

Submission to the UN Special Rapporteur on Freedom of Expression on Challenges to Freedom of Expression in Times of Armed Conflict

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Introduction

The UN Special Rapporteur on Freedom of Opinion and Expression has asked for submissions to assist her in the preparation of her report to the UN General Assembly in October 2022, which will be on challenges to freedom of opinion and expression in times of armed conflict and other disturbances. This is the Submission of the Centre for Law and Democracy (CLD) on that theme. In this Submission, CLD has taken a slightly different approach than it normally does in its submissions. While a number of recommendations to States, online intermediaries and sometimes other actors are embedded in the text of the Submission, several sections end with a list of “Issues to Explore Further”. We felt this was important given the novel nature of this theme.

This theme covers a potentially vast array of issues. In its submission, CLD has chosen to focus on just a few of them. The first is the scope of the prohibition in Article 20(1) of the ICCPR on “propaganda for war”. Unlike Article 20(2), on the prohibition of hate speech, this article of the ICCPR has received relatively little attention from either academics or oversight bodies. The second issue covered is the legal protection of journalists working in conflict zones, with a focus on the legal requirement to treat them as civilians rather than combatants. The third issue is the proper scope of legal derogations from freedom of expression during emergencies, again a topic that has received relatively little attention so far. Finally, the Submission looks at the responsibilities of social media companies during conflicts and other violent situations, a rapidly emerging area of focus.

Clarifying the Prohibition on Propaganda for War

The prohibition against propaganda for war is enshrined in Article 20(1) of the ICCPR, which provides: “Any propaganda for war shall be prohibited by law.” The terms ‘propaganda’ and ‘propaganda for war’ are not defined in the ICCPR, which has left some confusion as to the scope of Article 20(1).¹ One issue surrounding this prohibition has been whether the term “propaganda” is limited to ‘incitement to war’ or it extends to “propaganda which is antecedent to direct incitement to war but which serves either as a means of preparation for a future war, or perhaps to preclude peaceful settlement of disputes.”² This was debated during the preparation of the ICCPR, when attempts to restrict the provision to “incitement to war” were opposed by a majority of States who favoured a broader definition, while the minority of States ultimately accepted the final wording on the understanding it would be interpreted as something close to “incitement to war”.³ An overly broad interpretation of what constitutes ‘propaganda’ would undermine freedom of expression and stands in contrast to the approach to hate speech and advocacy for terrorism, which are both limited to incitement.⁴

The prohibition on propaganda for war was traditionally understood, consistently with the *travaux préparatoires*, as applying solely to wars of aggression, thus precluding its application to propaganda for non-international armed conflicts.⁵ However, in General Comment 11, the UN Human Rights Committee said that it applied whether the propaganda had aims “internal or external to the State concerned”,⁶ which may suggest that its application extends to propaganda for certain non-international armed conflicts. In the same paragraph, the Committee specifically excluded advocacy for self-defence or self-determination from the scope of this.

One interpretation of the General Comment is that the Committee did not intend to refer to non-international armed conflicts but was instead indicating “that States parties were obliged to prohibit all ‘propaganda for war’ without distinction as to whether the propaganda in

¹ Further adding to the confusion is the wide range of legislative approaches to addressing propaganda for war, as well as divergent practices for interpreting relevant crimes by judges who often fail to reference international obligations. See, for example, Andrei Richter, “Legal Response to Propaganda Broadcasts Related to Crisis in and Around Ukraine, 2014–2015” (2015) 9 *International Journal of Communication* 3125, <https://www.osce.org/files/f/documents/d/c/187936.pdf>.

² Michael Kearney, *The prohibition of propaganda for war in international law* (2007, Oxford, Oxford University Press), pp. 5-6.

³ *Ibid*, pp. 116, 121, 130-132.

⁴ Special Rapporteurs for Promoting Freedom of Expression, 2008 Joint Declaration on Defamation of Religions, and Anti-Terrorism and Anti-Extremism Legislation, <https://www.osce.org/fom/99558?download=true>.

⁵ Michael Kearney, *The prohibition of propaganda for war in international law*, note 2, pp. 149-150.

⁶ General Comment No. 11: *Prohibition of propaganda for war and inciting national, racial or religious hatred* (Art. 20), 29 July 1983, HRI\GEN\1\Rev.1, para. 2, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G94/189/63/PDF/G9418963.pdf?OpenElement>.

question was intended to incite domestic or foreign audiences.”⁷ However, the General Comment’s use of the term ‘aims’ rather than ‘targets’ or ‘audience’ may cast doubt on this interpretation.

In practice, several States have cited laws on national security and public order, including anti-terrorism legislation or prohibitions on incitement to domestic insurrections, in their reports to the Human Rights Committee on implementing Article 20(1).⁸ However, if Article 20(1) is to be understood as applying to some non-international armed conflicts, a clear legal rationale should be articulated and explicit guidance provided as to which kinds of conflicts are covered in view of the lack of clear international legal consensus on when resorting to force resulting in internal armed conflict is justified.⁹ Applying Article 20(1) to non-international armed conflicts presents challenges from a freedom of expression perspective, including the potential for it to be misused to justify overly expansive laws against subversion.¹⁰ The need for clarity regarding the scope of Article 20(1) to avoid misuse is confirmed by the assessment of human rights experts that many restrictions on propaganda are not legitimate.¹¹

A further area of ambiguity is the temporal application of Article 20(1). The text of the provision does not specify whether the propaganda for war that is to be subject to proscription is restricted to propaganda in the leadup to or promoting a war or whether it extends to propaganda in favour of the aggressor or perhaps other combatants once a war is

⁷ Michael Kearney, *The prohibition of propaganda for war in international law*, note 2, p. 150.

⁸ *Ibid.*, pp. 149-154.

⁹ Some attempts have been made to clarify the normative standards for when it is legitimate to resort to the internal use of force, but these have not yet crystallised into settled international law. For one such attempt, see Eliav Liebach, “Internal *Jus ad Bellum*”, (2016) 67 *Hastings Law Journal* 687, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2663954.

¹⁰ For example, in a report to the Human Rights Committee, Algeria cited Article 20 as justification for detaining journalists who published an advertisement by the dissolved Islamic Salvation Front calling for “disobedience and sedition”, noting they had interpreted the advertisement as a call for ‘civil war’. See Human Rights Committee, *Second periodic reports of States parties due in 1995: Algeria*, 18 May 1998, CCPR/C/101/Add.1, <https://bit.ly/3RjpXt8>, para. 168. In its Concluding Observations in that case, the Human Rights Committee noted: “[I]n practice numerous restrictions still persist with regard to freedom of expression dealing with, for example, coverage of allegations and discussion of corruption and criticism of government officials and of material regarded as an expression of sympathy or encouragement of subversion, all of which gravely prejudice the right of the media to inform the public and the right of the public to receive information.” See Human Rights Committee, *Concluding Observations: Algeria*, 18 August 1998, CCPR/C/79/Add.95, para. 16, <https://bit.ly/3nObsAb>.

¹¹ See, for example, “Communiqué by OSCE Representative on Freedom of the Media on propaganda in times of conflict”, 15 April 2014, <https://www.osce.org/fom/117701>. See also David Kaye, “Online Propaganda, Censorship and Human Rights in Russia’s War against Reality” (2022) 116 *AJIL Unbound* 140, p. 141, <https://www.cambridge.org/core/journals/american-journal-of-international-law/article/online-propaganda-censorship-and-human-rights-in-russias-war-against-reality/359EF362F588AC8F601FE6C28260AD83>.

underway.¹² The latter interpretation may be viewed as inconsistent with the underlying purpose of Article 20(1), which is essentially aimed at attempting to prevent the initiation rather than the ongoing conduct of illegitimate wars.

To date, the standards surrounding how social media companies should address propaganda for war are significantly under-analysed in comparison to policies on hate speech and incitement and thus need further clarification. Twitter, Meta, Instagram, TikTok and YouTube do not have specific community standards policies prohibiting propaganda for war, although certain policies on misinformation or hateful or violent content could be interpreted as encompassing certain kinds of propaganda for war.¹³

Issues to Explore Further:

- The scope of the prohibition of propaganda for war, including:
 - Whether Article 20(1) is limited to international conflicts or also covers non-international conflicts and, in the latter case, which non-international armed conflicts it applies to.
 - Whether Article 20(1) applies only prior to a war or also to content disseminated during a war.
 - Whether Article 20(1) applies to only propaganda that constitutes “direct incitement to war” or to other forms of propaganda that enable war.
- Whether there is a need for social media platforms to elaborate specific policies on moderating content that represents propaganda for war and, if so, what kinds of content should be subject to these policies.

Legal Protection of Journalists in Conflict Zones

Journalists continue to face significant challenges to practising their work during armed conflicts. In part this is simply a result of the often challenging environment which prevails in such contexts, but it is also in important part due to insufficient respect for international humanitarian and human rights law. A key element of the duty to respect the right to freedom of expression in situations of armed conflict is to ensure that journalists can carry out their key role of informing the public. Parties to armed conflicts should respect the

¹² Freya Foster, “The Price of News from the Front Line: Rethinking the Protection of Media Personnel under International Humanitarian Law”, (2015) 20:3 *Journal of Conflict & Security Law* 451, p. 463.

¹³ For example, Facebook Community Standards: Misinformation notes: “We remove misinformation where it is likely to directly contribute to the risk of imminent physical harm”, <https://transparency.fb.com/policies/community-standards/misinformation/>. Twitter’s Safety and Cybercrime: Glorification of Violence Policy notes: “[Y]ou can’t glorify, celebrate, praise or condone violent crimes, violent events where people were targeted because of their membership in a protected group, or the perpetrators of such acts”, <https://help.twitter.com/en/rules-and-policies/glorification-of-violence>.

important role of the media, including by refraining from overbroad limitations on access, which is a recurring problem in many armed conflicts.¹⁴

As civilians, in both international and non-international armed conflicts, journalists “are protected against attack, unless and for such time as they take a direct part in hostilities” (i.e. if their actions constitute “direct participation in hostilities”).¹⁵ In practice, the question of when the media and their equipment (including not only traditional broadcasting facilities but also those used to post content online) can legitimately become targets under international humanitarian law raises several issues.

One is whether disseminating propaganda would be considered a form of “direct participation in hostilities”, thus rendering the media legitimate military targets under international humanitarian law. The International Committee of the Red Cross provided a persuasive Guidance on how to interpret “direct participation in hostilities”, in a 2009 study. According to their approach, for an act to be characterised as “direct participation in hostilities”, it must meet the following criteria:

1. the act must be likely to adversely affect the military operations or military capacity of a party to an armed conflict or, alternatively, to inflict death, injury, or destruction on persons or objects protected against direct attack (threshold of harm), and
2. there must be a direct causal link between the act and the harm likely to result either from that act, or from a coordinated military operation of which that act constitutes an integral part (direct causation), and
3. the act must be specifically designed to directly cause the required threshold of harm in support of a party to the conflict and to the detriment of another (belligerent nexus).¹⁶

The ICRC indicated that that “political propaganda” or “media activities supporting the war effort” would not qualify as ‘direct’ participation in hostilities under this framework, but could instead be considered as a kind of “war-sustaining activity” best characterised as ‘indirect’ rather than ‘direct’ participation in hostilities.¹⁷ This would, therefore, rule out the vast majority of what might constitute media activities. At the same time, in narrow

¹⁴ See Daniel Hessel, “The Pen and the Sword: International Humanitarian Law Protections for Journalism”, (2016) 41 *The Yale Journal of International Law* 415, pp. 439-441.

¹⁵ Jean-Marie Henckaerts and Louise Doswald-Beck, *Customary International Humanitarian Law* (2005, Geneva, ICRC), Rule 6, “Civilians’ Loss of Protection from Attack”, https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_rul_rule6.

¹⁶ Nils Melzer, *Interpretative Guidance on the Notion of Direct Participation in Hostilities under International Humanitarian Law*, (2009, Geneva, ICRC), p. 46, <https://www.icrc.org/en/doc/assets/files/other/icrc-002-0990.pdf>.

¹⁷ *Ibid.*, p. 51.

circumstances, journalists may lose protection as civilians due to forms of direct participation in hostilities, for example through transmitting sensitive tactical information to assist with a military operation. The ICRC's Guidance included "wiretapping the adversary's high command" or "transmitting tactical targeting information for an attack" as examples of acts which might meet the "threshold of harm" for directly participating in hostilities.¹⁸ Although these examples do not refer specifically to journalists, presumably the latter might also engage in such activities. In addition, incitement to atrocities against civilian populations that are being targeted by a party to an armed conflict may in certain circumstances lead to the loss of a journalist's protection as a civilian.¹⁹

Issues to Explore Further:

- The narrow, exceptional circumstances in which journalists may lose their protection as civilians under international humanitarian law, including through direct participation in hostilities or for incitement to international crimes against civilians.
- The narrow circumstances in which it might be legitimate to restrict journalistic access to theatres of conflict.

Derogating From Freedom of Expression Obligations

International law allows for special derogations from rights during emergencies. Under Article 4 of the ICCPR, such derogations may be made only during an emergency which "threatens the life of the nation and the existence of which is officially proclaimed". Part of the latter involves informing other States Parties to the Covenant about the derogation through a notification to this effect to the Secretary-General of the UN. Such derogations must, substantively, be "strictly required by the exigencies of the situation", may not be inconsistent with a State's other international law obligations, such as under international humanitarian law, and may not be discriminatory. The UN Human Rights Committee has made it clear that this applies not only to the proclamation of a state of emergency but also to "any specific measures based on such a proclamation".²⁰ In addition, derogations are only

¹⁸ *Ibid.*, p. 48.

¹⁹ A committee advising the International Criminal Tribunal for the former Yugoslavia came to a similar conclusion, finding that the mere spreading of propaganda to support a war effort does not render media a legitimate target, while providing the following caveat: "If the media is used to incite crimes, as in Rwanda, it can become a legitimate military objective." However, the report did not provide further examples of kinds of crimes that would render media a legitimate target. See International Criminal Tribunal for the former Yugoslavia, *Final Report to the Prosecutor by the Committee Established to Review the NATO Bombing Campaign Against the Federal Republic of Yugoslavia*, 13 June 2000, paras. 47 and 55, <https://www.icty.org/x/file/Press/nato061300.pdf>.

²⁰ General Comment No. 29, States of Emergency (Article 4), CCPR/C/21/Rev.1/Add.11, 31 August 2001, para. 5,

allowed from certain rights, including freedom of expression but not, for example, the right to life, freedom from torture or freedom of thought and religion. The UN Human Rights Committee has indicated that the right to freedom of opinion (unlike freedom of expression) may never be subject to derogation during an emergency even though it is protected by Article 19 of the ICCPR, which is one of those from which derogations are permitted.²¹

It is reasonably clear that armed conflicts are among those situations which may meet the standard of threatening the life of the nation. Thus in its General Comment No. 29, the UN Human Rights Committee talked specifically about armed conflicts and emergencies and even highlighted the special need for States to justify invoking emergency derogation powers outside of situations of armed conflict.²² However, not every armed conflict will necessarily reach the level which might justify derogations. The *Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights* suggest that this might be the case if the situation threatens the “physical integrity of the population” or “the existence or basic functioning of institutions indispensable to protecting human rights”.²³

A key question regarding emergency derogations from freedom of expression is their relationship with the general regime for restrictions on this right, as set out in Article 19(3) of the ICCPR. In particular, it is relevant to probe the circumstances in which an emergency might require States to go beyond the restrictions which are already generally allowed pursuant to Article 19(3). The latter sets out a three-part test for restrictions. The first part of this test is that restrictions must be “provided by law”, normally meaning that they must be pursuant to a duly passed piece of legislation which must be sufficiently clear that it gives proper notice of what the restriction consists of and must not grant undue discretion to officials to limit freedom of expression.

It seems clear that this rule should be maintained even during an emergency at least to the extent that any derogation from freedom of expression must be legally valid under the domestic legal system (i.e. basic parameters of the rule of law must be maintained). Perhaps outside of a very brief initial, shock reaction to an attack, the experience of States during armed conflicts shows that it is still possible for the legislature to function, where necessary

https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2f21%2fRev.1%2fAdd.11&Lang=en

²¹ General Comment No. 34, Article 19: Freedoms of opinion and expression, CCPR/C/GC/34, 12 September 2011, para. 5,

https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2fGC%2f34&Lang=en

²² Note 1, para. 3.

²³ Adopted 1 July 1984, Principle 39, <https://www.icj.org/wp-content/uploads/1984/07/Siracusa-principles-ICCPR-legal-submission-1985-eng.pdf>.

after making some adaptations to its procedures. If anything, the initial COVID-19 shutdowns had a more extreme impact on the ability of legislatures to function than any armed conflict is likely to have, and yet legislatures managed to continue to conduct their business at that time.

It is reasonable to posit that certain armed conflicts may necessitate fairly dramatic legal changes across a number of areas, in which case the legislature might be required to grant fairly broad discretionary powers to various authorities to further regulate in different areas, potentially including restrictions on freedom of expression. Such delegations of power might not pass muster under the part of the “provided by law” rule which bars the grant of undue discretion to officials to restrict freedom of expression. To that extent, it might be reasonable to impose a limited derogation on freedom of expression in that area (i.e. to protect the grant of broad powers to non-legislative authorities to adopt restrictions on freedom of expression). However, there is no reason why any subordinate rules restricting freedom of expression which were adopted by relevant authorities should not themselves meet the ordinary standards of clarity required for such restrictions, such that a derogation of this nature would essentially be limited to adjusting the level of decision-making about restrictions rather than other elements of this part of the test. Here again the experience of COVID-19 is instructive inasmuch as some States did allocate broad discretion to various authorities to limit freedom of expression, for example in the area of access to information, and yet in many cases those authorities managed to be perfectly clear as to how and how far they were limiting this right.²⁴

The second part of the test is that restrictions must serve to protect one of the legitimate interests listed in Article 19(3). This list - which comprises the rights and reputations of others, national security, public order, public health and public morals – is already very broad and it is hard to see how any emergency, including one due to a situation of armed conflict, could justify expanding this while still respecting the rule that any derogations from rights be “strictly required by the exigencies of the situation”. The two interests which tend to take on outsized importance during situations of armed conflict – namely national security and public order – are already found in this list. As such, it is unclear whether a derogation would ever be needed to expand this part of the normal test for restrictions.

²⁴ For an in-depth discussion on this see Centre for Law and Democracy, *Maintaining the Right to Information During Health Emergencies, Brief on Standards Regarding the Right to Information*, May 2020, https://www.law-democracy.org/live/wp-content/uploads/2020/05/RTI-and-COVID-19-Briefing.20-05-27.Final_.pdf.

In practice, the most important part of the three-part test for restrictions on freedom of expression is the last one, that any such restriction be necessary to protect one of the interests covered by the second part of the test. The UN Human Rights Committee has observed, generally in relation to those rights that may be restricted: “[T]he obligation to limit any derogations to those strictly required by the exigencies of the situation reflects the principle of proportionality which is common to derogation and limitation powers.”²⁵ In other words, both derogations from and restrictions on freedom of expression need to meet the standard of proportionality, such that the former cannot go beyond what the latter already allows in terms of limiting freedom of expression. Echoing the same idea, the UN Special Rapporteur on freedom of expression noted, in a report focusing specifically on freedom of expression and pandemics: “Article 19(3) already provides sufficient grounds for necessary and proportionate restrictions of article 19(2) rights, to protect public health.”²⁶

At the same time, even if the standard implicit in “strictly required” is not more permissive than that of “necessity”, both are adapted to the context at the time a rule is adopted and applied. While restrictions often apply longer-term, derogations only apply during the period of the emergency which threatens the life of the nation. Thus, even if the “necessity” standard could still serve to assess the substantive appropriateness of a limitation, there are benefits to considering limitations which are deemed to be needed only due to an emergency under the derogations’ framework (and thus the “strictly required” standard). This would help make it clear that any such limitation on freedom of expression would need to be dropped once the emergency came to an end.

For example, many States introduced limitations on the right to information during the COVID-19 pandemic on the basis that they could not physically access non-digital documents during a period of work-from-home or that they needed longer to respond to requests due to limited overall capacity. Even where these limits passed muster as “necessary” given the overall situation, it would make more sense to treat them as derogations because they would only have been justified by the emergency situation and should cease to apply as soon as it came to an end.

As for the specific types of additional limitations on freedom of expression that might be warranted during an armed conflict, those involving suspensions relating to institutional capacity, like halting the processing or requests for information or applications for

²⁵ General Comment No. 29, note 1, para. 4.

²⁶ Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, *Disease pandemics and the freedom of opinion and expression*, A/HRC/44/49, 23 April 2020, para. 17, <https://www.ohchr.org/en/calls-for-input/report-disease-pandemics-and-freedom-opinion-and-expression>.

broadcasting licences, might be legitimate, depending on the circumstances. As always, these would need to be justified as being “strictly required”.

While the possible need for additional content restrictions cannot be ruled out entirely, these would come with a strong presumption against their validity. This is because most States already have in place ample, indeed often excessive, protections for public order and national security which, as already noted, are two issues which tend to take on greater importance during armed conflict. Armed conflicts may exacerbate pre-existing tensions among groups based on characteristics like nationality, ethnicity or religion, but Articles 19(3) and 20(2) of the ICCPR already set out clear rules and standards for addressing hate speech and other forms of harmful speech in this context, which should not need to be exceeded even when tensions are high. Apart from anything else, elevated tensions have numerous causes, which often occur outside of emergencies, and yet the non-emergency framework is considered adequate to address them. More generally, the experience of the COVID-19 pandemic, when many States rushed to adopt new restrictions on freedom of expression which were both illegitimate and ineffective in addressing pandemic concerns, is well documented²⁷ and serves as a warning against such actions during emergencies.

One specific issue which may arise during emergencies, especially those involving armed conflict, is whether it is legitimate for governments either to take over broadcasters to disseminate information they consider to be of overriding public importance or to require broadcasters to disseminate their messages. Laws in many countries give government the power to do this. CLD is of the view that such provisions are wholly illegitimate. Not only is the potential for their abuse obvious, but the rationale behind them – namely that such extreme control measures may be needed to ensure that the government can relay essential messages to the people – simply does not hold. It is, practically speaking, virtually impossible that no major media outlets will convey important information to the public and the experience of a very large number of countries during situations of armed conflict and other types of emergencies clearly bears this out. In any case, in the modern world governments have many other options for communicating important information directly to the public.

Beyond these analytical considerations, it may be noted that in practice there are very few proper derogations from the right to freedom of expression (in the sense of those which are

²⁷ See, for example, Amnesty International, “Covid-19: Global attack on freedom of expression is having a dangerous impact on public health crisis”, 19 October 2021, <https://www.amnesty.org/en/latest/news/2021/10/covid-19-global-attack-on-freedom-of-expression-is-having-a-dangerous-impact-on-public-health-crisis/>; and Human Rights Watch, “Covid-19 Triggers Wave of Free Speech Abuse”, 11 February 2021, <https://www.hrw.org/news/2021/02/11/covid-19-triggers-wave-free-speech-abuse>.

notified to the UN Secretary-General or similarly notified under other human rights systems). Thus, since the beginning of 2010 until the present, only 11 States have notified the UN Secretary-General of derogations specifically involving Article 19 (freedom of expression; notifications are supposed to indicate which rights are being derogated from), with repeat derogations in four of those States and only one due to COVID-19.²⁸ Only three States derogated from their freedom of expression obligations under the European Convention on Human Rights, of which two ran in parallel to ICCPR derogations. Under the American Convention on Human Rights, only five derogations from freedom of expression have occurred since 2014, all running in parallel to ICCPR derogations. Thus, on average just very slightly over one State per year has entered a derogation from the right to freedom of expression. These represent a tiny fraction of all derogations. For example, under the American Convention on Human Rights, there was only one freedom of expression derogation in 2021 out of 72 derogations in total, and one again in 2020 out of a total of 131. The numbers are a little bit less dramatic under the ICCPR and ECHR but there only about one in ten and one in twenty derogations, respectively, refer to freedom of expression.

This analysis suggests that there is relatively limited scope for derogations from freedom of expression during periods of armed conflict which threaten the life of the nation. Such derogations should still be set out clearly in properly adopted rules, even if the scope for delegated authority to adopt such rules may be wider than outside of emergency situations. There is no need adopt limitations on freedom of expression which serve to protect interests beyond those already listed in Article 19(3). The particular context of an armed conflict may justify certain limited derogations from the right to freedom of expression, mostly based on the impact of the conflict on public institutional capacity, depending on the actual circumstances. On the other hand, there will very rarely be any justification for additional content restrictions.

Issues to Explore Further:

- The extent to which the “provided by law” requirement might legitimately need to be relaxed during armed conflict emergencies.
- Whether there is any difference between the standard of “necessary” and “strictly required” and, if so, what it consists of.
- What sorts of additional limitations on freedom of expression a situation of armed conflict might justify.

²⁸ A search on all ICCPR derogations can be done at <https://treaties.un.org/Pages/CNs.aspx?cnTab=tab2&clang=en>.

Social Media Companies and Conflict

Under the UN Guiding Principles for Business and Human Rights, companies should conduct due diligence to identify and address human rights risks proactively in their operations. However, major social media companies have often taken an *ad hoc* approach towards harmful content related to conflict or in regions experiencing conflict. This section of this Submission discusses existing social media platform policies and makes recommendations, informed by international law standards, to improve their policies on moderating incitement to violence, hate speech and mis- and dis- information in the context of conflicts and other violent situations. It then looks at issues around deplatforming violent groups and overarching transparency concerns.

Content Moderation, Removal and De-Prioritisation

Incitement to Violence

Platform Policies:

Major social media platforms all have policies prohibiting incitement to violence, with some variance in the threshold of severity of harm they require or whether the language used shows intent is present. Some platforms also have policies on content which glorifies or praises violence.²⁹ Most of these policies are fairly general in their language and leave substantial room for interpretation but many refer to specific types of prohibitions, such as calls to bring weapons to a location or calls for violence accompanied by sensitive personal information (like a residential address).³⁰

These policies do not generally provide any indication on how they will be applied in the context of conflicts. However, given that many platforms have announced actions to respond to violence in specific country contexts,³¹ presumably they have some internal guidance on

²⁹ Meta's Community Standards, Violence and Incitement call for the removal of content that "incites or facilitates serious violence" and, depending on context, may remove other credible safety threats, <https://bit.ly/3NOTCHL>. YouTube's Violent or Graphic Content Policies prohibit encouraging others to commit violent acts, and prohibits promoting or glorifying violent tragedies, <https://bit.ly/3lojtVS>. TikTok's Community Guidelines prohibit advocating, directing, or encouraging others to commit violence, and also notes that users should not post content that "praises, promotes, glorifies, or supports violent acts", <https://bit.ly/3ytGZft>. Twitter's Violent Threats Policy prohibits threats of intent to inflict violence on a specific person or group, <https://bit.ly/3nQe1BU>. See also Twitter's Glorification of Violence Policy, <https://bit.ly/3lvziKt>.

³⁰ See TikTok, note 29; Meta, note 29; and VK, Safety Guidelines, Platform Standards, <https://m.vk.com/safety?section=standards&lang=en>.

³¹ See, for example, Sinéad McSweeney, "Our Ongoing Approach to the War in Ukraine", Twitter, 15 March, <https://bit.ly/3OS6EFH>.

the topic. At the same time, there is evidence to suggest there such internal decisions may be *ad hoc* or inconsistent.

For example, following the Russian invasion of Ukraine, Meta has reportedly issued internal guidance repeatedly altering the enforcement of its incitement and violence policy, such as to permit calls for violence against Russian soldiers and for the death of Vladimir Putin.³² Internal documents discussed in 2017 suggest Meta may have had an internal rule prohibiting praise of violence to resist occupation, which may have resulted in disproportionate moderation of civil society and journalists in Kashmir, Palestine, Crimea and Western Sahara.³³ For both Facebook and Twitter, taking action against heads of State for incitement to violence has been particularly fraught, including measures against Presidents Trump (United States), Abiy (Ethiopia) and Buhari (Nigeria).³⁴

Platforms have sometimes publicly announced precise guidance for particular conflicts. For example, Meta announced a Myanmar-specific policy prohibiting praise of or support for violence against civilians, the military or security forces.³⁵

Commentary:

Heightened tensions during conflicts means that speech may be more likely to incite or that inciteful speech may be more likely to have serious consequences. On the other hand, people experiencing situations of armed conflict are more likely to include the topic of violent action as part of normal discourse, which should not be silenced, as well as the voices of those who are already marginalised or targeted. To navigate these dynamics, the following should be taken into account:

- States should only punish speech on national security or public order grounds if that speech: 1) is intended to incite imminent violence; 2) is likely to incite such violence; and 3) there is a “direct and immediate connection” between the expression and the likelihood of violence.³⁶ Platforms may legitimately apply a less strict standard in the

³² Ryan Mac, Mike Isaac and Sheera Frenkel, “How War in Ukraine Roiled Facebook and Instagram”, New York Times, 30 March 2022, <https://nyti.ms/3OUxT2A>.

³³ Based on Pro Publica’s review of internal Facebook documents and civil society reports. See Julia Angwin and Hannes Grassegger, “Facebook’s Secret Censorship Rules Protect White Men from Hate Speech but not Black Children,” ProPublica, 28 June 2017, <https://bit.ly/3ansHoX>.

³⁴ BBC, “Facebook Deletes Ethiopia PM’s Post that Urged Citizens to ‘Bury’ Rebels”, 3 November 2021, <https://bbc.in/3ysZW28>; Ruth Maclean, “Nigeria Bans Twitter After President’s Tweet is Deleted”, New York Times, 5 June 2021, <https://nyti.ms/3yKVdZV>; and BBC “Twitter ‘Permanently Suspends’ Trump’s Account”, 9 January 2021, <https://bbc.in/3uyFnA0>.

³⁵ Rafael Frankel, “An Update on the Situation in Myanmar”, Meta, 11 February 2021, <https://about.fb.com/news/2021/02/an-update-on-myanmar/>.

³⁶ The Johannesburg Principles on National Security, Freedom of Expression and Access to Information, 1 October 1995, Principle 6, <https://www.article19.org/data/files/pdfs/standards/joburgprinciples.pdf>.

interest of creating safe online spaces.³⁷ However, testing posts against these three core criteria – whether there is intent to cause violence, a likelihood of inciting violence, and a causal link between the expression and the violence – would provide a good analytical framework even if less stringent standards for each criterion are used, especially so as to protect free speech in ambiguous or controversial cases, or where the speech forms part of a debate about a matter of public concern.

- Platform policies or guidance should provide clear examples of content which does *not* constitute incitement to violence. International human rights law places high value on political speech, for example, and protects peaceful advocacy of a change of government.³⁸ Platform policies should reference these standards as contextual factors to take into account when determining whether content violates the rules, ideally using some specific examples drawn from conflict situations.
- Some platform policies prohibit “glorifying” or “praising” violence, something which human rights law calls for States not to do.³⁹ At a minimum, these terms should be defined clearly and narrowly in any platform policies providing for measures to be taken against such speech, something most policies fail to do. In addition, the examples used in some policies are inspired by events in the United States (such as praising school shootings); more diverse guidance on these terms should be provided.

In addition, more precise guidance may be needed in some specific areas:

- Incitement to violence against specific individuals: While this is a risk at any time, during conflict “doxing” and other threats directed at individuals can be used as a tactic of war. In Myanmar, for example, targeted killings have been facilitated through social media.⁴⁰ Most major platforms already have policies prohibiting such acts⁴¹ but specific guidance on or strategies specific to addressing this in conflict contexts may be useful. Platforms may also consider adding specific guidance to their policies on

³⁷ Also, as part of the necessity analysis, the sanctions applied by platforms are less severe than the typically criminal sanctions imposed by States, thus altering the assessment of proportionality.

³⁸ Johannesburg Principles, note 36, Principle 7; UN Human Rights Committee, General Comment No. 34, para. 23,

https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2fGC%2f34&Lang=en.

³⁹ See special international mandates on freedom of expression, Joint Declaration on Freedom of Expression and Responses to Conflict Situations, 4 May 2015, para. 3(b), http://www.law-democracy.org/live/wp-content/uploads/2012/08/15.05.04.Joint-Declaration.PR_.pdf.

⁴⁰ Frontier Myanmar, “Pro-Military Death Squad Rallies Openly on Social Media”, 2 June 2022, <https://bit.ly/3NTT6Zc>.

⁴¹ Even Telegram, which lacks content moderation policies, says promoting violence violates its terms of service, although enforcement is lacking. See Telegram, Terms of Service, <https://telegram.org/tos>.

language inciting violence against civilians in the context of armed conflict, with reference to the special status of civilians under international humanitarian law.

- Language expressing opposition to military forces or armed groups: Platforms should adopt public guidance on content opposing militaries and armed groups, informed by human rights law. This should distinguish between general statements of political opinion and specific support of violent acts. The factors identified above (intent, likelihood of harm, and causation between the speech and the harm) could be helpful here. If platforms choose to permit greater latitude for incitement to violence directed at militaries or armed groups, clear conditions for when this applies should be adopted and applied consistently in different contexts.
- Incitement to violence which constitutes an international crime or could facilitate an international crime: Coordinated incitement to violence may constitute a crime against humanity, if sufficiently widespread and systematic. Some platform policies address issues of atrocity crimes (war crimes, crimes against humanity and the like), but platforms could strengthen their policies in this area, for example by adopting clear policies on removing speech which incites atrocity crimes and on how they will respond if perpetrators of atrocity crimes are using their platforms to organise.
- Incitement to violence by public figures and authorities: Platforms have been criticised for *ad hoc* enforcement of incitement to violence policies against politicians. When public figures make statements in support of violence, this may be more likely to incite to violence or other serious harms. However, political speech also warrants particularly strong protection, as does public access to statements made by politicians and senior officials.⁴² Platforms should adopt clear public policies on how they will address incitement to violence by public officials, taking into account these two competing considerations. Options which preserve the accessibility of such speech but downgrade it – such as accompanying warnings or corrections, deprioritisation or temporary holds – may strike this balance.

Hate Speech

Platform Policies:

Hate speech policies of major social media companies vary considerably but collectively prohibit speech which targets protected groups in a violent, dehumanising or discriminating

⁴² See special international mandates on freedom of expression, Joint Declaration on Politicians and Public Officials and Freedom of Expression, 20 October 2021, <https://www.law-democracy.org/live/wp-content/uploads/2021/10/Joint-Declaration.2021.pdf>.

manner.⁴³ However, these policies generally do not offer specific guidance on hate speech during armed conflicts. One exception is Meta's Hate Speech policy, which states it will consider whether content could incite "imminent violence" or there is an "ongoing conflict" when assessing some categories of potential hate speech.⁴⁴

Some companies have announced efforts to combat hate speech in the context of specific conflicts, although these efforts appear to be focused on enforcement rather than the adoption of specific policies tailored for such contexts.⁴⁵ Here again, non-public internal guidance might offer more specifics.

Commentary:

Reports from the UN Special Rapporteur on freedom of expression have highlighted serious issues regarding the clarity and consistency of platform hate speech rules.⁴⁶ These reports have also recognised that, given the complexity of online hate speech, it is legitimate for platforms to use a lower threshold in defining hate speech than the one found in Article 20(2) of the ICCPR. However, any rules justifying measures by platforms against hate speech should be clearly articulated and respect the standards of necessity and proportionality.⁴⁷ Clarity in hate speech policies is particularly important during armed conflict, even though hate speech often poses heightened risks at such times.

The Rabat Plan of Action puts forward six factors to take into account when assessing when criminal liability should be imposed for hate speech, namely context, speaker, intent, content and form, extent of the speech act, and likelihood (including imminence).⁴⁸ Even though the context is very different for measures by social media platforms, these factors can still provide helpful guidance for platforms seeking to address hate speech while protecting freedom of expression. Facebook reportedly drew upon the Rabat Plan, for example, in deciding to add

⁴³ YouTube's Hate Speech Policy prohibits promoting violence or hatred based on specified group characteristics, <https://bit.ly/3OR4INR>. TikTok's Community Guidelines prohibit content that "attacks, threatens, incites violence against, or otherwise dehumanizes" specified groups, <https://bit.ly/3ytGZft>. Meta's Community Standards, Hate Speech is more detailed but prohibits targeting of people, based on certain group characteristics, with violent or dehumanizing speech, <https://bit.ly/3PcoKCd>. Google's General Guidelines calls for a low ranking for pages that "promote, condone, or incite hatred" against specified groups, 19 October 2021, p. 41, <https://static.googleusercontent.com/media/guidelines.raterhub.com/en//searchqualityevaluatorguidelines.pdf>.

⁴⁴ Meta, Community Standards, Hate Speech, note 43.

⁴⁵ Meta has made comments along these lines on Myanmar and Twitter on Ukraine. See Rafael Frankel, note 35; and Sinéad McSweeney, note 31.

⁴⁶ Report of the UN Special Rapporteur for freedom of expression, 9 October 2019, undocs.org/A/74/486.

⁴⁷ Report of the UN Special Rapporteur for freedom of expression, 6 April 2018, para. 28, undocs.org/A/HRC/38/35.

⁴⁸ Rabat Plan of Action on the prohibition of advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence, 11 January 2013, <https://bit.ly/3RhAvJt>.

contextual factors like the existence of conflict or risk of imminent violence to its hate speech policy.⁴⁹ However, this addition was fairly limited and at least the public policies of other platforms lack such guidance.

We recommend that platforms use the Rabat Plan's six factors as a source of guidance for moderators addressing hate speech and when crafting their policies on hate speech. In doing so, they should consider making specific references to how situations of armed conflict would affect the impact of these factors. For example:

- In looking at the context, the existence of an armed conflict could be a significant factor in determining whether or not posts constitute hate speech. However, as always, care needs to be taken not to conflate controversial social or political commentary with hate speech. Such contextual decisions will require local language speakers and those with deep understanding of local contexts, making investment in staff and moderators from conflict-afflicted regions extremely important.
- During conflicts, when assessing posts for hate speech content, it may be relevant to consider whether the speaker is someone with authority over or connections to military actors.
- In considering the extent of the speech act, platform guidance should focus not only on the potential audience but also on the nature of the audience. Posts to a limited group may still be harmful if that group is more likely to engage in violence action.

Many of the points mentioned in the previous section on incitement to violence are also relevant to platform policies on hate speech. However, platforms should carefully distinguish hate speech policies from policies on non-hateful incitement to violence.

Misinformation and Disinformation

Platform Policies:

CLD has discussed the issue of the policies of social media platforms regarding disinformation in an earlier submission to the Special Rapporteur.⁵⁰ In general, platforms may or may not have strategies to address mis- or disinformation, but their policies typically focus on specific types of harmful misleading information rather than dis- or misinformation as a category. Typically, this means either language addressing these issues is spread across

⁴⁹ Meta, Community Standards, Hate Speech, note 43 (in descriptions of change log).

⁵⁰ Submission on an Annual Thematic Report on Disinformation, March 2021, <https://bit.ly/3amOfKG>.

different policies or misinformation policies are limited in focus to a few specific types of misinformation.

Some of these policies include language which may be relevant for conflict situations or other disturbances. Meta has a new misinformation policy, which, among other things, prohibits misinformation which is “likely to directly contribute to a risk of imminent violence or physical harm to people”.⁵¹ Twitter’s policy on manipulated media considers whether the content is likely to cause serious harm, including a “risk of mass violence” or a risk of impeding emergency response or protection efforts.⁵²

Notably, Twitter has very recently adopted a specific crisis misinformation policy, applicable only to international armed conflicts.⁵³ Conflict-related content violates this policy if it advances a demonstrably false or misleading claim, based on widely available, authoritative sources, and is likely to impact public safety or cause serious harm.

A number of platforms have announced efforts to combat dis- and misinformation related to specific conflicts through strategies such as de-amplification of the offending content.⁵⁴ Policies on prioritising or de-prioritising content are often not publicly available (or have not been adopted). Google has made public a document used to train individuals who assess search quality results, which assessment is then used in prioritising the way search results are listed. However, it is heavily United States-centric and it is not clear if different advice is provided for other national or regional contexts. It is also not clear if the same approach is used in automated prioritisation systems. The guidelines provide that “harmful misleading information” should be given a low-quality rating (which would result in a de-prioritisation of the way it is listed in search results). However, no guidance is provided that is likely to be relevant in conflict situations.⁵⁵

Commentary:

The policies of platforms which impact dis- and misinformation should incorporate more detailed rules on which aim to address the kinds of misleading information likely to be common and harmful in conflict situations. As recognised by Facebook’s own Oversight Board: “[I]n the contexts of war and violent conflict, unverified rumors pose higher risk to

⁵¹ Meta, Community Standards, Misinformation, <https://bit.ly/3ORr5mc>.

⁵² Twitter, Synthetic and Manipulated Media Policy, <https://bit.ly/3PgaLLN>.

⁵³ Twitter, Crisis Misinformation Policy, May 2022, <https://bit.ly/3ypteOX>.

⁵⁴ For example, in Ukraine, Google says it will “prominently surface” authoritative information and Twitter says it will de-amplify posts where “uncontextualized content may mislead people”. See Kent Walker, “Helping Ukraine”, Google, 4 May 2022, <https://bit.ly/3yo7Mdb>; and Sinéad McSweeney, note 31.

⁵⁵ Google, General Guidelines, note 43, p. 42.

the rights of life and security of persons. This should be reflected at all levels of the moderation process”.⁵⁶

Platforms may decide to adopt a conflict-specific dis- and misinformation policy, like Twitter, but perhaps an easier approach would be to adapt their existing policies to better reflect the challenges relating to conflict-related dis- and misinformation. In doing so, they should consider the following:

- Disinformation which incites violence, discrimination or hatred is likely best addressed under hate speech and incitement to violence policies. However, the falsity of the information should be a relevant factor in determining whether content violates those policies, and this should be mentioned in guidance on those policies.
- Some kinds of dis- and misinformation are particularly harmful during conflict, such as misleading information relating to safety and humanitarian aid, disrupting peace negotiations and obstructing the identification of missing persons. We recommend that platforms adopt dedicated guidance on these kinds of content. Twitter’s new conflict misinformation policy addresses some of these issues and to this extent represents better practice.
- If platforms develop specific policies on conflict-related dis- and misinformation, they should not focus exclusively on international armed conflicts. For example, Twitter’s policy primarily addresses issues which are likely to be relevant in internal as well as international conflicts. Such policies should cover both types of conflicts, differentiating where necessary.
- Automated prioritisation can help limit the spread of mis- and dis- information.⁵⁷ But, if Google’s public guidelines are any indication, there is a need to ensure that these prioritisation policies are not just United States-focused and instead take into account the diverse contexts which exist globally, including those present in conflict situations.

Decisions to Deplatform

Major social media companies often have policies banning certain types of entities from their platforms, or “deplatform” them, typically focused on violent groups and therefore very relevant to conflict situations. Most policies focus on terrorist, hate and criminal

⁵⁶ Oversight Board, Case decision 2021-014-FB-UA, 14 December 2021, <https://bit.ly/3ORZWje>.

⁵⁷ For example, YouTube claims its experiments with recommendation algorithms in the United States reduced view-time of harmful misinformation by 50%. The YouTube Team, “Our Ongoing Work to Tackle Hate”, 5 June 2019, <https://bit.ly/3bSs4Ux>.

organisations.⁵⁸ Meta's policy also addresses militarised social movements and violent conspiracy networks. These policies generally do not cover government actors. Twitter's violent organisations policy expressly exempts State actors, for example. However, in practice platforms have also banned government actors, particularly in the context of recent conflicts in Afghanistan, Ukraine and Myanmar.

The basis for decisions to ban State actors are not always set out clearly in company policies. For example, Meta stated its decision to deplatform Myanmar's military was based on a combination of factors including severe human rights violation, a history of content violations and an increased risk of a link to offline harm.⁵⁹ Twitter's says that for Ukraine they will not amplify or recommend government accounts from States "that limit access to free information and are engaged in armed interstate conflict", beginning with Russia, but this does not have a clear basis in its existing policies.⁶⁰

Some decisions to ban accounts are informed by national laws designating terrorist organisations or providing for sanctions. Meta's dangerous organisations policy specifically notes that it will prohibit organisations designated by the United States as Specially Designated Narcotics Trafficking Kingpins, Foreign Terrorist Organizations or Specially Designated Global Terrorists.⁶¹ Instagram removed accounts linked to Iran's Revolutionary Guard Corps after the US designated them as a terrorist organisation in 2019, for example.⁶²

In addition to an often unclear policy basis for banning or suspending entities, the decisions of platforms in this area have consistently suffered from limited transparency. Even a full list of banned entities is not always publicly available. For example, Meta does not disclose the list of entities banned in its "militarised social movements" category. A leaked list in 2021 generated accusations of geographic bias in enforcement and raised questions about the extent to which such measures were based on legal obligations as opposed to other internal criteria.⁶³

⁵⁸ Meta prohibits terrorist, hate and criminal organisations as well as violent non-State actors, Community Standards, Dangerous Individuals and Organisations Policy, <https://bit.ly/3nNIXDP>; TikTok prohibits terrorist groups, organised hate groups, criminal organisations and other non-state armed groups that target civilians, Community Guidelines, note 29, and Twitter prohibits terrorist organisations and violent extremist groups, Violent organizations policy, <https://bit.ly/3azdVeU>.

⁵⁹ See Rafael Frankel, note 35.

⁶⁰ See Sinéad McSweeney, note 31.

⁶¹ Meta, Community Standards, Dangerous Individuals and Organisations Policy, note 58.

⁶² See Isobel Cockerell, "Instagram Shuts Down Iranian Accounts after Soleimani's Death", 10 January 2020, Coda, <https://bit.ly/3RmKr4c>.

⁶³ See Faiza Patel and Mary Pat Dwyer, "So, What Does Facebook Take Down?", Brennan Center for Justice, 4 November 2021, <https://bit.ly/3ORuSzP>.

Policies on deplatforming should take into account the following:

- Decisions to deplatform should incorporate explicit standards of severity. Deplatforming is a harsh measure which effectively silences the target and it should only be done in response to a serious risk of harm.
- Platforms should be more transparent about how their deplatforming policies work and what entities they ban. They should also establish procedures whereby banned organisations are informed about the reasons for their ban and can challenge it.
- Platforms should shift from a unilateral to a multilateral mindset in making deplatforming decisions. Companies may need to comply with national legal requirements, subject to human rights due diligence obligations, but, beyond this, they should not generally deplatform simply based on a designation from a single country. They should also have clear policies on how they will handle national requests to remove organisations where the request appears to target a humanitarian or other non-violent group.
- Platforms need to adopt clear and objective guidance on how they will handle bans of State actors, given that many have now done so in practice. These should consider the right of the general public to information and the importance of political speech. For example, Meta's exception to its ban on the Myanmar military for key public health and social services information represents better practice, although it should be set out in policy.⁶⁴

Transparency Issues

A recurrent theme throughout the above discussion is the lack of transparent decision-making by platforms. This reflects broader platform governance challenges beyond the specific issue of harmful speech related to conflicts. However, conflicts are particularly politically fraught, incentivising platforms to avoid transparency. Three transparency issues are especially relevant in relation to conflict measures.

First, social media platforms need clear policies on when security risks can justify non-disclosure of information. Releasing some internal documents may create genuine safety risks, for example for local staff or vulnerable groups. However, security concerns are also a convenient and easy excuse for avoiding transparency. Meta's decision to withdraw its request to its Oversight Board for an advisory opinion on its Ukraine content policies, for

⁶⁴ See Rafael Frankel, note 35.

example, was justified on security grounds; the public has no way to test the legitimacy of that claim.⁶⁵

Any decision to avoid transparency should need to be based on a clear, public policy informed by human rights law standards. Better practice right to information laws require governments, before deciding not to disclose information on national security grounds, to weigh the specific risk of harm from releasing the information against the public interest in accessing it. Large platforms should use a similar approach when deciding to keep information secret. Ideally, such decisions should be subject to some kind of external review.

Second, platforms should commit to far greater transparency regarding data on harmful speech during conflicts and their actions in responding to it. Facebook's lack of cooperation with the Independent International Fact-Finding Mission on Myanmar, for example, is very disappointing.⁶⁶

Third, platforms should report transparently on their responses to conflict, in sufficient detail to allow the public to test whether they are actually undertaking the activities they claim. This is particularly true for prioritisation actions, such as Twitter claiming it is elevating authoritative content and deprioritising harmful content in the context of the invasion of Ukraine.⁶⁷ Deprioritisation is less harmful to freedom of expression than content removal, but is also harder to monitor, particularly given limited transparency about automated processes on the part of platforms.

⁶⁵ Reuters, "Meta Withdraws Ukraine War Content Policy Guidance Request", 11 May 2022, <https://reut.rs/3ypHt6C>.

⁶⁶ Report of the Independent International Fact-Finding Mission on Myanmar, 12 September 2018, para. 47, undocs.org/A/HRC/39/64.

⁶⁷ Sinéad McSweeney, note 31.