

# **SUBMISSION TO U.N. SPECIAL RAPPORTEUR ON THE SITUATION OF HUMAN RIGHTS IN THE PALESTINIAN TERRITORY OCCUPIED SINCE 1967**

## **STATEMENT OF THE CENTER FOR CONSTITUTIONAL RIGHTS AND PALESTINE LEGAL**

NOVEMBER 2016

### **I. THE WORK OF THE CENTER FOR CONSTITUTIONAL RIGHTS AND PALESTINE LEGAL**

The Center for Constitutional Rights (CCR) is dedicated to advancing and protecting the rights guaranteed by the U.S. Constitution and the Universal Declaration of Human Rights. Founded in 1966 by attorneys who represented civil rights movements in the South, CCR is a non-profit legal and educational organization committed to the creative use of law as a positive force for social change. CCR has been on the front lines in advancing advocacy and legal work to challenge unlawful and inhumane government practices.<sup>1</sup>

Palestine Legal is an independent organization dedicated to protecting the civil and constitutional rights of people in the United States who speak out for Palestinian freedom. Founded in 2012, Palestine Legal provides legal advice, advocacy, and litigation support to college students, professors, grassroots activists, and affected communities who stand for justice in Palestine.<sup>2</sup>

This submission focuses on failures of government agencies to protect, respect, and promote the rights of U.S.-based human rights defenders supporting Palestinian rights.

### **II. SUPPRESSION OF ACTIVISM IN SUPPORT OF PALESTINIAN HUMAN RIGHTS**

CCR and Palestine Legal have documented a pattern of suppression of advocacy in support of Palestinian human rights, spearheaded by a network of lobbying groups, watchdog organizations, public relations entities, and advocacy groups funded by, working in coordination with, or supportive of the Israeli government. Last year, we released a joint report, *The Palestine Exception to Free Speech*,<sup>3</sup> detailing incidents of censorship, punishment, or other burdening of advocacy that Palestine Legal responded to from January 2014 through June 2015, which is enclosed herewith.<sup>4</sup> There were 240 incidents documented in 2015, and 171 in the first half of 2016 alone, 80% and 90% of which, in 2015 and 2016 respectively, targeted students and scholars – a reaction to the increasingly central role universities play in the movement for

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<sup>1</sup> Learn more about us at [www.ccrjustice.org](http://www.ccrjustice.org).

<sup>2</sup> Learn more about us at <https://palestinelegal.org>.

<sup>3</sup> The report is available at <https://palestinelegal.org/the-palestine-exception>.

<sup>4</sup> Follow-up reports through July 2016 compiled by Palestine Legal are available at <http://palestinelegal.org/news/2016/1/26/suppression-of-palestine-advocacy-in-2015> and <http://palestinelegal.org/news/2016/7/25/2016-mid-year-report>.

Palestinian rights and an illustration of the level of pressure on academic institutions, many of which are supported with public funds, to suppress Palestinian rights activism.

Our *Palestine Exception* report documents the tactics that are used to stifle public advocacy – such as legislation, threats to academic freedom, administrative disciplinary actions, lawsuits and legal threats, and criminal investigations and prosecutions – and provides an appendix detailing a number of incidents that occurred on college campuses through June 2015.

All of these tactics – individually and in the aggregate – threaten the right to freedom of expression of people seeking to raise awareness about Palestinian human rights and challenge Israel's international law violations and U.S. policy that funds, defends, and enables those violations. Such tactics further undermine the traditional role of universities, particularly those that are public, in promoting the free expression of ideas – even if they are unpopular – and protecting challenges to the orthodoxies prevalent in official political discourse. U.S. educational and governmental institutions should resist attempts to punish, burden, or chill speech and advocacy supporting Palestinian rights or criticizing Israel and instead adhere to their stated commitments to provide space for open, robust debate on vital issues of public concern.

#### **A. LEGISLATION**

Fourteen states in the U.S. have enacted laws aimed at curbing Palestinian rights advocacy, targeting campaigns calling for boycotts, divestment, and sanctions (BDS) against Israel until it complies with international law.<sup>5</sup> These state laws vary, but generally blacklist companies or organizations that participate in BDS, and deny them the ability to receive state contracts or funding, and/or prevent state investments in them. Direct or indirect restrictions in public funding or benefits aimed at suppressing particular political perspectives are unconstitutional, and essentially force groups to choose between making ethical decisions in compliance with international law and accessing state funds and benefits. In New York State, the governor even circumvented the legislative process by signing an executive order<sup>6</sup> to implement an anti-BDS blacklist<sup>7</sup> when it appeared pending state legislation might not pass.

These anti-BDS laws are part of a global pattern. Efforts creating penalties for engaging in boycotts of Israel, limiting the ability of local municipalities to boycott Israeli goods, denouncing BDS initiatives, or assigning criminal or civil consequences for Palestinian human rights advocacy have appeared in countries including Canada, the United Kingdom, France, and Israel

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<sup>5</sup> Learn more at <http://righttoboycott.org/>.

<sup>6</sup> The executive order is available at [https://www.governor.ny.gov/sites/governor.ny.gov/files/atoms/files/EO\\_157\\_new.pdf](https://www.governor.ny.gov/sites/governor.ny.gov/files/atoms/files/EO_157_new.pdf).

<sup>7</sup> CCR and Palestine Legal submitted a Freedom of Information Law request to New York State seeking information about the decision-making process behind the executive order, available at [http://ccrjustice.org/sites/default/files/attach/2016/06/EO157\\_Cuomo\\_FOIL\\_Request.pdf](http://ccrjustice.org/sites/default/files/attach/2016/06/EO157_Cuomo_FOIL_Request.pdf).

itself.<sup>8</sup> In fact, Israel has reportedly been behind some lobbying efforts for these bills in the U.S. and U.K.<sup>9</sup>

## B. THREATS TO ACADEMIC FREEDOM

Israel advocacy organizations have launched numerous public campaigns targeting academics and students who criticize Israel, often with the aim of pressuring universities to investigate, punish, censor, sanction, deny tenure to, or dismiss them. For example, in 2014, the publicly-funded University of Illinois at Urbana-Champaign terminated Palestinian-American professor Steven Salaita from a tenured faculty position, following pressure from donors who disagreed with his personal tweets criticizing Israel's assault on Gaza that summer.<sup>10</sup> Israel advocacy organizations have also targeted Middle East Studies programs, running campaigns to defund programs that get federal funding because of purported bias and pressuring schools, at times successfully, to cancel courses.<sup>11</sup> Student groups organizing in support of Palestinian rights regularly experience disparate treatment, including bureaucratic hurdles, requirements to pay security fees and receive advance approval for activities, and increased scrutiny by university administrators, while organizers are often falsely accused of antisemitism or terrorism and sometimes subject to administrative sanctions for their advocacy.<sup>12</sup>

Israel advocacy organizations have engaged with U.S. state agencies to further their efforts. At least six meritless complaints have been filed with the U.S. Department of Education (DOE) alleging that campus expression in support of Palestinian rights creates a hostile educational environment for Jewish students, in asserted violation of Title VI of the Civil Rights Act of 1964, which prohibits discrimination on the basis of race, color, or national origin by institutions that receive federal funding. To date, no such complaint has been sustained or found to have legal merit, but DOE investigations are time-consuming and, even when they are found to be meritless, generate pressure on universities to suppress student activism.<sup>13</sup> Despite their lack of success, the threat of such complaints continues to chill engagement on the issue.<sup>14</sup> Additionally, Israel advocacy groups rely on the U.S. Department of State's definition of antisemitism to try to suppress Palestine human rights advocacy. The Department of State's definition, intended to identify antisemitism abroad, includes vague and overbroad language that characterizes "delegitimizing," "demonizing," or applying a "double standard" to Israel as antisemitic.<sup>15</sup>

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<sup>8</sup> Three Special Rapporteurs sent a letter in 2011 expressing concern over Israel's "Law for Prevention of Damage to the State of Israel through Boycott – 2011," available at

[https://spdb.ohchr.org/hrdb/19th/AL\\_Israel\\_26.08.2011\\_\(7.2011\).pdf](https://spdb.ohchr.org/hrdb/19th/AL_Israel_26.08.2011_(7.2011).pdf).

<sup>9</sup> See Ali Abunimah, *Israel "quietly" pushed for anti-BDS legislation in US, UK*, ELECTRONIC INTIFADA, Feb. 24, 2016, <https://electronicintifada.net/blogs/ali-abunimah/israel-quietly-pushed-anti-bds-legislation-us-uk>.

<sup>10</sup> Learn more at <https://ccrjustice.org/home/what-we-do/our-cases/salaita-v-kennedy-et-al>.

<sup>11</sup> See, e.g., Alexander, Nazaryan, *Why a Controversial Palestinian History Class at Berkeley Was Canceled, Then Reinstated*, NEWSWEEK, Oct. 5, 2016, <http://www.newsweek.com/2016/10/14/berkeley-palestinian-history-class-506153.html>.

<sup>12</sup> More information is available in CCR and Palestine Legal's report, *The Palestine Exception to Free Speech*, *supra* note 3, on pgs. 17-29.

<sup>13</sup> See, e.g., Kenneth L. Marcus, *Standing Up for Jewish Students*, JERUSALEM POST, Sept. 9, 2013, <http://www.jpost.com/Opinion/Op-Ed-Contributors/Standing-up-for-Jewish-students-325648>.

<sup>14</sup> *Id.*

<sup>15</sup> See *Defining Anti-Semitism*, U.S. DEP'T OF STATE, June 8, 2010, <https://www.state.gov/j/drl/rls/fs/2010/122352.htm>; see also FAQ: *What to Know about Efforts to Re-define Anti-*

### C. LAWSUITS AND LEGAL THREATS

Israel advocacy organizations have sued, threatened to sue, and filed complaints against activists and organizations in an attempt to censor, punish, and suppress speech critical of Israel. One example of current litigation that is detailed in our enclosed report was brought by five Olympia Food Co-op members against sixteen former and then-current board members after the board voted unanimously to boycott Israeli goods.<sup>16</sup> Israel advocacy group StandWithUs has taken credit for the case as a byproduct of its partnership with the Israeli government.<sup>17</sup> Since our report was published, two cases have been brought against the American Studies Association, which voted in 2013 to endorse the academic boycott of Israel.<sup>18</sup> Also recently, another Israel advocacy group, Shurat HaDin, filed a charge against the union United Electrical, Radio and Machine Workers of America with the National Labor Relations Board after it adopted a resolution endorsing BDS; the charge was dismissed in early 2016.<sup>19</sup> Most recently, David Horowitz, an Israel advocate recognized as “a driving force of the anti-Muslim, anti-immigrant and anti-black movements,”<sup>20</sup> threatened to sue a student who had written an op-ed condemning an inflammatory poster campaign Horowitz coordinated at multiple universities, through which he accused student organizers of promoting terrorism and “Jew hatred.”<sup>21</sup>

### D. CRIMINAL INVESTIGATIONS AND PROSECUTIONS

In some instances, campaigns to falsely depict Palestinian rights advocates as antisemitic and linked to terrorism have attracted the attention of law enforcement, driving surveillance, criminal investigations, and prosecutions on charges ranging from disrupting a meeting to material support for terrorism. In one particularly dramatic example from 2011, the Orange County district attorney (DA) charged eleven University of California at Irvine (UC Irvine) students with criminal misdemeanor counts of conspiring to disrupt a public meeting and disrupting a public meeting, after students read brief statements and walked out of a 2010 speech by Michael Oren, then Israeli ambassador to the United States, at UC Irvine. The DA’s handling of the case drew

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*Semitism to Silence Criticism of Israel*, PALESTINE LEGAL, <https://static1.squarespace.com/static/548748b1e4b083fc03ebf70e/t/56e6ff0cf85082699ae245b1/1457979151629/FAQ+onDefinition+of+Anti-Semitism-3-9-15+newlogo.pdf>.

<sup>16</sup> Learn more at <https://ccrjustice.org/home/what-we-do/our-cases/davis-et-al-v-cox-et-al>.

<sup>17</sup> See, e.g., Ali Abunimah, *Uncovered: Israel’s Role in Planned US Lawsuit to Fight BDS*, ELECTRONIC INTIFADA, Sept. 6, 2011, <https://electronicintifada.net/content/uncovered-israels-role-planned-us-lawsuit-fight-bds/10350>; Nathan Guttman, *StandWithUs Draws Sharp Line on Israel*, FORWARD, Nov. 27, 2011, <http://forward.com/news/146821/standwithus-draws-line-on-israel/>. See also *Davis v. Cox*, Declaration of Maria LaHood in Support of Defendants’ Opposition to Plaintiffs’ Second Motion to Compel, Jan. 2016, <http://ccrjustice.org/sites/default/files/attach/2016/01/LaHood%20Declaration%20and%20Exhibit.pdf>.

<sup>18</sup> The text of the American Studies Association’s boycott resolution is available at [http://www.theasa.net/american\\_studies\\_association\\_resolution\\_on\\_academic\\_boycott\\_of\\_israel](http://www.theasa.net/american_studies_association_resolution_on_academic_boycott_of_israel).

<sup>19</sup> See *UE Win at NLRB: Harassing Political Charge by Israeli Law Firm Dismissed*, UE UNION, Jan. 20, 2016, <http://www.ueunion.org/ue-news/2016/ue-win-at-nlrp-harassing-political-charge-by-israeli-law-firm-dismissed>.

<sup>20</sup> *Extremist Files: David Horowitz*, SOUTHERN POVERTY LAW CTR., <https://www.splcenter.org/fighting-hate/extremist-files/individual/david-horowitz>.

<sup>21</sup> See *Horowitz threatens to sue student over op-ed responding to hate posters*, PALESTINE LEGAL, Nov. 3, 2016, <http://palestinelegal.org/news/2016/11/3/horowitz-threatens-to-sue-student-over-op-ed-responding-to-hate-posters>.

allegations of misconduct;<sup>22</sup> nevertheless, ten of the students were found guilty and sentenced to probation, community service, and fines. U.S. prosecutors also relentlessly pursued a case against five Palestinian-Americans involved with the Holy Land Foundation, the largest U.S. charity providing humanitarian aid to Palestinians before 9/11, claiming that aid was provided under the influence of Hamas.<sup>23</sup> The five defendants received sentences of up to sixty-five years. Activists believe that a 2010 grand jury investigation of twenty-three anti-war activists led to the unusual criminal prosecution of Palestinian community organizer Rasmia Odeh for allegedly lying on a naturalization application.<sup>24</sup> Recent revelations have further demonstrated that the U.S. government shares significant amounts of intelligence data with Israel, though the full extent of collaboration and coordination between U.S. and Israeli government agencies in both surveillance and criminal prosecutions is unknown.<sup>25</sup> Israeli authorities have actively assisted in some U.S. prosecutions, providing leads, evidence against defendants, and even Israeli intelligence agents to serve as experts and testify anonymously in proceedings.

### III. ATTACKS ON U.S. CITIZEN HUMAN RIGHTS DEFENDERS BY ISRAEL

There have been numerous cases of U.S. citizen human rights defenders being killed or seriously injured by Israeli forces while engaging in protests, acting as human rights observers or medics, or partaking in other peaceful activities in support of Palestinian rights.<sup>26</sup> In 2003, Rachel Corrie was killed by an Israeli soldier operating a Caterpillar bulldozer as she stood in front of a Palestinian home in Gaza to protect it from demolition. In a civil case, the Israeli Supreme Court in 2015 upheld a lower court decision that determined that Israel could not be held liable for her death.<sup>27</sup> In 2010, 18-year-old Furkan Doğan was killed when he was shot five times by Israeli soldiers in international waters as he traveled on a flotilla to bring humanitarian aid to Gaza. All of the entry wounds were to the back of his body, except the shot to his face, which was delivered at point-blank range. In 2014, 14-year-old Orwah Hammad was killed by live ammunition at a demonstration in the West Bank. Several other human rights defenders have

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<sup>22</sup> See Matt Coker, 'Irvine 11' Again Go Before the Judge, OC WEEKLY, May 16, 2011, [http://blogs.ocweekly.com/navelgazing/2011/05/irvine\\_11\\_muslim\\_gag\\_order.php](http://blogs.ocweekly.com/navelgazing/2011/05/irvine_11_muslim_gag_order.php).

<sup>23</sup> See Gretel C. Kovach, *Five Convicted in Terrorism Financing Trial*, N. Y. TIMES, Nov. 24, 2008, [http://www.nytimes.com/2008/11/25/us/25charity.html?\\_r=0](http://www.nytimes.com/2008/11/25/us/25charity.html?_r=0).

<sup>24</sup> The information Odeh failed to provide on the form was a conviction in an Israeli military court for an offense she maintains she did not commit and only confessed to under torture. See *About the Case*, JUSTICE FOR RASMEA, <http://justice4rasmea.org/about/>. Odeh was convicted, and the Court of Appeals found that the trial court improperly withheld evidence of the torture and the resulting PTSD Odeh suffered. See *id.*; *United States v. Odeh*, Amicus Brief on behalf of Torture Experts in Support of Defendant-Appellant, July 2015, <https://ccrjustice.org/sites/default/files/attach/2015/07/OUR%20BRIEF.pdf>.

<sup>25</sup> See James Bamford, *Israel's NSA Scandal*, N. Y. TIMES, Sept. 16, 2014, <http://www.nytimes.com/2014/09/17/opinion/israels-nsa-scandal.html>.

<sup>26</sup> Learn more at <https://ccrjustice.org/home/get-involved/tools-resources/fact-sheets-and-faqs/israeli-attacks-us-human-rights-defenders>.

<sup>27</sup> The U.S. declined to comment on this verdict. See Jodi Rudoren and Danielle Ziri, *Court Rules Israel Is Not at Fault in Death of American Activist*, N. Y. TIMES, Aug. 28, 2012, <http://www.nytimes.com/2012/08/29/world/middleeast/court-rules-israel-wasnt-at-fault-in-rachel-corries-death.html>. In an earlier civil action brought by the Corrie family and Palestinian victims against Caterpillar for aiding and abetting war crimes in the United States, the United States filed an amicus brief in support of Caterpillar, urging the case be dismissed. See *Corrie v. Caterpillar*, Brief of the United States as *Amicus Curiae* in Support of Affirmance, Aug. 2006, [http://ccrjustice.org/sites/default/files/assets/us\\_amicus\\_brief-AS-FILED.pdf](http://ccrjustice.org/sites/default/files/assets/us_amicus_brief-AS-FILED.pdf).

been attacked at demonstrations, resulting in severe damage and, in some cases, permanent disabilities. Israel repeatedly fails to conduct thorough, credible, and transparent investigations<sup>28</sup> in these cases. Despite the U.S. government's responsibility to take serious and meaningful measures to demand accountability for the killing or injury of its human rights defenders by Israel and ensure protection of its citizens, it has showed an alarming amount of deference to Israel and similarly failed to take serious action.<sup>29</sup>

Additionally, Americans seeking to enter Israel to engage in human rights observing are repeatedly subject to denials of entry, detention, invasive searches, and exhaustive interrogations – sometimes resulting in bans on travel to Israel/Palestine for 10 years – that display a pattern of discrimination based on perceived racial or ethnic identity or political opinion,<sup>30</sup> about which the U.S. Department of State has expressed concern.<sup>31</sup> Stories of people denied entry include incidents where travelers seemed to be targeted because of their names, appearances, or ancestry, while many describe having their religion or ancestry mocked or insulted by border agents. And the Knesset has reportedly just authorized a bill to prevent BDS supporters from entering Israel.<sup>32</sup>

#### IV. RECOMMENDATIONS

1. We urge the Special Rapporteur to call on the U.S. government to ensure that the U.S. federal government and states respect, protect, and promote the right to freedom of expression and take no actions to undermine or undercut the full enjoyment of that right.

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<sup>28</sup> See, e.g., Matthew Kalman, *Israeli Inquiry into Rachel Corrie Death Insufficient, US Ambassador Tells Family*, GUARDIAN, Aug. 24, 2012, <http://www.theguardian.com/world/2012/aug/24/israel-rachel-corrie-us-ambassador>; Neil MacFarquhar, *UN Leader Criticizes Israeli Plan for Inquiry*, N. Y. TIMES, June 18, 2010, <http://www.nytimes.com/2010/06/19/world/middleeast/19nations.html>; Press Release, Amnesty Int'l UK, *Israeli Inquiry into Gaza Flotilla Deaths No More Than a Whitewash* (Jan. 28, 2011), <http://www.amnesty.org.uk/press-releases/israeli-inquiry-gaza-flotilla-deaths-no-more-whitewash>.

<sup>29</sup> The U.S. House of Representatives failed to act on a March 2003 resolution, available at <https://www.congress.gov/bill/108th-congress/house-concurrent-resolution/111/all-info>, calling on the U.S. government to “undertake a full, fair, and expeditious investigation” into Rachel Corrie’s death. The U.S. never investigated the death of Furkan Doğan, instead deferring to the Israeli government to conduct an investigation. See *Gaza Flotilla FOIA Production Guide: Furkan Doğan*, CTR. FOR CONSTITUTIONAL RIGHTS, Feb. 2013, <https://ccrjustice.org/sites/default/files/assets/Production%20Guide%20Furkan%20Dogan.pdf>. The U.S. was the only country to vote against endorsing a UN Human Rights Council report on the raid that concluded that violations of international law took place and evidence supported pursuing prosecutions. See Colum Lynch, *U.N. Panel Endorses Report Accusing Israel of Executions Aboard Aid Flotilla*, WASHINGTON POST, Sept. 30, 2010, <http://www.washingtonpost.com/wp-dyn/content/article/2010/09/29/AR2010092907110.html>. Most recently, the United States urged that a civil action filed in a U.S. federal court against the former Israeli Defense Minister Ehud Barak be dismissed on immunity grounds. *Doğan v. Barak*, Suggestion of Immunity by the United States, June 2016, <http://ccrjustice.org/sites/default/files/attach/2016/06/6.10.16%20US%20Suggestion%20of%20Immunity.pdf>. A decision is pending in that case. In the case of Orwah Hammad, a Department of State statement said that “local authorities... have the lead on this investigation.” See Press Release, U.S. Dep’t of State, *Death of U.S. Minor in Silwad* (Oct. 24, 2014), <https://www.state.gov/r/pa/prs/ps/2014/10/233356.htm>.

<sup>30</sup> A series of stories detailing the experiences of various Americans at the Israeli border is available at <http://www.aaiusa.org/snapshots-american-citizens-discriminated-against-at-israeli-border>.

<sup>31</sup> See US Campaign to End the Israeli Occupation, *Five US citizens detained, interrogated, denied entry to Israel*, MONDOWEISS, Aug. 3, 2016, <http://mondoweiss.net/2016/08/citizens-detained-interrogated/>.

<sup>32</sup> See, e.g., *Knesset Authorizes Bill to Ban BDS Supporters from Israel*, INT’L MIDDLE EAST MEDIA CTR., Nov. 9, 2016, <http://imemc.org/article/knesset-authorizes-bill-to-ban-bds-supporters-from-israel/>.

2. We appeal to the Special Rapporteur to express great concern over legislation that targets entities on the basis of political viewpoint or expression or that restricts or penalizes protected protest or expression, and to call on federal, state, and local governments to reject these bills.
3. We ask the Special Rapporteur to encourage U.S. government agencies, including the Department of State and the DOE's Office for Civil Rights, as well as publicly funded state institutions to clearly distinguish between antisemitism and criticism of Israeli policies in their definitions, policies, guidance, and actions.
4. We urge the Special Rapporteur to call on the Israeli government to cease efforts to interfere with and suppress the freedom of expression of advocates for Palestinian rights, including in the U.S.
5. We ask the Special Rapporteur to encourage U.S. and Israeli officials to conduct full, impartial, credible, and transparent investigations and seek accountability following the killing and serious injury by Israeli soldiers of U.S. citizens – and other human rights defenders – defending Palestinian rights.
6. Lastly, we encourage the Special Rapporteur to consider visiting the U.S. to meet with affected activists and government officials and to further study these issues.