of the Government to prevent LGPS from taking ethical investment decisions, insofar such as decisions do not accord with the Government’s foreign policy objectives. This appears to be the case even where this could place the LGPS in breach of their international law obligations.
71. It is worth noting that the provisions of the Bill do not apply to pension schemes other than local government pension schemes, by virtue of Part 1 of the Schedule, “Pension Schemes”. This means that public sector employees will be unfairly deprived of their rights to choose how their pension funds are invested, breaching their rights to freedom of conscience and belief, while members of private sector and other pension schemes will not be so affected.

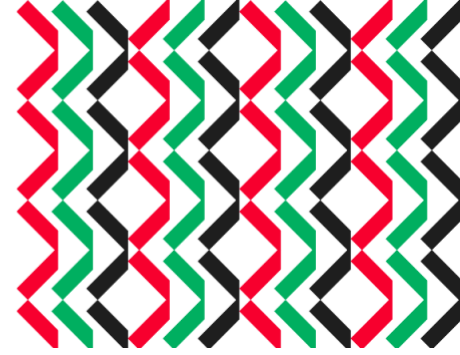
#### **Clause 14: Relationship with procurement legislation**

72. Clause 14 (1) provides: The powers conferred by Clause 19(3)(b) and 20(5)(c) and (d) of the Procurement Act 2023 (disregarding or excluding tenders from overseas non-treaty-state suppliers) are subject to the Clause 1 Prohibition.
73. The purpose of this clause is not entirely clear, but it may be intended to ensure that public sector bodies cannot boycott goods or services from illegal Israeli settlements in the OPT by ensuring that procurement decisions regarding “non-treaty-state suppliers” are subject to the Clause 1 Prohibition.
74. The new Procurement Bill is currently in its final amendments stage in Parliament and is due to come into force during 2024.<sup>37</sup> Clause 18 of the draft Bill (*Award of public contracts following a*

<sup>36</sup> R (on the application of Palestine Solidarity Campaign Ltd and another) (Appellants) v Secretary of State for Communities and Local Government (Respondent), [2018] EWCA Civ 1284 <https://www.supremecourt.uk/cases/uksc-2018-0133.html>; R (on the application of Palestine Solidarity Campaign Ltd and another) (Appellants) v Secretary of State for Housing, Communities and Local Government (Respondent), [2020] UKSC 16 On appeal from: [2018] EWCA Civ 1284, <https://www.supremecourt.uk/cases/docs/uksc-2018-0133-judgment.pdf>

<sup>37</sup> <https://bills.parliament.uk/publications/46439/documents/1777>; <https://bills.parliament.uk/bills/3159>





*competitive procedure*) provides that public authorities may disregard any tender from a supplier that is not a UK supplier or treaty state supplier when awarding public contracts following a competitive tender process.

75. Clause 14 (1) of the Bill will mean that public sector decision-makers will be subject to the Clause 1 Prohibition when making such a decision to disregard such a supplier. This may be intended to “catch” decisions made by public bodies not to award contracts to suppliers based in illegal Israeli settlements in the OPT on the basis that they are not UK suppliers or treaty state suppliers.
76. Clause 14 (2) provides: “The powers conferred by that Act in relation to excludable suppliers are also subject to clause 1 in a case where the exclusion ground relied on is that set out in paragraph 11 of Schedule 7 to that Act (professional misconduct).”
77. This is a reference to exclusion of suppliers under the new Procurement Bill for professional misconduct. Schedule 7 of the Procurement Bill sets out discretionary exclusion grounds for public bodies in their procurement decisions. These include suppliers who may be engaged in professional misconduct, which includes “*a serious breach of ethical or professional standards applicable to the supplier (whether those standards are mandatory or not)*”. It could be argued that a company or business that operates in, or is complicit in war crimes or gross human rights abuses overseas, is guilty of professional misconduct.
78. The relevant clause provides:

*Procurement Bill, Schedule 7, Clause 12(1) Professional misconduct*

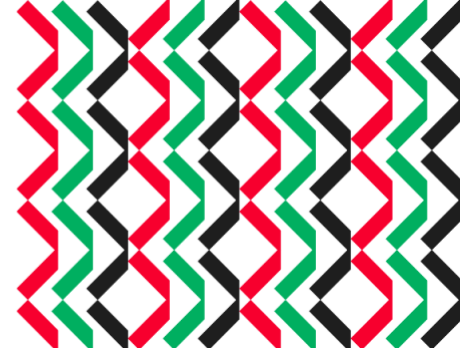
“12 (1) A discretionary exclusion ground applies to a supplier if the decision-maker considers that the supplier or a connected person has engaged in professional misconduct which brings into question the supplier’s integrity.

(2) A discretionary exclusion ground applies to a supplier if a court, regulator or other authority has ruled that the supplier or connected person has engaged in such professional misconduct.

(3) “Professional misconduct” includes conduct involving—

- (a) dishonesty;
- (b) impropriety;
- (c) *a serious breach of ethical or professional standards applicable to the supplier (whether those standards are mandatory or not)*. [emphasis added]”

79. This means that public sector decision-makers will be bound by the Clause 1 Prohibition (that is, they cannot have regard to a third party’s “moral or political disapproval of a foreign state’s conduct in relation to a particular territory”) when making a decision to exclude a supplier on the grounds of



professional misconduct under the new Procurement Act due to *a serious breach of ethical or professional standards applicable to the supplier*”.

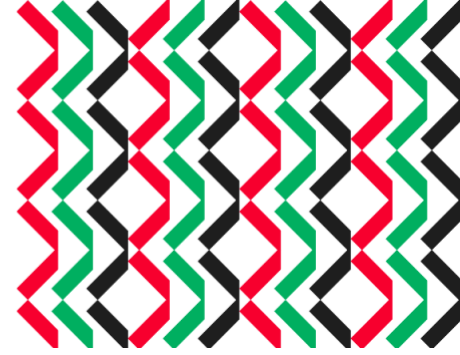
80. The peculiarly specific and targeted drafting of clause 14 (2) of the Bill suggests that it is aimed at closing off this avenue of accountability which could have allowed decision-makers to exclude companies involved in human rights violations overseas from their procurement decisions on the grounds that such violations constitute breaches of ethical or professional standards under the new Procurement Act.
81. Clause 14 (3) further provides that the Clause 1 Prohibition also applies to decision of Ministers to add or remove excluded suppliers from the “debarment list”, that is, a list of excluded suppliers maintained by the Minister pursuant to clause 59 of the Procurement Bill.

#### **Clause 15: Related changes to local government contracting restrictions**

82. This clause introduces some changes to the Local Government Act 1988 (“LGA 1988”). LGA 1988 was introduced during Margaret Thatcher’s government to prevent local authorities from boycotting companies doing business with the South African apartheid regime.<sup>38</sup>
83. Clause 17 (1) of the LGA 1988 provides that public authorities may not take “non-commercial” matters into account when deciding to award public supply or works contracts. These include “*the country or territory of origin of supplies to, or the location in any country or territory of the business activities or interests of, contractors*” (clause 17(5)(e)).
84. Thus, it is apparent that public bodies are already prohibited from taking “*the country or territory of origin of supplies to, or the location in any country or territory of the business activities or interests of, contractors*” into account in their investment or procurement decisions under the LGA 1988.
85. The Bill removes this requirement. The Explanatory Notes to the Bill provide: “Clause 15(1) and (2) repeal the restrictions on local authorities taking account of territory of origin in procurement, which the ban in section 1 of this Act replaces.”
86. This clause appears to be aimed at removing the blanket ban on taking the country or territory of suppliers or contractors into account under the LGA 1988 and replacing it with a new provision under

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<sup>38</sup> PPN 11/20 and reserving contracts for local suppliers – a sting in the tail for local authorities, 8 January 2021, available at <https://www.anthonycollins.com/insights/ebriefings/ppn-11-20-and-reserving-contracts-for-local-suppliers-a-sting-in-the-tail-for-local-authorities/>. See also “No Boycotts! The Government consults on changes to the revised Best Value Statutory guidance, 25 January 2018, available at <https://www.anthonycollins.com/insights/ebriefings/no-boycotts-the-government-consults-on-changes-to-the-revised-best-value-statutory-guidance/>.

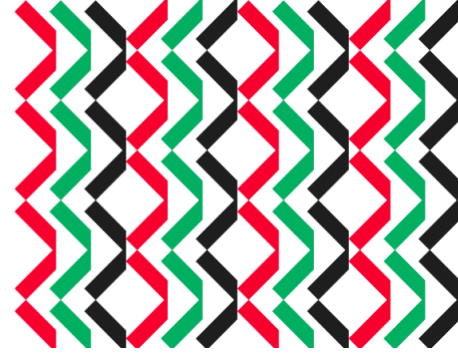


the Bill which would give Government ministers the power to pick and choose which countries or territories public bodies may boycott or divest from, in line with the foreign policy objectives of that Government.

87. Moreover, clause 15 (3) of the Bill provides: “*The Secretary of State may, for the purpose set out in subsection (4), by regulations provide for certain matters to be treated as falling outside— (a) Clause 17(5)(f) of the Local Government Act 1988 (political, industrial or sectarian affiliations).*”
88. While Clause 17(5)(f) of LGA 1988 defined “*political, industrial or sectarian affiliations*” as non-commercial matters, meaning that public bodies were not allowed to take them into account when making procurement decisions, clause 15 (3) of the Bill will give the Secretary of State powers to regulate that public bodies *may* take such considerations into account, once again, presumably if they align with the political objectives or foreign policy of the Government.
89. Once again, the changes under clause 15 of the Bill have the effect of removing the ability of public bodies to make ethical investment and procurement decisions in their own right, reserving this power to central government alone. It also gives Government ministers additional and more flexible powers to determine which countries, territories, and even which political, industrial or sectarian affiliations may be boycotted, powers which were not even envisaged by the LGA 1988.

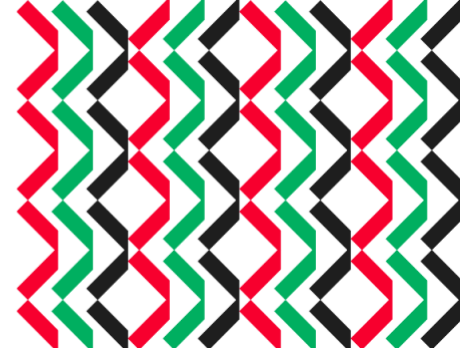
#### **Schedule: Exceptions for certain bodies and functions**

90. The schedule to the Bill sets out various exceptions to the Clause 1 Prohibition. They include: Security and intelligence services, Defence contracts, Pension Schemes, Financial and practical matters, National security, International law, Bribery, Labour-related misconduct, Competition law infringements and Environmental misconduct. These exceptions are extremely limited in scope.
91. The international law exception is very brief and appears to have been added as an afterthought. It provides: “Section 1 does not prevent regard to a consideration so far as the decision-maker reasonably considers it relevant to whether the decision (or 5 anything done further to it) would place the United Kingdom in breach of its obligations under international law.”
92. This exception is somewhat ambiguous; it does not clarify which bodies of international law it refers to, such as human rights, humanitarian or criminal law. Moreover, there is no reference to any of the most serious international crimes, including war crimes, crimes against humanity, apartheid, genocide, or aggression.
93. It is not clear how this exception would be compatible with the Clause 1 Prohibition, and indeed the driving force behind the rest of the Bill, which appears to be aimed at restricting the ability of public bodies to comply with international law (which includes human rights). It may have been included to



enable the Government to publicly state that the bill is compatible with human rights and international law, while its effect in practice would be likely to be the opposite.

94. This clause sets an exceptionally high threshold for international law breaches, since the act must place the UK itself in breach of international law, rather than the public body itself. Thus, a decision of a local authority, for example, not to procure good from Israeli settlements may fall foul of the Clause 1 Prohibition. At the same time, the authority may not be able to rely on the international law exception, as the Government could argue that the size of the transaction was insufficient to place the United Kingdom as a whole, in breach of its international law obligations, (even if the authority felt itself to be in breach of its own obligations).



## **Annex 1: What is the Boycott, Divestment and Sanctions Movement?**

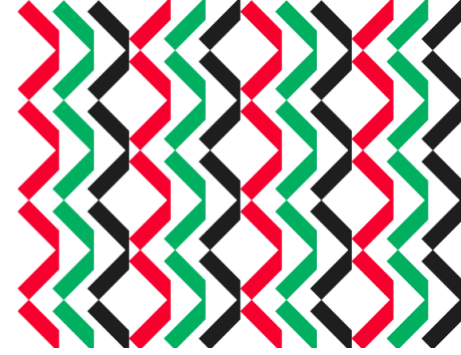
1. In this section, we provide a brief overview of the BDS movement.
2. The BDS movement is a Palestinian-led movement for freedom, justice and equality.<sup>39</sup> Launched in 2005 by 170 Palestinian civil society organisations, the BDS movement has had significant impact worldwide in challenging Israel’s systematic violations of Palestinian human rights.<sup>40</sup>
3. For almost 75 years, entire Palestinian communities have suffered from the gross and systematic violations of their rights under international law, arising from forced displacement, the destruction of property and confiscation of land to make way for Israeli settlements, torture, unlawful killings, state-backed settler violence, administrative detention and severe restrictions on movement.
4. The BDS movement was inspired by the South African anti-apartheid movement, as a peaceful means to pressure Israel to comply with its obligations under international law by meeting three demands:<sup>41</sup>
  - 1) Ending its occupation and colonization of all Arab lands (incorporating the West Bank, including East Jerusalem, Gaza and the Syrian Golan Heights) and dismantling the Wall.
  - 2) Recognizing the fundamental rights of the Arab-Palestinian citizens of Israel to full equality.
  - 3) Respecting, protecting and promoting the rights of Palestinian refugees to return to their homes and properties as stipulated in UN Resolution 194.<sup>42</sup>
5. The BDS movement aims to hold companies, institutions and governments that are complicit in Israel’s regime of oppression of Palestinian rights and violations of international law accountable. It is an inclusive, anti-racist human rights movement that is opposed to all forms of discrimination, including antisemitism and Islamophobia. The BDS movement does not target individuals or entities based on race, religion or national identity. It strictly targets companies and institutions based on complicity in denying Palestinian rights.

<sup>39</sup> ‘What is BDS?’, available at <https://bdsmovement.net/what-is-bds>.

<sup>40</sup> Impact, BDS Movement website, available at <https://bdsmovement.net/impact>. See also “Growth of a Movement”, Visualising Palestine website (<https://visualizingpalestine.org/collective-action-timeline>); and US BDS Victories, (<https://uscpr.org/activist-resource/boycott-divestment-and-sanctions/bdswins/>).

<sup>41</sup> BDS, *What is BDS*, available at: [//bdsmovement.net/what-is-bds](https://bdsmovement.net/what-is-bds)

<sup>42</sup> UN General Assembly Resolution 194 (III), Article 11, available at <https://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/IP%20ARES%20194.pdf>

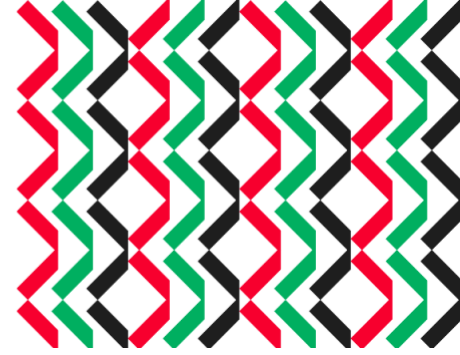


## **Annex 2 – Apartheid in relation to the State of Israel**

1. In this section, we highlight key findings from successive United Nations Special Rapporteurs on the occupied Palestinian territories, the United Nations, Human Rights Watch, B’Tselem, Amnesty International, and Al Haq’s apartheid reports.
2. Since 2017, the United Nations and a number of leading international, Palestinian and Israeli human rights organisations have published reports concluding that Israel is guilty of the crime of apartheid towards the Palestinian people.
3. These authoritative and fully documented reports, based on international law and authored by distinguished legal experts and professional international organisations, all concluded that Israel has either 1) established an apartheid regime over the Palestinian people as a whole, or 2) established and maintained policies and practices towards the Palestinian people that amount to the crimes of apartheid and persecution in certain areas under its control.
4. These findings follow decades of legal research, activism and campaigning by Palestinians themselves who have suffered under Israel’s racist and ethno-nationalistic laws and policies for over 75 years and have lived experience of their devastating effects.
5. With regard to the apartheid findings, two initial observations should be made. Firstly, while the term “apartheid” has often been used in a descriptive sense by politicians and public intellectuals to draw attention to the situation in Israel/Palestine,<sup>43</sup> these reports constitute the first detailed and rigorous legal analyses of Israeli laws, policies and practices towards the Palestinian people based on the definition of apartheid under international law.
6. Secondly, although the crime originated from the South African context, the international community has largely moved away from analysing apartheid with exclusive reference to South Africa, recognising (1) the universal character of the prohibition against apartheid; and (2) that apartheid practices will necessarily differ from country to country. Indeed, according to Professor Michael Lynk, former UN Special Rapporteur for the oPt, *“The 1998 Rome Statute of the International Criminal Court came into law after the collapse of the old South Africa. It is a forward-looking*

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<sup>43</sup> These include distinguished voices such as the former Secretary-General of the United Nations, Ban Ki-moon: US should back a new approach to the Israeli-Palestinian conflict, Ban Ki-Moon, Financial Times, 29 June 2021, <https://www.ft.com/content/c1210a21-0209-4c4b-8cb3-cfa31c3fdee0>; and Nobel Laureate Desmond Tutu: When Desmond Tutu stood up for the rights of Palestinians, he could not be ignored, Chris McGreal, The Guardian, 30 December 2021: <https://www.theguardian.com/commentisfree/2021/dec/30/desmond-tutu-palestinians-israel>



*legal instrument which prohibits apartheid as a crime against humanity today and into the future, wherever it may exist.”*<sup>44</sup>

7. The prohibition against apartheid is well-established as a matter of both customary and conventional international law. It is now considered a jus cogens norm, a peremptory norm of international law from which no derogation is permitted.
8. Apartheid is a crime against humanity pursuant to Article 1 of the International Convention on the Suppression and Punishment of the Crime of Apartheid of 1973 (the “Apartheid Convention”)<sup>45</sup> and articles 7(1)(j) and 7(2)(h) of the Rome Statute of the International Criminal Court of 1998 (the “Rome Statute”).<sup>46</sup>
9. Under the Rome Statute, apartheid is defined as: “*inhumane acts... committed in the context of an institutionalized regime of systematic oppression and domination by one racial group over any other racial group or groups and committed with the intention of maintaining that regime.*” The Apartheid Convention adopts a similar definition: “*inhuman acts committed for the purpose of establishing and maintaining domination by one racial group of persons over any other racial group of persons and systematically oppressing them.*”
10. The first UN report which made the apartheid finding was UN Economic and Social Commission for Western Asia’s (ESCWA) report “Justice for the Palestinian people: fifty years of Israeli occupation: The question of apartheid”, co-authored by Professor Richard Falk and Professor Virginia Tilley in 2017.<sup>47</sup>
11. This report concluded, on the basis of scholarly enquiry and overwhelming evidence, that Israel had established and maintains a regime of apartheid over the Palestinian people as a whole. It had achieved this by firstly, strategically dividing and fragmenting the Palestinian people into different geographic regions administered by different sets of laws, weakening their capacity to mount a

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<sup>44</sup> Israel’s 55-year occupation of Palestinian Territory is apartheid – UN human rights expert, 25 March 2022, UN Office of the High Commissioner for Human Rights:

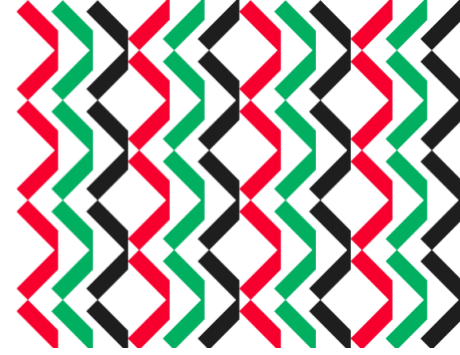
<https://www.ohchr.org/en/press-releases/2022/03/israels-55-year-occupation-palestinian-territory-apartheid-un-human-rights#:~:text=%E2%80%9CThere%20is%20today%20in%20the,UN%20Special%20Rapporteur%20for%20the>

<sup>45</sup> United Nations International Convention on the Suppression and Punishment of the Crime of Apartheid:

<https://treaties.un.org/Pages/showDetails.aspx?objid=0800000280035e63>

<sup>46</sup> Rome Statute of the International Criminal Court of 1998: <https://www.icc-cpi.int/sites/default/files/RS-Eng.pdf>

<sup>47</sup> Israeli Practices towards the Palestinian People and the Question of Apartheid, UN ESCWA, 2017. The report was removed from the ESCWA website due to threats and pressure from US and Israeli politicians, according to co-author Richard Falk in his blog. However it can be accessed at: <https://oldwebsite.palestine-studies.org/sites/default/files/ESCWA%202017%20%28Richard%20Falk%29%2C%20Apartheid.pdf>; the relevant article on Richard Falk’s blog can be accessed at: <https://richardfalk.org/2022/02/19/on-israel-as-an-apartheid-state-an-interview-with-richard-falk/>



unified resistance; and secondly, by implementing and enforcing a matrix of laws, policies and practices which ensure racial domination and serve to maintain the regime.

12. The report identified four “domains”:

- 1) Palestinian citizens of Israel, who are treated as second class citizens under Israel’s Basic Law and other key legislation such as the Law of Return.<sup>48</sup> They suffer from discriminatory zoning and planning laws, inferior services, limited budget allocations for Palestinian communities, restrictions on jobs and professional opportunities and a largely segregated landscape. Since the ESCWA report was published, in 2018, the Israeli Knesset passed a Basic Law known as the “Jewish nation-state law”, which according to Adalah “*has distinct apartheid characteristics – guarantees the ethnic-religious character of Israel as exclusively Jewish and entrenches the privileges enjoyed by Jewish citizens, while simultaneously anchoring discrimination against Palestinian citizens and legitimizing exclusion, racism, and systemic inequality*”. Indeed, Jewish nation-state law explicitly states that “*The right to exercise national self-determination in the State of Israel is unique to the Jewish people*”.<sup>49</sup> This has been seen by many as further entrenching apartheid in Israel.<sup>50</sup>
- 2) Palestinians living under conditions of belligerent occupation the West Bank and Gaza are subject to a racist dual legal system whereby Palestinians are subject to military law, whereas Jewish settlers living in the same territory benefit from the extraterritorial application of Israeli civil law to them. The racial character of this situation is further confirmed by the fact that all Jewish settlers in the West Bank enjoy the protections of Israeli civil law, whether they are citizens of Israel or not. The experts opined that in the case of the West Bank, “*the territory is administered in a manner that fully meets the definition of apartheid under the Apartheid Convention; except for the provision on genocide, every illustrative “inhuman act” listed in the Convention is routinely and systematically practised by Israel in the West Bank.*”<sup>51</sup>
- 3) Palestinians in East Jerusalem, who are classified as “permanent residents” and are subject to residency laws designed to maintain a highly insecure legal status for them. Residency revocations are systemically used to expel Palestinians from the city to serve Israel’s policy of

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<sup>48</sup> While Israel does not have a constitution, it has adopted a series of Basic Laws that have quasi-constitutional status. Israel’s 1950 Law of Return entitles all Jewish people to immigrate to Israel and automatically become citizens of the state while withholding any comparable right from Palestinians, including those with documented ancestral homes in the country. Adalah, Law of Return:

<https://www.adalah.org/en/law/view/537#:~:text=Description%3A,of%20their%20children%20and%20grandchildren>.

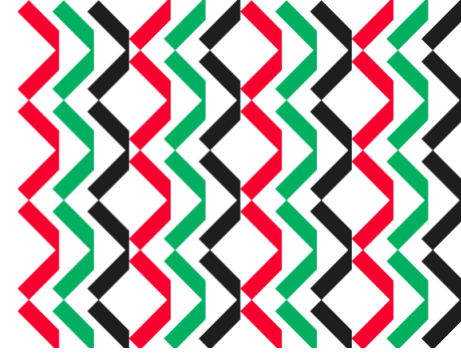
<sup>49</sup> Israel’s Jewish Nation-State Law, Adalah, 20 December 2020, <https://www.adalah.org/en/content/view/9569>

<sup>50</sup> EU leads criticism after Israel passes Jewish ‘nation state’ law, Peter Beaumont, The Guardian, 19 July 2018:

<https://www.theguardian.com/world/2018/jul/19/israel-adopts-controversial-jewish-nation-state-law>

<sup>51</sup> Supra note 4, p.5.





“demographic balance” in favour of Jewish residents.<sup>52</sup> Discriminatory laws and policies are routinely used by settler organisations to evict Palestinians from their homes and transfer their properties to Jewish owners in East Jerusalem neighbourhoods such as the Old City, Sheikh Jarrah and Silwan.<sup>53</sup> Palestinians in East Jerusalem also experience discrimination in access to employment, education, healthcare and building rights.

- 4) The millions of Palestinian refugees and involuntary exiles, mostly living in neighbouring countries, who are prohibited from returning to their land and homes in Israel and the Occupied Palestinian Territory (the “oPt”), who are explicitly denied their right to return under international law, as guaranteed by UN General Assembly Resolution 194.<sup>54</sup> Israel uses openly racist language to defend its laws and policies preventing their return, deeming them a “demographic threat” to the Jewish character of the Israeli state.

13. After conducting a detailed analysis of Israeli laws and policies towards Palestinians in these four domains against Israel’s obligations under international law, the report concluded that that Israel is guilty, beyond reasonable doubt, of imposing an apartheid regime over the Palestinian people.

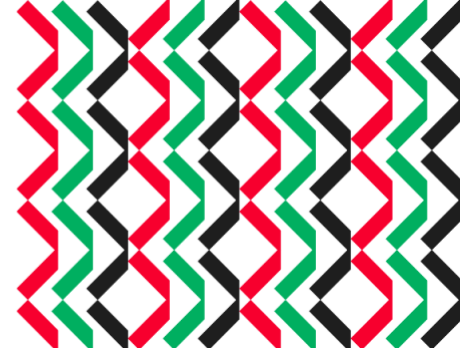
14. In 2021, Israeli human rights organisation B’Tselem reached a similar conclusion in its report *“This is apartheid; a regime of Jewish supremacy from the Jordan River to the Mediterranean Sea”*. It stated: *“The Israeli regime, which controls all the territory between the Jordan River and the Mediterranean Sea, seeks to advance and cement Jewish supremacy throughout the entire area. To that end, it has divided the area into several units, each with a different set of rights for Palestinians – always inferior to the rights of Jews. As part of this policy, Palestinians are denied many rights, including the right to self-determination...A regime that uses laws, practices and organized violence to cement the*

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<sup>52</sup> “Israel: Jerusalem Palestinians Stripped of Status: Discriminatory Residency Revocations”, Human Rights Watch, 8 August 2017 <https://www.hrw.org/news/2017/08/08/israel-jerusalem-palestinians-stripped-status>; Revocation of permanent residency in 2022: East Jerusalem Palestinians were stripped of their permanent residency status as part of Israel’s “quiet deportation” policy, the highest number of revocations since 2016, 12 March 2023, <https://hamoked.org/document.php?dID=Updates2344>; The Occupation and Annexation of Jerusalem through Israeli Bills and Laws, Al Haq, 5 March 2018 (<https://www.alhaq.org/advocacy/6263.html>); The Quiet Deportation Continues: Revocation of Residency and Denial of Social Rights of East Jerusalem Palestinians, B’Tselem and HaMoked, April 1997 [https://www.btselem.org/publications/summaries/199704\\_quiet\\_deportation](https://www.btselem.org/publications/summaries/199704_quiet_deportation); Revocation of Residency in the Occupied Palestinian Territories, Norwegian Refugee Council, December 2016, <https://www.nrc.no/resources/legal-opinions/revocation-of-residency-in-the-occupied-palestinian-territories/>

<sup>53</sup> 10 things you should know about the evictions in East Jerusalem, Norwegian Refugee Council, 11 November 2021, <https://www.nrc.no/perspectives/2021/10-things-you-should-know-about-the-evictions-in-east-jerusalem/>; Israel: UN experts condemn forced eviction of east Jerusalem families, Office of the High Commissioner for Human Rights, 12 July 2023, available at: <https://www.ohchr.org/en/press-releases/2023/07/israel-un-experts-condemn-forced-eviction-east-jerusalem-families#:~:text=Across%20east%20Jerusalem%2C%20there%20are,Israeli%20authorities%20and%20settler%20organisations>

<sup>54</sup> UNGA, Resolution 194 (III): Palestine – Progress Report of the United Nations Mediator, adopted on 11 December 1948, UN Doc. A/RES/194, para. 11: <https://www.securitycouncilreport.org/un-documents/document/ip-ares-194.php>



*supremacy of one group over another is an apartheid regime.”*<sup>55</sup>

15. In April 2021, Human Rights Watch published its 238-page report “A Threshold Crossed; Israeli Authorities and the Crimes of Apartheid and Persecution” in which it concluded that in certain areas under its control, Israeli policies and practices towards the Palestinian people amount to the crimes against humanity of apartheid and persecution.<sup>56</sup>
16. Similarly, in its 280-page report “Israel’s apartheid against Palestinians: Cruel system of domination and crime against humanity” Amnesty International provides an exhaustive analysis of Israel’s institutionalised and systematic discrimination against Palestinians within the framework of apartheid under international law.<sup>57</sup>
17. The 2022 report of the former UN Special Rapporteur, Professor Michael Lynk, also concluded that *“the political system of entrenched rule in the Occupied Palestinian Territory that endows one racial-national-ethnic group with substantial rights, benefits and privileges while intentionally subjecting another group to live behind walls and checkpoints and under a permanent military rule sans droits, sans égalité, sans dignité et sans liberté (without rights, without equality, without dignity and without freedom) satisfies the prevailing evidentiary standard for the existence of apartheid.”*<sup>58</sup>
18. Also in 2022, the report of leading Palestinian human rights organisation Al Haq and other Palestinian civil society organisations entitled “Israeli Apartheid: Tool of Zionist Settler Colonialism” concluded that *“through the implementation of the Zionist settler colonial project, Israel has institutionalised a regime of racial domination and oppression over the Palestinian people”* and that *“this is the continuation of decades of settler colonialism, ongoing Nakba, and apartheid.”*<sup>59</sup>

### **Annex 3: Anti- BDS legislation in the US**

1. In the US, lawmakers have introduced over 287 bills to date targeting boycotts in support of Palestinian human rights.<sup>60</sup> Though only 22 per cent of these bills have passed, 35 states currently

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<sup>55</sup> A regime of Jewish supremacy from the Jordan River to the Mediterranean Sea: This is apartheid, 12 January 2021, available at: [https://www.btselem.org/publications/fulltext/202101\\_this\\_is\\_apartheid](https://www.btselem.org/publications/fulltext/202101_this_is_apartheid)

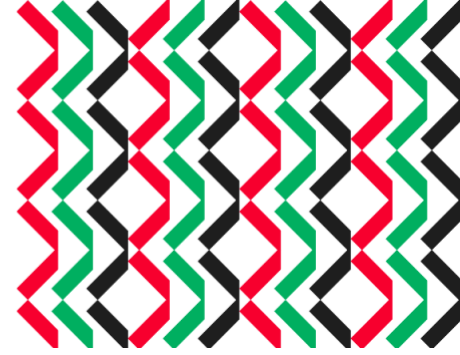
<sup>56</sup> A Threshold Crossed; Israeli Authorities and the Crimes of Apartheid and Persecution, Human Rights Watch, 27 April 2021, available at: <https://www.hrw.org/report/2021/04/27/threshold-crossed/israeli-authorities-and-crimes-apartheid-and-persecution>

<sup>57</sup> Israel’s apartheid against Palestinians: Cruel system of domination and crime against humanity, Amnesty International, 1 February 2022, p.266 <https://www.amnesty.org/en/documents/mde15/5141/2022/en/>

<sup>58</sup> UN Human Rights Council, Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, A/HRC/49/87, 12 August 2022: <https://www.un.org/unispal/document/report-of-the-special-rapporteur-on-the-situation-of-human-rights-in-the-palestinian-territories-occupied-since-1967-report-a-hrc-49-87-advance-unedited-version/>

<sup>59</sup> Israeli Apartheid: Tool of Zionist Settler Colonialism, Al Haq and other leading Palestinian civil society organisations, 29 November 2022, p.181: <https://www.alhaq.org/advocacy/20931.html>

<sup>60</sup> Palestine Legal, Legislation targeting advocacy for Palestinian rights (<https://legislation.palestinelegal.org/>).



have anti-BDS legislation on their statute books.<sup>61</sup>

2. Laws have been passed which require companies seeking public contracts and even people applying for jobs to sign a pledge promising they will not boycott Israel.<sup>62</sup>
3. Anti-BDS legislation is increasingly being used as a template to target the right to boycott more broadly,<sup>63</sup> with US states tabling or passing anti-boycott laws relating to the climate crisis, fossil fuels, factory farming and even bills seeking to prevent public bodies from “discriminating against firearm entities”.<sup>64</sup> According to Julia Bacha, director of the film *Boycott*, has said “*Anti-boycott laws are a Pandora’s Box that could be used to silence voices of dissent on a whole range of issues....*”<sup>65</sup>
4. Americans have been outraged that their constitutional rights to free speech have been sacrificed in support of the interests of a foreign state, and only around a fifth of these proposed laws have passed. The Bill is an attempt to import anti-BDS legislation into the UK. This is a dangerous Bill with significant implications for our democracy in the UK and it must be opposed in its entirety.

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<sup>61</sup> Ibid.

<sup>62</sup> ‘It’s an onslaught right now’: film details US battle against anti-boycott bills, Chris McGreal, The Guardian, 27 February 2023 (<https://www.theguardian.com/film/2023/feb/27/israel-boycotts-us-documentary-julia-bacha>).

<sup>63</sup> Just Vision, Anti-boycott Legislation tracker, (<https://justvision.org/boycott/legislation-tracker>).

<sup>64</sup> ‘Free Speech-Quashing Laws Based on Israel-Focused Anti-Boycott Laws + Related Articles’, Lara Friedman, p.1. (<https://fmep.org/wp/wp-content/uploads/BDS-Laws-as-Template-for-Laws-on-Other-Issues.pdf>).

<sup>65</sup> <https://www.theguardian.com/film/2023/feb/27/israel-boycotts-us-documentary-julia-bacha>; <https://ff.hrw.org/film/boycott>