INTERNAL

ARTICLE 19's submission

Response to the consultation of the UN Special Rapporteur on Freedom of Expression on her on Freedom of Expression in Challenging Times

July 2024

Introduction

ARTICLE 19 welcomes the opportunity to respond to the consultations organised by the UN Special Rapporteur on Freedom of Expression and Opinion (Special Rapporteur) on her forthcoming report on Freedom of Expression in Challenging Times – using the conflict in Gaza as a case study – to be presented at the 79th session of the UN General Assembly in October 2024.

Israel has followed Hamas' horrific October 7 attacks with a grossly disproportionate military offensive on Gaza that has taken a devastating toll on civilian life and had significant political repercussions around the globe. The ongoing conflict has also impacted protection of the right to freedom of expression and the protection of minority communities from hate crimes and hate speech in many regions, perhaps more than any other armed conflict in recent years. This is particularly true for the US, Europe and the MENA region.

In this submission, ARTICLE 19 focuses on the freedom of expression implications of the conflict. We will also address social media companies' responses to this specific conflict as well as regulatory pressures they have been facing.

Restrictions on the right to protest

The armed conflict in Israel and Palestine has sparked protests across the USA and European countries, testing the limits of free speech protections, as well as debates about the role of Western governments in the conflict and their obligation to uphold human rights standards. States, political parties, universities, and other actors across sectors of society have all too often responded to such protest and criticism by censoring protected expression about the conflict.

Across **Europe,** authorities have banned protests and censored attendees and organisers on the grounds of 'hate speech' and hate crimes, protection of public order, and countering terrorism. For example:

- In **Germany**, authorities pre-emptively banned several pro-Palestine gatherings, framing their decision as a response to the increase in antisemitic incidents and public security concerns and a move to prevent 'public celebration of the Hamas terrorist attacks' of 7 October.

- In **France**, Interior Minister Gérald Darmanin announced on 12 October a complete ban on pro-Palestine rallies, stating that demonstrations must be prohibited 'because they are likely to generate disturbances to the public order'.

- Though **the United Kingdom** has so far refrained from imposing an official ban on pro-Palestine demonstrations, top politicians have repeatedly attempted to marginalise or even target dissenting voices. Home Secretary Suella Braverman called pro-Palestine rallies 'hate marches', claimed that in some cases waving Palestinian flags could 'glorify terrorism', and urged the police to consider whether chanting 'From the River to the Sea' could express a 'violent desire'. There was mounting pressure on the Metropolitan Police to prevent a rally scheduled for Armistice Day on 11 November in London, with Prime Minister Rishi Sunak calling the planned event "disrespectful" and instructing law enforcement to do 'everything necessary to protect the sanctity of Armistice Day'. However, Metropolitan Police Commissioner Sir Mark Rowley stated on 8 November that the demonstration would go ahead, and that the threshold to ban it has not been met. Additionally, a protester was charged under hate crime legislation for carrying a placard mocking Prime Minister Rishi Sunak and former home secretary Suella Braverman.

In the **United States**, students and academic staff protests have been restricted, with some universities resorting to drastic measures and calling in police to clear pro-Palestine encampments.

In MENA region, Jordan and Egypt have experienced an escalating crackdown on the right to protest, further restricting an already shrinking civic space in both countries.

- In **Jordan,** authorities reportedly arrested more than 1,000 protestors between October and November 2023, who were demonstrating in support of Gaza, as well as bystanders. In late March 2024, when protests in solidarity with Gaza resurged, several activists, journalists, and political figures were arrested for taking part in these protests.

- In **Egypt,** authorities detained dozens of peaceful protesters expressing solidarity with Palestine in October 2023. Later, in March 8, Egyptian police disrupted a march led by a group of Egyptian women who demonstrated in solidarity with the women in Gaza. On 3 April 2024, they again arrested activists and students chanting slogans criticizing the authorities' policies towards the humanitarian catastrophe in Gaza in front of the Journalists Syndicate.

ARTICLE 19 has repeatedly emphasised that the protection of the right to protest is an essential part of the right to freedom of expression and a functioning democracy. We are concerned about overbroad restrictions on protest in Europe that do not align with international freedom of expression and freedom of assembly standards, which only allow

restrictions in very limited and narrowly defined instances. Protest is often one of the most effective tools for individuals to advocate for change – including as regards foreign policy decisions of their governments.

Censorship of expression of solidarity with Palestine

In the **United States**, students and academic staff expressing support for Palestine on university campuses have been censored in a violation of their right to freedom of expression. Pressure has also been exerted over politicians, with US Congress censuring its only Palestinian-American member over comments critical of Israel and in support of Palestinians in November 2023. A UK Member of parliament was temporarily suspended over comments he made at a pro-Palestinian rally in October 2023.

One of the most worrying trends we observe is the **increasing equation of political speech and criticism of the State of Israel with hate speech or incitement to terrorism**.

- One of the prime examples of this conflation have been responses to the use of the slogan "From the River to the Sea", which has a history of use as a call for equality and freedom for Palestinians and has often been chanted in protests calling for a ceasefire and condemning Israel's relentless and disproportionate attacks on Gaza since October 7. The slogan has been subject to blanket bans and protesters who use it have been liable under criminal law for supporting terrorism, inciting hatred or violence, or denying, condoning or justifying genocide, without any additional considerations (e.g. in Germany or the Czech Republic) and in a manner that does not meet the standards for restricting freedom of expression under international human rights law. The restrictions we have seen are also counterproductive to promoting equality, as they fail to address the underlying social roots of prejudice and intolerance in society. Social media companies have also censored or taken a position on the use of the slogan on their platforms, while failing to provide comprehensive information explaining the volume of content removed or on what basis it is being taken down.

- At the start of 2024, Meta considered changing its hate speech policy to add "Zionists" as a protected group. Even prior to that, Meta would already remove the term "Zionist" when it was used "explicitly as a proxy for Jews or Israelis in a dehumanizing or violent way". The reasoning for revisiting the policy remains unclear. It did, however, raise concerns among many human rights organisations about the potential for undue removal of political speech and how it could complicate the ability to criticise the State of Israel or its ongoing Gaza offensive without facing restrictions.

- In perhaps one of the most blunt and extreme conflations of political speech and discriminatory speech, US Congress in November 2023 passed a largely symbolic resolution stating that 'anti-Zionism is antisemitism'. In response to the US student protests over the war on Gaza, United States House of Representatives passed a bill in May 2024 that that would establish a broader definition of antisemitism for the Department of Education to enforce anti-discrimination laws. If passed by the Senate and

signed into law, the bill would broaden the legal definition of antisemitism to include the "targeting of the state of Israel, conceived as a Jewish collectivity".

- The Egyptian and Jordanian governments also swiftly silenced any expressions of solidarity with Gaza when their political responses to the conflict and their relations with Israel were criticised.

ARTICLE 19 acknowledges that since October 7, there has been a significant rise in antisemitic and Islamophobic incidents. Authorities must take any such incidents seriously, investigate and prosecute where crimes have been committed. At the same time, ARTICLE 19 has repeatedly warned against using such incidents as a pretext to unduly curb freedom of expression. Conflating political speech, for example in the form of criticism of the conflict parties or the foreign policy decisions of third States with respect to such conflict, is not only a free speech violation but will divert attention and resources away from real instances of antisemitism and Islamophobia.

Restrictions on ability of media to cover the conflict

Press freedom and the ability of media and journalists to cover the conflict and related issues have been heavily restricted. For instance:

- In **Jordan**, journalists covering the conflict in Gaza or the related protests have faced increasing restrictions and legal threats. On 30 March 2024, authorities arrested freelance photojournalist Ahmad Mohsen while he was reporting on demonstrations in front of the Israeli embassy in Amman. Security forces also arrested Abu Salem, a Syrian student at Yarmouk University, along with Jordanian student journalist Abdul Rahman Alsheikh while they were headed to film an evening pro-Palestinian protest in front of the Israeli embassy. Jordanian authorities have also prohibited demonstrations in the Jordan Valley and border areas and have limited journalists' coverage of pro-Palestinian demonstrations, reportedly for security reasons.

- Also in Jordan, Law No. 17 of 2023 on combating cybercrimes has been a particularly popular tool to silence journalists. For instance, on March 25, the General Security Department interrogated and transferred journalist Khair al-Din al-Jabri to the Cybercrime Unit, where he was questioned about his online activity and coverage of pro-Palestinian demonstrations. He was released on bail and placed under a travel ban until he was acquitted by the court on 17 May. On 6 May, Jordanian security forces detained Palestinian journalist Israa Sheikh at Queen Alia International Airport, preventing her from leaving. Sheikh was then referred to the Cybercrime Unit and released on the same day after being questioned about her social media posts related to Gaza, according to her statement. On 14 June 2024, the Soloh Court in Amman sentenced journalist Heeba Abu Taha to one year in prison for "inciting discord and strife among members of society" and "targeting community peace and inciting violence." Taha was arrested on 14 May for an investigation following an article about Jordan's alleged role in exporting goods to Israel. This judgment represents the harshest sentencing against a journalist since the adoption of Law No. 17 of 2023 in August 2023.

- In **Egypt**, the editor-in-chief of the website "Mada Masr" Lina Attalah, was summoned for interrogation by the Public Prosecution in November 2023 following the publication of an investigation concerning the movement of people and goods at the Rafah border crossing between Egypt and the Gaza Strip. She was released on bail after being interrogated on charges of "publishing false news" and "operating an unlicensed website". In October 2023, the Supreme Council for Media Regulation announced its decision to ban the same website for six months for "conducting media activities without a license" and "publishing false news without verifying their sources", and referred the matter to the Public Prosecution. This decision came after the website published a report about the displacement of Gaza residents to Egypt.

ARTICLE 19 also reiterates our earlier concerns about the refusal of Israel and Egypt to allow international journalists access to Gaza except under Israeli military escort (and, even then, with restrictions on reporting). In addition, the Israeli government is requiring media outlets in Israel to submit almost any detailed reporting on the war to its 'Censorship' office for review, while banning reporting on significant topics of public interest related to the war. It has also acted against its domestic press, for example, by threatening to retaliate against the country's oldest newspaper, Haaretz, for its coverage of the war, as well as threatening to shut down local bureau offices of foreign news agencies.

We hope the Special Rapporteur in her report will highlight the importance of protecting freedom of media in context of Israel's ongoing military offensive on Palestine and the need to protect and support local and international journalists covering and documenting military operations and other issues related to the conflict and to shed light on their compliance with international humanitarian and human rights law.

Role of social media companies

In an environment where freedom of expression is attacked and journalists' ability to report from Gaza is made extremely difficult, if not impossible, the role of social media companies and their ability to allow for information about the hostilities to circulate in and get out of Gaza cannot be overstated. Voices of local reporters and ordinary social media users on the ground are vital in informing the world about the realities of the conflict. In online discourse around Israel's Gaza offensive, disinformation and 'hate speech' online abound alongside legitimate content and political expression. Social media companies have been criticised by ARTICLE 19 and freedom of expression groups for silencing Palestinian voices or voices in support of Palestine while not doing enough to moderate incitement to violence, dehumanization, and calls for genocide on their platforms.

ARTICLE 19 and partners have also raised concerns about European Commissioner Thierry Breton's communications to X, Meta, TikTok and YouTube regarding the spread of disinformation and illegal content on their respective platforms following the escalation of hostilities in Gaza after October 7. Breton's invocations, which were not in line with the letter

of the EU Digital Services Act, risked prompting platforms to over-remove legitimate content, especially political content.

ARTICLE 19 observes that the significant potential harm of 'disinformation' and 'hate speech', coupled with the urgent need to address such threats during existing crises, can lead states and regulators to deal with such content through overly restrictive and censorious measures. Nevertheless, we contend that responses to problematic content during armed conflict should align with principles of freedom of expression. We also point to the fact that restricting content coming out of Gaza in third States – or the European Union – could have significant implications for accountability efforts, be it by international courts, bodies or fact-finding missions or by domestic courts around the world that might be considering prosecutions on the basis of the universal jurisdiction principles.

ARTICLE 19 urges the Special Rapporteur to examine in her forthcoming report all these violations and looks forward to continue supporting the Special Rapporteur's work in this area.