

## **Input for Thematic Report on Disinformation**

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

15 February 2021

### **Introduction**

The Charity & Security Network (C&SN) appreciates the opportunity to provide the Special Rapporteur with information and recommendations for her upcoming report on disinformation, and thanks her for bringing attention to this very important and timely topic.

C&SN is a resource center for nonprofit organizations (NPOs) on issues at the intersection of national security and civil society. We strive to promote and protect NPOs' ability to carry out effective programs that promote peace and human rights, aid civilians in areas of disaster and armed conflict and build democratic governance. C&SN is made up of a broad cross-section of nonprofits working on humanitarian aid, development, peacebuilding, human rights and civil liberties, along with grantmakers, donors and faith-based groups.

These comments focus on use of disinformation to attack civil society organizations through legal processes, including litigation, regulatory complaints and legislative/parliamentary campaigns. These uses of disinformation have a direct and negative impact on the rights of civil society organizations to express opinions and share information with the public and official bodies.

### **Overview**

As noted in the request for input, there is no universal, agreed upon definition of disinformation. Given our concerns about the impact of disinformation on civil society, C&SN refers the Special Rapporteur's to the following definition:

Disinformation is false or misrepresented information that is created and used exclusively to malign a person or group. It is often made up of half-truths and things that sound plausible but are, nonetheless, not factual. Disinformation attacks have become more significant in recent years, especially among groups that target organizations based on where they deliver aid and who they are attempting to aid.<sup>1</sup>

Addressing the disinformation problem is a complex undertaking, as any measures taken must respect the rights of speakers in the public space that may spread disinformation as well as those who are targeted and harmed by disinformation campaigns. We urge the Special Rapporteur to include a focus on the rights of targets of disinformation campaigns as a key challenge in her report.

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<sup>1</sup> InterAction, *Countering Disinformation in the NGO Space: A Together Project Initiative* (Fact Sheet)

Civil society organizations are particular targets of politically motivated disinformation campaigns. In many instances this is due to their exercise of the right of expression, including human rights defense and advocacy. Globally human rights defenders, humanitarian, peacebuilding and other groups that work in some of the world's most conflict-ridden environments speak out against abuses of power by both states and non-state armed actors. This has generated backlash that includes increased legal and regulatory restrictions on civil society and disinformation campaigns intended to discredit and silence them.<sup>2</sup>

This is particularly true for human rights defenders (HRDs) and civil society organizations (CSOs) working in Palestine or that support programs there. They are often falsely accused of having ties to terrorism by self-styled "pro-Israel" groups and faux-think tanks that use vague assertions of "ties" or "links" to terrorist groups, half-truths, misrepresentations and facts taken out of context. Circular logic and *ad hominem* attacks are common. For example, these disinformation groups have created a self-referential echo chamber intended to create the impression that their claims are established facts, which only exacerbates the harm to their targets.<sup>3</sup>

Disinformation campaigns cause direct harm to target organizations, including:

- *Reputational*: Public charges of serious misconduct, especially when alleging ties to or support of terrorism, are bound to harm the reputations of civil society organizations. The ease with which anyone can publish information online and through social media facilitates the spread of disinformation claims that would get little traction in outlets that adhere to robust journalistic or academic standards. Such charges can unjustly discredit an organization in the minds of donors, regulators and the public. Search engine results do not distinguish between credible and non-credible sources.
- *Legal costs and diversion of resources from beneficial programs*: Significant staff time is required to respond to investigations and information requests from regulators or legislative/parliamentary bodies, inquiries from donors and communications necessary to rebut false allegations. In addition, a relatively recent trend is for disinformation to be used as allegations in legal proceedings against HRDs and CSOs. Commonly referred to as "lawfare" (see below), this misuse of legal process includes litigation, filing regulatory complaints, challenges to charitable status and legislative pressure campaigns. These proceedings force HRDs and CSOs to divert resources from program delivery to pay for legal defence, which can be costly even if a lawsuit is dismissed.

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<sup>2</sup> Saskia Brechenmacher, Thomas Carothers, "Defending Civic Space: Is the International Community Stuck?" Carnegie Endowment for International Peace, Oct. 22, 2019 Online at <https://carnegieendowment.org/2019/10/22/defending-civic-space-is-international-community-stuck-pub-80110>

<sup>3</sup> The Lawfare Project cross-referencing website to the Middle East Forum at <https://www.thelawfareproject.org/press/category/Middle+East+Forum>, Middle East Forum article describing Lawfare Project effort at <https://www.thelawfareproject.org/press/category/Middle+East+Forum>

- *Loss of adequate access to financial services and online platforms:* Commercial entities, including financial institutions, compliance screening database providers and social media platforms pick up allegations of terror ties from disinformation groups through search engines or direct pressure campaigns. These entities often choose to drop services to HRDs and CSOs rather than risk the potentially serious consequences of sanctions violations, including fines and reputational harm. In the financial services industry this has become known as “derisking” and the term “deplatforming” is often used to describe the same process by social media and payment processing platforms. The cost of investigating disinformation allegations far outweighs the potential profit they would receive by serving the targeted group.
- *Loss of funding:* Reputational harm and derisking and deplatforming by financial institutions make civil society fundraising more difficult. However, a much larger challenge is the systematic use of disinformation to fuel pressure campaigns aimed at getting institutional donors to cut off funding for HRDs and CSOs, especially those that work in Palestine. These campaigns target foreign assistance funds, primarily in the United Kingdom and Europe, but also in the United States.<sup>4</sup>

### **Use of Disinformation in Lawfare Against Human Rights Defenders and Civil Society Organizations**

While there are several definitions of the term “lawfare,” the use of disinformation in legal processes is a major form of lawfare that is harming not only targeted HRDs and CSOs, but the people they serve. These comments use the Wikipedia definition of lawfare:

Lawfare is the misuse of legal systems and principles against an enemy, such as by damaging or delegitimizing them, tying up their time or winning a public relations victory. The term is a portmanteau of the words *law* and *warfare*.<sup>5</sup>

Lawfare attacks based on disinformation are in reality retaliation for opinions and expressive activities of target organizations that work to protect human rights, build peace and democracy and alleviate suffering in Palestine. For example, the New York-based Zionist Advocacy Center (TZAC) sued the Carter Center and Oxfam under the U.S. False Claims Act, accusing each of providing material support to terrorism in violation of the terms of their grants from USAID. Each has been critical of Israel’s actions in relation to Palestine. President Carter wrote about “the abominable oppression and persecution in the occupied Palestinian territories<sup>6</sup> and Oxfam has opposed expansion of Israeli settlements.<sup>7</sup> (Both suits were dismissed at the request of the Department of Justice.)

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<sup>4</sup> For example see NGO Monitor, “Analysis of EU Funding to NGOs in 2019: Divisive Politics, Terror links, and Antisemitism” Oct. 21, 2020 Online at <https://www.ngo-monitor.org/reports/eu-funding-to-ngos-in-2019/>

<sup>5</sup> <https://en.wikipedia.org/wiki/Lawfare>

<sup>6</sup> Jimmy Carter, “How I See Palestine: Aug. 11, 2006

[https://www.cartercenter.org/news/editorials\\_speeches/latimes\\_palestine\\_081206.html](https://www.cartercenter.org/news/editorials_speeches/latimes_palestine_081206.html),

<sup>7</sup> Oxfam International, “Home

TZAC also sought to have the U.S. tax-exempt status of Doctors Without Borders (MSF) revoked, claiming its training in hospitals in Gaza was illegal support for Hamas. The Internal Revenue Service rejected the request. The complaint followed accusations by another organization with clear political aims, NGO Monitor, that accused MSF of taking sides in the Israel/Palestine conflict because MSF publicly shared information about the impact of the conflict on Palestinians. MSF explained such statements are part of its “bearing witness” function, saying “Neutrality is not synonymous with silence. Our proximity to people in distress implies a duty to raise awareness on their plight to ultimately help improve their situation.”<sup>8</sup>

- Examples of Disinformation and Lawfare Groups

Two groups – the Middle East Forum and NGO Monitor – have been active for a long time. They work on two tracks, publishing disinformation and then using it in pressure campaigns to get donors to cut off funding and to urge financial services providers to discontinue services. In the last decade a new cohort of such groups has focused on using this disinformation to initiate legal proceedings. This includes the Zionist Advocacy Center (TZAC) and The Lawfare Project, both based in the United States, and UK Lawyers for Israel (UKLFI). All these groups have clearly stated their political motivations, as an examination of their websites demonstrates.<sup>9</sup> In two cases the targets of lawfare attacks successfully sued for defamation in UK courts.<sup>10</sup>

- Examples of Lawfare in the U.S. and UK

TZAC uses a U.S. statute aimed at encouraging whistleblowers to expose fraud against the government, the False Claims Act.<sup>11</sup> Most of these cases allege fraud by USAID grantees, claiming that their anti-terrorism certifications were false because they provided material support to terrorist groups. The factual claims are based on disinformation, some directly citing groups like the Middle East Forum. Of the cases that have been unsealed to date,<sup>12</sup> two have been dismissed at the request of the Department of Justice, two have settled prior to trial and one is pending on a motion to dismiss. In its successful motion to dismiss the case against the Carter Center, the Department of Justice noted that TZAC has a “difference of opinion with the Carter Center about how to resolve conflict in the Middle East” but that its complaint “does not allege facts addressed to the elements it or the United States must prove to

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“What is Oxfam's position on the Israel-Palestine conflict?” <https://www.oxfam.org/en/what-oxfams-position-israel-palestine-conflict>

<sup>8</sup> “WHO WE ARE We are Médecins Sans Frontières” <https://www.msf.org/who-we-are>

<sup>9</sup> <https://www.ngo-monitor.org/>, <https://www.meforum.org/>, <https://www.thelawfareproject.org/>, <https://www.uklfi.com/>

<sup>10</sup> See Charity & Security Network “Settlement in Libel Case is Setback for Disinformation Campaign” March 12, 2020 Online at <https://charityandsecurity.org/news/settlement-in-libel-suit-is-setback-for-disinformation-campaign/> and Carter-Ruck, “CEO AND FOUNDER OF ISLAM CHANNEL AWARDED £140,000 IN LIBEL DAMAGES OVER FALSE TERRORISM ALLEGATION” Online at <https://www.carter-ruck.com/news/read/ceo-and-founder-of-islam-channel-awarded-libel-damages>

<sup>11</sup> For a summary of the False Claims Act see Charity & Security Network, “False Claims Act Lawsuits: What Nonprofits Need to Know” Nov. 1, 2018 Online at <https://charityandsecurity.org/issue-briefs/fca-basics-handout/>

<sup>12</sup> Because U.S. law requires FCA cases to be sealed while the government investigates the claims, the defendants are not notified of the suit until the process is well underway.

establish violations of the FCA.”<sup>13</sup> For a full list of litigation pending in the U.S. and case summaries see <https://charityandsecurity.org/litigation-overview/#lawfare>

TZAC has also filed to challenges to charitable status at the IRS – one against Doctors Without Borders, as described above, and another against a group that support U.S. students advocating for justice in Palestine. That case is pending. UKLFI frequently files disinformation-based challenges to charitable status with the Charity Commission of England and Wales against UK organizations working in Palestine. None of the complaints discovered during research for these comments resulted in corrective action by the Commission. However, UKLFI shared the complaints with the charities’ online donation payment processors, resulting in interrupted online fundraising capacity in two cases.<sup>14</sup>

Legislative and parliamentary processes have become lawfare tools, where decisionmakers are pressed to launch investigations into HRDs and CSOs, or to cut off their funding. Lawfare groups often partner with right-wing lawmakers and political parties, who can file proposed legislation or conduct investigations.

For example, in 2017 the Middle East Forum promoted a budget amendment in the U.S. House of Representatives unsuccessfully sought to defund Islamic Relief Worldwide (IRW), a large UK-based humanitarian aid organization.<sup>15</sup> Use of disinformation by Members of Congress is especially harmful, as it tends to legitimize the disinformation source and can directly threatens the operations of NPOs. Although this type of legislation is usually withdrawn or dies in committee, the negative impact remains.

NGO Monitor lobbies international donors, especially in the EU, to drop funding for Palestinian NGOs and programs in Palestine. They use the 2018 Israeli government report *The Money Trail* falsely alleges that millions of Euros went to NGOs with “terror ties” and supporters of BDS.<sup>16</sup> The Policy Working Group (PWG), comprised of former Israeli diplomats, academics and other experts, characterized the report as echoing “recycled allegations against the EU and European and Palestinian NGOs that NGO Monitor has been making for years.”<sup>17</sup>

### **Recommended Measures to Protect and Promote the Right to Freedom of Opinion and Expression While Addressing Disinformation**

It is important to recognize the harm done to targets of disinformation campaigns. The first step is to build awareness of this aspect of the issue and identify red flags that stakeholders should be aware of. It

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<sup>13</sup> United States Court for the District of Columbia, Case 1:15-cv-02001-RC USA ex rel TZAC, Inc. v. The Carter Center, Inc.

<sup>14</sup> UKLFI, “War on Want Loses Paypal Facility”, Oct. 10, 2018 Online at <https://www.uklfi.com/war-on-want-loses-paypal-facility> and “Global Giving UK is Pulled From DCI-P’s Donation Page” June 6, 2019 Online at <https://www.uklfi.com/globalgiving-uk>

<sup>15</sup> AMENDMENT TO DIVISION G OF RULES COMMITTEE PRINT 115–31 OFFERED BY MR. DESANTIS OF FLORIDA [https://freebeacon.com/wp-content/uploads/2017/08/DESANT\\_056\\_xml.pdf](https://freebeacon.com/wp-content/uploads/2017/08/DESANT_056_xml.pdf)

<sup>16</sup> Government of Israel, Ministry of Strategic Affairs and Public Diplomacy “THE MONEY TRAIL EUROPEAN UNION FINANCING OF ORGANIZATIONS PROMOTING BOYCOTTS AGAINST THE STATE OF ISRAEL” 2nd EDITION | JANUARY 2019 Online at <https://www.gov.il/en/Departments/General/nativ010819>

<sup>17</sup> Policy Working Group, “NGO Monitor: Shrinking Space, Defaming human rights organizations that criticize Israeli occupation” September 2018 Online at [http://policyworkinggroup.org.il/report\\_en.pdf](http://policyworkinggroup.org.il/report_en.pdf)

is then incumbent on all stakeholders to do a better job of assessing the credibility of information they rely on and to give targets of disinformation opportunities to correct the record.

C&SN recommends the following concrete steps that can be taken to protect the targets of disinformation attacks for the Special Rapporteur's consideration:

*For the UN, Human Rights Council and Member States*

- The Human Rights Council and UN member states should issue statements recognizing the gravity of disinformation attacks against civil society, including human rights defenders.
- Assess the human rights record and potential political motivations of government terrorist listings of civil society organizations before relying on such designations;
- The HRC should urge member states to ensure foreign agent laws do not capture INGOs due to the nature of their international operations by providing exemptions or narrowly tailored language.
- To combat disinformation within governmental bodies, require that:
  - Rigorous review of data and information before introduction of legislation
  - Any organizations named in legislation should have the opportunity for rebuttal prior to introduction
  - Branches of government should work jointly in addressing disinformation and assessing intel on NPOs

*For Donors:*

- International donors should beware of disinformation regarding their grantees/implementing partners and assess the credibility of organizations that make complaints against grantees/implementing partners before engaging with them.
- When donors have conducted due diligence on an organization and provided it with funds, they should provide such organizations with notice and fair opportunity to respond when complaints are lodged, and prior to taking adverse action.
- Where grantees/implementing partners are attacked because of their work, donors should provide them with additional resources to offset the cost of responding.

*For Financial Institutions and Communications Platforms*

- HRC should recommend that financial services providers and communications platforms have transparent policies for complaints that provide customers with notice, appeal process and remedy when complaints are made.
- Decisions on whether to serve customers should be risk-based, not the result of AI processes.

*Others*

- HRC should recommend that UN member states require risk management/compliance software providers to:
  - alert people and organizations they flag who are not on UN or government sanctions lists and provide them with a means of correcting disinformation

- conduct a human rights assessment of their data processing practices and an evaluation of the credibility of sources used so that disinformation is either flagged or excluded.
- HRC should recommend that UN member states require search engines to test their indexing against the most common forms of disinformation against civil society and human rights defenders.

## Conclusion

Disinformation and lawfare attacks are having a negative impact on freedom of opinion and expression for human rights defenders and civil society organizations, especially those that work in Palestine. Use of disinformation in legal processes is a misuse of the legal system, which is not the appropriate forum for settling disputes about foreign policy or how to resolve the Israel/Palestine conflict.

The U.S. Department of Justice made this clear in its Motion to Dismiss the Zionist Advocacy Center's case against Oxfam, saying that allowing TZAC to proceed with the case would "impose a substantial burden on government resources" and interfere "with government policies and the administration of its programs" and "implicate the Government's foreign policy positions and international aid programs." The government noted that TZAC's "subjective disagreement with the Government's investigative strategy and ultimate decision does not provide the Court with a basis to second-guess the Government's decision to dismiss the case."<sup>18</sup>

Disinformation and lawfare damages or delegitimizes target organizations by imposing reputational harm, causing reduced access to financial services and fundraising platforms, loss of revenue and diversion of resources. Often the goal of such legal attacks is not only to win a case, but to score public relations points.

The current trend of increasing lawfare attacks on human rights defenders and civil society organizations in Palestine sets a dangerous precedent for civil society space and the right of opinion and expression globally. As James Zogby said, "Denying Palestinians their fundamental right to express pain and to protest is to deny their very humanity."<sup>19</sup>

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<sup>18</sup> United States District Court for the Southern District of New York, Case 1:18-cv-01500-VECUSA ex rel TZAC inc. v. Oxfam a/k/a Oxfam GB Filed Nov. 18, 2019

<sup>19</sup> James Zogby, "Palestinians: Victims of 'cancel culture', Responsible Statecraft, Dec. 7, 2020

