

Economic Activity of Public Bodies (Overseas Matters) Bill: [call for evidence](#)

Evidence to parliamentary committee by [Scottish Palestine Solidarity Campaign](#) (SPSC). The interest and expertise that we offer to the committee is over twenty years of campaigning and public information in Scotland and extensive experience of contact with Palestinian people in the State of Israel, the Occupied Palestinian Territory (West Bank and Gaza Strip), the refugee diaspora and in Scotland.

This evidence makes the case that the Bill should be rejected in its entirety because of the threat that it poses to the integrity of public bodies, to democracy, to devolution, to the legitimate desire of the British public to express concerns and apply leverage against states and companies breaching legal or ethical standards, and specifically to the importance of solidarity with the Palestinian people denied human rights by living under hostile occupation, under apartheid conditions and as refugees. It is particularly galling that this Bill should be before Parliament at the current time, while the violence that Palestinians are facing from illegal settlers and the occupying Israeli army is escalating (over 200 Palestinians have been murdered by Israeli actions this year). Palestinian political prisoners are being subjected to inhumane treatment, and the current far-Right government in Israel is openly calling for ethnic cleansing of Palestinians.

SPSC understands that the Bill intends to prevent “public bodies when making decisions about procurement and investment from considering a country or territory of origin or other territorial considerations in a way that indicates political or moral disapproval of a foreign state.” It would also prevent public bodies from making statements indicating that they would have done so if it were lawful. We also understand that ‘public bodies’ is defined as equivalent to ‘public authorities’ under the Human Rights Act 1998.

While the Bill would have wide ranging implications for many activities of public bodies across the United Kingdom who take decisions on the basis of legal and moral considerations on human rights, environmental damage and violations of international law, it is clear that the principal target of the Bill is the campaign for Boycott, Divestment and Sanctions (BDS) against Israel, as attested to by section 3 (7) specifically exempting the State of Israel and the lands under Israeli military occupation from exemption.

SPSC has been a strong supporter of BDS since its inception and has been actively involved in lobbying public bodies in Scotland to support the campaign through, for example, divestment decisions by local authority pension schemes. It is important to clarify what the campaign for BDS is. BDS is a legal, nonviolent and voluntary action that can be taken by individuals and organisations to seek to compensate for the inaction of state bodies and their collusion in Israel’s breaches in international law and human rights violations. The legality of BDS has been attested to by the UK [Supreme Court](#) and the [European Court of Human Rights](#). The BDS call is specifically made to civil society, which includes bodies that carry out “functions of a public nature” and therefore are considered to be public authorities under the Human Rights Act and would therefore be subject to this Bill.

The [call for BDS](#) was made in 2005 by a wide range of civil society organisations in Palestine, including trade unions, churches, mosques, cultural organisations and women's organisations, specifically because of

1. Israel's persistent violation of international law and its obligations under the Universal Principles of Human Rights; and
2. The failure of international states to convince or force Israel to comply with these legal and human rights obligations.

Israel's breaches of human rights and international law specifically relate to its ongoing military occupation of the West Bank, Gaza Strip and Golan Heights (in breach of the Geneva conventions); its legal infrastructure that discriminates against its Palestinian citizens; and its refusal since 1948 to honour its international obligation to provide the right of refugees (including their descendants) to return to the land from which they were displaced. The campaign for BDS calls for nothing more than Israel's adherence to international law and the universal principles of human rights, on which the international order is based and which is expected of all states. Indeed, a Bill which implies that some States' violations of human rights and international law might be exempted from sanction, whilst other States' violations might not, on the basis of Government decree, is nothing less than a green light for rogue States.

A 2022 Amnesty International (AI) report concluded that:

'The totality of the regime of laws, policies and practices described by Amnesty International demonstrates that Israel has established and maintained an institutionalized regime of oppression and domination of the Palestinian population for the benefit of Jewish Israelis – a system of apartheid – wherever it has exercised control over Palestinians' lives since 1948.'

Furthermore, AI highlights the complicity of the international community:

'Without taking any meaningful action to hold Israel to account for its systematic and widespread violations and crimes under international law against the Palestinian population, the international community has contributed to undermining the international legal order and has emboldened Israel to continue perpetrating crimes with impunity. In fact, some states have actively supported Israel's violations by supplying it with arms, equipment and other tools to perpetrate crimes under international law and by providing diplomatic cover, including at the UN Security Council, to shield it from accountability.'

This Bill is a clear attempt by the current government to actively support Israel's violations of Palestinian rights and its crimes of apartheid as defined under international law.

There is no reason why Israel should singularly be exempted from its obligations to the principles of human rights and international law. By definition, international law and human rights are universal, and there is no reason why any state should be exempted from their obligations by the Government of the day (If section 3 (7) were removed or amended, the Bill would still be unacceptable). Should any Government decide to collude with such breaches of another state, then it is appropriate for public bodies to take steps to absolve themselves from such collusion by, for example, applying boycotts, divestment or

sanctions. For a public body to adopt the requests of the BDS campaign, it would not so much be indicating “political or moral disapproval of a foreign state” as intended in this Bill, but rather be upholding its support for international law and the principles of human rights.

The current Government has indicated that it intends to exempt actions against Russia and Belarus from the Bill because of their hostile occupation of Ukraine and violence against the Ukrainian people. The contradiction of, at the same time, preventing the exemption of Israel’s hostile occupation of Palestine and violence against the Palestinian people demonstrates the iniquity of the Bill. A similar Bill, if enacted prior to 1994, would have prevented the many public bodies from boycotting, divesting from and applying sanctions against Apartheid South Africa, contrary to policy of the UK Government at the time. Such international economic pressure against South Africa has been widely recognised as a contribution to the end of Apartheid.

Indeed, the [advisory opinion](#) of the International Criminal Court on the Construction of a Wall in the Occupied Palestinian Territory (2004) is that:

All States are under an obligation not to recognize the illegal situation resulting from the construction of the wall and not to render aid or assistance in maintaining the situation created by such construction; all States parties to the Fourth Geneva Convention relative to the Protection of Civilian Persons in Time of War of 12 August 1949 have in addition the obligation, while respecting the United Nations Charter and international law, to ensure compliance by Israel with international humanitarian law as embodied in that Convention. (page 70)

Moreover, pursuant of this advisory opinion, a [letter signed by 92 legal experts](#) makes clear that this obligation also applies to public bodies, irrespective of whether the State is fulfilling its obligations in this matter:

States, public entities, parastatal organisations and private actors ... are under self-executing obligations to ... (t)erminate all funding, contracts or other economic and institutional relations with actors enabling, supporting or encouraging the continuation of Israeli violations of international law.

Israel is of course opposed to economic sanctions being applied and seeks immunity for its violations of human rights and international law. Since 2005, Israel has been mounting a counter-offensive to BDS, including through diplomatic and international fora, as well as through the soft power of supporting and resourcing civil society organisations, both explicitly pro-Israel organisations, and others that seek to normalise the illegal actions of the Israeli state. Indeed it is likely that such civil society organisations will be providing evidence to the committee in support of the Bill. It is the experience of SPSC that the vested interests of such organisations in dismissing and perpetuating Israel’s breaches in international law mean that their representation should be treated with suspicion and subject to scrutiny.

Many public bodies are committed to corporate social responsibility, to advancing human rights and promoting equality, diversity and inclusion. They are rightly concerned about the ethical, legal and political impacts of their economic activities because of their corporate policies, fiduciary responsibilities for public funds, risk of reputational damage and in many

cases their democratic accountability. Such activity ranges from an extension of their responsibilities for tackling climate change, through fair trade procurement, to investment decisions on behalf of employees' pension funds. The institutional autonomy of public bodies to make such decisions must be defended from this Bill.

The application of the Economic Activity of Public Bodies (Overseas Matters) Bill to any part of the UK should be resisted. However, the extension of its intent to Scotland is especially egregious, since governance of public bodies in Scotland is the responsibility of the Scottish Parliament, which is accountable to the people in Scotland for whom the public bodies work. We note that the Scottish Government has already issued a [Legislative Consent Memorandum](#), action that SPSC has advocated. The Scottish Government has already affirmed, in response to a [petition](#) from SPSC, its view that “we do not wish to mandate how Scottish public institutions, organisations or individuals approach this issue [of BDS]” and urges the UK Government “respects the autonomy of Scottish institutions in making decisions on this issue.”

This Bill is an attempt to undermine democracy in Scotland as well as the autonomy of public bodies throughout the UK to make reasonable decisions about public funds and private funds over which they have responsibility on the basis of their legitimate commitment to human rights, ethical standards, environmental protection and corporate social responsibility.