

**Mandates of the Working Group on the issue of human rights and transnational corporations and other business enterprises; the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on the situation of human rights in the Palestinian territory occupied since 1967 and the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance**

Ref.: OL GBR 19/2023

(Please use this reference in your reply)

12 December 2023

Excellency,

We have the honour to address you in our capacities as Working Group on the issue of human rights and transnational corporations and other business enterprises; Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; Special Rapporteur on the situation of human rights in the Palestinian territory occupied since 1967 and Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, pursuant to Human Rights Council resolutions 53/3, 52/9, 1993/2A and 52/36.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning **the Economic Activity of Public Bodies (Overseas Matters) Bill**, which restricts public bodies from taking into consideration foreign states' conduct, including their human rights record, in undertaking economic decisions. The purpose of this letter is to share with your Excellency's Government our observations, comments and concerns regarding the Bill, taking into consideration the obligations of the U.K. Government under international human rights law.

*Economic Activity of Public Bodies (Overseas Matters) Bill*

*The Economic Activity of Public Bodies (Overseas Matters) Bill* ("the Bill") was introduced in the House of Commons on 19 June 2023 and is currently at the third reading stage. The stated intention of this Bill is to "prevent public bodies from being influenced by political or moral disapproval of foreign states when taking certain economic decisions." The Bill effectively restricts public bodies, including universities and local authorities, from making investment and procurement decisions, based on consideration of foreign states' conduct. The motivation behind the Bill is the U.K. Government's view that it is not appropriate for public bodies to impose their own direct or indirect boycotts, divestment, or sanctions ("BDS") campaigns against foreign countries. Notably, in justifying the Bill, the Government has cited concerns that BDS campaigns "overwhelmingly target Israel" and that they may "legitimise and drive antisemitism".<sup>1</sup>

The Bill allows for a number of exceptions to the prohibition. For instance, the prohibition does not apply to consideration that relates to financial and practical matters, national security, international law, bribery, labour-related misconduct, competition law infringements, or environmental misconduct. The Bill also gives the Secretary of State or Minister for the Cabinet Office power to specify a country or territory to which the prohibition does not apply. However, the Bill does not allow for

---

<sup>1</sup> Department for Levelling Up, Housing and Communities, Impact Assessment: Economic Activity of Public Bodies (Overseas Matters) Bill (PDF), 4 May 2023.

an exception to the prohibition that relates to specifically, or mainly to, “Israel”, “the Occupied Palestinian Territories”, or “the Occupied Golan Heights”, effectively imposing a blanket prohibition on public bodies to boycott, divest or sanction those designated country and territories.

### *Human rights impact of the Bill*

The Bill raises a number of concerns from the perspectives of international human rights law:

(a) *Contravening State duty to ensure protection and respect of human rights in their role as economic actors – including in policy areas such as state-owned enterprises export credit, official investment insurance and public procurement.*

The Bill is likely to discourage public bodies from taking into account human rights consideration when undertaking financial decisions, as there are risks that such consideration may be considered “political or moral disapproval of foreign state conduct”, as prohibited by the Bill.

However, as highlighted by the UN Guiding Principles on Business and Human Rights 4-6, States should take additional step to protect against human rights abuses by businesses that they own, or control, that they have commercial transactions and contract with and those to which the State provides substantial support and services. In those economic activities, States should lead by example and require, where appropriate, human rights due diligence to them. The commentary to guiding principle 4 provides that “[w]here States do not explicitly consider the actual and potential adverse impacts on human rights of enterprises they provide support they put themselves at risk – in reputational, financial, political and potentially legal terms”.

The guiding principles specifically provide that in conflict-affected areas where the risk of gross human rights abuses is heightened, States should help ensure that business enterprises operating in those contexts are not involved in such abuses, including by “[d]enying access to public support and services for a business enterprise that is involved with gross human rights abuses and refuses to cooperate in addressing the situation”. Notably, the Working Group has clarified that “conflict-affected areas” include an area under occupation. The Working Group has underlined that in such contexts, States “should review their policies, legislation, regulations and enforcement measures to ensure that they effectively serve to prevent and address the heightened risk of business involvement in abuses in conflict situations”.<sup>2</sup>

Equally the General Comment No. 24 on “State obligations under the International Covenant on Economic Social and Cultural Rights in the context of business activities” clarifies that States should “revoke business licenses and subsidies, if and to the extent necessary, from offenders; and revise relevant tax codes, public procurement contracts, export credits and other forms of State support, privileges and advantages in case of human rights violations, thus aligning business incentives with human rights responsibilities. States parties should regularly review the adequacy of laws and identify and address compliance and information gaps, as

---

<sup>2</sup> UN Working Group on the issue of human rights and transnational corporations and other business enterprises, Statement on the implications of the Guiding Principles on Business and Human Rights in the context of Israeli settlements in the Occupied Palestinian Territory, 6 June 2014, <https://www.ohchr.org/sites/default/files/Documents/Issues/Business/OPTStatement6June2014.pdf>

well as emerging problems”.

The Bill appears to be particularly problematic in the context in which the international community unequivocally recognized that “the establishment by Israel of settlements in the Palestinian territory occupied since 1967, including East Jerusalem...constitutes a flagrant violation of international law”,<sup>3</sup> and all States, including the U.K., have the obligation not to “either recognize or assist” the expansion of such settlements.<sup>4</sup> We note that the U.K. Government’s business risk guidance also expressly recognizes that such settlements are illegal under international law and that, in light of “clear risks related to economic and financial activities in the settlements”, the UK Government does not “encourage or offer support to such activity”.<sup>5</sup>

Furthermore, the prohibition under the Bill may, in turn, have a chilling effect on business enterprises in carrying out human rights due diligence. The lack of scrutiny by public bodies or reward for responsible business conduct may negatively affect business incentives to ensure respect for human rights, as businesses may find themselves at competitive disadvantage for having in place rigorous human rights policies and practices.

Finally, the bill seems to contradict the UK commitments to protect human rights against business-related human rights violations in its National Action Plan on Business and Human Rights, titled “Good Business-implementing the UN Guiding Principles on Business and Human Rights”.

(b) Restrictions on freedom of expression

A further concern about this Bill is the inherent threat to freedom of opinion and expression, guaranteed under article 19 of the International Covenant on Civil and Political Rights (ICCPR), to which the UK is a State party. The scope of protection afforded under article 19 is wide, covering “all forms of expression and the means of their dissemination”,<sup>6</sup> including all forms of political expression, such as boycott. Contrary to this guarantee, clause 4 of the Bill specifically prohibits individuals in public bodies from publishing a statement indicating that they intend to take into consideration moral or political disapproval of a foreign state in making economic decisions, or that they would do so, if it were lawful to do so.

While freedom of opinion and expression may be subject to certain restrictions, any restrictions must meet a three-part test prescribed by article 19, paragraph 3 of the ICCPR. Restrictions are permitted, only if they:

- (a) are “provided by law”;
- (b) are imposed for one of the grounds set out in paragraph 3, subparagraphs (a) and (b), namely, “respect of the rights or reputations of others” or “the protection of national security or of public order

---

<sup>3</sup> S/RES/2334 (2016), para. 1.

<sup>4</sup> See, for e.g. A/HRC/RES/31/36, para. 12 (a).

<sup>5</sup> Foreign, Commonwealth and Development Office, Overseas business risk: Israel, <https://www.gov.uk/government/publications/overseas-business-risk-israel/overseas-business-risk-israel-3#business-and-human-rights>

<sup>6</sup> Human Rights Committee, General comment No. 34, Article 19: Freedoms of opinion and expression, 12 September 2011, CCPR/C/GC/34, para. 12.

(*ordre public*) or of public health or morals”; and

(c) conform to the strict tests of necessity and proportionality.<sup>7</sup>

We are concerned that the restrictions imposed by the Bill may fail to meet this test, as they appear to be overbroad in scope and nature, and it is unclear how they may serve to protect one of the permitted grounds for restrictions. In this regard, restrictions on political speech are subject to the most serious scrutiny, given the particularly important value that the ICCPR places on “uninhibited expression” in political speech. Elaborating the three-part test, the United Nations Human Rights Committee carefully spelt out that in order for a restriction on expression to be legitimate, a State party “must demonstrate in specific and individualized fashion the precise nature of the threat, and the necessity and proportionality of the specific action taken, in particular by establishing a direct and immediate connection between the expression and the threat”.<sup>8</sup>

If the “threat” identified by the U.K. Government is “antisemitism” in the present case, it is questionable whether the outright ban on BDS campaigns can be considered as a necessary and proportionate measure to achieve the aim of fighting antisemitism. We note that there is a marked difference between antisemitism – discrimination, prejudice, hostility or violence against Jews as Jews, or Jewish institutions as Jewish – and a criticism of the Israeli Government’s policies and practices, and further express concern that the term, “antisemitism”, should not be instrumentalized to silence individuals and groups who oppose the Israeli Government’s policies and practices. Furthermore, as recognized in the Bill’s Impact Assessment, there is no evidence to substantiate that BDS campaigns incite hate crimes or antisemitism and anti-Muslim hatred.<sup>9</sup> In light of these elements, we are not convinced that the prohibition under the Bill could be considered a legitimate restriction to freedom of expression in compliance with international human rights law.

(c) *Impact on civil society participation and advocacy*

While the Bill only targets BDS campaigns by public bodies, there are concerns that the Bill may have the effect of stifling civil society participation in and advocacy for activities promoting respect for human rights.

Pursuant to the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, everyone has “the right, individually and in association with others, to participate in peaceful activities against violations of human rights and fundamental freedoms”,<sup>10</sup> and the Declaration recognizes their important role and responsibility in contributing to “the promotion of the right of everyone to a social and international order” in which the human rights and fundamental freedoms are realized.<sup>11</sup> As against these standards, the Bill is problematic to the extent that it effectively reduces space for individuals and groups

---

<sup>7</sup> Ibid, para. 22.

<sup>8</sup> Ibid, para. 35.

<sup>9</sup> Ilze Jozepa, Philip Loft, James Mirza-Davies, Economic Activity of Public Bodies (Overseas Matters) Bill 2022-23, Commons Library Research Briefing, 28 June 2023, p. 18.

<sup>10</sup> Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, article 1.

<sup>11</sup> Ibid, article 18, paragraph 3.

for engaging in peaceful activities against human rights violations in the occupied Palestinian territory, and for holding public officials and bodies accountable for making economic decisions that may contribute to such violations.

In this regard, we wish to highlight that civil society participation in global boycott movements has historically played a critical role in realizing social justice and equality. From ‘Quit Sugar’ campaign by mostly British women against the trans-Atlantic slave trade to the anti-racist bus boycotts in both U.K. and the USA, boycott tactics have been an instrumental tool in facilitating social change. Additionally, the boycott movements in South Africa, eventually supported by the U.K., were critical in ending the Apartheid regime. Around 120 local authorities and many universities in Britain were part of that movement at the time. In light of this, we underline the importance of creating non-prohibitive environments for civil society to engage in peaceful activities, such as boycotts, in the pursuit of a just, equal and anti-racist society.

(d) *Inconsistent application of international law*

Under the Bill, no Secretary of State or Cabinet Minister can exclude “Israel” and its “Occupied Palestinian Territories” from the prohibition on “disapproval of foreign state conduct”. The Bill effectively shields one particular State from scrutiny for human rights violations and requires public bodies in the U.K. to disengage from any economic decisions to denounce such a State’s conduct.

This appears contradictory to the U.K.’s established position that “[s]ettlements are illegal under international law”,<sup>12</sup> as well as to its commitment as a Member of the Human Rights Council, responsible for “promoting universal respect for the protection of all human rights and fundamental freedoms for all, without distinction of any kind and in a fair and equal manner”.

In light of these concerns, we urge your Excellency’s government to withdraw the Bill or to introduce significant amendments to address the above concerns. Failing that, we request you to bring this letter to the attention of the Members of Parliament, along with our request that they should not vote in favour of this Bill.

As it is our responsibility, under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention, we would be grateful for your observations on the following matters:

1. Please provide any additional information and/or comment(s) you may have on the above-mentioned Bill.
2. Please explain in detail the rationale behind exempting one particular State and territories occupied by it from the exception to the prohibition and how it is compatible with the U.K.’s obligations under international human rights law.
3. Please provide any further evidence or information that substantiates the alleged link between antisemitism and BDS campaigns.

---

<sup>12</sup> <https://www.gov.uk/government/publications/overseas-business-risk-israel/overseas-business-risk-israel--3#business-and-human-rights>

4. Please provide evidence or information that shows that business enterprises and public bodies which conduct human rights due diligence will not be adversely affected by this Bill.

This communication, as a comment on pending or recently adopted legislation, regulations or policies, and any response received from your Excellency's Government will be made public via the communications reporting [website](#) after 48 hours. They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

Please accept, Excellency, the assurances of our highest consideration.

Damilola S. Olawuyi  
Chair-Rapporteur of the Working Group on the issue of human rights and  
transnational corporations and other business enterprises

Irene Khan  
Special Rapporteur on the promotion and protection of the right to freedom of opinion  
and expression

Francesca Albanese  
Special Rapporteur on the situation of human rights in the Palestinian territory  
occupied since 1967

K.P. Ashwini  
Special Rapporteur on contemporary forms of racism, racial discrimination,  
xenophobia and related intolerance