Bern, July 11, 2022

**Switzerland's responses to the Special Rapporteur's questionnaire on the promotion and protection of the right to freedom of opinion and expression, focusing on challenges to freedom of opinion and expression in times of conflict and unrest.**

2. a) What are the legal, policy and practical challenges faced by states, businesses, media and civil society organizations in upholding freedom of opinion and expression while countering hate speech, disinformation or other forms of manipulation of information in situations of conflict and unrest?

b) Where do you see the main legal and policy gaps or inconsistencies on these issues? Please let us know your thoughts on how best to fix this.

The protection of fundamental rights is an absolute priority for Switzerland. A careful balance must be struck in this respect: on the one hand, the public has the right to effective protection against illegal hate speech and disinformation. On the other hand, it is also necessary to protect fundamental rights such as freedom of expression and freedom of the media and to prevent any suppression or unjustified interference with fundamental rights.

Online platforms play an important role in realizing fundamental communication rights. At the same time, there are several problem areas: the spread of hate speech and disinformation on intermediary platforms, opacity in various areas, and the arbitrary application of communication rules. This can negatively influence the formation of public opinion, including in the political sphere and endangers the fundamental rights of citizens.

In Switzerland, there is currently no specific legal framework regarding the responsibilities of online platforms and intermediaries. However, given the growing influence of platforms, the debate over the need for such a framework is intensifying. Switzerland is therefore currently examining the need for regulatory action regarding communication platforms.

3.) What legislative, administrative, policy, regulatory or other measures has your country's government taken to protect freedom of expression or access to information online and offline in times of emergency, conflict, violence, unrest?

b) What legislative, administrative, policy, regulatory or other measures exist in your country to address online or offline issues:

* War propaganda;
* disinformation and misinformation; and
* Incitement to violence, discrimination or hatred.

c) Is there any recent case law or decisions relating to these laws, policies or practices?

d) What was the impact of these measures on human rights and international humanitarian law?

e) Do you have any suggestions on how these measures can be improved to uphold human rights while countering war propaganda, disinformation, misinformation and incitement?

Switzerland is deeply committed to the protection of all fundamental rights and recognizes the importance of freedom of expression and freedom of the media for democracy and the rule of law. For this reason, freedom of expression – online and offline – is protected by s. 16 of the Swiss Federal Constitution. It also includes the right to information. Furthermore, freedom of the media is protected as an independent fundamental right by Art. 17 of the Swiss Federal Constitution. Art. 17 also prohibits censorship and guarantees the protection of sources.

Calls for violence, personality attacks and racial discrimination are prohibited in Switzerland, both online and offline.

With regard to hate speech, Swiss criminal and civil law cover various aspects (cf. in particular art. 177 of the Swiss Criminal Code [CPS; Insult], art. 180 CPS [Threatening behaviour], art. 261 CPS [Attack on freedom of belief and freedom of worship] and art 261bis CPS [Discrimination and incitement to hatred]).

The dissemination of propaganda is criminally sanctioned when the propaganda aims to overthrow by violence the constitutional order of the Confederation or of a canton (art. 275bis CPS), or in the context of incitement to hatred against a race, an ethnic group, a religion or a specific sexual orientation (art. 261bis CPS, see above).

4. a) How do internet intermediaries deal with:

- propaganda for war

- incitement to violence, discrimination or hatred

- disinformation and false information that incites or aggravates violence, instability or conflict

b) In your opinion, do company policies and measures comply with international human rights and humanitarian law standards, and are they implemented effectively?

c) What improvements would you suggest?

d) What good practices have been developed by companies?

Companies need to ask themselves questions about the impact of their activities and products on freedom of expression. They must conduct themselves in accordance with the United Nations Guiding Principles on Business and Human Rights (UNGPs), particularly when operating in conflict-affected or high-risk contexts. Part of the technology sector has products, services and solutions that are used in such contexts. They must therefore exercise human rights due diligence to prevent them from contributing to human rights violations.

For example, internet intermediaries must put in place measures to prevent their use for the dissemination of hate speech or incitement to violence, which may be the source of human rights violations, while such as misinformation or false information that can produce the same result.

In this context, Switzerland supports the B-Tech project launched by the Office of the High Commissioner for Human Rights with a view to advancing the adoption of the Guiding Principles by both States and technology companies.

States can help guide companies on how they should manage the human rights risks associated with their products and services. These have, for example, implemented content moderation measures. However, these measures are often automatic in nature and can be the source of abuse and violations of human rights, in particular freedom of opinion and expression, by being used for repressive and authoritarian purposes. Companies can still make great efforts to improve the transparency of their human rights due diligence processes and the mitigation measures put in place, in particular in dialogue with the most vulnerable users. Companies should communicate about their policies and systems in this area.

7.) Please share any suggestions or recommendations you may have for the Special Rapporteur on how to protect and promote freedom of opinion and expression while countering the manipulation of information in times of conflict, unrest or tension.

The Special Rapporteur could sensitize companies to exercise increased due diligence in conflict situations and to put in place complaint handling mechanisms to provide a remedy to individuals or groups who feel aggrieved. Indeed, digital platforms, especially social media, have a particular responsibility in times of unrest, tension or conflict, which can be easily exacerbated by misinformation and online hate campaigns.