

**Mandate of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression**

Ref.: OL OTH 90/2023  
(Please use this reference in your reply)

5 July 2023

Dear Mr. Hughes,

I have the honour to address you in my capacity as Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, pursuant to Human Rights Council resolution 52/9.

I am writing to provide some comments on the procedure followed to implement Meta's policy on cases relating to online gender-based violence, which I understand the Meta's Oversight Board is currently considering. I would like to draw your attention to some recent work of my mandate which could be relevant to the complaints currently before the Board, in particular cases no. 2023-002-IG-UA, 2023-005-IG-UA, and 2023-006-FB-UA, and potentially to other future cases related to gender equality and freedom of expression.

I am an independent expert appointed by the United Nations Human Rights Council to report and advise on human rights issues from a thematic or country-specific perspective, and form part of its Special Procedures, which are a central element of the United Nations' human rights system. Reporting to the UN General Assembly and the Human Rights Council, I am mandated to gather relevant information relating to violations of the right to freedom of opinion and expression and make recommendations and provide suggestions on ways and means to better promote and protect the right to freedom of opinion and expression in all its manifestation. Special Procedures mechanisms can intervene directly with Governments and other stakeholders (including companies) on allegations of abuses of human rights that come within their mandates by means of letters, which include urgent appeals, allegation letters, and other communications. The interventions may relate to a human rights violation that has already occurred, is ongoing, or which has a high risk of occurring. The process involves sending a letter to the concerned actors identifying the facts of the allegation, applicable international human rights norms and standards, the concerns and questions of the mandate-holder(s), and a request for follow-up action. Communications may deal with individual cases, general patterns and trends of human rights violations, cases affecting a particular group or community, or the content of draft or existing legislation, policy or practice considered not to be fully compatible with international human rights standards.

Since 1999, the UN and regional mandates for freedom of expression - namely, the Special Rapporteur on Freedom of Expression and Access to Information of the African Commission on Human and Peoples' Rights (ACHPR), the Special Rapporteur on Freedom of Expression of the Organization of American States (OAS) and the Representative on Freedom of the Media the Organization for Security and Co-operation in Europe (OSCE) - have issued annually a Joint Declaration on freedom of expression. These Declarations have addressed a wide range of contemporary and pressing global issues, such as restrictions on Internet freedom, policies relating to counter terrorism and violent extremism, disinformation, elections

in the digital age, politicians and public officials and freedom of expression, and media freedom. Past Declarations are available on the OHCHR website at: <https://www.ohchr.org/en/special-procedures/sr-freedom-of-opinion-and-expression/resources>

These Joint Declarations carry persuasive weight as compelling sources of soft law on the international legal standards applicable to freedom of expression. They are adopted through a collaborative process of collective review of international and regional law, as well as emerging practice. The Joint Declarations have become a point of reference for international and regional human rights bodies, national courts, non-governmental organisations, among others.

I would like to draw the attention of the Oversight Board to the Joint Declaration on Freedom of Expression and Gender Justice, adopted in 2022 (available at: [Gender-Joint-Declaration-Freedex.pdf](#)). It describes gender equality and the right to freedom of opinion and expression as mutually reinforcing, indivisible and interdependent, while noting “structural obstacles, including sexual and gender-based violence, misogyny, entrenched bias, social prejudices, patriarchal conventions, and interpretations of cultural and religious norms, as well as discriminatory laws, policies and practices and unequal access to digital technology and participation in the media that prevent women’s equal enjoyment of freedom of expression.”

The Joint Declaration recognises “the importance of the internet and digital technology in bolstering freedom of expression and access to information globally, and promoting the empowerment of women and others who experience discrimination and marginalisation.” However, it also highlights the negative impacts of “online gender-based violence, gendered hate speech and disinformation, which cause serious psychological harm and can lead to physical violence, are proliferating with the aim of intimidating and silencing women, including female politicians, journalists and human rights defenders.” It calls on Internet intermediaries to be “particularly mindful of the way that their services, automated or algorithmic processes and business practices to increase user engagement, target advertising or engage in profiling may amplify gender stereotypes, bias, misogyny and gender-based violence. Companies should ensure that their content moderation and curation policies and practices do not discriminate on the basis of gender or other protected attributes.”

The Joint Declaration further notes that the prohibition against sexual and gender-based violence applies online as well as offline, and affirms that sex and gender should be recognised as protected characteristics for the prohibition of advocacy of hatred that constitutes incitement to discrimination, hostility or violence under Article 20(2) of the ICCPR, and Article 4 of the International Convention on the Elimination of All Forms of Racial Discrimination, in line with Article 2 of the ICCPR which guarantees the rights and freedoms of all persons without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. In addition, the Joint Declaration recalls that misogyny should be restricted if it reaches the threshold set by Articles 19(3) and 20(2) of the ICCPR.

Furthermore, the Joint Declaration on Freedom of Expression and Gender Justice states that:

Online violence against women has particular significance for freedom of expression as it encompasses harmful speech as well as behaviour facilitated by digital technology, including threats of physical or sexual violence, online bullying and stalking, doxing, harassment, targeted electronic surveillance, coercion and non-consensual exposure of intimate images.

I would urge the Oversight Board to be sensitive to the reality that “online gender-based violence, gendered hate speech and disinformation, which cause serious psychological harm and can lead to physical violence, are proliferating with the aim of intimidating and silencing women, including female politicians, journalists and human rights defenders.”

With respect to permissible restrictions of freedom of expression, my report on gender justice and freedom of expression, which I presented to the UN General Assembly in 2021 ([A/76/258](#)), and the aforementioned Joint Declaration, provide specific guidance for States and private actors. The Joint Declaration on Freedom of Expression and Gender Justice states:

Women who publicly denounce alleged perpetrators of sexual or gender-based violence should not be charged with criminal libel, prosecuted for false reporting of crimes or be subjected to frivolous or vexatious defamation lawsuits. When women speak out about sexual and gender-based violence, States should ensure that such speech enjoys special protection, as the restriction of such speech can hinder the eradication of violence against women.

Social media platforms have an obligation to ensure that online spaces are safe for all women and free from discrimination, violence, hatred and disinformation. Companies should improve their transparency and content governance, provide users with safety tools, make it easier to report online violence and create direct, easily accessible routes for the escalation of complaints. They should ensure that the relevant teams have the necessary expertise on gender-based violence and the cultural context.

Gendered disinformation that does not constitute incitement to violence or hatred should be addressed through non-legal and multi-stakeholder strategies implemented by States, companies and civil society, including public education, community awareness, digital, media and information literacy, de-incentivising the spread of disinformation on social media platforms, fact-checking and fostering of diverse and credible sources of information including independent media, and legal, social and digital safety support to empower and build the resilience of those at risk.

In my gender justice report ([A/76/258](#)), I state that “although gender and sex are not mentioned in article 20 (2), they can and should be considered grounds for protection in view of the gender equality clauses elsewhere in the Covenant and the broader intersectional approach to non-discrimination that international human rights law has consistently taken in recent decades. In addition to the specific requirements set out in article 20 (2) of the Covenant, 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<sup>1</sup> six elements are proposed as a threshold test for

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<sup>1</sup> [A/HRC/22/17/Add.4](#)

hate speech: the context; the speaker; the intent; the content and form of the speech; the extent of the speech act; and the likelihood, including the imminence, of harm. Providing all these elements are satisfied, gendered hate speech can be prohibited under international law. However, it should not be criminalized except in the most egregious cases of real and imminent danger with a clear intention to cause serious harm.

The Rabat Plan of Action also offers a framework for distinguishing between different types of speech based on the severity of harm. It sets out three categories: harmful speech that constitutes a crime because it presents real and imminent danger; harmful speech that does not reach that threshold but may justify civil action; and offensive speech that raises concerns in terms of tolerance, hostility or discrimination and should be addressed through non-legal measures, such as condemnation, awareness-raising and education.

Such a graduated approach could provide an international benchmark for defining gender-based hate speech in a way that protects both women’s safety and freedom of expression.”

Finally, I would like to draw your attention to the following recommendations to companies, which are excerpts of the Joint Declaration:

- In line with the United Nations Guiding Principles on Business and Human Rights, as a matter of due diligence, all companies should carry out regular human rights and gender impact assessments to identify and mitigate systemic risks to women’s human rights posed by their business model, user engagement practices, advertising, targeting or profiling practices, as well as their content moderation and curation, and data collection and privacy practices.
- Internet intermediaries should design processes and outcomes that respect and uphold women’s human rights, using diverse and inclusive teams to create tools, technology and content. They should develop and enable secure digital communications, strong encryption, and anonymity-enhancing tools, products and services. They should empower women with the means to protect their privacy and security, control what data is collected from them and to whom it is distributed as well as what data they choose to receive.
- Internet intermediaries should make their policies on non-discrimination, gender equality and safety from online violence publicly available, and explain their practices, decision-making processes, the operation and impact of automated processes and algorithms they use, their appeals processes, and their remedies for abuse, bias or discrimination in non-technical terms and make them easily accessible to all users in local languages.
- Women, in all their diversity and intersectionality, should be included when governance or regulatory decisions - including content moderation policies and community standards – are being discussed, designed and adopted.

Given the potential for adverse effects of inadequate measures to address online gender-based violence in line with freedom of expression principles, I would recommend a thorough analysis of the implementation of Meta’s policy to ensure

compliance with international human rights standards. Should you wish to discuss these or other matters further, I would welcome the opportunity to do so.

As it is my responsibility under the mandate provided to me by the Human Rights Council to seek to clarify all matters brought to my attention, I would be grateful for your observations on the following matters:

1. Please provide an additional information and/or comment(s) you may have on the above-mentioned comments.
2. Please provide information on the measures you may recommend to ensure the implementation of Meta's policy related to online gender-based violence in line with international human rights standards.

I would like to inform you that, in keeping with Special Procedures' commitment to transparency, this communication, as a comment on pending or recently adopted policies, and any response received will be made public via the communications reporting [website](#). The publication will take place within 48 hours. The communication and any response you may provide will also subsequently be made available in the usual report to be presented to the Human Rights Council.

Sincerely,

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