

New York Governor's Unconstitutional Order Enables Israeli Occupation, Protects Israel against BDS

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Over the past year, several attempts in the New York legislature to pass laws protecting Israel against the boycotts, divestment and sanctions collectively known as “BDS” have failed. BDS punishes Israel for its illegal occupation of Palestinian lands. In an unprecedented end run around the legislative process, Gov. Andrew Cuomo issued an executive order this month that would accomplish just what the legislature has refused to do.

Cuomo’s order directs all agencies under his jurisdiction to discontinue all dealings with companies and organizations that support BDS. It also mandates that Cuomo’s commissioner compile a list of institutions and companies that support a boycott of Israel. The blacklist will be publicly posted. The burden of proving that these entities do not support the boycott is on the companies and institutions themselves.

What Is BDS?

The boycott, divestment and sanctions movement was launched in 2005 by representatives of Palestinian civil society. They called upon “international civil society organizations and people of conscience all over the world to impose broad boycotts and implement divestment initiatives against Israel similar to those applied to South Africa in the apartheid era ... [including] embargoes and sanctions against Israel.”



Gov. Andrew Cuomo’s decision to punish participants in the Boycotts, Divestment and Sanctions movement enables the Israeli occupation of Palestine and a never-ending cycle of violence.

(Photo: Marc A. Hermann / MTA New York City Transit)

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This call for BDS specified that “these non-violent punitive measures” should last until Israel fully complies with international law by (1) ending its occupation and colonization of all Arab lands and dismantling the barrier Wall; (2) recognizing the fundamental rights of the Arab-Palestinian citizens of Israel to full equality; and (3) respecting, protecting and promoting the rights of Palestinian refugees to return to their land as stipulated in United Nations General Assembly Resolution 194.

The BDS movement has had several successes in recent years. Groups honoring BDS include the United Church of Christ, Presbyterian Church (USA), United Methodist Church, Mennonites and Quakers and several academic institutions, as well as many artists and intellectuals.

In 2014, Israeli Prime Minister Benjamin Netanyahu excoriated BDS during his address to the American Israel Public Affairs Committee, or AIPAC, the powerful United States-based organization that lobbies for Israel. Cuomo now walks in lockstep with Netanyahu. In his executive order, Cuomo declared, “If you boycott against Israel, New York will boycott you.”

Omar Barghouti, a founder of the BDS movement, [said in an email to The New York Times](#): “Having lost many battles for hearts and minds at the grass-roots level, Israel has adopted since 2014 a new strategy to criminalize support for BDS from the top” in order to “shield Israel from accountability.”

What Is the Israeli Occupation?

Israel’s occupation of Palestinian territories is a form of colonialism. Israel maintains effective control over Gaza’s land, airspace, seaport, electricity, water, telecommunications and population registry. Israel deprives Gazans of food, medicine, fuel and basic services. The occupation constitutes collective punishment, which is considered a war crime.

In 2002, more than 100 Israeli army reservists declared they would no longer fight in the West Bank and Gaza Strip “with the aim of dominating, expelling, starving and humiliating an entire people.” “The price of occupation,” they said, “is the loss of the Israeli Defense Forces’ semblance of humanity and the corruption of all of Israeli society.” The soldiers reported firing at Palestinians who hadn’t endangered them, stopping ambulances at checkpoints, and stripping areas clean of groves and trees necessary to people’s livelihoods.

Cuomo’s executive order is a blatant ploy to prevent any criticism of Israel’s policy of occupation and oppression of Palestinians.

An Unconstitutional Executive Order

Cuomo’s order is also unconstitutional. “The Supreme Court has made clear [that the] government can’t penalize people or entities on the basis of their free expression, and political boycotts are a form of free expression,” the New York Civil Liberties Union declared. “Creating a government blacklist that imposes state sanctions based on political belief raises serious First Amendment concerns.”

“Boycotts are a constitutionally protected form of speech, association and assembly — as well as a non-violent form of resistance to oppression,” according to Audrey Bomse, co-chair of the National Lawyers Guild’s Palestine Subcommittee.

Barghouti concurs. He told the Times that the boycott is a “time-honored tactic of resisting injustice in the US.”

Boycotts Achieve Social Change

Indeed, it was the domestic consumer and rent boycotts, the international academic boycotts and divestments, and the UN General Assembly’s call for boycotts and sanctions against South Africa that nourished the anti-apartheid movement.

“As someone who successfully moved a boycott of South African goods in 1962 ... I fully support the right to use a boycott as a legitimate expression of those who oppose [Israel’s policies],” said Lord Hughes, chairman of the UK’s Anti-Apartheid Movement for 20 years, in an interview with Al Jazeera.

From 1965 to 1970, a consumer grape boycott organized by the United Farm Workers (UFW) forced growers to sign their first union contracts, granting workers better pay, benefits and protections. UFW President Cesar Chavez called it “a gate of hope through which [farm workers] expect to find the sunlight of a better life for themselves and their families.”

And the 1955 to 1956 Montgomery Bus Boycott by African Americans, guided by Rev. Martin Luther King Jr. after Rosa Parks refused to relinquish her seat on a bus to a white man, ultimately led the US Supreme Court to order the integration of Montgomery’s bus system.

“Gov. Cuomo has decided that his moral compass points in the direction of Joseph McCarthy rather than Rosa Parks,” said Columbia Law School professor Katherine Franke, who chairs the board of the Center for Constitutional Rights (CCR).

The National Lawyers Guild, Palestine Legal and CCR wrote in a legal memorandum that the anti-BDS bills pending in the New York legislature “harken back to the McCarthy era when the state sought to deny the right to earn a livelihood to those who express controversial political views.” The memo added, “The courts long ago found such McCarthy-era legislation to be at war with the First Amendment,” as they “unconstitutionally target core political speech activities and infringe on the freedom to express political beliefs.”

More than 100 churches, human rights groups and legal organizations signed a letter to the New York legislature opposing the pending legislation, saying “it would chill and deter constitutionally protected speech by intimidating people from engaging in political actions for fear of being blacklisted ... These measures are dangerous and unconstitutional. No legislation should restrict the rights of New Yorkers to engage in efforts to bring sanctions against a nation engaged in human rights violations.”

In addition, “It is unprecedented for a state to create a list of entities that support or engage in a First Amendment protected political activity, and deny them financial benefits because of it,” according to Palestine Legal.

BDS Is a Nonviolent Anti-Occupation Strategy

Last week, Ron Huldai, mayor of Tel Aviv-Jaffa and a former Israeli Air Force pilot, made news when he declared that Israel’s occupation is a factor that causes Palestinians to turn to terrorism. Likewise, former Israeli Prime Minister Ehud Barack once said that if he were a Palestinian, he would have joined a terrorist organization.

After the June 8 terrorist attack in Tel Aviv claimed the lives of four Israelis, an editorial in the Israeli newspaper Haaretz stated, “The terror will continue as long as the Palestinian people have no hope on the horizon ... The only way to deal with terrorism is by freeing the Palestinian people from the occupation. Until then, the Palestinians will continue their opposition using force, as most peoples have done throughout history.”

In Bomse’s words, “The response of the movement in solidarity with the Palestinian people should be to build an even stronger consensus in support of Palestinian human rights and against Israeli colonialism.”

Rebecca Vilkomerson, executive director of Jewish Voice for Peace, said, "There will not be progress toward a just peace without pressure on Israel to respect Palestinian rights." She added, "Bringing about that pressure, through a global grassroots mobilization, is exactly what BDS is about."

BDS should be embraced as a nonviolent strategy to challenge the Israeli occupation.

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