

## **Access Now and the European Legal Support Center’s public comment to Meta’s Oversight Board case consultation**

**| 21 May 2024**

Access Now and the European Legal Support Center welcome the opportunity to submit their comment to the Oversight Board regarding Meta’s moderation of the phrase “[From the river to the sea](#).” In our submission below, we outline the current and different uses of the phrase; recent state responses and court rulings on such uses; and Meta’s human rights responsibilities and international human rights standards on freedom of expression and hate speech.

We consider the phrase “From the river to the sea” does not constitute, in itself, a call for violence or hate speech, and therefore, it doesn’t violate Meta’s policies on [Hate Speech, Violence and Incitement](#) or [Dangerous Organizations and Individuals](#). We urge the Board to uphold Meta’s decision to leave up the content detailed in the three cases, and ensure that any content removal is strictly based on international human rights law standards.

### **I. The different uses of “From the river to the sea”**

The utilization of the phrase to claim sovereignty over the territory spanning from the Jordan River to the Mediterranean Sea has been adopted by various actors and individuals, each with different interpretations and intentions.<sup>1</sup> For example, Israel’s Likud Party used the phrase “between the Sea and the Jordan there will only be Israeli sovereignty” in its [original charter of 1977](#) to advocate for Greater Israel. The party’s leader, Benjamin Netanyahu, recently [vowed](#) on January 18, 2024, to oppose any efforts to establish a Palestinian state and affirmed Israel’s determination to maintain control from the river to the sea. On the other hand, Hamas uses a similar phrase in its [charter](#): “Palestine, within its borders from the Jordan River in the east to the Mediterranean Sea in the west, and from Ras al-Naqoura in the north to Umm al-Rashrash in the south, is a unified territorial entity. It is the land of the Palestinian people and their homeland.”

However, the slogan has a longer historical context originating from Mandatory Palestine which spanned the geographical area between the Mediterranean Sea and the Jordan River. Following the ethnic cleansing of Palestinians in 1948 and Israel’s subsequent military occupation in 1967, “From the river to the sea” became a popular political slogan tied to Palestinians’ aspiration for

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<sup>1</sup> Amos Goldberg and Alon Confino, ‘From the river to the sea’: one slogan, many meanings, The Review of Democracy. Available online: <https://revdem.ceu.edu/2024/03/27/from-the-river-to-the-sea-one-slogan-many-meanings/>

self-determination and a call for a democratic and secular state where all people living between the river to the sea enjoy equal rights.<sup>2</sup>

Since October 7, 2023, the use of the phrase has exponentially surged, online and offline, in protest over Israel's military actions in Gaza and in demand of ending Israeli military occupation, oppression, and apartheid. For example, the U.S. Representative Rashida Tlaib [stated](#) that "From the river to the sea is an aspirational call for freedom, human rights, and peaceful coexistence, not death, destruction, or hate. My work and advocacy is always centered in justice and dignity for all people no matter faith or ethnicity." Similarly, British lawmaker Andy McDonald, who was suspended from the Labour Party for using this phrase at a pro-Palestinian rally, expressed a similar intention by saying "We won't rest until we have justice, until all people, Israelis and Palestinians, between the river and the sea can live in peaceful liberty."

While some groups [view](#) the phrase as inherently anti-semitic and violent, its various usages demonstrate that it cannot automatically be associated with anti-semitism, calls for violence, or the destruction of Israel or the Jewish people.

## II. State and institutional responses to the use of the phrase

In response to the surge of this expression's use over the past months, a number of governments and institutions banned the phrase or penalized individuals for using it. For instance, the Vienna police [banned a pro-Palestinian protest](#) in October 2023 for using the phrase in its invitations. Similarly, Germany's Federal Ministry of Interior [considered the phrase as a Hamas slogan](#). While there is no blanket ban on the slogan per se, its use in connection with Hamas and Samidoun is forbidden. It is unclear what "in connection with" means, a vague formulation which makes it legally questionable and in violation of the nulla poena sine lege certa - principle, as enshrined in Art. 7 ECHR, Art. 9 ACHR, and Art. 15 ICCPR. The public prosecutors offices in the federal states of [Berlin](#) and [Bavaria](#), however, consider the use of "From the river to the sea as a criminal offense. The Ministry of Interior in Hessen has [also called for the ban](#) of a protest in Frankfurt entitled "From the river to the sea, Palestine will be free."

In addition to banning protests, some individuals who carried posters with the slogan during rallies and protests have been [arrested and prosecuted](#). In another example, a piece of art visualizing the

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<sup>2</sup> Natasha Spreadborough, *From the River to the Sea: Water Conflict and International Law in Israel and Palestine*, Emory University, School of Law, 4 May 2021. Available online:

[https://wilj.law.wisc.edu/wp-content/uploads/sites/1270/2022/09/39.3\\_459-484\\_Spreadborough.pdf](https://wilj.law.wisc.edu/wp-content/uploads/sites/1270/2022/09/39.3_459-484_Spreadborough.pdf)

Mandy Turner, *From the River to the Sea Palestine and Israel in the Shadow of "Peace"*, Lexington books, 2019.

Robin D. G. Kelley, *From the River to the Sea to Every Mountain Top*, *Journal of Palestine Studies* Vol. 48, No. 4 (192), pp. 69-91, Taylor & Francis, Ltd.

Ben Burgis, *From the River to the Sea" Is a Call for Democracy and Equality*, 9 November 2023. Available online:

<https://jacobin.com/2023/11/from-the-river-to-the-sea-palestine-equality-one-state-rashida-tlaib-censure>

Rebecca Ruth Gould, *From the River to the Sea: A Historical Inquiry*, SOAS, University of London, November 2023. Available online:

[https://www.researchgate.net/publication/375770818\\_From\\_the\\_River\\_to\\_the\\_Sea\\_A\\_Historical\\_Inquiry](https://www.researchgate.net/publication/375770818_From_the_River_to_the_Sea_A_Historical_Inquiry)

phrase “From the river to the sea” [was removed](#) from an art exhibition in Miami by a local nonprofit after receiving a complaint letter from Jewish lawyers decrying the slogan’s use.

However, such bans or criminal charges have been overruled in a number of jurisdictions when challenged in court. Below, we highlight a number of recent court decisions on the legality of the use of the phrase:

### *Germany*

- On April 30, 2024, the Higher Administrative Court of Bremen, [upheld](#) the lower court's decision that the use of the slogan was not punishable as condoning crimes, inciting to commit crimes, or promoting hatred. The court also affirmed that statements questioning Israel’s right to exist do not necessarily constitute a criminal offense. Additionally, the court acknowledged the lower court's reasoning that, given the time between the Hamas attack and the of the phrase and Israel’s ongoing counter-offensive, the slogan could reasonably be interpreted as criticism of Israel's actions in Gaza, its settlement policy, or as a call for liberation from such policies. However, the Higher Administrative Court overruled this decision. While it acknowledged that the slogan can have many meanings, including non-violent ones, the court held that the Federal Ministry of Interior declared the slogan as a Hamas symbol and therefore -given that it is a preliminary decision - it had to reject the activists request to use this slogan in a demonstration..
- On March 22, 2024, the Hessian Administrative Court of Frankfurt [ruled](#) that the slogan is unlikely to be covered by criminal liability for public incitement to commit criminal offenses because it does not clearly identify the type of criminal conduct, the time, place and victim. Similarly, it does not constitute the offense of incitement to hatred or violence because it is directly and exclusively directed against the state of Israel and only indirectly affects Jews living in Germany.
- On November 17, 2023, the Administrative Court of Münster [ruled](#) in a case involving the ban of a pro-Palestinian protest that the use of “From the river to the sea” does not constitute a criminal offense of incitement to hate as “it is objectively directed against the state of Israel, but not with sufficient specificity against, for example, the Jewish population in Germany.” This decision was [upheld](#) in a separate but a similar case by the Administrative Court of Cologne in December 2023.

### *Netherlands*

- On August 15, 2023, the Court of Amsterdam [upheld](#) the decision of the Dutch public prosecutor not to prosecute a Dutch activist who delivered a speech at a Palestine solidarity rally in May 2021 in Amsterdam. The public prosecutor considered that the slogan he used "are subject to various interpretations" rather than constituting calls for illegal conduct. Furthermore, the prosecutor stated that they found the expression "to relate to the state of

Israel and possibly to people with Israeli citizenship, but do not target Jews based on their race or religion."

#### *Czech Republic*

- On December 18, 2023, the Municipal Court of Prague city [ruled](#) that the police ban decision on a demonstration that will use the phrase "From the river to the sea" constitutes an unjustified restriction of the right to freedom of expression and peaceful assembly. The court argued that a justified ban on a demonstration should not be based solely on the use of a multi-meaning slogan. Instead, the context of the intended expression, its use during previous demonstrations, and the identity of the convener of the assembly should be considered.

### **III. Freedom of expression and hate speech under International Human Rights Law**

#### *International freedom of expression standards*

Freedom of expression is a fundamental right for individuals, online and offline. As per Meta's human rights responsibilities, it is crucial that it designs and implements content moderation policies that are in line with international human rights standards related to freedom of expression.

The UN Human Rights Committee emphasized in its [General Comment No.34](#) that "All forms of opinion are protected, including opinions of a political, scientific, historic, moral or religious nature." It has also confirmed that the "right to freedom of expression embraces even expression that may be regarded as deeply offensive, although such expression may be restricted in accordance with the provisions of article 19, paragraph 3 and article 20." Article 20(2) of the ICCPR prohibits "[a]ny advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law."

Any restrictions should respect the three part test, however. Firstly, the limitation should be clear and precise so that individuals can regulate their behavior accordingly. Secondly, it should be made to achieve one of the legitimate purposes, namely respect for the rights or reputations of others, protection of national security, public order, public health, and morals. Thirdly, it should respect the principles of necessity and proportionality in a democratic society.

#### *Hate speech*

The [Rabat Plan of Action](#) clarifies further what Article 20(2) of the ICCPR means when it calls on States to prohibit "incitement." It contains a 6-factor test to determine whether or not content falls under this article. These factors include:

- The political, economic, and social context in which the expression was communicated;
- The influence of the speaker;
- The intent of speaker to incite violence;
- The content and form of expression;

- The extent of the expression; and
- The likelihood and imminence of violence, discrimination or hostility occurring as a direct consequence of the expression.

It also classifies hate speech into three categories:

- Expression that constitutes a criminal offense that States are required by international human rights law to prohibit based on Article 20(2) of the ICCPR;
- Expression that is not criminally punishable, but may justify a civil suit or administrative sanctions such as discriminatory threats or harassment against identifiable individuals; and
- Expression that does not give rise to criminal, civil or administrative sanctions, but still raises concern in terms of tolerance, inclusion and respect for the rights of others, but which do not meet the threshold requiring or permitting restriction under Articles 20(2) and 19(3) of the ICCPR.

While it may be legitimate to ban categories of hate speech, online platforms should not employ vague terms such as praising or glorifying or promoting terrorism when restricting content. Incitement should be understood as a direct call to engage in violence, with the intention to promote hate and violence, and in a context in which the call is reasonably likely to directly cause discrimination, hostility or violence.

#### *High protection for political, artistic and academic speech*

It is crucial to note that **political, artistic** and **academic** speech benefit from a high protection and any restriction must be carefully considered and justified.

In their [2021 Joint Declaration on Politicians and Public Officials and Freedom of Expression](#), the four freedom of expression mandates emphasized on “the special imperative of providing a high level of protection to political speech, including speech which many may find unduly critical or even offensive.”

The European Court of Human Right, in the *Baldassi v France* case (2020), has clearly recognised Palestine as a matter of public interest, reaffirming that there is **little scope under Article 10 § 2 of the Convention for restrictions on political speech or debate** (*Brasilier v. France*, § 41) or on debate on matters of public interest (*Sürek v. Turkey (no. 1)* [GC], § 61; *Lindon, Otchakovsky-Laurens and July v. France* [GC], § 46; *Wingrove v. the United Kingdom*, § 58). As a result, state members of the Council of Europe should protect freedom of expression of the Palestinian solidarity movement, with the only exception of calls for violence.

Regarding the freedom of artistic expression, many [songs](#), [pictures](#) and [poems](#) using the slogan have been disseminated by individuals advocating for freedom and peace or reclaiming the [right of return](#).

The UN Special Rapporteur in the field of cultural rights [has explained](#) that “[a]n artwork differs from non-fictional statements, as it provides a far wider scope for assigning multiple meanings:

assumptions about the message carried by an artwork are therefore extremely difficult to prove, and interpretations given to an artwork do not necessarily coincide with the author's intended meaning. Artistic expressions and creations do not always carry, and should not be reduced to carrying, a specific message or information. In addition, the resort to fiction and the imaginary must be understood and respected as a crucial element of the freedom indispensable for creative activities and artistic expressions: representations of the real must not be confused with the real, which means, for example, that what a character says in a novel cannot be equated with the author's personal views. Hence, **artists should be able to explore the darker side of humanity, and to represent crimes or what some may consider as "immorality", without being accused of promoting these."**

The Human Rights Committee [found](#) that the Republic of Korea had violated article 19 of ICCPR concerning a painter, Hak-Chul Shin, who had been convicted for a painting deemed to be an "enemy-benefiting expression" contrary to the National Security Law.

Freedom of expression in academia is also afforded significant protection, even regarding contentious topics such as claiming Palestinian sovereignty over the entire territory from the river to the sea or advocating for the eradication of Israel. The Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression [emphasized](#) that "It is understandable that States may wish to restrict expression such as genocide denial, given that "antisemitic expressions of Holocaust denial seek to repudiate or minimize the harrowing historical facts of that systematic murder of 6 million Jews". As a matter of academic freedom and freedom of expression, **such work – even if appropriately characterized as pseudoscientific, polemical, advocacy-driven or antisemitic or racist – should be left to the self-governance structures of the academy**, while allegations of an individual's incitement to discrimination or hatred or violence under article 20 should be addressed separately and according to the limitations of article 19 (3)."

#### **IV. Recommendations related to Meta's human rights responsibilities in relation to content using the phrase "From the river to the sea"**

Based on the human rights standards outlined above, we believe that the phrase "From the river to the sea," without any additional elements, should be considered as protected speech as it can not have, in itself, any call for genocide, violence, or hate speech. Therefore, any moderation of this expression should not be based only on its mere use, but based on other elements outlined in [Rabat Plan of Action](#) such as context, the speaker's intent, and the likelihood of content causing imminent violence, discrimination or hostility, among others. Furthermore, in assessing whether removal of "From the river to the sea," when it is accompanied with violent elements, is appropriate, Meta should take into account the extent to which counter speech by other users is likely to mitigate harms caused by such speech. The removal of content or banning of accounts should be used as a last resort.

First of all, **the political, economic, and social context** in which the expression was communicated is essential in assessing the three cases subject to appeal.

The question of whether to pursue a one-state or two-state solution remains a topic of debate among scholars, politicians, and activists. To grasp the significance of this issue, it's worth considering whether it is theoretically feasible to establish Palestine as a sovereign state extending from the river to the sea, where Jews, Muslims, and other groups coexist as equal citizens. Indeed, pondering such a scenario is theoretically possible and should be recognized as a protected political opinion. Therefore, advocating for a one-state solution using this phrase does not inherently constitute hate speech or incite violence, provided there are no additional elements indicating an intent to endanger the physical or moral well-being of Israeli citizens.

The heavy presumption in favor of political speech is especially important when it comes to the context of military occupation and the right of people to self-determination. Online platforms should protect opinions of diverse groups related to topics of public interest. Any removal of content should be made only as a last resort because access to that speech is essential to understand and evaluate governments and international institutions' policies and actions. As such, using this phrase by Palestinians in Gaza or the West Bank should be interpreted within the framework of their assertion of the rights to self-determination and to return.

While pro-palestinian protestors and activists use this phrase to advocate for Palestinians' rights, Israel is actively striving to realize it on the ground. The expansion of Israeli settlements and the blatant reduction of internationally recognized Palestinian territory by the State of Israel serve as concrete expressions of this slogan, ultimately undermining the prospects for a two-state solution.

Based on the Rabat Plan, "negligence and recklessness are not sufficient for an act to be an offense under article 20 of the ICCPR." **Therefore, it is important to carefully assess the intent of the speaker.**

In a recent [survey](#) of 250 college students across the US by the Wall Street Journal, 86% supported the phrase "From the river to the sea." However, the percentage dropped to 32% after being told that a new Palestinian state would stretch from the Jordan River to the Mediterranean. Some students remained in support of this phrase to express their wish to see Palestinians and Israelis living side by side. The survey proves the radically different interpretations of the phrase, and as such it cannot inherently imply a genocidal intent, hate speech or violence and incitement.

Thirdly, **the speaker's position or status should be considered to reasonably assess the nature of the speech.** For example, the Court of Prague [found](#) in the case stated above that "the applicant had not yet manifested himself as an extremist. Neither according to the statement of the representative of the Ministry of the Interior nor according to the expert, the applicant is linked to a radical milieu."

Moreover, the **extent of the speech** can be used as a scale to measure its impact on others and, thus, the likelihood of a potential harm. This element includes the number and type of reactions and comments, its public nature and size of its audience. Other elements to consider include what means of dissemination are used, for example whether its sponsored content or organic

Finally, **the likelihood of imminent offline violence or harm is an important element to take into consideration while assessing the use of this phrase accompanied with signs of violence. For instance**, even when it's used accompanied with extra elements hinting at the erasure of the state of Israel, it shouldn't be, automatically, qualified as hate speech or incitement to violence but rather as an expression of emotional reaction to the human toll during the war. It's essential to think about the serious likelihood of harm caused by civilians and peaceful protesters using this phrase when an entire civilian population are enduring mass starvation and the imminent risk of genocide by an army equipped with the most advanced infrastructure and weaponry.

Back to the three cases subject of appeal, there are no indicators that the user intends to incite or promote hatred towards a group or an individual based on their protected characteristics, which may create an imminent risk of discrimination, hostility, or violence against them.

We, therefore, concur with Meta's response to the Oversight Board that, without additional context, it is not possible to conclude that "From the river to the sea" constitutes a call to violence or exclusion of any specific group, nor is it exclusively linked to support for Hamas. However, factors beyond context, such as the intent of the speaker and likelihood of imminent violence, discrimination or hostility, should be considered to objectively determine appropriate measures.

**Based on the above analysis, we recommend that Meta:**

- Ensures that any enforcement of its hate speech policy involves a rigorous evaluation of context, the intent of the user, and the likelihood of imminent online or offline harm, including by ensuring that any use of automation should involve human review and oversight;

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- Publishes its content moderation policies with concrete and comprehensive examples and guidelines so that individuals can reasonably foresee whether content they generate or share is likely to be removed or otherwise affected;

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- Invest in human resources to strengthen contextual analysis of speech, specially in times of crisis, and meaningfully engage with civil society organizations, human rights experts, and researchers in assessing and addressing such content;;

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- If the phrase is accompanied by additional elements that categorize the content as hate speech, violence, or incitement, then it's important to develop less intrusive methods such as the de-amplification and demonetization of such content, and promoting counter-speech.

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