



**R3D**

Red en Defensa  
de los Derechos Digitales

**R3D Comments for the Oversight Board**

**“From the Land to the Sea” case**

**2024-004-FB-UA, 2024-005-FB-UA, 2024-006-FB-UA**

## **Introduction**

1. R3D (*Red en Defensa de los Derechos Digitales*) is a non-governmental organization dedicated to defending and promoting human rights in the digital environment based in Mexico. One of our central lines of work is the defense of freedom of speech and the agenda of content moderation in social media. We address this analysis on a contextual basis and from an InterAmerican perspective, considering the legal framework established in the American Convention on Human Rights (ACHR) and in the work of both the InterAmerican Commission of Human Rights (IACHR) and the InterAmerican Court of Human Rights (IAHR Court). This framework is desirable for content moderation due to its solid standards for freedom of expression on the Internet.
2. In the following paragraphs, we divide our comments into different sections to emphasize the questions made by the OB and the issues we consider related to them that are important to exercising freedom of expression.

## **Removing posts referring to the phrase “From the land to the sea” would imply establishing an anti-arab and anti-Palestinian bias within Meta policies.**

3. Recently, the Oversight Board recognized in the “Shaheed” case (PAO 2023-1) that Meta has been applying an approach that over-moderates speech related to arab expressions related to their cultural background and their language use, taking the term “shaheed” as a reference to the glorification or exaltation of terrorist violence (reason why Meta considered every expression containing that reference as a violation of the Violence and Incitement, and the Dangerous Organizations and Individuals [DOI] norms). In that case, the OB demonstrated that Meta had a biased moderation to that term, which was discriminatory and restrictive regarding the right of freedom of expression.
4. In that case, one of the key points was to understand that the context and the use of an expression are of capital importance when we address matters related to the legitimate exercise of the right of freedom of expression. Freedom of expression is a right exercised contextually, so its limits and scope must always be addressed while considering the context and cultural background. In Meta’s specific case, its policies must avoid decontextualized moderation and any general approach that takes an expression with a universal and unique meaning.
5. In the present case, removing the reference to “From the land to the sea” as a general approach would mean adopting a similar reasoning to that used in the “shaheed” case. Moreover, it would take a culture and the story of an oppressed people as a

story related uniquely to the promotion of violence and terror, in open contravention to the principle of non-discrimination that should guide every Meta's decision.

6. In the three cases under review by the OB, the messages on the posts that were reported by users include messages of support to the Palestinian people, in one case explicitly referring to the cease of fire of the recurrent attacks of the State of Israel against innocent Palestinians, and referring to the freedom of this people and to the "senseless slaughter" that it has suffered. Taking the context into account, in this case, must mean recognizing the over-documented instances of crimes against humanity and war crimes that have been committed against the Palestinian people by the attacks of the Israeli Army (with a clear intent to commit genocide). These facts have been so overwhelmingly brutal that the International Criminal Court, the specialized institution international law regarding international criminal law (and to the gravest criminal acts such as genocide, war crimes, and crimes against humanity), has decided to apply for an arrest warrant against the President of Israel for the violence committed against the Palestinian people (<https://www.icc-cpi.int/news/statement-icc-prosecutor-karim-aa-khan-kc-applications-arrest-warrants-situation-state>).
7. The biased discriminatory approach we refer to would be instituted if, as some of the reporting users alleged, Meta interprets these messages of support and protest against the State of Israel as automatic support for the violent acts committed by Hamás in this context (also referred into the application of the arrest warrant of the Prosecutor of the International Criminal Court against some of their organization leaders). Articles 1 & 2 of the Universal Declaration of Human Rights recognize the equality of all human beings in their rights and dignity, with full entitlement without distinction of language, religion, political opinion, national origin, or the jurisdictional status of the country or territory to which a person belongs. If Meta includes the reference in question as a violation of its policies, it will implicate discriminatory treatment of expressions of Palestinians or Palestinian supporters.

**The expressions under Meta's review are legitimate manifestations of the right to freedom of speech and the right to social protest.**

8. Freedom of expression and the right to social protest are two sides of the same coin. Especially in contexts of social discontent such as this, those in charge of the duties related to guaranteeing these rights must take them seriously and recognize that a strong and vehement criticism against a State is by no means outside the legitimate use of freedom of expression and protest.<sup>1</sup> If genocide is being committed in daylight, constantly televised, and committed beyond the limits of any humanitarian constraint, why should people distressed by these facts avoid criticism of the State committing those crimes?
9. The existence of harsh expressions that can question the legitimacy of any government, especially when they result from acts of war in clear violation of human rights, is at the heart of these rights. In the Inter-American System of Human Rights

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<sup>1</sup> Gargarella, Roberto. "Law and social protests". Available in: <https://philpapers.org/rec/GARLAS-2>.

(IASHR), for example, a well-established interpretation of the scope of freedom of expression gives a reinforced character to speeches that constitute political criticism against a government. This means that expressions of this kind of questioning are especially protected from censorship and restrictions. They have a heavier weight to be given in the public sphere, and they should be tolerated.

10. It is far from the discussion that expressions related to religion and its practices are essential to personal identity and to the right to freedom of thought, conscience, and religion as established by Article 18 of the Universal Declaration of Human Rights. The expression “From the Land to the Sea” clearly fits in this framework and it has historic and cultural relevance to the Palestinian People. In the IASHR, another of the especially protected speeches is the speech that expresses essential elements of personal identity or dignity precisely because of their importance to the exercise of other human rights or the consolidation, proper functioning, and preservation of democracy. This case is also an iteration of this kind of protected speech.
11. Meta must interpret what we propose as compatible with its community norms because it is the only possible interpretation compatible with the right to freedom of expression, the principle of non-discrimination, and its commitments related to inclusion and respect for human rights. The dishonest allegations that any criticism against the State of Israel is tantamount to antisemitic statements must be rejected clearly by Meta as a part of its compromise to the principles abovementioned. Any other decision would result in an over-moderation of a legitimate expression and even have a chilling effect on these expressions.
12. For those reasons, the OB must consider Meta’s decision as the correct approach to this question and should continue in the direction established by the “shaheed” case recommendations related to the transparency of Meta and the contextual and culturally inclusive moderation of content on the platform. The OB must be clear by stating that the automated systems of Meta shouldn’t incorporate this phrase as one in tension with the figures of Violence and Incitement, Hate Speech, or DOI.
13. Freedom of the press and freedom of expression are fundamental to informing about State abuses and protecting Palestinian people's integrity and lives. Voice's value would be undermined in how users express themselves on the platform and in exercising some essential liberties in these contexts if the expression is banned as proposed by the reporting users.
14. In moderating these kinds of expressions, Meta must ensure that only in cases where there is additional praise, representation, or support in the sense contained in the standard of DOI could those expressions be limited as an exception. However, this exception must only result from human moderation and in conditions that ensure that specialized human moderators consider the multiple interpretations of the phrase. Meta must incorporate the social, political, and religious contexts in every moderation decision related to this expression (as it apparently has).
15. Transparent reports must accompany all the actions that Meta takes to decide on this case and its policies and implement procedures to adapt its automated and human moderation processes to its human rights duties.