Israel’s attacks on the BDS movement:

A threat to free speech and democracy in the West

A Briefing of the Palestinian BDS National Committee (BNC)

June 2016

BDS is a global movement of human rights defenders led by the Palestinian BDS National Committee (BNC), the broadest coalition in Palestinian civil society. It advocates for non-violent, global campaigns of Boycott, Divestment and Sanctions (BDS) against Israel, similar to those imposed on apartheid South Africa, until it respects international law and the human rights of the Palestinian people as affirmed by the United Nations, including the rights to self-determination, non-discrimination and return of the refugees.

The BDS movement was launched on the first anniversary of the ICJ advisory opinion on Israel’s illegal Wall in occupied Palestinian territory with a call for BDS issued on 9 July 2005 by more than 170 Palestinian unions, grassroots associations, NGOs, and networks representing Palestinian communities in the occupied West Bank, including East Jerusalem, and Gaza Strip (OPT), inside Israel and in exile.

In the course of one decade, campaigning for BDS has become the most widely-shared activity of individuals, groups, associations and institutions that defend the human rights of the Palestinian people, among them grassroots associations, unions, faith-based organizations, NGOs, students and academic associations, journalists, foreign aid workers, parliamentarians, local governments and their networks in five continents.

Human rights defenders, including BDS campaigners, carry out a wide range of other activities, among them documentation and awareness-raising about Israeli human rights abuses, support for Palestinian communities at risk or affected by such abuses, peaceful protests and legal advocacy in national courts, the United Nations and the International Criminal Court (ICC).

In OPT and inside Israel, all human rights defenders are facing intensifying Israeli intimidation and repression. Nevertheless, the Israeli attack on the BDS movement is in many ways unique.

Israel has declared the movement to be a “strategic threat” and invests unprecedented resources in an effort to thwart nonviolent BDS campaigning, not only at home but also abroad. Since 2013, and more decisively since 2015, the Ministry of Strategic Affairs has led the coordination of Israeli security, intelligence, diplomatic, media, academic and cultural initiatives against the BDS movement globally, often competing with the Ministry of Foreign Affairs.

Due to the severe ramifications on civil liberties in many countries, commentators have described the Israeli campaign against the BDS movement as the “greatest threat to free speech in the West.”

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BNC member organizations:

- Council of National and Islamic Forces in Palestine
- Gen. Union of Palestinian Workers
- Palestinian General Federation of Trade Unions
- Palestinian Trade Union Coalition for BDS (PTUC-BDS)
- Palestinian NGO Network (PNGO)
- Palestinian Nat’l Institute for NGOs
- Federation of Indep. Trade Unions
- Global Palestine Right of Return Coalition
- Occupied Palestine and Syrian Golan Heights Initiative
- Gen. Union of Palestinian Teachers
- Palestinian Federation of Unions of University Professors and Employees (PFUUPE)
- Gen. Union of Palestinian Women
- Palestinian Union of Palestinian Writers
- Union of Palestinian Farmers
- Grassroots Palestinian Anti-Apartheid Wall Campaign (STW)
- Pal. Campaign for the Academic and Cultural Boycott of Israel (PACBI)
- Popular Struggle Coordination Committee (PSCC)
- Civic Coalition for the Defense of Palestinian Rights in Jerusalem
- Coalition for Jerusalem
- Nat’l Committee to Commemorate the Nakba
- Union of Public Employees in Palestine-Civil Sector
- Gen. Union of Palestinian Peasants
- Union of Pal. Charitable Organizations
- Union of Professional Associations
- Women Campaign to Boycott Israeli Products
- Palestinian Economic Monitor
- Union of Youth Activity Centers-Palestine Refugee Camps
- Agricultural Cooperatives Union
- Nat’l Committee for Grassroots Resistance

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Attacks on BDS campaigners in Israel and the OPT

Intimidating legislation, repressive administrative measures

In recent years, Israel has adopted a series of laws that undermine the rights and activities of human rights defenders, including BDS campaigners inside Israel, as well as in occupied East Jerusalem.

The “Anti-boycott Law” (2011), for example, enables civil lawsuits and fines against anyone promoting an academic, economic or cultural boycott against the state, including its institutions and illegal settlements, and excludes those calling for a boycott from public funding and tenders. The “Foreign Government Funding Law” (2011) discourages human rights defenders from seeking foreign funds by imposing intrusive public reporting requirements, while exempting from these requirements organizations affiliated with the World Zionist Organization and Jewish Agency that support Israel’s illegal settlement policy and oppression of Palestinians.

The Israeli Supreme Court has upheld these laws, while many more bills that restrict civil and political rights are being debated by Israeli lawmakers despite repeat recommendations by UN human rights treaty committees to Israel to refrain from abolishing legislation that has a “chilling effect” on the rights to freedom of speech and assembly. Israeli lawmakers have also ignored the recommendations of the UN Special Rapporteur on the right to freedom of opinion and expression, who affirmed in 2012 that “Calling for or participating in a boycott is a form of expression that is peaceful, legitimate and internationally accepted.”

Moreover, Israel’s Minister of Interior is increasingly using his powers of discretion to intimidate and punish Palestinian human rights defenders by threatening to revoke, and actually revoking, their Israeli residency permits on grounds of “lack of center of life in Israel” and, newly, for “breach of loyalty to the State of Israel.” With BDS campaigning defined as a “strategic threat” to the state, Palestinian BDS human rights defenders carrying an Israeli residency permit are at high risk of becoming victims of this new policy.

Palestinian human rights defenders in occupied East Jerusalem are directly affected by these intimidating Israeli laws and the policy of punitive residency revocation, because Israel has imposed Israeli permanent residency permits on all East Jerusalem Palestinians in the context of its illegal annexation of the occupied city and applies its discriminatory domestic laws and policies to East Jerusalem in contravention of its obligations as occupying power under international humanitarian law.

Elsewhere in the OPT, Israel officially denies that it has human rights obligations to the occupied Palestinian population, including the obligation to respect and protect the rights to freedom of expression and assembly. Israel’s military regime takes recourse to a variety of arbitrary grounds of “security” and “anti-terrorism” in order to thwart the activities of Palestinian human rights defenders, including BDS campaigning, by means of armed violence, arbitrary restrictions on the freedom of movement, travel bans, forcible (temporary) removals, arrest, imprisonment and torture.

Threats of physical violence by Israeli government officials

Intimidating legislation and administrative repression are accompanied by public incitement against the BDS movement, in particular, by Israeli officials, including threats that undermine the safety and integrity of its members.

As Amnesty International has noted, “An especially alarming statement came from Israeli Minister of Transport, Intelligence and Atomic Energy Yisrael Katz who called on Israel to engage in ‘targeted civil eliminations’ of BDS leaders with the help of Israeli intelligence.”
Gilad Erdan, Israeli minister of Strategic Affairs who is responsible for coordinating Israel's attacks on the BDS movement, recently said that BDS activists must “pay the price”. These threats appear to be aimed at Palestinian, Israeli and international human rights defenders active in the BDS movement. Although Erdan followed up by saying that he does not mean “physical harm”, his comments are reason for strong concern because of the racist and violent environment nourished by Israel’s extreme right-wing government, and because of Israel’s decades-old practice of extrajudicial executions of Palestinians involved in political and nonviolent popular resistance.

Human rights organizations are particularly concerned about the safety of Omar Barghouti who has faced constant incitement and threats from Israeli government officials, right-wing lobby groups and pro-Israel media for his prominent role in the BDS movement. Barghouti, who has held Israeli permanent residency since 1994, is under an effective travel ban now due to the Israeli Ministry of Interior’s refusal to renew his travel document. The Ministry has confirmed that it is considering revoking his Israeli residency permit, explicitly mentioning his BDS activism among the reasons. (For details, see the BNC’s case file/Omar Barghouti).

**Attacks on BDS human rights defenders abroad**

**Israeli intelligence targeting BDS campaigners**

Israeli media reports and statements by Israeli ministers confirm that Israel uses its intelligence services to spy on western citizens in their countries and “sabotage” the work of civil society organizations engaged in BDS campaigning.

Israeli intelligence minister Yisrael Katz recently told a conference that his ministry is “absolutely” part of Israel's efforts to tackle BDS and that the Israeli intelligence services collaborate with other intelligence services regarding the BDS movement. Israel's Military Intelligence monitors “dozens” of organizations involved in the BDS movement internationally, according to an Israeli military official. One Israeli military analyst has recently revealed that Gilad Eran, Minister of Strategic Affairs, is seeking direct control of the Military Intelligence unit that spies on BDS organizations and their members.

It is, thus, highly likely that Israel is using its intelligence services for surveillance of electronic communications and phone calls of citizens and civil society groups involved in BDS human rights activism in western countries, in contravention of these countries’ respective laws.

**False allegations of anti-Semitism**

BDS is an inclusive, anti-racist movement that is anchored in the Universal Declaration of Human Rights and is opposed on principle to all forms of racism and racial discrimination, which is defined in international conventions as “any distinction, exclusion, restriction, or preference based on race, color, descent, or national or ethnic origin that has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life” (International Convention on the Elimination of Racial Discrimination).

The principled opposition of the BDS movement to all forms of racism, including anti-Semitism and Islamophobia, is understood by everyone sincerely interested and concerned. Support for BDS among Jewish populations abroad, for example, has grown strongly in recent years, with one Israel lobby group’s poll in 2014 showing that 46% of all non-Orthodox Jewish-American men under 40 support a boycott of
Israel because they object to its occupation, illegal settlements and violations of the human rights of Palestinians.\textsuperscript{15}

Nevertheless, false allegations of anti-Semitism are at the heart of Israel’s attacks against BDS, in particular in Europe and North America. Israel and its lobby groups have invested substantial resources in an attempt to distort the meaning of racial discrimination as adopted in international conventions. So-called “working definitions of anti-Semitism” promoted by Israel and its lobby groups declare any opposition to Zionism and Israeli policies to be a form of racial discrimination and anti-Semitic,\textsuperscript{16} although such opposition is not directed at anyone because of their Jewish identity or origin, but rather at the racist ideology, laws and policies adopted by the state of Israel in order to deprive the country’s indigenous Palestinian people of its fundamental human rights.

The Failure of states to protect their citizens from Israel-led attacks

So far, governments, as well as the EU, have largely failed to protect their citizens from Israel-led attacks on their freedom of expression and assembly. As a result, there has been an upsurge of attacks carried out by Israel and its lobby groups against human rights defenders of the BDS movement in many western countries, including surveillance by Israeli intelligence, false allegations of anti-Semitism, lawsuits, pressure to close bank accounts and deny venues for public events, and other forms of sabotage.

Examples include:

- Media campaigns led by Israeli foundations, lobby groups and affiliated journalists and newspapers, systematically targeting BDS campaigners with false and libelous accusations of anti-Semitism and undermining their personal integrity and professional standing;\textsuperscript{17}
- Lawsuits sponsored by Israel and affiliated groups against BDS activists, unions and local councils, including failed legal challenges against trade unions in the UK\textsuperscript{18} and the US\textsuperscript{19} over their support for BDS;
- Pressure on banks, often involving “investigative” Israeli journalists and threats of financial damage, that has resulted in the arbitrary closure of bank accounts of groups and organizations defending Palestinian human rights and campaigning for BDS in the UK\textsuperscript{20}, Germany\textsuperscript{21}, Austria\textsuperscript{22} and France\textsuperscript{23};
- Pressure on owners of facilities for public events, including municipalities and NGOs, to deny venues to BDS human rights defenders, resulting in repeated relocation or cancellation of press conferences and public meetings, in France, Italy, Austria and Germany, among others;
- Anti-BDS motions brought to parliaments by Israel lobby groups and supportive MPs, such as a motion in Switzerland aimed at excluding Palestinian and Israeli human rights defenders from development aid because of alleged anti-Semitism and/or support for BDS;
- Spying and sabotage against BDS activities by pro-Israel groups pretending to be Palestinian human rights activists.\textsuperscript{24}

Repression against BDS human rights defenders by western states

By May-2016, the governments of Sweden, Ireland and the Netherlands had confirmed explicitly that they respect the right of civil society to campaign and advocate for Palestinian rights through BDS activities.\textsuperscript{25}

States committed to the principles of democracy and human rights have generally respected the right of civil society to carry out boycotts as means for ending injustices and violations of human rights, for example by the Civil Rights movement in the United States, the international boycott campaign against apartheid in South Africa, and numerous civil society-led boycott campaigns against businesses responsible for abuses
of child, labor and environmental rights. Sweden, Ireland and the Netherlands have thus upheld the universality of human rights and principles of democracy, recognizing the right to call for and engage in a boycott of Israel to be a legitimate means for defending the human rights of Palestinians. They have in effect treated Israel, not as an exception, but according to the same international law standards applied in other, similar cases.

However, in some western countries, in particular France, the UK, Canada and USA, authorities have, to varying degrees, endorsed Israel’s false allegations of anti-Semitism against its critics and human rights campaigners. They have responded to Israeli lobbying by adopting measures aimed at suppressing BDS campaigning and by doing so have undermined basic principles of democracy and the right to freedom of expression of their citizens.

France:

In 2010, then justice minister Michèle Alliot-Marie instructed state authorities to treat calls for a boycott of Israeli goods as an offence under an archaic law from 1881 that allows the punishment of citizens or organizations who call for the boycott of goods from a country whose policies they criticize on the grounds that such calls constitute discrimination.” Since then, more than 30 human rights defenders have faced criminal charges over their participation in nonviolent BDS advocacy based on this instruction.

Moreover, in October 2015, the Court of Cassation, France’s highest appeals court, falsely interpreted the call for a boycott of Israeli products by a group of BDS human rights defenders as discriminatory against a “nation” and, therefore, a criminal offense under French law.26 French authorities apply the above court ruling sweepingly to all forms of BDS activism, even when it does not involve calling for a boycott of Israeli products. French police has intervened repeatedly to suppress demonstrations calling for BDS to stop Israel’s occupation and oppression of Palestinians, and in early March 2016, a solidarity activist was reportedly arrested simply for wearing a T-shirt with the imprint “Boycott Israeli Apartheid”. The Paris city council has also passed a resolution condemning the BDS movement based on the same sweeping and arbitrary interpretation of the court ruling.

While Prime Minister Manuel Valls recently announced that he would consult with the Ministry of Interior about what further measures could be taken to repress BDS activities,28 a group of French human rights defenders of the BDS movement is about to appeal to the European Court of Justice against their conviction and criminalization by French Court of Cassation.

United Kingdom:

In October 2015, the governing Conservative party announced in a press release that the UK government would take steps to “prevent town hall boycotts”, and prevent local councils and other public bodies from supporting the BDS movement or adopting measures aimed at companies that participate in Israeli violations of international law.29 The government press release included a number of false allegations against the BDS movement, including the claim that it targets Israel on grounds of its “Jewish identity.”

More recently, senior members of the UK government, including Prime Minister David Cameron and Justice Minister Michael Gove, have made public statements containing similar lies and false allegations of anti-Semitism against the BDS movement.30 In this vein, the government has also permitted the use of public institutions for the channeling of funds for various anti-BDS initiatives,31 while the UK College of Policing adopted a so-called “EU working definition of anti-Semitism” promoted by Israel and defining political criticism of Israel as anti-Semitic, although the EU had clarified that this was not an official EU document.32
Additional chilling, anti-democratic measures have been advanced by the UK government through a policy note on public procurement and proposed changes to local government pension scheme regulations.\textsuperscript{33}

**Public procurement:** On 17 February 2016, the Cabinet Office published a Procurement Policy Note (PPN1) that restates existing legal obligations regarding public sector procurement. It refers to World Trade Organization (WTO) rules providing that public bodies are not permitted to exclude a company from tenders and contracts on grounds of its “country of origin”. The policy note does not introduce new obligations for public bodies, and it does not prohibit the exclusion from public tendering and contracts of companies implicated in human rights violations, a practice that was accepted as lawful by previous governments. However, the policy note was clearly intended to have a chilling effect on local councils. Many local governments in the UK have begun to exclude from procurement companies involved in Israeli human rights violations; they are to be intimidated into falsely thinking that doing so was unlawful.

**Local government pensions:** On 25 November 2015, the government launched a public consultation about new regulations concerning the investment of local government pension funds. The government-proposed new regulations include a proposal that would give the national government veto power over investment decisions of local councils. It also states that additional guidance will be published in order to clarify that investment decisions of local government “should not pursue policies which run contrary to UK foreign policy”. That guidance has not yet been published. However, also this initiative is clearly intended to intimidate local councils acting as human rights defenders. Local councils have been conveyed the message that their decisions to not invest or divest pension funds from businesses implicated in the illegal Israeli settlements or other Israeli human rights violations will not be tolerated by the government.

**Canada:**

In February 2016, the Canadian parliament voted to condemn the BDS movement. The motion was put forward by the opposition Conservative Party but backed by most members of Trudeau’s governing Liberal Party. It “calls upon the government to condemn any and all attempts by Canadian groups or individuals to promote the boycott, divestment and sanctions movement, which it describes as promoting the ‘demonization and de-legitimization’ of Israel.”\textsuperscript{34}

This motion is the latest in a string of government-backed attacks on the BDS movement and infringements on free speech that have also seen government politicians condemning campus activism and smearing BDS as “anti-Semitic”, and the signing of a cooperation agreement with Israel that includes an explicit commitment by Canada to help Israel repress the BDS movement.\textsuperscript{35}

**United States:**

Renowned US civil rights associations have documented anti-BDS bills and laws introduced in 21 different states and in the US Congress.\textsuperscript{36} All of these seek to withhold public funds, contracts and/or investment from entities that endorse BDS.

On July 23, 2015, Illinois Governor Bruce Rauner signed the country’s first explicitly anti-BDS state law. This new law requires the creation of a state-run “blacklist” of foreign companies that heed calls for boycotting Israel and compels the state’s pension fund to divest from those companies.

The Combatting BDS Act of 2016, introduced into the US Congress, seeks to authorize state and local governments to divest assets from and prohibit investment in any entity that “engages in a commerce or investment-related boycott, divestment or sanctions activity targeting Israel.” Similar bills introduced in New York, Illinois and Maryland seek to defund or reduce government funding to colleges and universities that
participate in BDS activities or subsidize activities of groups, such as the American Studies Association, that endorse the academic boycott of Israel.

In June 2015, President Obama signed the Trade Promotion Authority (TPA) into law. This broad free trade law includes provisions making the discouragement of "politically-motivated actions to boycott, divest from, or sanction" Israel and "Israeli-controlled territories" an objective of US negotiations with the EU about the proposed free trade agreement (TTIP).

Some of the the above-mentioned renowned civil rights associations contribute to an initiative aimed at protecting the civil and constitutional rights of people in the US who speak out for Palestinian freedom (Palestine Legal). All of them, including the Association of Civil Liberties Unions (ACLU), the Center for Constitutional Rights and the National Lawyers Guild, hold that the above bills and laws will not withstand a future test of constitutionality in the US Supreme Court:

“Boycotts have long played a significant role in U.S. history, and the Supreme Court has held that boycotts to effect political, social, and economic change are protected by the First Amendment of the Constitution. The call for a boycott of Israel is based on Israel’s human rights violations, and is intended to effect social and political change. The Constitution is the ‘law of the land,’ so federal, state, and local laws cannot take away your constitutional rights.”

Note: For more information about sources affirming the right to boycott and the legitimacy of the BDS movement see the BNC’s briefing "BDS: a Legitimate Human Rights Movement to be Respected and Protected by States".

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1 See for example, Glenn Greenwald, at: https://theintercept.com/2016/02/16/greatest-threat-to-free-speech-in-the-west-criminalizing-activism-against-israeli-occupation/
8 Amnesty International; supra.
9 https://www.youtube.com/watch?v=zbXq4MwkJkA
10 http://www.timesofisrael.com/israel-boycott-campaigner-prevented-from-travel/
12 https://www.youtube.com/watch?v=ukXxAXkBk
13 http://www.haaretz.com/israel-news/premium-1.671785
16 See for example: http://european-forum-on-antisemitism.org/definition-of-antisemitism/english-english
17 In German-speaking Europe (Switzerland, Germany, Austria), for example, Audiatur, a pro-Israeli foundation, supports the lobbying of media, parliamentarians and churches. Affiliated journalists are Benjamin Weinthal (Jerusalem Post, Henryk M. Broders and journalists of the Swiss Baseler Zeitung: http://www.achgut.com/autoren
18 https://electronicintifada.net/blogs/asa-winstanley/israels-incompetent-global-campaign-lawfare
20 https://morningstaronline.co.uk/a-4fe6-Co-op-shuts-down-PSC-bank-accounts#.VOQOTTH_W5
21 http://www.jp/.com/International/Main-German-bank-closes-top-BDS-linked-account-445105
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27 https://electronicintifada.net/blogs/ali-abunimah/woman-arrested-france-t-shirt-critical-israel
28 http://www.lemonde.fr/societe/article/2016/01/19/valls-envision-des-mesures-contre-les-manifestations-pro-boycott-de-
produits-israeliens_4849405_3224.html
31 https://electronicintifada.net/content/billionaire-donor-using-british-council-combat-israel-boycott/15991
33 War on Want, Local government and ethical procurement: a briefing, at:
34 http://www.huffingtonpost.ca/2016/02/22/trudeau-backs-motion-condemning-boycott-israel-movement-some-liberals-balk_n_9293904.html
36 http://palestinelegal.org
37 Supra.