

On the wrong side of history

The Government's Economic Activity
of Public Bodies (Overseas Matters) Bill

A legal briefing





- 1 The Government's *Economic Activity of Public Bodies (Overseas Matters) Bill*, commonly referred to as the Anti-Boycott Bill is a poorly drafted piece of proposed legislation. If passed in its current form it will have a detrimental impact on public bodies' ability to protect and promote human rights overseas. Human Rights Watch **observed**:

"The United Kingdom government's anti-boycott bill will be debated next week in parliament, the latest in a growing list of measures which fundamentally undermine free speech and democratic rights in the country."

- 2 It is argued here that the Anti-Boycott Bill is inconsistent with obligations under international law, and will stifle free speech domestically, which as a matter of law is incompatible with Article 10 of the European Convention for Human Rights (ECHR). It is also undemocratic as it will take decisions making powers from local councils, and will centralise decision making into the hands of the Secretary of State.
- 3 The Anti-Boycott Bill (if passed) will have a general impact on all decisions by public bodies. However it is apparent further to Clause 3(7) contained within the Bill, that the impetus for its introduction is to counter the 'Boycott, Divestment and Sanctions' campaign ('BDS') as it relates to the Occupied Palestinian Territories ('OPT') and a campaign that is directed at Israel. Furthermore, should the Bill be passed it will equally have an impact on the ability of public bodies to disinvest from fossil fuel companies, through for instance a local council disinvesting its pension fund.
- 4 The Anti-Boycott Bill is unacceptable and objectionable irrespective of the merits of the BDS campaign. Outlined below we seek to examine the potential impact of this proposed legislation as it currently stands, and to advise on its legal impact.

Clause 1: banning boycotts and silencing dissent

- 5 This opening section of the Anti-Boycott Bill is very unclear. The key points in Clause 1 are contained in sub **clauses 2 to 6**.
- 6 The legislation bars decisions by public bodies that are influenced by moral or political objections toward a foreign government. Sub-clauses (3) to (5) of Clause 1 strongly imply that all actions by foreign states are encompassed within sub-clause 2. This is further reinforced by

the specific mention of Israel, the Occupied Palestinian Territories (referred to as the 'OPT'), and the Golan Heights in sub-clause 3(7).

- 7 The Anti-Boycott Bill will have far reaching, and fully intended consequences. As it stands it will prevent public bodies from considering any human rights abuses committed by a foreign government in their decision-making process. The Anti-Boycott Bill will prohibit public bodies generally, and local councils specifically from taking into account a spectrum of unlawful actions by a foreign state, such as genocide, unlawful military incursions, war crimes, and crimes against humanity. If legislation akin to this had existed in the 1980s, it would have made it illegal to decline sourcing goods from apartheid-era South Africa.
- 8 The Anti-Boycott Bill will stop public bodies generally, and thus local councils from having regard to any human rights abuses of a foreign government. Local councils, often responding to trade unions, and local campaigners seeking to raise concerns and to protect against human rights violations overseas – will now generally be unable to act.
- 9 The Anti-Boycott Bill acknowledges that under specific circumstances, as outlined in the Schedule, taking certain actions may be deemed appropriate. These exceptions seem to be based on the belief that considering human rights in decision-making by local authorities can be suitable and impactful. However, the Bill strips local authorities of the autonomy to make these decisions independently. Instead, the sole authority now rests with the Secretary of State. Even in this capacity, the Secretary of State is completely prohibited from making any exceptions regarding Israel, the OPT (Occupied Palestinian Territories), or the Golan Heights.

Clause 3: doubling down against boycotts

- 10 Clause 3 outlines the instances where Clause 1 does not apply. It grants the Secretary of State and the Minister for the Cabinet Office extensive authority to exempt specific public bodies from the scheme. The Secretary of State can also control the scope of these exceptions (Clause 3(2)) and make adjustments to the list of countries included or excluded from these exceptions (Clause 3(5)). As stated above, even though the Secretary of State has broad powers, Clause 3(7) explicitly prohibits any exemptions concerning decisions related to Israel, the OPT, or the Golan Heights.



This further illustrates the main thrust, although not the only reason for the Anti-Boycott Bill.

11 As stated Clause 3 provides the following exemptions:

- i By granting the Secretary of State exclusive authority over exemptions, the Bill diminishes the autonomy of public bodies. This is undemocratic and counter to the overarching direction of Government policy aiming to distribute power more widely. Furthermore, it appears to disregard the existing democratic and legal limitations already in place for public bodies like local authorities.
- ii The removal of such powers from numerous public bodies and their concentration in the control of the Secretary of State has historically resulted in unpredictable and often undesirable outcomes. An illustrative example lies in the pivotal involvement of UK local authorities in the boycott campaign against South Africa during the apartheid era. If this legislation had been active in the 1980s, it's highly probable that such actions would have been considered unlawful, and exemptions would likely not have been granted. This is especially evident considering the stance of the Prime Minister at that time, who labelled Nelson Mandela as a terrorist and considered the apartheid regime an ally.
- iii While the Schedule offers certain restricted exemptions concerning topics like labour rights, bribery, and the environment, it excludes other critical human rights violations such as genocide, systematic use of torture, other crimes against humanity, and serious breaches of the Geneva Convention. Viewed through the lens of international law, these omissions are extremely worrying.

12 Clause 3(7) seems to be the real reason, or certainly where the Anti-Boycott Bill seeks to hang its case upon. It is highly unusual. First, the Secretary of State will, as stated above, centralise significant decision making powers. Second, whilst those additional powers are centralised it does allow exemptions to the blanket rule. This this would provide in certain very specific circumstances an ability for public bodies to boycott. Finally, despite this under no circumstances can there be any boycott of Israel, the OPT and the Golan Heights.

13 From a legal and international law standpoint, the inclusion of the Occupied Palestinian Territories (OPT) and the Golan Heights alongside Israel as outlined in Clause 3(7) is of course a massive concern. Thus, Clause 3(7) extends the same high

level of protection to territories occupied since 1967, considered unlawful under international law, as that granted to Israel. Presumably therefore a boycott of the illegal settlements in the OPT, and the good they produce, will not be allowed.

14 The effect of Clause 3(7) prevents any exemptions, including those by the Secretary of State, to allow decision-makers to consider the international legal status of the OPT or human rights abuses there. This means that even if a local authority completes a competitive tendering process, they would be compelled to buy goods produced in a settlement on disputed land – the existence of the settlement is contrary to international law. Regardless of the evident circumstances, neither the public body nor the Secretary of State would have the authority to intervene or take any action. This very real scenario – PILC believes is unlawful.

15 The terms of the exemption as outlined in Clause 3(7) run counter to the United Kingdom's long standing position regarding the occupation of the OPT. Crucially, they run counter to the United Kingdom's commitments under international law. The United Nations Security Council in Resolution 2334 which unequivocally condemned Israel's settlements in the OPT states and reaffirmed that they lack "...the legal validity and [constitute] a flagrant violation under international law and a major obstacle to the achievement of a two state solution." In addition, the International Court of Justice's 2004 Advisory Opinion on the "Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory" confirmed that:

"...the Court is of the view that all States are under an obligation not to recognize the illegal situation resulting from the construction of the wall in the Occupied Palestinian Territory, including in and around East Jerusalem [and that] , all the States parties to the Geneva Convention relative to the Protection of Civilian Persons in Time of War of 12 August 1949 are under an obligation, while respecting the United Nations Charter and international law, to ensure compliance by Israel with international humanitarian law as embodied in that Convention."

16 The Anti-Boycott Bill prevents public bodies and local councils from supporting Palestinian self-determination within the OPT. Clause 3(7) of the Anti-Boycott Bill violates international law. Government insistence that public bodies abide by it would further violate its international legal duties.

Clause 4: stifling democratic decision making

17 Clause 4 represents an exceptional restriction on democratically elected politicians and public bodies – it is in reality a gagging order! The prohibition explicitly forbids individuals within public bodies from making public statements that suggest they plan to make an economic decision influenced by political disapproval of a foreign state, as outlined in Clause 1 of the Act. This clause covers factors such as a state's human rights record. Alarming, it restricts individuals (such as local councillors) from indicating that they would make such decisions if not restrained by the Act's provisions.

18 A fundamental pillar of a democratic society and the rule of law has historically acknowledged freedom of expression. This principle extends beyond just information or ideas but even those that frequently provoke, or unsettle either the State or segments of the population. Even if we accept that under international human rights law, nations can limit freedom of expression when meeting specific strict criteria, namely when the limitation is legally prescribed, such limitation must be essential and proportional to accomplishing a valid objective. Such a limitation under Article 10 of the of the ECHR – we say – does not exist.

Clauses 6 to 10: draconian enforcement

19 Clauses 6 to 10 will allow the Secretary of State (the 'Enforcement Authority') the ability to issue written notices mandating individuals to provide all information relating to decisions and to penalise any breaches or failures to comply. For instance, if an individual receives a notice under Clause 7, they are compelled to surrender all information deemed 'likely to be useful' by the Secretary of State in assessing whether an offense has occurred. This expansive reach implies conferring upon the Secretary of State greater powers than those wielded by anti-terrorism police and the security services. These powers are draconian, undemocratic and extensive.

Conclusion

20 20. From a domestic and international legal perspective there is little doubt that the Anti-Boycott Bill is deeply disturbing. The potential ramifications are profound across various fronts: from the impact on local democracy to advocating for global human rights from leveraging our economic influence for the advancement of human rights, to upholding free speech – it must be opposed.



Time to take action

Action 1: Write to you MP – you can do that [here](#)

Action 2: Get your trade union branch or community organisation to pass this resolution [here](#)

Action 3: keep in touch with the national campaign – [here](#)



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