

Mandates of the Working Group on the issue of human rights and transnational corporations and other business enterprises; the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on the rights to freedom of peaceful assembly and of association; the Special Rapporteur on the independence of judges and lawyers; the Special Rapporteur on minority issues; the Special Rapporteur on the situation of human rights in the Palestinian territory occupied since 1967; the Special Rapporteur on the right to privacy and the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism

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(Please use this reference in your reply)

18 April 2024

Excellency,

We have the honour to address you in our capacities as Working Group on the issue of human rights and transnational corporations and other business enterprises; Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; Special Rapporteur on the rights to freedom of peaceful assembly and of association; Special Rapporteur on the independence of judges and lawyers; Special Rapporteur on minority issues; Special Rapporteur on the situation of human rights in the Palestinian territory occupied since 1967; Special Rapporteur on the right to privacy and Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, pursuant to Human Rights Council resolutions 53/3, 52/9, 50/17, 53/12, 52/5, 1993/2A, 46/16 and 49/10.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning **a number of alleged human rights violations in Israel and the occupied Palestinian territory since 7 October 2023, including increased criminalization, surveillance, harassment and attacks against individuals who are peacefully expressing dissent or advocating for Palestinian rights on social media. The proliferation of hate speech, incitement to violence, disinformation, and bias and systematic censorship of Palestinian and pro-Palestinian human rights voices and content are allegedly also on the rise on social media platforms including Meta, X, Google (headquartered in the United States of America), and Telegram (headquartered in the United Arab Emirates).**

A letter was sent expressing related concerns to your Excellency's Government on 9 March 2023 (ARE 1/2023). We regret that in that instance, we did not receive a response.

According to the information received:

The proliferation of hate speech and incitement to violence against Palestinians in the context of the 7 October attacks and its aftermath on various platforms presents a grave concern. While hate speech against Israelis, Jews and antisemitism are also strongly on the rise, social media platforms appear to have a biased and discriminatory approach when it comes to protecting Palestinians against hate speech. We have received reports that content relating to hate speech, incitement to violence, dehumanization and calls for genocide against Palestinians remains uncensored and prominent on Telegram's platform. Of the 2,800+ violations recorded through the Palestinian Observatory for Digital Rights Violations between 7 October and

15 December, more than half (2,012 cases) were classified as harmful content. This content includes hate speech, incitement to violence, online harassment and smear campaigns. Most of those cases occurred on Facebook, X (formerly Twitter), and Telegram.

Specifically related to hate speech in Israel against Palestinians, 7amleh’s “Violence Indicator” —a linguistic model that uses artificial intelligence technology that monitors the spread of hate speech and violence in Hebrew against Palestinians and their advocates on social media platforms— has counted over 2,381,444 pieces of hate speech and violent content posted on X, Facebook, and Telegram.

Telegram hosts several Hebrew-language, publicly viewable channels with thousands and hundreds of thousands of subscribers which actively incite violence against Palestinian individuals, share and celebrate graphic content from occupied Gaza, and propagate widespread hate and dehumanizing speech. Despite repeated complaints reportedly lodged by concerned stakeholders, Telegram has not acted against any of those channels. In one Telegram channel, moderators post pictures of Palestinians, including students, activists, journalists, released detainees, and public figures, with crosshair marks on their faces, together with their full names, professions, and home addresses and call for their elimination. They also post house coordinates of Palestinian families in the occupied West Bank and call for their bombardment. In another Telegram channel with over 112,000 subscribers, users post and celebrate extremely graphic footage of Palestinians killed or injured by the Israeli army in occupied Gaza. Yet another Telegram channel, allegedly operated by the Israeli army, targets Israeli audiences and shares graphic footage from occupied Gaza.

While we do not wish to prejudge the accuracy of the information received, we wish to express serious concern at the fact that the services of Telegram, an instant messaging platform by a company based in the United Arab Emirates, appear to be used as a conduit for human rights violations and abuses. We are concerned that, in the absence of a strong State response including from where the company is based, such as preventive actions, regulations and sanctions for all those involved, Telegram may continue to be used as a platform to disseminate disinformation, calls to violence, hate speech, and discrimination, which may amount to violations of article 3 of the Universal Declaration of Human Rights (UDHR), which guarantees everyone’s right to life, liberty and security of the person. The use of Telegram’s services to post personal information of individuals without their consent, including their location, is a violation of their human dignity and the right to privacy, protected under article 12 of the UDHR. The chilling effect of these posts targeting individuals for their political views is also impacting Palestinians’ fundamental rights to freedom of expression and peaceful assembly and association in Israel and the occupied Palestinian territory, as protected under articles 19 and 20 of the UDHR.

The six months of conflict since 7 October 2023, now plausibly amounting to a real and imminent risk of genocide according to the International Court of Justice,¹ have placed a spotlight on the role and obligations of technology companies, particularly social media platforms, in situations of armed conflicts. While Telegram’s

¹ <https://www.icj-cij.org/case/192>

Terms of Services prima facie prohibit “promoting violence on public channels, bots and chats”, we are troubled by Telegram’s approach to content moderation, which appears to be allowing pro-military channels to continue to disseminate violent posts against actors for their political views in violation of its own terms of services. Equally, we are concerned by significant gaps in Telegram’s Terms of Service, as they do not appear to prohibit hate speech. We note the need to prevent the promotion of violence more effectively against Palestinians through Telegram’s channels in accordance with their own Terms of Service as well as their FAQ (which indicates Telegram’s stance on ‘non-peaceful expression of opinion’).

Further, we note your Government’s legal provisions applicable to technology companies based in the United Arab Emirates, including Federal Decree Law No. 34 of 2023 on Combating Discrimination, Hatred and Extremism; Federal Decree Law No. 34 of 2021 on Combating Rumors and Cybercrimes; Federal Law No. 3 of 2003 on Organizing the Telecommunication Sector; and Federal Law Number 7 of 2014 on Combating Terrorism Offences. We call on your Excellency’s Government to ensure that the terminology used in these laws is not overly broad and that they are not applied to criminalise the legitimate work of journalists and human rights defenders. In particular, we urge your Excellency’s Government to adopt the model definition of hate speech and incitement, in line with Articles 19 (3) and 20 of the ICCPR and the standards spelled out in the Rabat Plan of Action, when addressing advocacy of national, racial or religious hatred that may constitute incitement to discrimination, hostility or violence (A/HRC/22/17/Add.4). We further encourage your Excellency’s Government to operationalise the Rabat Plan of Action threshold test, which sets the right balance between protecting freedom of expression and prohibiting incitement to hatred, based on a case-by-case assessment of the context, speaker, intent, content, extent of dissemination and likelihood of harm.

We also urge your Excellency’s Government to adopt the model definition of incitement to terrorism advanced by the mandate of the United Nations Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism (A/HRC/16/51, Practice 8). We further call on your Excellency’s Government to ensure that these laws are compatible with international human rights law, including the rights to freedom of expression and freedom of association and peaceful assembly.

We underline that new technologies, in particular digital technologies, involve complex systems that present inherent risks to the protection of rights, particularly for groups in vulnerable situations. The failure to take into account the special characteristics of high-risk systems, the systemic devaluation of risks of discrimination and inequality, and the lack of human rights-based approaches to risk management define the main human rights challenges in this area. In our view, a laissez-faire approach to the development and use by the private sector of new technologies in security contexts, coupled with the lack of an internationally agreed definition of terrorism and the systematic abuse of anti-terrorism and security laws and practices creates an aggravated and intersectional set of human rights challenges that should be at the centre of Member States’ considerations (A/HRC/52/39, para. 17).

Finally, we wish to highlight A/HRC/55/L.30 on the human rights situation in the occupied Palestinian territory and the obligation to ensure accountability and justice. This resolution includes an expression of concern at the spread of

disinformation and propaganda, including on the Internet, which can be designed and implemented so as to mislead, to violate human rights, including the right to freedom of expression, to spread hatred, racism, xenophobia, negative stereotyping or stigmatization and to incite violence, discrimination and hostility, and emphasizes the important contribution by journalists in countering this trend.

In connection with the above alleged facts and concerns, please refer to the **Annex on Reference to international human rights law** attached to this letter which cites international human rights instruments and standards relevant to these allegations.

As it is our responsibility, under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention, we would be grateful for your observations on the following matters:

1. Please provide any additional information and/or comment(s) you may have on the above-mentioned allegations.
2. Please provide information about measures and policies that your Excellency's Government has put in place to protect against human rights abuses by business enterprises domiciled in its territory, including Telegram, and to ensure business enterprises respect human rights throughout their operations. This includes conducting effective human rights due diligence to identify, prevent, mitigate and account for how they address their impacts on human rights throughout their operations (including abroad), as set forth by the UN Guiding Principles on Business and Human Rights. This also includes conducting heightened human rights due diligence in conflict-affected regions (A/75/212).
3. Please indicate the steps that your Excellency's Government has taken, or is considering taking, to ensure effective access to domestic judicial mechanisms for victims of business-related human rights abuses.
4. Please indicate the steps that your Excellency's Government has taken or is considering taking to ensure that business enterprises such as Telegram provide effective, operational-level grievance mechanisms, or cooperate in the provision of effective remedies through legitimate processes to the affected victims if they have contributed to adverse human rights impact.
5. Please indicate the steps that your Excellency's Government has taken or is considering taking to ensure that its legal framework applicable to technology companies is compatible with international human rights law.

We would appreciate receiving a response within 60 days. Past this delay, this communication and any response received from your Excellency's Government will be made public via the communications reporting [website](#). They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

While awaiting a reply, we urge that all necessary interim measures be taken to halt the alleged violations and prevent their re-occurrence and in the event that the investigations support or suggest the allegations to be correct, to ensure the accountability of any person(s) responsible for the alleged violations.

We may publicly express our concerns in the near future as, in our view, the information upon which the press release will be based is sufficiently reliable to indicate a matter warranting immediate attention. We also believe that the wider public should be alerted to the potential implications of the above-mentioned allegations. The press release will indicate that we have been in contact with your Excellency's Government's to clarify the issue/s in question.

Please note that letters expressing similar concerns will also be sent to the chief executive officers of the relevant social media companies and the States where they are domiciled.

Please accept, Excellency, the assurances of our highest consideration.

Robert McCorquodale
Chair-Rapporteur of the Working Group on the issue of human rights and
transnational corporations and other business enterprises

Irene Khan
Special Rapporteur on the promotion and protection of the right to freedom of opinion
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Francesca Albanese
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Ana Brian Nougrères
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Ben Saul
Special Rapporteur on the promotion and protection of human rights and fundamental
freedoms while countering terrorism

Annex

Reference to international human rights law

In connection with above alleged facts and concerns, we would like to draw your attention to the applicable international human rights norms and standards, as well as authoritative guidance on their interpretation.

We would also like to highlight the UN Guiding Principles on Business and Human Rights, which were unanimously endorsed in 2011 by the Human Rights Council in its resolution (A/HRC/RES/17/31) following years of consultations involving Governments, civil society, and the business community. The Guiding Principles have been established as the authoritative global standard for all States and business enterprises with regard to preventing and addressing adverse business-related human rights impacts. These Guiding Principles are grounded in recognition of:

- a. “States’ existing obligations to respect, protect and fulfil human rights and fundamental freedoms;
- b. The role of business enterprises as specialized organs or society performing specialized functions, required to comply with all applicable laws and to respect human rights;
- c. The need for rights and obligations to be matched to appropriate and effective remedies when breached.”

It is a recognized principle that States must protect against human rights abuses by business enterprises within their territory and/or jurisdiction. As part of their duty to protect against business-related human rights abuses, States are required to take appropriate steps to “prevent, investigate, punish and redress such abuse through effective policies, legislation, regulations and adjudication” (Guiding Principle 1). This requires States to “state clearly that all companies domiciled within their territory and/or jurisdiction are expected to respect human rights in all their activities” (Guiding Principle 2). In addition, States should “enforce laws that are aimed at, or have the effect of, requiring business enterprises to respect human rights...” (Guiding Principle 3). The Guiding Principles also require States to ensure that victims have access to effective remedy in instances where adverse human rights impacts linked to business activities occur.

States may be considered to have breached their international human law obligations where they fail to take appropriate steps to prevent, investigate and redress human rights violations committed by private actors. While States generally have discretion in deciding upon these steps, they should consider the full range of permissible preventative and remedial measures.

Business enterprises, in turn, have an independent responsibility to respect all internationally recognized human rights (Guiding Principle 11). They are expected to carry out human rights due diligence in order to identify, prevent, mitigate and account for how they address their impacts on human rights (Guiding Principle 15). Where a business enterprise causes or may cause an adverse human rights impact, it should take the necessary steps to cease or prevent the impact. Similarly, where a

business enterprise contributes or may contribute to an adverse human rights impact, it should take the necessary steps to cease or prevent its contribution and use its leverage to mitigate any remaining impact to the greatest extent possible (commentary to Guiding Principle 19).

Furthermore, business enterprises should remedy any actual adverse impact that it causes or contributes to. Remedies can take a variety of forms and may include apologies, restitution, rehabilitation, financial or non-financial compensation and punitive sanctions (whether criminal or administrative, such as fines), as well as the prevention of harm through, for example, injunctions or guarantees of non-repetition. Procedures for the provision of remedy should be impartial, protected from corruption and free from political or other attempts to influence the outcome (commentary to Guiding Principle 25).

The Guiding Principles also recognise the important and valuable role played by independent civil society organisations and human rights defenders. In particular, Principle 18 underlines the essential role of civil society and human rights defenders in helping to identify potential adverse business-related human rights impacts. The Commentary to Principle 26 underlines how States, to ensure access to remedy, should make sure that the legitimate activities of human rights defenders are not obstructed. In its recent guidance on ensuring respect for human rights defenders (A/HRC/47/39/Add.2), the Working Group on Business and Human Rights highlighted the urgent need to address the adverse impacts of business activities on human rights defenders. It unpacked, for States and businesses, the normative and practical implications of the Guiding Principles in relation to protecting and respecting the vital work of human rights defenders.

In a report to the Human Rights Council (A/HRC/41/41), the Special Rapporteur on freedom of peaceful assembly and of association recalled that the General Assembly has also called upon all States to “ensure that the same rights that individuals have offline, including the rights to freedom of expression, of peaceful assembly and of association, are also fully protected online, in accordance with human rights law”. The Special Rapporteur went on to state in the same report that “States not only have a negative obligation to abstain from unduly interfering with the rights of peaceful assembly and of association but also have a positive obligation to facilitate and protect these rights in accordance with international human rights standards,” and that in the digital age “the positive obligation to facilitate the exercise of the rights to freedom of peaceful assembly and of association includes efforts ‘to bridge the digital divides, including the gender digital divide, and to enhance the use of information and communications technology, in order to promote the full enjoyment of human rights for all’. The obligation to protect requires that positive measures be taken to prevent actions by non-State actors, including businesses, that could unduly interfere with the rights to freedom of peaceful assembly and of association.”

In addition, the Special Rapporteur on the rights to freedom of peaceful assembly and association has emphasized in various reports the importance of digital technology to exercise the mentioned rights, and in his report on freedom of assembly and association in the digital age, he detailed that those “(...) technologies are important tools for organizers who seek to mobilize a large group of people in a prompt and effective manner, and at little cost, and also serve as online spaces for groups of people that are marginalized by society and are confronted with restrictions

when operating in physical spaces” (A/HRC/41/41 para. 11).

In his recommendations in the abovementioned report, the Special Rapporteur on freedom of peaceful assembly and of association put forward that “States should duly implement their duty to protect against abuses of the rights to freedom of peaceful assembly and of association by business enterprises by taking appropriate steps to prevent, investigate, punish and redress such abuse through effective policies, legislation, regulations and adjudication. This includes adopting and enforcing laws and policies that focus on creating mandatory requirements for digital technology companies to exercise due diligence to identify, prevent, mitigate and account for how they address any human rights impacts of their business services and products, as well as for robust transparency and remediation mechanisms. These laws should be adopted only after a fully inclusive and participatory consultation process with all stakeholders.”

We underline that international human rights law already provides a robust framework and guidance for regulating against racial discrimination and incitement to discrimination or violence, including the Convention on the Elimination of All Forms of Racial Discrimination and the Rabat Plan of Action on the prohibition of advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence when criminalizing (A/HRC/22/17/Add.4, annex, appendix, para. 29).

In addition, we refer to the fundamental principles set forth in the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, also known as the UN Declaration on Human Rights Defenders. The Declaration reaffirms each State’s responsibility and duty to protect, promote, and implement all human rights and fundamental freedoms, including every person’s right, individually and in association with others, “to form, join and participate in non-governmental organizations, associations or groups” and “to solicit, receive and utilize resources for the express purpose of promoting and protecting human rights and fundamental freedoms through peaceful means” (A/RES/53/144, arts. 5, 13).

As stated by the Special Rapporteur on the rights to freedom of peaceful assembly and of association, “[t]he right to access and use internet and other digital technologies for the purposes of peaceful assembly is protected under article 20 of the Universal Declaration of Human Rights” (A/HRC/47/24/Add.2, para. 8).

Furthermore, it should be noted that, based on international law, the Maastricht Principles aim to clarify the content of States' extraterritorial obligations to realize economic, social and cultural rights in order to promote and give full effect to the purposes of the Charter of the United Nations and international human rights. All States have obligations to respect, protect and fulfill human rights, including civil, cultural, economic, political and social rights, both within their territories and extraterritorially. Each State has the obligation to realize the economic, social and cultural rights of all persons within its territory to the maximum extent of its capabilities. All States also have extraterritorial obligations to respect, protect and fulfill economic, social and cultural rights.

We respectfully remind your Excellency’s Government that although there is no multilateral treaty on terrorism which *inter alia* defines terrorism, States should

ensure that counterterrorism legislation is limited to criminalizing conduct which is properly and precisely defined and strictly guided by the principles of legality, necessity, and proportionality and non-discrimination. The definition of terrorism in national legislation should be guided by the provisions of international counterterrorism instruments and the definitions found in Security Council resolution 1566 (2004), the UN General Assembly's Declaration on Measures to Eliminate International Terrorism and the model definition recommended by the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism. Counter-terrorism legislation should comply with all relevant international human rights obligations, including due process, the prohibition on arbitrary detention, freedom of expression and opinion, freedom of peaceful assembly, and minority and cultural rights.

We emphasize that the 'principle of legal certainty' under international law, including article 15(1) of the ICCPR requires that criminal laws are sufficiently precise so it is clear what types of behaviour and conduct constitute a criminal offence and are the consequences of committing such an offence. This principle recognizes that ill-defined and/or overly broad laws are susceptible to arbitrary application and abuse, including in the context of vague counter-terrorism laws. Article 9 (1) ICCPR affirms the principle of legal certainty by requiring that any substantive grounds for arrest or detention must be prescribed by law and defined with sufficient precision to avoid overly broad or arbitrary interpretation or application, and thus to avoid arbitrary deprivation of liberty.