

## Evidence for report on disinformation:

### Submitted to the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression

#### **Disinformation, anti-BDS Motions in Germany and Austria and their impact on the right to freedom of expression for advocates for Palestinian rights**

The European Legal Support Center (ELSC)<sup>1</sup> is grateful for the opportunity to provide the Special Rapporteur with information and recommendations for the upcoming report on disinformation.

The ELSC is the first and only independent organisation providing professional legal support and assistance to associations, groups and individuals advocating for Palestinian rights in Europe and the UK. Since early 2019, we have been closely monitoring violations of the right to freedom of expression for advocates of Palestinian rights in several EU countries. The following submission refers to question 1 of the submission guide: *“What do you believe are the key challenges raised by disinformation? What measures would you recommend to address them?”*<sup>2</sup>

**In the first section**, we will argue that the campaign led by the Israeli government and several politically motivated Non-Governmental Organisations (hereafter: NGOs) to label the Boycott, Divestment, Sanction movement (hereafter: BDS) and its supporters as inherently antisemitic amounts to disinformation. **In the second section** we will show that this campaign resulted in the adoption of non-legally binding motions in Germany and Austria, at both national and regional level, designating the BDS as antisemitic. **In the third section**, we will describe the negative impact of these anti-BDS motions on the exercise of the right to freedom of expression and assembly of BDS activists and individuals and civil society organisations advocating for Palestinian rights in Europe.

## **Section I: The disinformation campaign about the BDS**

### **a) The campaign to label the BDS movement as antisemitic**

1. In the past few years, Palestinian human rights defenders, activists and civil society organizations advocating for Palestinian rights have been facing increased attacks both in Palestine and in Europe from the Israeli state and politically motivated NGOs such as

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<sup>2</sup> <https://www.ohchr.org/EN/Issues/FreedomOpinion/Pages/Report-on-disinformation.aspx>

NGO Monitor, Shurat Hadin, UK Lawyers for Israel.<sup>3</sup> These attacks focus on **damaging the reputation of the targets** by using allegations of antisemitism and support for terrorism. The main perpetrator of these campaigns is the Israeli Ministry of Strategic Affairs (hereafter: MSA) that was founded to “*act against the delegitimisation and boycott campaigns against the state of Israel.*”<sup>4</sup>

2. Since its establishment in 2015, the MSA published four reports directly targeting Palestinian organisations and their supporters. The MSA’s reports entitled “The Money Trail 1” (May 2018), “The Money Trail 2” (January 2019), and “Terrorist in Suits” (February 2019) claim to reveal the ties between the BDS campaign and proscribed groups. The MSA’s report “Behind the Mask” published in September 2019 specifically focuses on the BDS movement claiming to ‘expose its antisemitic nature’. These reports are **part of a broader effort to label the BDS movement as antisemitic** and as a threat to the State of Israel’s national security.<sup>5</sup>
3. Following the narrative of the MSA, politically motivated NGOs in Israel and Europe joined the efforts of delegitimising BDS by calling its objectives antisemitic and accusing BDS of ‘undermining the right of the Jewish people to self-determination’.<sup>6</sup> Furthermore, they attack civil society organisations and individuals in Europe with accusations of antisemitism due to their support for BDS.<sup>7</sup>

**b) The delegitimisation campaign against BDS amounts to disinformation**

4. The United Nations defines disinformation as “*false information that is created and spread, deliberately or otherwise, to harm people, institutions and interests.*”<sup>8</sup> We will show that the campaign against BDS amounts to disinformation since both the elements of the definition are met, namely: (α) the misleading or inaccurate content of the information spread, (β) the specific intent to cause a negative impact.

**a) The claim that BDS is intrinsically antisemitic is factually incorrect**

5. The Israeli actors **present BDS as intrinsically antisemitic**, by claiming that BDS ‘hides its antisemitic nature behind the human rights principles.’<sup>9</sup> The accusation of antisemitism implies that BDS has discriminatory objectives.

<sup>3</sup> See Jamal, A. (2018). *The Rise of “Bad Civil Society” in Israel*, German Institute for International and Security Affairs, at p. 1, available at: [https://www.swp-berlin.org/fileadmin/contents/products/comments/2018C02\\_jamal.pdf](https://www.swp-berlin.org/fileadmin/contents/products/comments/2018C02_jamal.pdf); W. Staes and N. Janne, *Occupation and Shrinking Space: The Attack on Civil Society in the Occupied Palestinian Territory and in Israel*, January 2020, CNCD-11.11.11, available at: <https://www.cncd.be/IMG/pdf/2020-occupation-shrinking-space-israel-palestine-report.pdf>, at p. 10; Policy Working Group, *SHRINKING SPACE - NGO Monitor: Defaming human rights organizations that criticize the Israeli occupation*, 2018,, available at: [http://policyworkinggroup.org.il/report\\_en.pdf](http://policyworkinggroup.org.il/report_en.pdf), at pp. 32 – 35; The Arab Center for the Advancement of Social Media, *Online Smear Campaigns and Deplatforming: The Silencing and Delegitimization of Palestinian Human Rights Defenders, Activists and Organizations*, 7 February 2020, available at <https://7amleh.org/storage/Research%20and%20Position%20Papers/Online%20Smear%20Campaigns%20and%20Deplatforming.pdf>

<sup>4</sup> Ministry of Strategic Affairs and Public Diplomacy (August 2019) About.

[https://www.gov.il/en/departments/Units/ministry\\_of\\_strategic\\_affairs\\_and\\_public\\_diplomacy](https://www.gov.il/en/departments/Units/ministry_of_strategic_affairs_and_public_diplomacy)

<sup>5</sup> B. White, B. Ahmad and P. Bennis, *Shrinking Space & The BDS Movement*, October 2018, available at <https://www.tni.org/en/publication/shrinking-space-and-the-bds-movement>

<sup>6</sup> <https://www.ngo-monitor.org/key-issues/bds/about/#whatisbds>

<sup>7</sup> *Struggle in Bayreuth, Germany Over Award to CODEPINK*, 1 March 2016, available at

[https://www.codepink.org/struggle\\_in\\_bayreuth\\_germany\\_over\\_award](https://www.codepink.org/struggle_in_bayreuth_germany_over_award); Thomsen J., *Ballhaus Naunynstraße: Antisemitismusvorwurf gegen Kuratorinnen*, 21 October 2016, available at <https://www.berliner-zeitung.de/mensch-metropole/ballhaus-naunynstrasse-antisemitismusvorwurf-gegen-kuratorinnen-li.28905>

<sup>8</sup> <https://www.ohchr.org/EN/Issues/FreedomOpinion/Pages/Report-on-disinformation.aspx>

<sup>9</sup> <https://www.ngo-monitor.org/key-issues/bds/about/#whatisbds>

6. However, in the landmark judgement *Baldassi and Others v. France* delivered in June 2020, the European Court of Human Rights (ECtHR) stated that “*c Il for boycott is speci l mod lity of exercising freedom of expression combining the expression of a protesting opinion and encouraging differential treatment and it may constitute a call for discrimination of others. ... However, incitement to differential treatment does not necess rily mount to incitement to discrimin te*”<sup>10</sup> According to the ECtHR’s case-law, “*a difference in treatment is discriminatory if it has no objective and re son ble justific tion*.”<sup>11</sup> The State of Israel’s grave violations of international law that the BDS movement aims at ending through non-violent means are widely recognized by the international community<sup>12</sup>. The ongoing expansion of Israeli settlements, imminent annexation of the occupied Palestinian territory and the current blockade of Gaza<sup>13</sup>, constitute clear violations of peremptory norms of international law, namely a) the right to self-determination of the Palestinian people, which is a norm of jus cogens nature; b) the customary norm of international humanitarian law set forth in Article 49 of the Fourth Geneva Convention, prohibiting the occupying power from transferring its own population into occupied territories, and doing so constitutes war crimes under the Rome Statute of the International Criminal Court (ICC)<sup>14</sup>. Moreover, the well-documented systematic discrimination of Palestinians living under de jure or de facto control of the State of Israel, has developed nowadays into a regime of apartheid as acknowledged by leading human rights organizations and legal scholars.<sup>15</sup>
7. The BDS’ call for differential treatment is entirely **directed at these Israel’s policies**, and not against the Jewish people. The call addresses international civil society organizations and people of conscience all over the world, including conscientious Israelis.<sup>16</sup> By inviting everybody to join, the call is entirely inclusive, as it “*categorically opposes as a matter of*

<sup>10</sup> *Baldassi and Others v. France*, no. 15271/16, § 64, 11 September 2020

<sup>11</sup> *Chassagnou and Others V. France*, Applications Nos. 25088/94, 28331/95 and 28443/95, § 91, 23 April 1999

<sup>12</sup> UN HRC, *Report of the independent fact-finding mission to investigate the implications of the Israeli settlements on the civil, political, economic, social and cultural rights of the Palestinian people throughout the Occupied Palestinian Territory, including East Jerusalem*, A/HRC/22/63 (7 February 2013); Amnesty International, *Destination: Occupation Digital Tourism and Israel’s Illegal Settlement in the Occupied Palestinian Territories*, 2019, available at <https://www.amnesty.org/download/Documents/MDE1594902019ENGLISH.PDF>, at Chapter 3

<sup>13</sup> UN Country Team in the Occupied Palestinian Territory, *Gaza Ten Years Later*, July 2017, available at [https://unsco.unmissions.org/sites/default/files/gaza\\_10\\_years\\_later\\_-\\_11\\_july\\_2017.pdf](https://unsco.unmissions.org/sites/default/files/gaza_10_years_later_-_11_july_2017.pdf). See also UN HRC, Resolution A/HRC/RES/S-28/1, 18 May 2018, available at [https://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/a\\_hrc\\_res\\_s28\\_1.pdf](https://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/a_hrc_res_s28_1.pdf)

<sup>14</sup> UN HRC, *Report of the independent fact-finding mission to investigate the implications of the Israeli settlements*, A/HRC/22/63, 7 February 2013; UN General Assembly, *Rome Statute of the International Criminal Court (last amended 2010)*, 17 July 1998, Article 8(2)(b)(vii)

<sup>15</sup> See: Sfar, M. (2020) *The Occupation of the West Bank and the Crime of Apartheid: Legal Opinion*, available at: <https://www.yesh-din.org/en/the-occupation-of-the-west-bank-and-the-crime-of-apartheid-legal-opinion/>; Al-Haq, *Global Response to Israeli apartheid: A Call to the UNGA from Palestinian and international Civil Society Organizations*, 22 September 2020, available at: <https://www.alhaq.org/advocacy/17305.html>; Tilley, V. (2012) *Beyond Occupation: Apartheid, Colonialism and International Law in the Occupied Palestinian Territories*; Pappé, I. (2015) *Israel and South Africa: The Many Faces of Apartheid*; Dugard, J. (2019) *Confronting Apartheid: A personal history of South Africa, Namibia and Palestine*; Richard Falk and Virginia Tilley, *Israeli Practices towards the Palestinian People and the Question of Apartheid*, UN Economic and Social Committee for Western Asia (ESCWA), March 2017, Report E/ESCWA/ECRI/2017/1, Beirut, available at [https://opensiuc.lib.siu.edu/cgi/viewcontent.cgi?article=1013&context=ps\\_pubs](https://opensiuc.lib.siu.edu/cgi/viewcontent.cgi?article=1013&context=ps_pubs). See also UN HRC, *Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967*, Richard Falk, 19 September 2012, A/67/379, available at <https://undocs.org/A/67/379>, para 99.

<sup>16</sup> BDS, *Palestinian Civil Society Call for BDS*, 9 July 2005, available at <https://www.bdsmovement.net/call>

*principle all forms of racism, including Islamophobia and anti-Semitism*"<sup>17</sup>. In fact, the BDS movement is precisely an **anti-racist movement** that finds its inspiration in the movement against apartheid in South Africa<sup>18</sup>.

8. Moreover, the legitimacy of the BDS movement has also been affirmed internationally by scholars,<sup>19</sup> civil society organisations<sup>20</sup>, States and public institutions.<sup>21</sup> In light of the above, it is indisputable that the BDS pursues a genuine and legitimate human rights agenda. Therefore, presenting the BDS movement as antisemitic is **factually inaccurate** and constitutes **false information**.

**b) The campaign against BDS is carried out with the intent to harm the movement**

9. The Israeli actors' **intention to cause harm to BDS** and civil society actors who support the movement can be observed in the statements of Israeli officials and resources allocated for efforts to fight BDS. In 2015, the Israeli government declared the BDS movement 'a strategic threat' to the Israeli state.<sup>22</sup> Furthermore, the former minister of the MSA, Gilad Erdan, stated that "*Israel is in the midst of a cognitive war against adversaries such as non-violent campaigns like BDS*."<sup>23</sup>
10. In 2017, the Seventh Eye, an independent investigative magazine based in Israel, revealed that the MSA paid millions of shekels to **place sponsored content** in Israel's most prominent media outlets including news websites and television news channels, as well as to promote content on social media and search engines.<sup>24</sup> These paid-for contents called the public to "fight against delegitimisation of Israel by BDS" and spread pro-Israel messaging on social media through an app called Act.il, which is used to encourage users to post and share disinformation or to report content that criticises Israel.<sup>25</sup> In addition to

<sup>17</sup> BDS, FAQs: *Isn't a boycott of Israel anti-Semitic?*, available at <https://bdsmovement.net/faqs#collapse16241>

<sup>18</sup> Bot, M. (2019) *The right to boycott: BDS, law, and politics in a global context*. Transnational Legal Theory, at p. 9.

<sup>19</sup> Richard Falk and Virginia Tilley, *Israeli Practices towards the Palestinian People and the Question of Apartheid*, UN Economic and Social Committee for Western Asia (ESCWA), Report E/ESCWA/ECRI/2017/1, March 2017, Beirut, available at [https://opensiuc.lib.siu.edu/cgi/viewcontent.cgi?article=1013&context=ps\\_pubs](https://opensiuc.lib.siu.edu/cgi/viewcontent.cgi?article=1013&context=ps_pubs). See also UN HRC, *Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, Richard Falk*, 19 September 2012, A/67/379, available at <https://undocs.org/A/67/379>, para 99.

<sup>20</sup> See Petition to the President of the European Commission and the Director General of the DG Justice and Consumers of the European Commission, "*Enough with the criminalisation of the BDS movement for justice in Palestine! Let's support right to boycott!*", available at: <https://www.eccpalestine.org/enough-with-the-criminalisation-of-the-bds-movement-for-justice-in-palestine-lets-support-right2bds/>

<sup>21</sup> European Parliament, Parliamentary questions, Question reference E-005122/2016, available at [https://www.europarl.europa.eu/doceo/document/E-8-2016-005122-ASW\\_EN.html?redirect](https://www.europarl.europa.eu/doceo/document/E-8-2016-005122-ASW_EN.html?redirect); House of Representatives, 'Answer to questions by Member Grashoff on Israeli threats against supporters of the boycott, disinvestment and sanctions (BDS) movement', 20 May 2016, available at <https://www.tweedekamer.nl/kamerstukken/kamervragen/detail?id=2016D20156&did=2016D20156>; Houses of the Oireachtas, 'Dáil Éireann debate', 26 May 2016, available at <https://www.oireachtas.ie/en/debates/debate/dail/2016-05-26/18/?highlight%5B0%5D=bds#s22>

<sup>22</sup> The Guardian, *Israel brands Palestinian-led boycott movement a 'strategic threat'*, 3 June 2015, available at <https://www.theguardian.com/world/2015/jun/03/israel-brands-palestinian-boycott-strategic-threat-netanyahu>

<sup>23</sup> Bloomberg, *Israel Developing Tools to Fight on Social Media Battlefield*, 13 February 2017, available at <https://www.bloomberg.com/news/articles/2017-02-13/israel-developing-tools-to-fight-on-social-media-battlefront>

<sup>24</sup> The Seventh Eye, *The Israeli government is paying for anti-BDS journalism*, 20 December 2017, available at <https://www.972mag.com/the-israeli-government-is-paying-for-anti-bds-journalism/>

<sup>25</sup> 7amleh - The Arab Center for the Advancement of Social Media, *Online Smear Campaigns and Deplatforming: The Silencing and Delegitimization of Palestinian Human Rights Defenders, Activists and Organizations*, 7 February 2020, at p. 8, available at <https://7amleh.org/storage/Research%20and%20Position%20Papers/Online%20Smear%20Campaigns%20and%20Deplatforming.pdf>



local channels, the MSA paid the Jerusalem Post, Times of Israel and J Media Group to publish articles and opinion pieces on the “links between BDS and antisemitism” based on the MSA’s report on BDS.<sup>26</sup>

11. These efforts seek to **delegitimise BDS by damaging its image**, to narrow the public spaces BDS activists and supporters can use and to avert the support BDS has gained from the international community. Therefore, since both of the elements of the definition are fulfilled, the Israeli government’s **campaign against the BDS movement can be defined as disinformation**.

## Section 2: The Anti-BDS motions in Germany and Austria

12. Between 2018 and 2020, **German and Austrian Parliaments** at federal, regional and local levels have adopted non-legally binding motions designating BDS as antisemitic and calling public institutions not to provide funding and spaces for groups supporting BDS (hereafter: anti BDS motions).
13. **In Germany**, on 17 May 2019, the German federal Parliament (hereafter: Bundestag) passed a motion designating the BDS as antisemitic and calling on German institutions to cut the funds for BDS activities and not to provide premises and facilities to BDS supporters.<sup>27</sup> In 2018, also the regional Parliaments of North-Rhine Westphalia<sup>28</sup> (hereafter: NRW), Thuringia<sup>29</sup> and Baden-Württemberg<sup>30</sup> have adopted anti-BDS motions as well as ten city councils (Bielefeld,<sup>31</sup> Leipzig,<sup>32</sup> Bonn,<sup>33</sup> Bochum, Dortmund,<sup>34</sup>

<sup>26</sup> Benzaquen I. and The Seventh Eye, *Israeli ministry paying for anti-BDS propaganda in major news outlets*, 14 January 2020, available at <https://www.972mag.com/anti-bds-propaganda-ministry-media/>

<sup>27</sup> German Bundestag, *Resolution by the CDU, CSU, SPD, FDP, Alliance 90 and Green Parliamentary Groups to resist the BDS movement with a determination to fight antisemitism*, 19 May 2019, 19/10191, available at <https://icahd.org/wp-content/uploads/sites/1/2019/07/Bundestag-Resolution-English-Translation.pdf>

<sup>28</sup> Landtag Nordrhein-Westfalen, *In Nordrhein-Westfalen ist kein Platz für die antisemitische BDS-Bewegung*, 11 September 2018, 17/3577, available at <https://www.landtag.nrw.de/portal/www/dokumentenarchiv/dokument/mmd17-3577.pdf>

<sup>29</sup> Thüringer Landtag, *Antisemitismus in Thüringen konsequent bekämpfen*, 9 July 2018, 6/5886, available at [http://www.parldok.thueringen.de/ParlDok/dokument/67720/antisemitismus\\_in\\_thueringen\\_konsequent\\_bekaempfen.pdf](http://www.parldok.thueringen.de/ParlDok/dokument/67720/antisemitismus_in_thueringen_konsequent_bekaempfen.pdf)

<sup>30</sup> Landtag von Baden-Württemberg, *Antisemitismus entschlossen bekämpfen*, 27 February 2018, 16/3622, available at [https://www.landtag-bw.de/files/live/sites/LTBW/files/dokumente/WP16/Drucksachen/3000/16\\_3622\\_D.pdf](https://www.landtag-bw.de/files/live/sites/LTBW/files/dokumente/WP16/Drucksachen/3000/16_3622_D.pdf)

<sup>31</sup> Rat der Stadt Bielefeld, *Antisemitismus bekämpfen – BDS Kampagne entgegentreten*, 11 July 2019, 8977/2014-2020, available at [https://anwendungen.bielefeld.de/bi/to0050.asp?\\_ktonr=168361](https://anwendungen.bielefeld.de/bi/to0050.asp?_ktonr=168361)

<sup>32</sup> *Gegen jeden Antisemitismus! Gemeinsamer Antrag der Fraktionen Bündnis 90/Die Grünen, SPD und CDU*, 2 September 2018, available at <https://www.gruene-fraktion-leipzig.de/beitrag/gemeinsamer-antrag-gegen-jeden-antisemitismus.html>

<sup>33</sup> Bundesstadt Bonn, *In Bonn ist kein Platz für die antisemitische BDS-Bewegung*, 14 May 2019, 1911513, available at [https://www2.bonn.de/bo\\_ris/daten/o/pdf/19/1911513.pdf](https://www2.bonn.de/bo_ris/daten/o/pdf/19/1911513.pdf)

<sup>34</sup> *Grundsatzerklärung des Netzwerks zur Bekämpfung von Antisemitismus in Dortmund*, 18 January 2019, available at [https://www.dortmund.de/media/downloads/pdf/news\\_pdf/2019\\_6/Grundsatzerklaerung\\_gegen\\_Antisemitismus.pdf](https://www.dortmund.de/media/downloads/pdf/news_pdf/2019_6/Grundsatzerklaerung_gegen_Antisemitismus.pdf)

Cologne,<sup>35</sup> Berlin,<sup>36</sup> Hamburg,<sup>37</sup> Munich<sup>38</sup> and Frankfurt<sup>39</sup>) passed similar motions calling the municipalities to deny public facilities and subsidies to BDS groups and to not support any event and group that share BDS goals.

14. In Austria, on 27 February 2020, the Austrian parliament adopted a motion labelling the BDS movement as antisemitic.<sup>40</sup> The motion called on the Austrian Government to strongly condemn the BDS movement and its goals and “*not support any events of the BDS movement or groups pursuing its goals, either financially or in any other form.*” On the local level, the cities of Graz in November 2019<sup>41</sup> and Vienna in June 2018<sup>42</sup> adopted similar motions stating that the BDS movement and related groups would not be allowed to use public spaces.
15. This general pattern is the outcome of intense lobby activities as acknowledged by one of the most prominent newspapers in Germany, which revealed the efforts of pro-Israeli organisations to put pressure on MPs in the Bundestag to adopt the anti-BDS motion.<sup>43</sup> Several Israeli officials also celebrated the adoption of the Bundestag anti-BDS motion, calling it “groundbreaking” and the “most significant step so far in the war against the boycott and the new antisemitism.”<sup>44</sup>
16. The influence of the disinformation spread can be observed in the texts of the motions adopted, which use the same terminology and narrative that the MSA and other politically motivated actors adopted. The Bundestag motion states “*the pattern of argument and methods of the BDS movement are antisemitic*”. It also calls on German institutions to cut the funds for BDS activities and “*not provide premises and facilities under the administration of the Bundestag to organisations that express themselves in antisemitic terms or question Israel's right to exist*.” Similarly, the Austrian Parliament’s motion

<sup>35</sup> Rat der Stadt Köln, *Resolution Kein Raum für Antisemitismus in Köln! Für eine solidarische Stadtgesellschaft!*, 5 July 2018, available at [https://ratsinformation.stadt-koeln.de/vo0051.asp?\\_kvonr=77087](https://ratsinformation.stadt-koeln.de/vo0051.asp?_kvonr=77087)

<sup>36</sup> Abgeordnetenhaus von Berlin, *Gegen jeden Antisemitismus! – Jüdisches Leben in Berlin schützen*, 31 May 2018, 2018/27/19, available at <https://pardok.parlament-berlin.de/starweb/adis/citat/VT/18/PlenarPr/pl8-027bsl061.pdf>

<sup>37</sup> Bürgerschaft der Freien und Hansestadt Hamburg, *In Hamburg ist kein Platz für Antisemitismus*, 3 January 2018, 21/11500, available at <https://www.buergerschaft-hh.de/ParlDok/dokument/60614/in-hamburg-ist-kein-platz-f%C3%BCr-antisemitismus.pdf>

<sup>38</sup> Stadtrat München, *Gegen jeden Antisemitismus! - Keine Zusammenarbeit mit der antisemitischen BDS-Bewegung*, 13 December 2017, available at <https://www.muenchen-transparent.de/dokumente/4760943>

<sup>39</sup> Stadt Frankfurt am Main, *Antisemitismus keinen Raum geben - BDS aktiv entgegentreten*, 25 August 2017, M 165, available at [https://www.stvv.frankfurt.de/PARLISLINK/DDW?W=DOK\\_NAME=%27M\\_165\\_2017%27](https://www.stvv.frankfurt.de/PARLISLINK/DDW?W=DOK_NAME=%27M_165_2017%27)

<sup>40</sup> Republik Österreich Nationalrat, *Verurteilung von Antisemitismus und der BDS-Bewegung*, 27 February 2020, available at [https://www.parlament.gv.at/PAKT/VHG/XXVII/E/E\\_00012/index.shtml](https://www.parlament.gv.at/PAKT/VHG/XXVII/E/E_00012/index.shtml)

<sup>41</sup> Stadt Graz, *Jedem Extremismus entschieden entgegentreten – Erklärung gegen Antisemitismus*, 14 November 2019, available at [https://www.graz.at/cms/dokumente/10340140\\_7768145/0dee2e41/To1-Präs.-078079-2019-0001-Jedem%20Extremismus.pdf](https://www.graz.at/cms/dokumente/10340140_7768145/0dee2e41/To1-Präs.-078079-2019-0001-Jedem%20Extremismus.pdf)

<sup>42</sup> Stadt Wien Gemeinderat 39. Sitzung, 27 June 2018, available at <https://www.wien.gv.at/mdb/gr/2018/gr-039-w-2018-06-27-081.htm>

<sup>43</sup> *Wie zwei Vereine die deutsche Nahostpolitik beeinflussen wollen*, 12 July 2019, available at <https://www.spiegel.de/politik/lobbyismus-im-bundestag-wie-zwei-vereine-die-deutsche-nahostpolitik-beeinflussen-wollen-a-00000000-0002-0001-0000-000164871539>; Landau N., *Israel Lobbies German Government to Enforce Motion Defining BDS as anti-Semitic*, 11 June 2019, available at <https://www.haaretz.com/world-news/europe/.premium-israel-lobbies-german-government-to-enforce-motion-defining-bds-as-anti-semitic-1.7360064>; Alsaafin L., *From spying to lobbying, Israel's fight against BDS intensifies*, 20 June 2019, available at <https://www.aljazeera.com/news/2019/06/spying-lobbying-israel-fight-bds-intensifies-190620170711122.html>

<sup>44</sup> Lazaroff T. & Hacohen H., *'BDS is antisemitic' rules German Bundestag in landmark vote*, 19 May 2019, available at <https://www.jpost.com/Israel-News/German-Bundestag-rules-BDS-is-antisemitic-589999>

refers to anti-Israeli antisemitism and calls the government “*not to provide premises and infrastructure to organizations that make antisemitic statements or question Israel's right to exist*”.

### Section 3: The negative impact of the anti-BDS motions over the right to freedom of expression acknowledged by German courts

17. The adoption of anti-BDS motions has further had a detrimental impact on the fundamental rights of freedom of expression and assembly for BDS activists, individuals, and civil society organizations advocating for Palestinian rights.
18. Over the past few years, different German cities **refused to grant public spaces for Palestine-related events**. In February 2019, the City of Oldenburg refused to grant conference space to BDS Oldenburg for events related to the 2019 Israeli Apartheid Week, claiming that the BDS movement is antisemitic.<sup>45</sup> In May 2019, the City of Bonn denied the request of German-Palestinian Women's Association, the Palestinian Community-Bonn and the German Palestinian Society to participate in the annual Culture and Encounter Festival due to their affiliation with the BDS movement by invoking the anti-BDS motions adopted by the Bonn City Council and the parliament of NRW.<sup>46</sup> Similarly in Austria, in September 2019 BDS Austria's event for the premiere of the film “iYallah! iYallah!” was cancelled last minute by the ARTIS Cinema, citing the Vienna City Council resolution adopted in 2018, which called for “*no cooperation with the antisemitic BDS movement*.”<sup>47</sup> In December 2020, the City of Frankfurt am Main refused to provide a venue to the Bundestag 3 for Palestine (BT3P) campaigners to host an event.<sup>48</sup>
19. By employing the notion of antisemitism, the motions **stigmatise the BDS movement** and advocates for Palestinian rights, jeopardizing their enjoyment of fundamental rights to freedom of expression, association and assembly, as several German Courts widely acknowledged.
20. In September 2018, the Administrative Court of Oldenburg found the decision of the Oldenburg City Council to revoke the permit given to a local BDS group to use a public event space was an **unlawful interference with the right to freedom of expression and assembly**.<sup>49</sup> In March 2019, the Higher Administrative Court of Lower Saxony overturned the decision of the lower court, which was in favour of the City of Oldenburg's refusal to grant public space for 2019 Israeli Apartheid Week, and ruled that “*it cannot be ascertained ... that the applicant or the BDS campaign and the persons participating in the events do not vouch for the free democratic basic order. Thus, ... the applicant is consequently entitled to*

<sup>45</sup> <https://res.cloudinary.com/elsc/images/v1608061966/Oldenburg-Statement-13032020/Oldenburg-Statement-13032020.pdf>

<sup>46</sup> Verwaltungsgericht Köln, 14 L 1766/19, 12 September 2019, available at [https://www.justiz.nrw.de/nrwe/ovgs/vg\\_koeln/j2019/14\\_L\\_1765\\_19\\_Beschluss\\_20190912.html](https://www.justiz.nrw.de/nrwe/ovgs/vg_koeln/j2019/14_L_1765_19_Beschluss_20190912.html)

<sup>47</sup> *BDS Austria slams cancellation of Palestinian film screening after Israel pressure*, 6 September 2019, available at <https://www.middleeastmonitor.com/20190906-bds-austria-slams-cancellation-of-palestinian-film-screening-after-israel-pressure/>

<sup>48</sup> Abi Melzer, *Verbot der Stadt Frankfurt am Main gegen BDS-Aktivistinnen durch Hessischen Verwaltungsgerichtshof aufgehoben*, 5 December 2020, available at <http://der-semit.de/verbot-der-stadt-frankfurt-am-main-gegen-bds-aktivistinnen-durch-hessisches-verwaltungsgerichtshof-aufgehoben/>

<sup>49</sup> Verwaltungsgericht Oldenburg, 3 A 3012/16, 27 September 2018, §§ 32-33, available at <https://www.rechtsprechung.niedersachsen.de/jportal/portal/page/bsndprod.psml?doc.id=MWRE190000178&st=nul&showdoccase=1>

*have the events planned by him held in urban areas*".<sup>50</sup> In September 2019, the Administrative Court of Cologne found that the City of Bonn's decision to exclude three Palestinian associations from the Culture and Encounter Festival on the grounds of their support for the BDS Movement constitutes "*unjustified unequal treatment*" and in **breach of the principle of equality and right to freedom of opinion and expression**.<sup>51</sup> In September 2020, the Constitutional Court of the State of NRW ruled on a complaint regarding the anti-BDS motion adopted by the parliament of NRW, stating that "*the judgment of antisemitism does not only concern the campaign itself, but it **affects negatively also the people and organisations behind it***" and due to "*defamatory, discriminatory and distorting statements in the motion*" the complainants may suffer violations of their **fundamental right to freedom of association**.<sup>52</sup> In November 2020, the Highest Administrative Court in Bavaria ruled that "*the **general exclusion of events dealing with the BDS campaign violates the fundamental right of freedom of opinion and the general principle of equality***" and "*the [anti-BDS] resolution adopted by the Munich City Council constitutes an **impermissible interference with the freedom of expression of the potential users of the facility***".<sup>53</sup> In December 2020, the Administrative Court of Hessen ordered the City of Frankfurt by a temporary injunction to provide a venue to the application of BT3P activists.<sup>54</sup> Moreover, on May 2020, three Palestinian rights activists based in Germany filed a complaint before the Administrative Court of Berlin demanding the nullification of the Bundestag motion.<sup>55</sup> The complaint argues that despite its non-legally binding nature, the motion has a **law-like effect leading to unlawful restrictions on the freedoms of expression and assembly** and points out that the motion exposes human rights organisations and activists to **public defamation as being antisemitic**, disrupting the debate about Israel-Palestine in Germany.<sup>56</sup> The case is currently pending.

21. The motions are also **creating a significant chilling effect** on advocates for Palestinian rights in both countries: intellectuals<sup>57</sup>, authors,<sup>58</sup> and artists<sup>59</sup> have been stigmatized due

<sup>50</sup> Niedersächsisches Oberverwaltungsgericht, 10 ME 48/19, 27 March 2019, § 9, available at <https://res.cloudinary.com/elsc/images/v1608062542/Oldenburg-Higher-Adm-Court-Lower-Saxony-Judgement-27032019/Oldenburg-Higher-Adm-Court-Lower-Saxony-Judgement-27032019.pdf>

<sup>51</sup> Verwaltungsgericht Köln, 14 L 1766/19, 12 September 2019, available at [https://www.justiz.nrw.de/nrwe/ovgs/vg\\_koeln/j2019/14\\_L\\_1765\\_19\\_Beschluss\\_20190912.html](https://www.justiz.nrw.de/nrwe/ovgs/vg_koeln/j2019/14_L_1765_19_Beschluss_20190912.html)

<sup>52</sup> Verfassungsgerichtshofs für das Land Nordrhein-Westfalen, 49/19.VB-2, §§ 22 and 28, available at [https://www.vgh.nrw.de/rechtsprechung/entscheidungen/2020/200922\\_49\\_19\\_VB-2.pdf](https://www.vgh.nrw.de/rechtsprechung/entscheidungen/2020/200922_49_19_VB-2.pdf)

<sup>53</sup> Bayerischer Verwaltungsgerichtshof, 4 B 19.1358, 17 November 2020, §§ 48-49, <https://openjur.de/u/2308579.html>

<sup>54</sup> Hessischer Verwaltungsgerichtshof, 8 B 3012/20, 4 December 2020, available at <https://openjur.de/u/2309729.html>

<sup>55</sup> BT3P, *Why do we sue the German Bundestag?*, <https://www.bt3p.org/en/klage>

<sup>56</sup> Ahmed Abed, *Summary of the Statement of Claim in the Proceedings Against the Anti-BDS Decision before the Administrative Court of Berlin* (Gz. Vg 2 K 79/20), 28 September 2020, available at <https://www.bt3p.org/en/bt3p-news/statement-of-claim>.

<sup>57</sup> Eddy M., *Director of Berlin's Jewish Museum Quits After Spat Over B.D.S.*, 14 June 2019, available at <https://www.nytimes.com/2019/06/14/world/europe/berlin-jewish-museum-director-quits-bds.html>

<sup>58</sup> Flood A., *Kamila Shamsie's book award withdrawn over her part in Israel boycott*, 19 September 2019, available at <https://www.theguardian.com/books/2019/sep/19/kamila-shamsies-book-award-withdrawn-over-her-part-in-israel-boycott>

<sup>59</sup> Eno B., *Artists like me are being censored in Germany – because we support Palestinian rights*, 4 February 2021, available at <https://www.theguardian.com/commentisfree/2021/feb/04/artists-censored-germany-palestinian-rights>



to their alleged support for the BDS movement,<sup>60</sup> with invitations to events or prizes being withdrawn<sup>61</sup> or speeches cancelled. Among others, in April 2019 a lecture of theologian and vice-president of the German-Palestinian Society Martin Breidert, scheduled to take place in the Übersee-Museum, was cancelled because of a complaint accusing Breidert of being a BDS advocate and thus an antisemite.<sup>62</sup> In June 2019, the American artist Talib Kweli was disinvited from a music festival in Düsseldorf after he refused to denounce the BDS movement.<sup>63</sup> In March 2020 Professor Achille Mbembe was disinvited from the festival Ruhrtriennale, after Felix Klein, the federal commissioner for the fight against antisemitism, accused Mbembe of antisemitism because of a text he wrote, in which he calls “the occupation of Palestine the greatest moral scandal of our times” and another text comparing elements of the Israeli settlement enterprise to the colonial fixtures of the apartheid regime in South Africa.<sup>64</sup>

22. The anti-BDS motions and the way public authorities used them to stigmatize advocates for Palestinian rights drew reactions from different groups. In May 2019, 240 Jewish and Israeli scientists and scholars published ‘A Call to German Parties not to Equate BDS with antisemitism’ rejecting the allegation that BDS as such is antisemitic and pointed out that boycotts are a legitimate and non-violent tool of resistance.<sup>65</sup> In September 2019, hundreds of authors published an open letter criticising the City of Dortmund’s decision to withdraw Kamila Shamsie’s award, pointing out “*conflating anti-Jewish racism with opposition to Israel’s policies and system of occupation and apartheid ... undermines both the Palestinian struggle for freedom, justice and equality and the global struggle against antisemitism.*”<sup>66</sup> In April 2020, a group of prominent Israeli and Jewish scholars, many of whom specialize in the study of the Holocaust, antisemitism, and Israel, have called on Germany’s interior minister to fire Felix Klein for his “shameful attack” on Achille Mbembe.<sup>67</sup> In December 2020, 30 leading German and Austrian cultural institutions have denounced the Bundestag motion, stating that accusations of antisemitism are being misused to push aside important voices and to distort critical positions.<sup>68</sup>

<sup>60</sup> Mashiah I., *In Germany, a Witch Hunt Is Raging Against Critics of Israel. Cultural Leaders Have Had Enough*, 10 December 2020, available at <https://www.haaretz.com/israel-news/.premium.HIGHLIGHT.MAGAZINE-in-germany-a-witch-hunt-rages-against-israel-critics-many-have-had-enough-1.9362662>

<sup>61</sup> Greenberger A., *German City Withdraws Art Prize for Walid Raad Over Artist’s Alleged Support of BDS Movement*, 1 October 2019, available at <https://www.artnews.com/art-news/news/walid-raad-bds-art-prize-withdrawn-13313/>

<sup>62</sup> <https://www.jpost.com/Diaspora/Antisemitism/German-museum-cancels-antisemitic-event-with-BDS-advocate-587900?fbclid=IwAR3E4txdhKQCHXBAm3LnEPfmftd8ce7ZlJNxbGI2EQNR8MicL-BQVQDjgS8>

<sup>63</sup> *Talib Kweli’s removal from festival lineup is part of anti-Palestinian censorship trend*, 2 July 2019, available at <https://www.theguardian.com/world/2019/jul/02/talib-kweli-removal-from-festival-lineup-is-part-of-anti-palestinian-censorship-trend>

<sup>64</sup> Zonszein M., *Jewish, Israeli scholars back African intellectual smeared for Israel criticism*, 10 May 2020, available at <https://www.972mag.com/achille-mbembe-germany-israel-antisemitism/>

<sup>65</sup> [https://www.haaretz.com/embeds/pdf\\_upload/2019/20190516-185634.pdf](https://www.haaretz.com/embeds/pdf_upload/2019/20190516-185634.pdf)

<sup>66</sup> *The Right to Boycott An Open Letter*, 23 September 2019, available at <https://www.lrb.co.uk/blog/2019/september/the-right-to-boycott>

<sup>67</sup> *Call to replace Felix Klein as the Federal government Commissioner for the Fight against Antisemitism*, 30 April 2020, available at <https://www.scribd.com/document/459345514/Call-on-German-Minister-Seehofer>

<sup>68</sup> Initiative GG 5.3 Weltoffenheit <https://drive.google.com/file/d/14WBPlOswuU8Vm2pQmlcteCLrDnPs7FZ5/view>

## Conclusions and recommendations

23. As demonstrated in this submission, the anti-BDS motions adopted in Germany and Austria are de facto narrowing the scope of the human rights to freedom of expression, association and assembly of a group of human rights defenders and they were adopted on the basis of a disinformation campaign aimed at labelling the BDS movement as anti-Semitic.
24. These developments are extremely concerning, since the **chilling effect** that the allegation of antisemitism has when attached to advocates of Palestinian rights, results in intimidating and even silencing these voices and the consequent worrisome partial erasure of Palestine from the domain of legitimate public debate.
25. In October 2019 four UN Special Rapporteurs addressed an official letter of concern to the German authorities denouncing that a) *“the motion sets a worrying trend of unduly limiting the rights to freedom of opinion and expression, peaceful assembly and of association”*; b) *“the motion may shrink the civic space available to human rights defenders, groups and organisations to express legitimate grievances”*<sup>69</sup>.
26. The German authorities replied stressing that: *“mere political motions adopted by the German Bundestag cannot – as such - impair individual rights, as they do not affect the rights of an individual. Rather, specific decisions by a governmental body (e.g., a German city or municipality) on requests by supporters of the BDS movement for financial support or for the use of facilities could have such an effect...If, however, in the context of BDS activities or purported affiliation with BDS, an individual or group perceives his or her rights violated by such an individual decision, it is always possible to take legal action. It is then the responsibility of the German judiciary to determine whether the activities in question are within the scope of the aforementioned rights and whether they were violated.”*<sup>70</sup>
27. However, the response provided by the German authorities is unsatisfactory since taking legal action is not an adequate remedy for countering the broader chilling effect that this disinformation campaign has created.
28. **In the light of the above we recommend the Special Rapporteur to:**
  - 1) Issue a statement recognizing that the campaign stigmatizing the BDS movement as antisemitic amounts to disinformation.
  - 2) Address a second official letter of concern to the German and Austrian authorities about the implementations of the anti BDS motions.

Giovanni Fassina, ELSC Programme Director

Amsterdam 15.02.2021

<sup>69</sup> <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=24834>

<sup>70</sup> <https://spcommreports.ohchr.org/TMResultsBase/DownloadFile?gId=35109>