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Promotion and protection of human rights: human rights questions, including alternative approaches for improving the effective enjoyment of human rights and fundamental freedom

Global threats to freedom of expression arising from the conflict in Gaza

Note by the Secretary-General**

The Secretary-General has the honour to transmit to the General Assembly the report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Irene Khan, submitted in accordance with Human Rights Council resolution [43/4](#).

* [A/79/150](#).

** The present report was submitted after the deadline to reflect the most recent information.



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

Summary

In the present report, the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression examines the impact of the conflict in Gaza on freedom of expression globally. She highlights attacks on journalists and media restrictions, endangering access to information about the conflict globally; suppression of protests and dissent and undermining of academic and artistic freedoms in polarized political environment; and restrictions on legitimate political expression in the name of fighting terrorism and antisemitism. She assesses the compliance of States, social media companies and other private actors with international human rights standards, online and offline, and finds an extensive pattern of unlawful, discriminatory and disproportionate restrictions on advocacy for the rights of Palestinian people. Emphasizing the importance of freedom of opinion and expression – enjoyed on an equal basis by all sides – as an invaluable tool for fighting hate and encouraging mutual respect and dialogue, the Special Rapporteur calls on States, social media companies and other private actors to reject double standards on human rights and makes concrete recommendations for them to uphold the right to freedom of opinion and expression equally for all.

I. Introduction

1. The conflict in Gaza has unleashed a global crisis of freedom of expression. Rarely has a conflict challenged freedom of opinion and expression so broadly and so far beyond its borders. The global and grave nature of the challenges are the subject of the present report.

2. Hamas' attack on Israel on 7 October 2023, the intensity of Israel's military response, the alarming level of civilian casualties in Gaza, especially of children and women, the massive destruction of infrastructure and the humanitarian catastrophe pushing the population to the brink of famine have outraged people around the world. Public opinion is highly polarized, in support of or in opposition to Palestinian rights and Israel's action. So too are the positions of States and private actors, shaped by their different understanding of the fraught history of the region, the situation in the occupied Palestinian Territory, Israel's military operation in Gaza and their own national interests.

3. The right to freedom of opinion and expression is caught in the crosshairs of this challenging situation. The unprecedented level of killing of journalists, attacks on media infrastructure and restrictions on foreign media have made reporting difficult and dangerous, affecting the right to information of people in Gaza as well as audiences around the world. Social media platforms have played an important role as the main conduit of information to and from the besieged population but have also been a major vector of disinformation and hate speech, sowing hatred, violence, fear and distrust among and within communities and countries.

4. Antisemitism, Islamophobia and anti-Palestinian racism have surged online and offline since 7 October. Confusion over what constitutes antisemitism, poorly drafted and badly implemented national laws, opaque policies and practices of social media platforms and vested political interests have combined to complicate, undermine and weaponize the task of combating hate speech.

5. Around the world, large-scale demonstrations have erupted in solidarity with the Palestinian people and against genocide and occupation. Although largely peaceful, the protests and dissent have been suppressed harshly in several countries. Some private actors, such as universities, cultural institutions and funders, even media outlets, have played a disturbing role, intimidating, isolating and silencing voices that differ from theirs.

6. The Special Rapporteur has identified three distinct challenges to freedom of opinion and expression emanating from the conflict in Gaza directly and indirectly: first, attacks on journalists and media, endangering access to information about the conflict globally; second, the suppression of Palestinian voices and views in a discriminatory and disproportionate manner, undermining academic and artistic freedom as well as freedom of expression more generally; and third, the blurring of the boundaries between protected and prohibited speech. None of these challenges are new but have become more intense over the past year.

7. The Special Rapporteur examines the practices of States, social media and other private actors in relation to these three challenges and analyses their compatibility with international human rights and, where applicable, humanitarian law. While touching on the situation in the occupied Palestinian Territory, the geographic and thematic scope of the report is global, in line with the mandate of the Special Rapporteur.

8. The Special Rapporteur draws on consultations, written submissions from stakeholders and desk research. The Special Rapporteur thanks all those who provided inputs to the report.¹

II. International legal standards

9. At the core of all human rights is the right to non-discrimination.² It has two important implications for the right to freedom of opinion and expression. First, everyone has an equal right to exercise their freedom of opinion and expression. Second, the equal enjoyment of freedom of expression means that it cannot be used as a licence to incite discrimination, hostility and violence against others.

10. Enshrined in articles 19 of the Universal Declaration of Human Rights, as well as in the International Covenant on Civil and Political Rights and in key regional instruments, freedom of opinion and expression guarantees the right to hold opinions without interference, and to seek, receive and impart information and ideas of all kinds, true or false, offensive or enlightened, regardless of frontiers or choice of media. It protects, among other things, media freedom; discourse on political and public affairs; criticism of government officials, policies or institutions; intellectual discourse; advocacy of human rights; and cultural and artistic expression.³ These issues are relevant to the challenges discussed in the present report.

11. Freedom of expression may be restricted in accordance with article 19 (3) of the Covenant. Restrictions must be provided by law that is precise, public and does not give undue discretion to the authorities, and it must be necessary to meet the legitimate objective of ensuring respect for the rights or reputation of others, or for protecting national security, public order, public health or public morals. The principle of necessity incorporates the notion of proportionality and the use of the least restrictive means to achieve the purported aim.⁴ Because of the fundamental role this right plays in empowering people and enabling them to exercise other rights, any restriction must be construed narrowly and must not impair the right itself.

12. International human rights law, born in the aftermath of the Holocaust, provides clear standards for addressing hate speech. While international law does not use the term “hate speech”, under article 20 (2) of the International Covenant States must prohibit by law “the advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence.” Advocacy of hatred is not sufficient by itself to justify prohibition and must amount to incitement which is likely to result in discrimination, hostility and violence.

13. The Rabat Plan of Action on the prohibition of advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence provides valuable guidance on the factors that should be considered in assessing the appropriateness of prohibiting and criminalizing speech. The criteria include the social context, the speaker’s status and intent, the content and form of the speech, the nature of the audience, the reach of the communication and the imminence of harm. By their very nature, these criteria require a contextual analysis of each situation rather than a blanket ban, whether of antisemitism, Islamophobia or other forms of hate speech.

¹ Written submissions are available at www.ohchr.org/en/calls-for-input/2024/call-submissions-thematic-report-special-rapporteur-freedom-expression.

² Human Rights Committee, general comment No. 34 (2011) on the freedoms of opinion and expression, para. 26.

³ *Ibid.*, para. 11.

⁴ *Ibid.*, para. 22.

14. Incitement to discrimination, hostility and violence on the grounds of race is also prohibited under article 4 (a) of the International Convention on the Elimination of All Forms of Racial Discrimination. Contextual analysis, similar to the Rabat Plan of Action, is required to determine racist expression that must be punishable by law.

15. International criminal law places an important limit on expression. Direct and public incitement to genocide is an international crime.⁵ Such speech must be intended, understood and communicated publicly as a call to commit genocide; the context, content and speaker are highly relevant in determining liability.⁶

III. Journalists under fire

16. The right to freedom of opinion and expression provides the international legal basis for uncensored and unhindered news media and the right of journalists to work safely and without fear. International humanitarian law is also applicable to the safety of journalists in the occupied Palestinian Territory.

A. Occupied Palestinian Territory

17. There is serious concern that the pattern of killings and arbitrary detention of journalists and destruction of press facilities and equipment in Gaza indicates a deliberate strategy of the Israeli military to silence critical reporting and obstruct documentation of possible international crimes.⁷

18. Under international humanitarian law, journalists enjoy protection as civilians. The deliberate killing of a journalist is a war crime.⁸ Journalists may only become a legitimate military objective if they participate directly in hostilities or incite war crimes or other international crimes. While Israel has made claims in the media about some journalists reportedly participating in hostilities, none of the claims has been substantiated.

19. As of 13 August 2024, 113 Palestinian journalists and media workers had been killed and many more injured, making Israel's military action since October 2023 the deadliest conflict for journalists and media workers globally in the past three decades.⁹ In addition, three journalists were killed in Israeli shelling near the border of Lebanon. Four Israeli journalists were killed by Hamas in the 7 October attacks.

20. Journalists, wearing clearly identifiable jackets and helmets marked as "Press" and travelling in well-marked press vehicles, have been attacked by the Israeli army under circumstances that indicate they may have been targeted.¹⁰ Investigations into an incident in Gaza in which two journalists were killed and another in southern Lebanon in which several journalists were injured and one killed led to the conclusion

⁵ Convention on the Prevention and Punishment of the Crime of Genocide, art. III(c); Rome Statute of the International Criminal Court, art. 25(3)(e).

⁶ A/HRC/55/73, paras. 50–52.

⁷ International Court of Justice, application instituting proceedings, *South Africa v. Israel*, 29 December 2023, para. 119.

⁸ Protocol Additional to the Geneva Conventions of 12 August 1949, arts. 51.3 and 79.2.

⁹ See Committee to Protect Journalists, "Journalist casualties in the Israel-Gaza war", 13 August 2024, available at <https://cpj.org/2024/08/journalist-casualties-in-the-israel-gaza-conflict/>.

¹⁰ See communication ISR 12/2023. All communications mentioned in the present report are available from <https://spcommreports.ohchr.org/Tmsearch/TMDocuments>. See also www.ohchr.org/en/press-releases/2024/08/expert-denounces-killing-two-more-journalists-gaza-and-demands-full.

that the Israeli military had known or should have known that they were attacking journalists.¹¹

21. Silencing journalists by killing them is the most egregious form of censorship.¹² Despite the international obligation to conduct prompt, thorough, independent and impartial investigations into all unlawful killings, impunity has persisted for decades in Gaza or the West Bank.¹³ The failure of Israel to investigate, prosecute and punish serious crimes against journalists not only denies justice to the victims' families, it emboldens perpetrators to continue and can have a chilling effect on other journalists.

22. Media facilities are considered civilian objects under international law and therefore are protected from military attacks. Nonetheless, there has been large-scale destruction of press facilities in Gaza. According to the Palestinian Journalists' Syndicate, around 70 press organizations, including local radio stations, news agencies, transmission towers and journalist training institutes, have been partially or completely destroyed in Gaza since October 2023. Cameras filming live from the Gaza strip and buildings housing press organizations have been destroyed by the Israeli military. According to one report, "by targeting all press facilities and equipment, the Israeli military not only cuts off any source of images and information in Gaza, but also compromises the logistics journalists need to carry out their mission."¹⁴

23. Access to the Internet has been acknowledged as a human right¹⁵ and is vital for all civilians, including journalists, in conflict-affected contexts.¹⁶ Reporting and access to information have been severely hampered by disruptions to Internet connectivity in Gaza, resulting from a combination of factors, including widespread destruction of civilian telecommunications infrastructure, deliberate restrictions on access to electricity and technical disruptions to telecommunications services.

24. Reports of harassment, intimidation and violence by the Israeli authorities against journalists and media workers in the occupied Palestinian Territory have increased since 7 October attacks. Dozens of Palestinian journalists have been arbitrarily detained allegedly by Israeli forces in Gaza and the West Bank.¹⁷ Journalists covering the conflict have repeatedly faced obstruction, incommunicado detention,¹⁸ confiscation of equipment and physical attacks by the Israeli military.¹⁹ Some Palestinian journalists have reported receiving threats from the Israeli authorities to halt their coverage of the war.²⁰

25. Israel has refused to grant unhindered access to foreign media in Gaza, despite repeated requests. It reduces media diversity and affects access to information. As a result, local journalists carry the burden of reporting what is happening in the Gaza Strip. Despite the psychological toll of the death of colleagues, friends and families and the destruction of their homes, offices and media facilities, they have continued to work valiantly, putting their lives on the line to deliver their mission while enduring

¹¹ See L. Loveluck et al, "Drone footage raises questions about Israeli justification for deadly strike on Gaza journalists", *Washington Post*, 19 May 2024; and submission of Human Rights Watch.

¹² A/HRC/50/29, para. 29.

¹³ See communication ISR 14/2022.

¹⁴ See <https://forbiddentories.org/the-destruction-of-press-infrastructure-in-gaza-a-strategy-to-blind-the-public/>.

¹⁵ Human Rights Council resolution 47/16; and General Assembly resolution 77/150.

¹⁶ A/77/288, para. 91.

¹⁷ See Committee to Protect Journalists, "Arrests of Palestinian Journalists Since Start of Israel-Gaza War", 25 July 2024, available at <https://cpj.org/2024/07/arrests-of-palestinian-journalists-since-start-of-israel-gaza-war/>.

¹⁸ See communication ISR 12/2023.

¹⁹ Submission of IFEX.

²⁰ Submission of PEN International.

the enormous hardship that has been inflicted on all civilians in Gaza. According to one AFP reporter “we see more horrors than anyone else”.²¹

B. Media freedom elsewhere

26. The media environment inside Israel appears to have worsened following the October attacks by Hamas and the government military action in Gaza. Some journalists in Israel are afraid to express dissenting views.²² There have been mob attacks on journalists,²³ as well as reports of intimidation by the authorities.²⁴

27. In April 2024 the Israeli Parliament adopted the Foreign Media Law, which gives wide powers to the Executive to ban foreign media and impose other restrictions without prior judicial review.²⁵ The Special Rapporteur communicated her concern to the Government of Israel that banning a media outlet constitutes an unnecessary and disproportionate restriction of freedom of expression, inconsistent with international human rights standards. It affects not only the freedom of expression of journalists but also the public’s right to information from diverse sources, and therefore should be reviewed and repealed. In May 2024 the Government used the Foreign Media Law to temporarily ban Al-Jazeera, citing concerns of national security, incitement and its support for Palestinian factions.²⁶ The ban was made permanent following an amendment of the law.

28. The space for media freedom in the Middle East region has long been limited.²⁷ Following the onset of the recent conflict in Gaza, some Governments have reacted harshly against journalists for their coverage of Israeli or Palestinian issues. For instance, Jordan applied its Cybercrimes Law to detain and interrogate hundreds of individuals, including journalists, for their use of social media posts.²⁸ The media regulator in Egypt banned the website “Mada Masr” for six-months for “publishing false news” and summoned its editor following the publication of a report on the displacement of Gaza residents to Egypt.²⁹

29. In some Western countries, media companies took retaliatory measures against their own journalists, usually Arab or Palestinian, for expressing their personal views online or offline. There are numerous reports of termination, resignation and reassignment of journalists for posting on personal social media accounts, signing petitions in solidarity with the Palestinian people or criticizing the conduct of Israel regarding the war at public events. The overall effect has been to chill diverse views.

30. The *Los Angeles Times* reportedly banned 38 employees from covering issues related to Israel or Palestine after they signed a letter condemning the killing of journalists in Gaza.³⁰ Twenty journalists at the *Sydney Morning Herald* and *The Age* were reportedly banned from participating “in any reporting or production relating to

²¹ See “Death, exhaustion and suspicion: AFP journalists on the horrors of Gaza”, *AFP*, 8 February 2024.

²² See Emma Goldberg, “Some Israeli Journalists Express Fear About Conveying Dissenting Views”, *New York Times*, 21 October 2023, available at www.nytimes.com/2023/10/21/business/media/israel-journalists-hamas-war.html.

²³ Submission of PEN International.

²⁴ Submission of ARTICLE 19.

²⁵ See communication ISR 15/2024.

²⁶ See <https://network.aljazeera.net/en/press-releases/israel-shuts-down-al-jazeera-offices>.

²⁷ See <https://cpj.org/2021/01/ten-years-after-arab-spring-media-threats-press-freedom-trends/>.

²⁸ Submissions of ICNL and ARTICLE 19.

²⁹ Submission of ARTICLE 19.

³⁰ See National Writers Union, “Red lines: Retaliation in the media history during the war on Gaza” (2024), available at https://drive.google.com/file/d/10fUJL7dpmWIYyT-LvzAu-YF-7xb_z6Vd/view?pli=1.

the war” after they signed an open letter criticizing how Australian media has covered Israeli military action in Gaza. It has also been reported that the BBC launched an investigation into six of its Arabic Service journalists for bias. Although none of them were found to have violated BBC editorial policies, they were disciplined and one senior journalist resigned.³¹ While media companies may legitimately wish to address bias or perceptions of bias among its journalists, all such action should be done in a non-discriminatory, proportionate and transparent manner.

31. In a refreshing contrast to the action of traditional media outlets noted above, the board of the Pulitzer Prize commended student journalists at Columbia University in the United States of America for their work “to document a major national news event under difficult and dangerous circumstances and at risk of arrest”.³²

IV. Suppression of protest and dissent

32. State practice has shown a tendency to suppress protests, advocacy and critical expression in a disproportionate and discriminatory manner against Palestinian groups. While this practice has been apparent in the past, the recent conflict in Gaza has expanded its scope and gravity.

A. Public protests

33. Israel’s assault on Gaza sparked a wave of public protests in countries across the world, including Algeria, Australia, India, Indonesia, Japan, Mexico, Malaysia, Nigeria and South Africa. The protests have been particularly strong in the Middle East, and although peaceful, were restricted, banned or disrupted with force in several countries in the region.³³

34. Several European Governments imposed specific restrictions, blanket bans or pre-emptive bans on demonstrations in support of Palestinian people, justifying their actions on grounds of “risk to public order and security”, countering “support of terrorism” and “preventing antisemitism”.³⁴ The responses are arbitrary, unfairly equating Palestinian advocacy as antisemitic or in support of terrorism, and discriminatory as no demonstrations in support of Israel appear to have encountered any specific restrictions.

35. In Germany, the response was among the toughest, imposing a blanket ban on all demonstrations in support of Palestinian people from 7 to 21 October 2023, and pre-emptively banning several such gatherings and explaining its action was to prevent “public celebration of the Hamas terrorist attacks”. On 12 October 2023, the Government of France announced a complete ban on all Palestinian rallies as potentially disturbing the public order, but was overruled by the Conseil d’État, the highest administrative court of France, on the grounds that such decisions should be made by local authorities on a case-by-case basis.³⁵ There have been reports of arbitrary detention and excessive use of force by the police in relation to pro-Palestinian demonstrations in several countries, including Belgium, Canada, France, Germany, Greece, Italy and the Kingdom of the Netherlands.³⁶ Jewish

³¹ Submission of PEN International.

³² See www.pulitzer.org/news/statement-pulitzer-prize-board-3.

³³ Submissions of Gulf Centre for Human Rights, Pen International and International Centre for Non-Profit Law.

³⁴ See Amnesty International, “Under protected and over restricted the state of the right to protest in 21 European countries” (London, 2024).

³⁵ Ibid.

³⁶ Ibid., and submission of Canadian Lawyers for International Human Rights.

protestors who participated in Palestinian protests complained that the authorities failed to protect them from pro-Israeli counter-protestors.³⁷

36. In the United States, over 10,000 demonstrations were organized between October 2023 and June 2024 in support of Palestinian people. Ranging from mass street protests and public rallies to student encampments on campus, vigils and other public assemblies, most events were held peacefully. Nevertheless, the authorities resorted to repressive measures, including widespread police action against the demonstrators and stigmatization of Palestinian advocacy as inherently dangerous. In addition, State and federal lawmakers have proposed over 45 pieces of legislation aimed at restricting street protests in support of Palestine, punishing student protestors and stigmatizing their Palestinian advocacy as “terrorism”.³⁸

37. The right to peaceful assembly, protected under article 21 of the International Covenant on Civil and Political Rights, is closely related to freedom of expression.³⁹ States have an obligation to allow peaceful assemblies, including peaceful civil disobedience, to take place without unwarranted interference, as well as an obligation to protect the participants. The possibility that a peaceful assembly may provoke adverse or even violent reactions from some members of the public is not in itself sufficient reason to prohibit or restrict the assembly.⁴⁰ Authorities are obliged to take reasonable measures to protect protestors and safely separate counter-protestors.

B. Assault on academic freedom

38. Academic freedom, rooted in a number of rights, including freedom of opinion and expression, signifies the right of members of the academic community, including students and scholars, to enjoy, individually and collectively, the freedom to develop, pursue and share knowledge and ideas without censorship, and to express, debate and challenge issues peacefully, without discrimination, fear or censorship.⁴¹ Academic freedom also includes the autonomy and self-governance of academic institutions.⁴²

39. In the context of Palestinian advocacy following Israeli military operations in Gaza, academic freedom of students and scholars, as well as the autonomy of institutions, have come under scrutiny and attack in several western countries, affecting both Jewish and Palestinian members of the academic communities. A major concern has been the failure of the university authorities to uphold their autonomy and respect the principle of non-discrimination and equal protection of the rights of all students and scholars.

40. Thousands of students, including many Jewish students, have demonstrated on campuses in Europe and North America since October 2023. In April 2024, encampments were set up by students to express solidarity with Palestinian civilians in Gaza, call for a ceasefire and demand that their universities divest from corporations profiting from the conflict and occupation of the Palestinian territories. In the United States, mass encampments were set up in colleges and universities in more than 25 states. While the protests were largely peaceful, some Jewish student groups reported feeling fearful and complained of antisemitism, antisemitic attacks, marginalization and discrimination, as well as tensions within the Jewish student community between those who participated in Palestinian protests and others who did

³⁷ Submission of Jøder for Retfærdig Fred (af 5784).

³⁸ Submission of International Centre for Non-profit Law.

³⁹ Human Rights Committee, general comment No. 37 (2020) on the right of peaceful assembly, para. 5.

⁴⁰ *Ibid.*, para. 27.

⁴¹ [E/C.12/1999/10](#), para. 39.

⁴² [A/75/261](#), para. 9.

not.⁴³ There are also claims that police failed to protect protestors in support of Palestine from counter-protestors.⁴⁴ Jewish students and Jewish student groups participating in Palestinian advocacy have been accused of being “antisemitic”.⁴⁵

41. The responses of some university administrations and local authorities in the United States were particularly harsh and disproportionate.⁴⁶ Despite the largely peaceful nature of protests, many of the encampments were removed by police on the grounds of maintaining public order, at the request of the university administrations. In several cases, it led to excessive use of force, including the deployment of riot units. Students and faculty members were assaulted, handcuffed and arrested. More than 2,000 people, including students and professors, were reportedly detained by police on university campuses, mainly for trespassing.⁴⁷

42. The universities are taking disciplinary measures against the students who participated or planned to participate in the protests, including suspension, possible expulsion, eviction from campus housing and the threat of deportation of some foreign students, which could jeopardize their scholarships and future careers.⁴⁸ In some cases, the protestors have been identified publicly by unknown groups in a process called “doxing”. Some students have had their employment offers withdrawn because of their activism on Palestine.

43. Contravening the generally accepted principle of respecting the independence and autonomy of academic institutions, United States legislators and private donors put political pressure on universities to suppress student protests and dismiss faculty and administrators. Some of the top academic institutions appear to have succumbed to that pressure, putting the United States at the risk of becoming “an exporter of bad models” of academic freedom.⁴⁹

44. Many scholars believe that the measures, on-campus and off-campus, have had a chilling effect on public discourse, academic research and policy expertise on Middle East issues.⁵⁰ Students, researchers and faculty members complain about a culture of intimidation in European and North American institutions in which they are afraid to express their views for fear of being deemed “antisemitic”, harassed, threatened, fired from their jobs or denied research funds.⁵¹ Scholars, faculty and students have complained of being investigated by their institutions about their social media posts and of being targeted by online smear campaigns, doxing and harassment.⁵² Israeli scholars have also reported being isolated from conferences on the basis of their perceived association with the actions of Israel.⁵³

⁴³ Submission of the European Union of Jewish Students.

⁴⁴ See communications OTH 71/2024 and USA 12/2024.

⁴⁵ See www.ohchr.org/sites/default/files/documents/issues/education/statements/20240510-stm-eom-sr-education-usa.pdf; meeting with student leaders in Geneva, July 2024.

⁴⁶ See Inter-American Commission of Human Rights, “United States must respect peaceful protest and academic freedom on campuses”, 9 May 2024, available at www.oas.org/en/iachr/jsForm/?File=/en/iachr/media_center/preleases/2024/095.asp.

⁴⁷ See communications OTH 71/2024 and USA 12/2024; and submissions of Human Rights Watch and Defending Rights and Dissent.

⁴⁸ See www.ohchr.org/en/press-releases/2024/07/usa-free-speech-campus-needs-be-protected-not-attacked-say-experts; and communication USA 12/2024.

⁴⁹ Observations on recent events on United States campuses (May 2024), Scholars at Risk Network.

⁵⁰ See www.ohchr.org/sites/default/files/documents/issues/education/statements/20240510-stm-eom-sr-education-usa.pdf.

⁵¹ Ibid.; see also Nader Hashemi, “Teaching the Middle East after October 7: Reflections on Academic Freedom, Antisemitism, and the Question of Palestine”, *POMEPS Studies* 51, April 2024.

⁵² Submission of ELSC.

⁵³ See Marc Lynch, “The Middle East and Middle East Studies After Gaza”, *POMEPS Studies* 51, April 2024.

45. Scores of courses, lectures, seminars or panel discussions about Palestine have been cancelled, and some adjunct faculty members have not had their appointments renewed because they spoke out in solidarity with Palestinians.⁵⁴ The level of obstruction of independent thought is illustrated by one instance in which, for the first time ever, the website of the well-known *Columbia Law Review* was shut down by the journal's board in an attempt to deter the publication of an article by a Palestinian legal scholar.⁵⁵

C. Intolerance of artistic freedom

46. Artistic freedom thrives in open multicultural societies, nourished by the democratic values of tolerance and diversity. The banning of books, films and artwork, retaliation against artists and writers, and demanding that social media platforms take down content or punishing users for posting critical content are practices usually carried out in authoritarian States but appear to have been emulated by public and private institutions in Western Europe and North America in relation to the Israel/Palestine situation. The justification, as in the case of protests and academic freedom, has been the protection of public order and the fight against hate speech. The practices have targeted both those expressing sympathy with Israel and those advocating for Palestinian rights.

47. One manifestation of this behaviour has been “deplatforming”, also colloquially known as “cancel culture”. In effect it is censorship by exclusion. Literature festivals have disinvited guest speakers.⁵⁶ Major exhibitions have been cancelled.⁵⁷ Music concerts have been cancelled or musicians threatened.⁵⁸ Art galleries have dropped long-standing clients over their political views.⁵⁹ Artistic agencies have terminated relationships with some clients.⁶⁰ Writers who criticize Israel have found themselves isolated and excluded.⁶¹

⁵⁴ See www.ohchr.org/sites/default/files/documents/issues/education/statements/20240510-stm-com-sr-education-usa.pdf; www.ohchr.org/en/press-releases/2024/07/usa-free-speech-campus-needs-be-protected-not-attacked-say-experts; National Writers Union, “Red Lines: Retaliation in the media history during the war on Gaza”, 6 May 2024.

⁵⁵ See Prem Thakker, “Columbia Law Review Is Back Online After Students Threatened Work Stoppage Over Palestine Censorship”, *The Intercept*, 6 June 2024, available at <https://theintercept.com/2024/06/06/columbia-law-review-palestine-gaza-rejects/>.

⁵⁶ See P. Oltermann, “Palestinian voices ‘shut down’ at Frankfurt Book Fair, say authors”, *The Guardian*, 15 October 2023, available at www.theguardian.com/world/2023/oct/15/palestinian-voices-shut-down-at-frankfurt-book-fair-say-authors.

⁵⁷ See D. Cassidy, “German Photography Biennial Cancelled After Curator’s Social Media Posts Are Called ‘Antisemitic’”, *ARTnews*, 22 November 2023, available at www.artnews.com/art-news/news/biennale-fur-aktuelle-fotografie-cancelled-freedom-fo-speech-and-antisemitism-1234687537/.

⁵⁸ See “Argentine judiciary cautions Roger Waters against making anti-Semitic remarks”, *Buenos Aires Herald*, 21 November 2023, available at <https://buenosairesherald.com/society/argentine-judiciary-cautions-roger-waters-against-making-anti-semitic-remarks>.

⁵⁹ See K. Burke, “Melbourne’s Anna Schwartz gallery drops artist Mike Parr after political piece on Israel-Gaza war”, *The Guardian*, 8 December 2023, available at www.theguardian.com/culture/2023/dec/08/melbourne-gallery-drops-mike-parr-performance-artist-israel-hamas-war-piece-anna-schwartz.

⁶⁰ See A. Horton, “Susan Sarandon dropped by talent agency after remarks at pro-Palestine rally”, *The Guardian*, 21 November 2023, available at www.theguardian.com/film/2023/nov/21/susan-sarandon-pro-palestinian-remarks-uta-dropped.

⁶¹ See J. Schuessler, “92NY Pulls Event With Acclaimed Writer Who Criticized Israel”, *New York Times*, 21 October 2023, available at www.nytimes.com/2023/10/21/arts/92ny-viet-thanh-nguyen-israel.html.

48. These are just some examples of the many ways in which artistic freedom is being censored and intellectual discourse diminished by private actors in collusion with State authorities.

V. Censorship online

49. Companies have a responsibility under international law to respect human rights and avoid causing or contributing to “adverse human rights impacts”. They have an obligation to prevent or mitigate such impacts by adopting human rights policies, undertaking due diligence and impact assessment and providing remedial processes.⁶²

50. As in other armed conflicts, social media platforms play a dual role in Gaza. On the one hand, they provide a communications lifeline, enabling people in Gaza to share information among themselves and with the outside world. Social media has been central to disseminating information on Gaza, playing a “vital, not complementary, role” given that access to traditional media in Gaza is severely curtailed.⁶³ Young social media “influencers” went from posting entertaining content to being suddenly thrust into a serious role of a source able to convey the reality of Gaza to the world. Women in Gaza have been at the forefront, voicing their situation in a way not done by mainstream media.⁶⁴

51. At the same, the platforms have removed Palestinian content excessively, inadequately addressed hate speech against both sides and enabled information manipulation, disinformation and misinformation. The large platforms have tended to be more lenient regarding Israel and more restrictive about Palestinian expression and content about Gaza, as compared with their policies and practices relating to the invasion by the Russian Federation of Ukraine and Ukrainian expression.⁶⁵

A. Content moderation

52. Following the October 7 attacks, disproportionate censorship of content on Palestinian rights and views has increased significantly across platforms, including Meta, X, Google and Telegram.⁶⁶ Measures have included monitoring and removal, suspension or disabling of accounts, restricting the ability to engage with posts (such as “liking”, commenting or sharing) or to follow or tag other accounts, and “shadow-banning” or decreasing the visibility of user content without notification or adequate justification. Documented cases of censorship include not only Palestinian-generated Arabic language content, but also pro-Palestine, English-language content originating

⁶² Guiding Principles on Business and Human Rights; see also A/77/288, paras. 74–99.

⁶³ See A. Walker, “How Instagram Cat Influencers Are Helping Break News in Gaza”, *The Daily Beast*, 12 December 2023, available at www.thedailybeast.com/how-instagram-cats-and-skincare-influencers-help-break-news-in-gaza.

⁶⁴ See B. Ferrari, “Pro-Palestine TikTok Creators Aren’t Backing Down”, *Vice*, 13 December 2023, available at www.vice.com/en/article/pkav5y/pro-palestine-tiktok-gen-z-digital-activism.

⁶⁵ See “Meta’s Ongoing Efforts Regarding Russia’s Invasion of Ukraine”, 26 February 2022, available at <https://about.fb.com/news/2022/02/metas-ongoing-efforts-regarding-russias-invasion-of-ukraine/>. See also “Meta’s Ongoing Efforts Regarding the Israel-Hamas War”, 13 October 2023, available at <https://about.fb.com/news/2023/10/metas-efforts-regarding-israel-hamas-war/>.

⁶⁶ See communications USA 8/2024; OTH 19/2024; OTH 20/2024; OTH 21/2024; and OTH 22/2024.

from over 60 countries around the world.⁶⁷ Users typically have few functional or meaningful ways to appeal these restrictions.⁶⁸

53. The disproportionate censoring of Palestinian content by platforms is not a new problem. For instance, an independent due diligence review commissioned by Meta in 2021,⁶⁹ as well as the findings of its Oversight Board, identified significant shortcomings in relation to Palestinian content. The company committed itself to addressing the flaws, but its response to the situation in Gaza indicates that many of the problems persist.⁷⁰

54. In one study in December 2023 of 1,050 English-language takedowns by Meta, 1,049 involved peaceful content in support of Palestine that was censored or otherwise unduly suppressed, while only one case involved the removal of content in support of Israel.⁷¹ Phrases such as “From the River to the Sea, Palestine will be free”, “Ceasefire Now”, and “Stop the Genocide” have been repeatedly removed by Meta’s platforms as “spam”.⁷² The “emoji” of the Palestinian flag has been hidden as “potentially offensive”, and phrases such as “Palestinian” and “praise be to God” have been translated as “Palestinian terrorists”.⁷³ There have been complaints about inconsistent Arabic translation. There also appears to be inconsistent moderation of the same content in Arabic and Hebrew. For instance, Meta immediately censored the Arabic hashtag #iron_swords (# طوفان_الاقصى) on October 7 but did not censor the parallel hashtag in Hebrew (# חרבות_ברזל).⁷⁴

55. Meta’s “dangerous individuals and organizations” policy, which has underpinned the widespread takedown of pro-Palestine content, is problematic.⁷⁵ The policy’s vague and overly broad interpretation of what constitutes “glorification” or “support” of terrorism has led to takedowns of legitimate political expression and journalistic coverage of Gaza as claims of support for Hamas.⁷⁶ Meta updated the policy in January 2024 to “allow for more social and political discourse,” just months before the Oversight Board undertook to review it and found that the policy “substantially and disproportionately restrict(ed) free expression”.⁷⁷

56. Erroneous and inconsistent implementation of community standards relating to “adult nudity and sexual activity,” “violent and graphic content” and “spam” have constrained the sharing of vital information on alleged human rights violations or possible war crimes in the occupied Palestinian Territory on Meta’s platforms. Newsworthiness exceptions were repeatedly ignored and failed to take context into account, resulting in the disruption of reporting on episodes of torture and ill-treatment and of the destruction of hospitals. The censorship has affected Palestinian journalists, activists and human rights defenders, as well as a range of news outlets.⁷⁸ However, despite these problems, it is important to acknowledge that Meta allows a

⁶⁷ See Human Rights Watch, *Meta’s Broken Promises, Systemic Censorship of Palestine Content on Instagram and Facebook*, 21 December 2023.

⁶⁸ Submission of Human Rights Watch.

⁶⁹ See Business for Social Responsibility, “Human Rights Due Diligence of Meta’s Impacts in Israel and Palestine in May 2021”, September 2022.

⁷⁰ See communication OTH 20/2024.

⁷¹ See Human Rights Watch, “Meta’s Broken Promises”.

⁷² Submission of Human Rights Watch.

⁷³ Some of the moderation measures led the company to apologize. See also communication USA 8/2024.

⁷⁴ See communication USA 8/2024.

⁷⁵ *Dangerous Organizations and Individuals (DOI) Policy Update*, Meta Transparency Center, 23 January 2024.

⁷⁶ See communication USA 8/2024; and www.ohchr.org/sites/default/files/Documents/Issues/Opinion/Legislation/Case_2021_009-FB-UA.pdf.

⁷⁷ See communication USA 8/2024.

⁷⁸ Submission of Access Now.

significant amount of pro-Palestinian expression and denunciations of Israeli government policies.

57. Other platforms have also taken down content disproportionately and extensively. For instance, Google's YouTube faced internal scrutiny after it allowed a pro-Israeli military song "HarbuDarbu" on the platform with lyrics such as "One, Two, Shoot!" and descriptions of rodents emerging from tunnels in Gaza, but it labelled an age-restricted content warning on a prominent rapper's tribute to a six-year-old Palestinian girl killed by Israeli forces in Gaza City.⁷⁹ YouTube was criticized by its own staff for its lack of balance in content moderation on Gaza, as compared to the Russian Federation-Ukraine conflict.

58. X in general has taken a more permissive approach to Gaza-related content, although there have been reports of throttling or suspension of pro-Palestine accounts such as the United States chapter of the activist group, "PalAction". Following documented reports of takedowns of "graphic" content on human rights violations, X updated its rules in January 2024 to allow exceptions for graphic content that is "documentary or educational" for evidence preservation.⁸⁰

59. Platforms appear to have taken a deferential position when confronted with tens of thousands of take-down requests from Governments, including that of Israel.⁸¹ Companies have varying levels of transparency regarding government requests. For instance, twice a year, TikTok publishes data for government takedown requests, which indicates that it received 260 requests from Israel in the second half of 2023, involving 10,191 pieces of content and 529 accounts, 98.2 per cent of which were removed.⁸² There is often little transparency as to the scope of government-sponsored requests, and users typically have no way of knowing whether their content has been taken down as a result of State-initiated complaints.⁸³ Meta's Oversight Board recommended that the company review State actor takedown requests for systemic biases, and Meta is now in the process of developing such a system.⁸⁴

60. Overly restrictive, unbalanced content moderation or censorship of Palestinian speech on social media platforms seem to be the result of inherently biased policies, opaque and inconsistent content moderation, heavy reliance on automated tools to moderate and translate and a permissive approach to State requests for content removal. Some platforms, notably Meta, acknowledge the distinct challenges of balancing "voice" and "safety" during crises and took temporary, salient measures to address rapidly changing events in the Gaza conflict, most of which have now ended.⁸⁵ Overall, there appears to be an absence of heightened human rights due diligence on a consistent basis by platforms in conflict related situations, as recommended by the United Nations business and human rights working group.⁸⁶

⁷⁹ See Paresh Dave, "YouTube's Rulings on Gaza War Videos Spark Internal Backlash", *Wired*, 2 July 2024, available at www.wired.com/story/youtube-israel-gaza-moderation/.

⁸⁰ 7amleh, "The Impact of Platform's Content Moderation Policies on Palestinian Digital Rights".

⁸¹ Israel says over 90 per cent of requests were honoured over the period. See Israeli Ministry of Justice, "Fighting Incitement Online", 26 November 2023, available at www.gov.il/en/pages/news-26-11.

⁸² See TikTok Transparency Center, "Government Removal Requests Report", 6 June 2024, available at www.tiktok.com/transparency/en-us/government-removal-requests-2023-2/.

⁸³ Human Rights Watch, "Meta's Broken Promises".

⁸⁴ See letter from Meta to OHCHR, 6 May 2024.

⁸⁵ *Ibid.*

⁸⁶ [A/75/212](#).

B. Harmful content

61. There has been an alarming spike in hate speech in the context of Hamas' attacks on 7 October and the conflict in Gaza.⁸⁷ Content curation algorithms create a profit incentive for platforms to push harmful or false content to generate more "clicks", worsening the problem.⁸⁸ While Jews, Jewish Israelis and Palestinians have all been targeted online, the responses of the platforms show a biased and discriminatory approach towards Palestinians.

62. Most hate speech, incitement to violence, online harassment and smear campaigns targeting Palestinians have appeared on Facebook, X and Telegram.⁸⁹ X has been a particularly egregious offender. Over 99 per cent of tracked violent Hebrew-language content appeared on its platform, including statements by Israeli government officials describing Palestinians as "human animals", "Amalek" and "children of darkness", among other dehumanizing terms, in apparent violation of X's own policies. Such language may amount to incitement to genocide.⁹⁰

63. Telegram, which is known for its "hands off" approach to moderation, has allowed both antisemitic content as well as hate speech against Palestinians. It hosts several Hebrew-language, publicly viewable channels that actively incite violence against Palestinian individuals, share graphic content from Gaza, propagate hate, publish personal information about individuals without consent (doxing) and call for their elimination.⁹¹ Threats of doxing often pose a disproportionate threat to women during times of conflict and constitute a form of gender-based violence online.⁹² Despite repeated complaints, Telegram has failed to act against the channels.

64. Platforms have allowed advertisements dehumanizing Palestinians, including from State actors, even when they appear to violate the terms of service of platforms. YouTube reportedly accepted \$7.1 million in advertisements sponsored by the Government of Israel, primarily targeted at audiences in Belgium, France, Germany, Switzerland, the United Kingdom of Great Britain and Northern Ireland and the United States.⁹³ Some of them could constitute incitement to violence, labelling Palestinians as "barbaric terrorists" and featuring graphic, bloody material. Meta reportedly approved ads from the Government of Israel that called for a "holocaust for the Palestinians" and wiping out "Gazan women and children and the elderly".⁹⁴

65. The International Court of Justice has called on Israel to "take all measures within its power to prevent and punish the direct and public incitement to commit genocide in relation to members of the Palestinian group in the Gaza strip."⁹⁵ If platforms provide the means to distribute information that constitutes incitement to war crimes or genocide, they may trigger the application of international criminal law or humanitarian law to their operations. Company personnel may incur liability on the basis of their direct action or corporate complicity.⁹⁶

66. As noted by the Special Rapporteur, conflicts heighten the risks of information manipulation, including online disinformation and misinformation.⁹⁷ The conflict in

⁸⁷ Human Rights Council resolution [55/28](#).

⁸⁸ [A/78/288](#), para. 101.

⁸⁹ See communications OTH 20/2024; OTH 21/2024; and OTH 22/2024.

⁹⁰ See communication USA 8/2024; and [A/HRC/55/73](#) paras. 50–54.

⁹¹ See communication OTH 21/2024.

⁹² [A/78/131](#), para. 67; and [A/HRC/50/29](#), para. 46.

⁹³ See communication OTH 19/2024.

⁹⁴ See communication OTH 20/2024.

⁹⁵ International Court of Justice, Order of 26 January 2024.

⁹⁶ [A/77/288](#), para. 75.

⁹⁷ [A/77/288](#).

Gaza has fuelled widespread instances of disinformation and misinformation on various online platforms, in addition to artificial intelligence-generated deepfakes that increase fears about artificial intelligence-powered models fostering misleading information.⁹⁸ Meta discovered a coordinated network of fake profiles originating in the Islamic Republic of Iran posted in Hebrew in Israel, across a number of services, including Meta, Telegram, YouTube, X and TikTok. It also found a network between its platform, X and YouTube, originating from Israel and targeting Canadian and United States audiences with pro-Israel content related to the Gaza conflict.⁹⁹

67. There are rising concerns that activity and information posted on social media, including private information, are possibly being used for purposes of military targeting in artificial intelligence-driven systems.¹⁰⁰ These issues require further investigation and transparency by the platforms, as they have grave and uncharted humanitarian implications.

VI. Protected and prohibited expression

68. Many States and companies that have restricted or prohibited speech, symbols, slogans and protests related to Palestine claim to have done so to combat support for terrorism or antisemitism. The present section contains an analysis as to whether the line between protected and prohibited speech is being correctly drawn in accordance with international human rights law.

A. Terrorism, incitement and genocidal intent

69. Unlike the United Nations, many States have designated Hamas as a terrorist organization under their national anti-terrorism laws. Social media companies cite these laws and the designation of Hamas as a terrorist organization in their national jurisdictions to justify their policies on moderation of Palestinian content.¹⁰¹

70. Counter-terrorism laws fall under the legitimate objective of national security as grounds for restricting freedom of expression under article 19 (3) of the Covenant. However, the offences under those laws – such as “glorifying”, “praising”, “supporting” or “encouraging” “terrorism” or “extremist activity” – that form the basis for restricting freedom of expression are often vague and poorly defined and fail to meet the international requirement of legality. They leave a lot of room for misuse, which often leads to the silencing of legitimate human rights advocacy.¹⁰² In the aftermath of the 7 October attacks by Hamas on Israel, these vague and overly broad offences were used by some States to ban demonstrations to support civilians in the Gaza conflict.¹⁰³

71. Some States have banned and criminalized the display of Palestinian symbols, such as the national flag and the *keffiyeh* (traditional black and white scarf) as signs of antisemitism and support for Hamas.¹⁰⁴ Such general bans do not meet the

⁹⁸ See communication USA 8/2024.

⁹⁹ See Meta, “Adversarial Threat Report”, First Quarter 2024.

¹⁰⁰ See “Urgent need to investigate role of technology, social media companies in killing Gazan civilians”, *Euro-Med Human Rights Monitor*, 21 April 2024, available at <https://euromedmonitor.org/en/article/6274/Urgent-need-to-investigate-role-of-technology,-social-media-companies-in-killing-Gazan-civilians>.

¹⁰¹ See letter from Meta, 6 May 2024.

¹⁰² See A/73/361, A/74/335, and A/77/288, para. 63.

¹⁰³ See ARTICLE 19, “From the River to the Sea: Protecting freedom of expression in public discourse on the conflict in Israel and Palestine”, 22 May 2024.

¹⁰⁴ Submissions by Canadian Lawyers for International Human Rights and Access Now.

requirements of necessity and proportionality under article 19 (3) and therefore violate the right to freedom of expression. As general symbols of Palestinian identity, they should be regarded as legitimate forms of expression. Whether or not they are being used in a specific situation to signify intolerance or hatred against Jews or to incite violence or to indicate support for terrorism must be assessed on case-by-case basis, with careful contextual analysis to determine if they should be restricted.¹⁰⁵

72. Blanket bans of Palestinian symbols, by linking Palestinians as a people to terrorism or antisemitism, demonize and stigmatize them and seek to delegitimize their liberation struggle. Equating advocacy of Palestinian rights with terrorism or antisemitism is not only a disproportionate response, but may indicate an underlying institutional racism against Palestinians, violating fundamental human rights. Restricting the use of the Palestinian flag is a denial of the right to self-determination of the Palestinian people, which has been recognized by the General Assembly and the International Court of Justice.¹⁰⁶

73. “From the River to the Sea, Palestine Will Be Free”, the most recognizable chant in many Palestinian marches, has been the subject of blanket restrictions by some States and private actors on the grounds that it is a sign of support for Hamas and shows genocidal intent or incitement to violence against Jews. That interpretation of the slogan has been challenged by scholars, human rights experts and Palestinian advocates, including many Jewish groups and scholars who see it as a call for the right to self-determination of Palestinians. Over the past year, the slogan has been used widely during protests in solidarity with Palestinians. In some Western countries, the use of the slogan has been criminalized or otherwise sanctioned. In some others, the courts and law enforcement agencies have recognized the different meanings of the slogan and have refused to impose blanket bans on it.¹⁰⁷

74. A general ban or criminalization for the mere utterance of the slogan in all circumstances is disproportionate and not in line with international human rights law. Incitement requires credible proof of intent to incite, as well as the likelihood that it would lead to the intended objective, rather than just arousing feelings of fear, offence or insult. Whether or not in certain specific situations such intent and likelihood exists and prohibition of the slogan is justified should be assessed in accordance with international standards and contextual analysis outlined in the Rabat Plan of Action.

B. Antisemitism and protection of political expression

75. In the context of States’ responses to Palestinian advocacy, there has been a tendency to confuse and conflate criticism of the policies of Israel, which is a legitimate exercise of freedom of expression, with antisemitism, which is racial and religious hatred against Jews that must be condemned.

76. An example of such conflation is the response of some States to the global “boycott, divest and sanctions” movement. The latter makes three demands on Israel: “ending the occupation; ensuring full equality of all citizens and not privileging the rights derived from Jewish identity; and respecting and allowing the right of return for Palestinian refugees.”¹⁰⁸ All three are aligned with the international obligations of

¹⁰⁵ Human Rights Committee, general comment No. 37 (2020) on the right of peaceful assembly, para. 51.

¹⁰⁶ *Legal Consequences arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem, Advisory Opinion*, 19 July 2024, para. 274; and General Assembly resolution 78/192.

¹⁰⁷ ARTICLE 19, “From the River to the Sea”.

¹⁰⁸ H.M. Hauge, “Evaluating the Practice of Lawfare against Pro-Palestinian Groups”, *Middle East Policy*, 2024, pp. 1–16, available at <https://doi.org/10.1111/mepo.12764>.

Israel, which it has so far failed to uphold.¹⁰⁹ Many civil society organizations and individuals, including some Jewish groups, support and participate in the movement. A key demand of the campus demonstrators, which included many Jewish groups and students, was the divestment of their universities from Israel-linked companies. Nevertheless, the movement is regarded in some Western countries, including Germany and the United States, as being discriminatory and antisemitic.

77. In a case relating to boycott, divest and sanctions protestors in France, the European Court of Human Rights found that a boycott is a legitimate means of expressing political opinion.¹¹⁰ The court held that differential treatment undertaken with the purpose of ensuring substantive equality and in a proportionate manner does not necessarily amount to inciting discrimination. The Court drew a distinction between expression that serves as a call for antisemitism and is not protected by international law, and political expression, such as the boycott, divest and sanctions movement, which aims to condemn a Government and is unquestionably protected by international law. This decision vindicates the movement as a valid means of protest and pressure on Governments.

78. Antisemitism is a serious form of religious and racial hatred, and States and private actors must take all necessary measures to fight it. The weeks following October 2023 have seen a surge in complaints of antisemitism around the world, compared with the same period the previous year.¹¹¹ It is vital that the fight against antisemitism be framed according to international human rights standards, so that there is a shared understanding of the problem and its root causes and, consequently, more effective responses to eradicate it. Otherwise, there is a risk that discrimination against one vulnerable group will be replaced with discrimination against another group, which, far from reducing antisemitism, will fuel more hatred and intolerance.

79. As noted by the European Court of Human Rights, antisemitism should be clearly distinguished from political expression. It is of serious concern that the “working definition” of antisemitism of the International Holocaust Remembrance Alliance contravenes this critical international standard of freedom of expression, and yet is being promoted heavily by various entities and Governments. It has been adopted by 43 States and is used in practice as a quasi-legal basis to restrict expression on the grounds of antisemitism.¹¹² Its adoption across Europe has been a source of serious concern in relation to freedom of expression and other human rights.¹¹³ The previous Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance found the “working definition” to be “divisive” and “politically instrumentalized”.¹¹⁴ Counter-proposals to “the working definition” have been developed by Jewish scholars and experts on antisemitism.¹¹⁵

80. The “working definition” was never intended to be used as a framework for regulating expression¹¹⁶ and does not meet the international legal standards for restriction or prohibition of speech laid out in the Covenant. First, it is overly broad,

¹⁰⁹ Ibid. See also [CCPR/C/ISR/CO/4](#); and [A/HRC/20/17/Add.2](#), para. 34.

¹¹⁰ See *Baldassi and Others v. France*, European Court of Human Rights, 15271/16, 15280/16, 15282/16 et al., 11 June 2020.

¹¹¹ Submission of the World Jewish Congress.

¹¹² See Rebecca Ruth Gould, “Legal Form and Legal Legitimacy: The IHRA Definition of Antisemitism as a Case Study in Censored Speech”, *Law, Culture and the Humanities*, vol. 18 (1), 2022.

¹¹³ [A/77/512](#), para. 74, footnote 4.

¹¹⁴ Ibid., paras. 71–79.

¹¹⁵ See Jerusalem Declaration on Antisemitism, 25 March 2021.

¹¹⁶ See written testimony of Kenneth S. Stern, United States House of Representatives Committee on the Judiciary, 7 November 2017.

vague and equivocal,¹¹⁷ and fails the test of legal certainty, required under article 19 (3) of the Covenant. The overly broad and vague definition of antisemitism offered by the “working definition” is harmful because it can lead to wrongful accusations and damage reputations, distort statistics on antisemitic incidents and divert attention from addressing the real causes of antisemitism. Second, it does not include the element of incitement, as required for prohibition of speech under article 20 (2) of the Covenant. Third, its “illustrative examples” deal not only with the impact of speech on individuals but also on Israel, which contravenes international human rights law and in particular the right to freedom of expression, which permits criticism of all States. Fourth, it is unnecessary as there are universally accepted international standards to address racial and religious hatred, including antisemitism.

81. The central conceptual flaw of the “working definition” is the inherent conflation of Zionism, a political ideology, with antisemitism. The practical consequence is the suppression of legitimate criticism of Israel, not the enhancement of protection of Jews from racial and religious hatred and intolerance. Jewish groups and individuals who engage in anti-Zionist protests have been labelled as antisemitic.¹¹⁸ When Jews celebrating Jewish festivals in solidarity with Palestinians were attacked by pro-Israel supporters, the incident was not considered to be antisemitic.¹¹⁹

82. Zionism is not an inherent characteristic of an individual or group, and so it is wrong to equate anti-Zionism with antisemitism. Where there is concern in a specific situation that the term “Zionist” is being used as a proxy for hate speech against Jews, then a contextual analysis should be made on a case-by-case basis in accordance with the universally applicable standards laid out in articles 19 (3) and 20 (2) of the Covenant and the guidance in the Rabat Plan.¹²⁰

VII. Conclusions and recommendations

83. The main conclusion of the present report is that the most fundamental principle of human rights – that all persons have an equal right to enjoy all human rights – has been endangered by an extensive pattern of unlawful, discriminatory and disproportionate restrictions and repression of freedom of expression, primarily of Palestinian activists and their supporters in Western Europe and North America. This trend did not emerge with the Israeli assault on Gaza but has become more widespread in the past year, from the targeted killing of journalists in Gaza to the banning of Palestinian protests, speech and symbols in various countries, especially in North America and Europe.

84. Such repression is particularly disturbing in the light of the recent advisory opinion of the International Court of Justice, which reaffirms the right to self-determination of Palestinians and finds that the Israeli occupation of Palestinian territory is unlawful, with an obligation placed on all other States to ensure that “impediments” to end it are removed. In the opinion, the Court vindicates the

¹¹⁷ Opinion of Geoffrey Robertson KC, “Antisemitism, the IHRA definition and its consequences for freedom of expression”, para. 2. Available at https://prc.org.uk/upload/library/files/Anti-Semitism_Opinion_03.09.18eds.pdf.

¹¹⁸ See National Writers Union, “Red Lines: Retaliation in the media history during the war on Gaza”, 6 May 2024.

¹¹⁹ Submission of Jøder for Retfærdig Fred (af 5784).

¹²⁰ Meta has revised its policy to restrict speech only where the term “Zionist” is deemed to be a proxy for Jewish people. See Meta Transparency Center, “Update from the Policy Forum on our approach to ‘Zionist’ as a proxy for hate speech”, 9 July 2024. Civil society organizations, like Access Now, are concerned whether Meta will be able to enforce a nuanced policy given its automated decision-making tools and previous history of overenforcement of Palestinian content.

legitimacy of Palestinian advocacy for human rights, including the right to self-determination, and creates an imperative for all States to change their laws, policies and practices restricting or prohibiting such advocacy.

85. People have the right to express their views and to protest peacefully. States have a duty to respect, protect and facilitate those rights on an equal basis for all persons. Civil disobedience or non-violent protests aimed at challenging unjust proscriptions, as well as campaigns to boycott, seek divestment and promote sanctions, are legitimate forms of political expression that should not be prohibited or criminalized.

86. In recent years, many western Governments have taken a restrictive approach to public protests, viewing them through the lens of security, law enforcement, countering terrorism and violent extremism, that is not in line with human rights standards. Blanket prohibition of Palestinian protests, slogans or symbols is inherently incompatible with international human rights law. Any restriction of freedom of expression must respect scrupulously the requirements of legality, legitimate aims and the necessity and proportionality of measures to achieve those aims, as set out in international law.

87. Antisemitism is a serious form of racial and religious hatred that must be condemned. However, the fight against antisemitism should not be instrumentalized and politicized to protect Israel or block criticism of the political ideology of Zionism. The “working definition” of the International Holocaust Remembrance Alliance on antisemitism is inconsistent with international human rights law and should not be used to define policy or regulate speech.

88. International human rights law draws a clear line between political criticism, from which no State can be shielded, and antisemitism as a serious form of religious and racial hatred, which must be condemned. The genocide in Gaza, the violation of human rights in the occupied Palestinian Territory and the failure of Israel to respect its international legal obligations, including the occupation of Palestinian territory, are matters of global public interest. There is no scope for restricting freedom of expression on such matters.

89. Access to information is vital during conflicts, both for civilians trapped in the conflict zone as well as the world outside, which makes the safety of journalists and unhindered access of foreign media to Gaza crucial. The allegations of targeted attacks on media as part of a strategy to cover up evidence of war crimes makes the establishment of international mechanisms to investigate crimes against journalists all the more vital.

90. Not only States, but also organs of society, such as companies, universities and cultural and philanthropic organizations, have reneged on their responsibility to respect freedom of opinion and expression on a non-discriminatory basis. The failure of some of the best academic institutions in the world to ensure equal protection of all members of their academic communities, whether Jewish, Palestinian, Israeli, Arab or Muslim, was disappointing. Academic leaders must do some soul-searching as to what went wrong and how they can put it right.

91. Experience shows that, in highly polarized contexts, freedom of opinion and expression – enjoyed on an equal basis by all sides – is an invaluable tool for fighting hate, overcoming prejudice, building mutual respect and encouraging dialogue to resolve disputes. That should be a strong incentive for all stakeholders – States, private actors, civil society and international

organizations – to reject double standards and ensure the full and equal protection of the right to freedom of opinion and expression of all persons.

A. Recommendations for States

92. States must respect, protect and fulfil the right to freedom of opinion and expression without discrimination against any individual or groups on the grounds of race, religion, political beliefs or other protected characteristics. Any restriction of expression, including in relation to counter-terrorism laws or antisemitism, must follow strictly the criteria set out in articles 19 (3) and 20 (2) of the International Covenant on Civil and Political Rights.

93. States must refrain from blanket prohibitions of demonstrations, slogans, symbols or other forms expression in support of the Palestinian people. Any decision to prohibit such acts or expressions on the grounds of incitement must be done on a case-by-case basis, taking into account international legal standards as well as specific contextual and other factors, as articulated in the Rabat Plan of Action on the prohibition of advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence.

94. In the light of the advisory opinion of the International Court of Justice issued in July 2024, States should repeal – or refrain from adopting – laws and policies that penalize opposition to or impede advocacy against Israeli occupation and segregation, such as laws against the boycott, divest and sanctions movement.

95. States must not restrict expression in support of Palestinian self-determination. Advocacy of Palestinians' human rights, including the right to self-determination, is legitimate expression.

96. States must condemn antisemitism, anti-Arab racism, particularly anti-Palestinian racism, and Islamophobia, and the use of dehumanizing language by any State official or entity and take all measures in line with international human rights law to combat them, including prompt, thorough, effective, independent and impartial investigation and prosecution of hate crimes against Muslim and Jewish persons.

97. The “working definition” of antisemitism by the International Holocaust Remembrance Association is incompatible with international standards on freedom of expression. States should rescind their adoption and application of it and refrain from promoting it.

98. States should promote an environment conducive to diverse views, debate and discussion, using inclusive consultative processes and programmes to promote equality, intercultural dialogue, understanding and tolerance among and within the affected communities, and combat negative stereotypes of Jews, Muslims, Palestinians and Arabs.

99. Israel must ensure the safety of all journalists and must refrain from targeting them or destroying media facilities in Gaza. Israel should grant full and free access of foreign media to Gaza.

100. Israel should investigate all attacks on journalists in the occupied Palestinian Territory promptly, effectively, independently and impartially, in line with the Minnesota Protocol on the Investigation of Potentially Unlawful Death.

101. All States, including Israel, as well as social media companies and media outlets, must respect the provisional order of the International Court of Justice

to preserve all evidence of atrocities committed in occupied Palestinian Territory.

102. States should not ask platforms to remove content or to enforce measures that do not conform with international human rights standards.

B. Recommendations for companies

103. Companies should carry out heightened human rights due diligence and trigger enhanced risk management strategies in the occupied Palestinian Territory, with adequate resources, language and contextual expertise, and the engagement of civil society. Due diligence processes should incorporate a robust analysis of the impact of the companies' operations, products and services on the specific dynamics of conflict, occupation and segregation, as well as the human rights situation.

104. Companies should address the overenforcement of Palestine-related content, including by ensuring that content moderation policies and enforcement are aligned with international human rights law, providing transparency about the use of automation and machine learning to moderate or translate Palestine-related content, sharing information on the classifiers programmed and used and their error rates, and conducting independent audits of content curation and ranking and recommender systems.

105. Companies should develop predictable, consistent and effective frameworks for addressing hate speech, disinformation and other information manipulation, in line with international human rights and humanitarian law, and ensure user security.

106. In the light of the order of the International Court of Justice on the plausibility of a real and imminent risk of genocide, companies should be vigilant about their own liability and ensure appropriate policies and processes to remove content with genocidal intent. They should take particular care to preserve all evidence of atrocities for future accountability processes.

107. Companies should ensure effective and swift remedy and redress to affected individuals, including easily accessible, transparent reporting mechanisms to appeal content moderation decisions within reasonable, predictable timelines.

C. Recommendations for academic and cultural institutions

108. Academic institutions should respect the freedom of opinion and expression of students, faculty and staff without discrimination, and should not permit the use of force to disperse peaceful advocacy, protests or civil disobedience on campuses.

109. Academic institutions should abstain from retaliation against students and other members of the academic community for their peaceful advocacy and protests, including non-violent civil disobedience, or participation in boycott movements.

110. Academic institutions should actively promote an inclusive, safe and enabling environment for academic, evidence-based enquiry, debate and discussion on the Israel-Palestinian question.

111. Academic institutions should condemn hate speech, including antisemitism, Islamophobia and anti-Palestinian racism. If they have adopted the

International Holocaust Remembrance Association’s “working definition” of antisemitism, they should review their policy in the light of the serious human concerns regarding the definition.

112. Cultural and artistic institutions and events sponsors should not discriminate against individuals or deny their participation purely on account of their support or political views regarding Israel or Palestine. The artistic community should reject the “cancel culture”, which chills artistic freedom and encourages discrimination, and use the arts as a means to promote intercultural understanding and fight stereotypes.

D. Recommendations for the international community

113. The International Criminal Court should prioritize its investigation into the killing of journalists in the occupied Palestinian Territory.

114. The discriminatory and disproportionate responses by State and private actors to protect human rights, including freedom of expression, of the Palestinian people and those who support them raise serious concerns about anti-Palestinian racism that cut across the mandates of several Special Procedures and engage a wide range of stakeholders. The Human Rights Council should consider a cross-mandate, multistakeholder discussion to strengthen the equal protection of human rights for vulnerable groups in this highly polarized environment.
