21 June 2024

To: Special Rapporteur on Freedom of Opinion and Expression

Re: **Call for Input - Freedom of Expression in Challenging Times – Submission for the State of Israel**

The surge of anti-Semitism and incitement to violence against the Jewish people

1. Within hours of Hamas launching its devastating assault in southern Israel, tens of thousands of demonstrators took to the streets across the Middle East, North America, Europe, and Australia, to celebrate the largest and bloodiest attack on the Jewish people since the Holocaust, including chants of "Gas the Jews." Such incitement has since only multiplied and intensified globally, on the streets and on social media.

2. The year 2023 began with a moderate increase in documented antisemitic incidents (10% increase in relation to 2022). This trend was steady until September 2023. During the months of October-December 2023, there were six times more documented antisemitic incidents than during the months January-September. Most of the incidents, including brutally violent ones, occurred during the so-called Pro-Palestinian demonstrations. **Overall, in 2023, there was a 235% rise in antisemitic incidents, as compared with 2022.**

3. During the months of October-December 2023, there was also a 264% rise in antisemitic discourse online, as compared to the preceding three-month period. There was a 400% increase in antisemitic discourse online in the 17 days following October 7, compared to 17 days prior. On Telegram, a platform popular with Islamic State militants and white supremacists, antisemitic threats surged by an alarming 488% in the first 18 hours of October 7, according to the Anti-Defamation League.

4. Antisemitism is directed towards Jews, but it is actually a mirror of society – it harms the fabric of life and undermines the values of democracy and equality. It is a violation of fundamental human rights of Jews to life, personal safety and freedom of religion. In

order to address this overwhelming tsunami of hate against Jews a full understanding of this multi-layered, ever-mutating phenomenon, is required. Identifying antisemitism is critical because its presence presents a threat to democracy and democratic institutions. Individuals, organizations, or autocratic governments use antisemitism to undermine trust in democracies.

5. The unprecedented public rise of antisemitism across the ideological spectrum exemplifies the multifaceted nature of anti-Jewish hate and highlights the need for a definition that encapsulates its multidimensional nature. The International Holocaust Remembrance Alliance (IHRA) Working Definition of Antisemitism provides a comprehensive and internationally recognized framework to delineate and address contemporary manifestations of antisemitism, fostering a shared understanding crucial for effective policy implementation.

6. The IHRA Working Definition of Antisemitism captures the evolving characteristics of antisemitism. Embracing this definition is a key first step toward combating this reawakening of the world's most enduring hatred.

Prominent incidents of violence and hate-speech incited by antisemitism

7. On 18 June 2024, two 13-year-olds were charged with gang rape, antisemitic insults and violence, and issuing death threats against a 12-year-old Jewish girl in Paris. Following this incident, President Emmanuel Macron denounced the "scourge of antisemitism".

8. On 5 November 2023, Paul Kessler, a 69-year-old Jewish man was murdered in Los Angeles while participating in a peaceful protest in support of Israel. Kessler was attacked by pro-Palestinian demonstrators, one of whom hit him in the head, causing his death.

9. On 8 October 2023, three Israeli tourists were murdered in Alexandria by an Egyptian policeman who shot at the group of tourists after identifying them as Israelis.

10. On 5 December 2023, US Congress held a discussion on the rise of antisemitism in American campuses. The presidents of prominent universities testified before the Education Committee. The University presidents were asked whether *calling for the*

genocide of Jews violates their schools' bullying and harassment policies, to which they failed to provide a proper answer. The college campuses of US have become a breeding ground for antisemitism in anti-Israel protests, with Jewish students being intimidated and threatened, prevented from attending class, and having to hide to protect themselves from the mobs.

11. On 29 November 2023, an airport in the Dagestan region in the Russian Federation was attacked by hundreds of locals when a plane from Israel landed.

12. On 9 November and 11 November 2023, three incidents of shootings at Jewish schools in Montreal were documented. On 27 November 2023, a Molotov cocktail was thrown at the entrance to the Jewish Community Center in Montreal.

13. On 4 December 2023, a 30-year-old Jewish woman was stabbed in her home in the city of Lyon in France. The attacker drew a swastika on her door and escaped.

14. On 8 October 2023, a Jewish person walking to a synagogue in London was called a "dirty Jew" by a stranger, who said, "no wonder you're all getting raped".

15. On 2 March 2024, a Jewish man in Zurich was stabbed by a young man who was identified as a member of the al-Aqsa Martyrs' Brigades.

16. On 5 May 2024, five people were murdered in a terrorist attack on a synagogue on the Tunisian island of Djerba.

17. Anti-Israel demonstrations overtly call for extermination of Jews. Just to name a few, in Sydney, unverified footage distributed by the Australian Jewish Association appeared to show a group of protesters outside the Sydney Opera House shouting, "Gas the Jews." In Poland, a sign was shown saying "keep the world clean" alongside a picture of an Israeli flag being thrown in a bin.

18. In addition to this, in protests around the world, including New York, protesters have held signs praising the attacks on October 7, and speakers have commended the attacks. In London, a man was seen chanting "god's curse be upon the Jews, god's curse be upon Israel" and chants of "oh Jews, the army of Mohammed is returning" were also heard.

In Glasgow, a video showed one woman draped in a Palestinian flag shouting: “Free Palestine... Don’t forget where the Jews were in 1940.”

19. The dramatic surge in violence and relentless hate-speech, both offline and online, already pose an imminent threat to Jewish people and Jewish communities around the world. The global community is at a grim point in time if people cannot mark a clear line in the sand between marching for the safety of a people without calling for the total annihilation of another people. The prevalent chants in pro-Palestinian demonstrations do not call for the rights of the Palestinian people, they call for the elimination of the State of Israel. This rhetoric is all too familiar, from a not-so-distance past, which marks the darkest times of humanity.

20. While States have an obligation to protect freedom of speech, they also have an obligation to protect their population, ensure their personal safety. It is elementary that hate speech, incitement to violence, let alone calls and the call for the destruction of a State and of a people, cannot be tolerated.

21. In this vein, the State of Israel expresses its concern regarding the decision of a thematic mandate-holder to issue this call for input, focusing specifically on an ongoing conflict. A similar exercise was never done before in other situations of conflict. Furthermore, given the activism of the mandate-holder in condemning Israel, the credibility of any report produced based on this call for inputs is questionable at best.

The right to freedom of expression and protection against incitement in Israeli legislation

22. The right to freedom of expression has long been recognized as a constitutional norm of critical importance in Israel, and any limitations on its exercise for reasons related to public interest, public order human rights or the rights and reputation of others must meet strict standards of scrutiny regarding their justification and scope. While *Basic Law: Human Dignity and Liberty* 1992, does not directly articulate the right to freedom of expression and opinion, the Supreme Court regards these rights as constitutional rights protected in this Basic Law. (See for example H.C.J. 5239/11 *Uri Avneri et. al. v. The Knesset et. al.* (15.4.15)).

23. Generally, freedom of expression may be restricted only if the speech in question gives rise at least to a "near certainty" that the public peace, broadly construed, will be endangered, and only if other means to lessen the severity or the likelihood of such a violation of public peace are of no avail. (H.C.J. 73/53, *Kol Ha'am Ltd.* v. *The Minister of Interior)*.

24. Certain types of speech are expressly forbidden by Knesset legislation. Among others, the *Prevention of Terrorism Ordinance* 5708-1948 prohibits written or oral publication of any praise, support or encouragement of violent acts which are likely to cause the death or injury of a person, of threats of such violent acts, or of terrorist organizations. Therefore, the name, picture, address or other identifying information regarding a minor who is either a defendant or witness in a criminal trial, or a complainant or victim in criminal trials involving certain sex-related offences, may not be published without explicit permission of the court (*Courts Law [Consolidated Version]* 5744-1984).

25. The *Denial of the Holocaust Prohibition Law* 5746-1986, prescribes a maximum punishment of five (5) years' imprisonment for publications which deny or minimize the extent of the crimes against the Jewish people and humanity committed during the Nazi regime in Germany, with the intent of defending perpetrators of such crimes or of praising or identifying with them. In addition, various provisions in the *Penal Law*, prohibit seditious utterances, incitement to racism, insult of a public servant, and speech which is calculated to outrage the religious beliefs of others.

26. Political expression - The freedom of political opinion and of expression of a political nature has been rigorously defended by Israeli courts as essential to the existence of democracy. The High Court of Justice has consistently upheld the principle that freedom of expression entails the freedom not only to express popular opinions, but also those which the majority despises (E.A. 2,3/84, *Neiman* v. *Chair of the Central Elections Committee of the Eleventh Knesset*), as well as the freedom to criticize government action (H.C.J. 351/72, *Kenan* v. *Council for Review of Films and Plays*). Freedom of expression also includes the opportunity to hear other opinions. The Supreme Court has repeatedly held that freedom of political expression is entitled to the highest degree of protection (see for example H.C.J. 6396/96, *Zakin v. The Mayor of Be'er Sheva* and H.C.J. 5239/11 *Uri Avneri et. al. v. The Knesset et. al.* (15.4.15)).

27. Israeli jurisprudence has established that the freedom of expression, which includes the right to demonstrate, is aimed to provide a platform and opportunity for everyone, including minority populations, to voice their interests even when they oppose those of the majority, and not restricted to the expression of social consensus. Accordingly, the right of minorities to protest decisions that regard them must be protected, and the Police is obligated to assist in the exercise of this right.

28. The right to peaceful assembly is protected by Israeli law through the right to demonstrate or protest. It is a fundamental human right, embedded in Israel's legal system, and derivative of the right to freedom of expression, which is recognized as a constitutional norm of critical importance, as a primary instrument for the expression of ideas and social issues. Though its importance cannot be overstated, this right is not unlimited and must be balanced against fundamental interests such as public order and basic human rights. Nonetheless, any limitation on the exercise of the right to freedom of expression for reasons related to public interest, public order human rights or the rights and reputation of others, must meet strict standards of scrutiny regarding their justification and scope. Even during war, Israeli society continues to engage in ongoing protests and demonstrations on a myriad of issues.