



# The Oversight Board: Operationalizing the UN Guiding Principles on Business and Human Rights

Submission to the  
Office of the High Commissioner for Human Rights, United Nations  
*on the practical application of the UNGPs to the activities of technology companies*

February 2022



## I. Introduction

The Oversight Board is grateful for this opportunity to contribute to the UN High Commissioner for Human Rights consultation on the practical application of the UN Guiding Principles on Business and Human Rights to the activities of technology companies, pursuant to Human Rights Council resolution 47/23.<sup>1</sup> The submission focuses on area three: accountability and remedy.

The Board was created to ensure respect for freedom of expression on Facebook and Instagram by issuing binding decisions on content and by making non-binding policy recommendations. The Charter requires the Board to base its decisions on Meta’s content policies and to consider international human rights norms on freedom of expression.<sup>2</sup> The Oversight Board began operations in 2020, following a consultative process to establish its institutional structure and scope.<sup>3</sup> The first cases were decided in January 2021.<sup>4</sup>

In its corporate human rights policy, Meta affirmed that the Board was conceptualized in line with the effectiveness criteria of operational grievance mechanisms and access to remedy under the UN Guiding Principles on Business and Human Rights (UNGPs).<sup>5</sup> The Oversight Board has described itself in several decisions as an independent non-judicial grievance mechanism,<sup>6</sup> in addition to citing to the UNGPs as part of its framework for assessing Meta’s compliance with its human rights responsibilities. Through the powers provided under the Charter, the Oversight Board seeks to provide accountability and remedy in ways that may be considered unique in the field of social media companies.

Firstly, the Board’s individual decisions are binding on Meta, which third-parties have observed is unusual compared to powers grievance mechanisms under the UNGPs are normally afforded.<sup>7</sup> To date, the Board has issued 22 binding decisions.<sup>8</sup>

Secondly, the Board is also empowered to make non-binding policy recommendations within case decisions, as well as policy advisory opinions that have broader impact for content

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<sup>1</sup> OHCHR consultation and call for submission on the practical application of the United Nations Guiding Principles on Business and Human Rights to the activities of technology companies, available [here](#).

<sup>2</sup> Article 2, section 2, Charter.

<sup>3</sup> See [Charter](#) and [Bylaws](#).

<sup>4</sup> Oversight Board, [Announcing the Board’s first case decisions](#) (January 2021)

<sup>5</sup> Meta, [Our Commitment to Human Rights](#) (March 2021).

<sup>6</sup> See, e.g., Oversight Board Case Decisions: 2020-006-FB-FBR (Claimed COVID Cure); 2021-004-FB-UA (Pro-Navalny Protests in Russia); 2021-005-FB-UA (“Two Buttons” Meme); 2021-006-IG-UA (Ocalan’s Isolation); 2021-007-FB-UA (Myanmar Bot); 2021-001-FB-UA (South Africa Slur). For the full list of cases, see [here](#).

<sup>7</sup> In its human rights impact assessment of the Oversight Board, BSR noted that the Board’s ability to bind Meta to its decisions on individual pieces of content make the Oversight Board “unlike anything previously created by a company.” At the same time, content moderation on Facebook and Instagram concern stakeholders from all over the world, in contrast to the “bounded number of rightsholders” that the UNGPs initially sought to address. See BSR, [Human Rights Review: Facebook Oversight Board](#) (December 2019), p. 4

<sup>8</sup> All decisions are publicly available [here](#).



moderation on the Facebook and Instagram platforms. This policy advisory capacity may also be understood as a less common feature of the Board’s design as a grievance mechanism. In February 2022, the Board released its first policy advisory opinion on the sharing of private residential information. The policy advisory opinion recommended narrowing the exceptions to the [Privacy Violations](#) Community Standard to help Meta better protect private residential information of people on and off the platform.<sup>9</sup> If adopted, this would prohibit Meta from allowing otherwise violating content on Facebook and Instagram just because it is publicly available.<sup>10</sup>

Thirdly, given the large global userbase of Meta’s platforms the volume of content actions it takes, the number of persons who are eligible to bring appeals to the Board is massive. The Board has received over 800,000 appeals since it began accepting cases in October 2020 up to the end of September 2021.<sup>11</sup> Rather than seek to resolve all appeals, the Board is designed to focus on significant and difficult cases, where the issues are considered emblematic and the impact of a single decision is likely to be felt more broadly.

Since it started operations, the Oversight Board has focused on various aspects of content moderation on Facebook and Instagram, and its recommendations have proposed significant reforms on a variety of issues. The Board has addressed recurring issues relating to Meta’s content policies on [Hate Speech, Violence and Incitement](#), and [Dangerous Individuals and Organizations](#),<sup>12</sup> as well as content emanating from situations of conflict or civil unrest.<sup>13</sup> In one decision, the Oversight Board disclosed that Meta misplaced an internal guidance on policy exceptions to Facebook’s Dangerous Individuals and Organizations policy for three years.<sup>14</sup> In another decision, the Oversight Board found that content falling outside the Adult Nudity and Sexual Activity policy was removed by automation without proper human oversight.<sup>15</sup> These gaps constituted arbitrary content removals and would unduly restrict expression if left unaddressed. Recommendations in both decisions sought to ensure errors such as these, with significant adverse impacts for freedom of expression, are avoided.

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<sup>9</sup> Oversight Board, [Oversight Board publishes policy advisory opinion on the sharing private residential information](#) (February 2022).

<sup>10</sup> *Ibid.* The term “publicly available” is defined as content “published by at least five news outlets” or if it contains residential addresses or imagery from financial records or statements of an organisation, court records, professional and business licences, sex offender registries or press releases from government agencies, or law enforcement.”

<sup>11</sup> [Oversight Board tweet](#) (February 2022).

<sup>12</sup> See, e.g., Case Decisions: 2021-012-FB-UA (Wampus Belt); 2021-011-FB-UA (South Africa slurs); 2021-010-FB-UA (Colombia protests); 2021-002-FB-UA (Depiction of Zwarte Piet); 2020-006-FB-FBR (Claimed COVID Cure); 2020-007-FB-FBR (Protests in India against France); 2020-003-FB-UA (Armenians in Azerbaijan); 2020-003-FB-UA (Myanmar post about Muslims); 2021-006-IG-UA (Ocalan’s Isolation); 2021-003-FB-UA (Punjabi concern over the RSS in India). For the full list of cases, see [here](#).

<sup>13</sup> See e.g., Case decisions 2021-014-FB-UA (Alleged Crimes in Raya Kobo); 2021-001-FB-FBR (Suspension of Former President Trump’s accounts); 2021-009-FB-UA (Shared Al Jazeera Post); 2021-007-FB-UA (Myanmar Bot). For the full list of cases, see [here](#).

<sup>14</sup> Oversight Board Case Decisions: [2021-006-IG-UA](#) (Ocalan’s Isolation).

<sup>15</sup> Oversight Board Case Decisions: [2020-004-IG-UA](#) (Breast Cancer Symptoms and Nudity).



Meta has committed to acting upon many of the Board’s recommendations,<sup>16</sup> such as including a satire exception to the public-facing language of the Hate Speech policy;<sup>17</sup> clarifying health misinformation policies;<sup>18</sup> publicly clarifying that Instagram’s Community Guidelines are interpreted in line with Facebook’s Community Standards and the latter prevails in case of inconsistencies;<sup>19</sup> translating content policies understood by Meta’s users;<sup>20</sup> transparency around the strikes and penalties process for restricting users; as well as immediate action on content posted by heads of state that pose a high probability of imminent harm.<sup>21</sup> In addition to adhering with the formal requirement to provide an initial response to the Board’s recommendations, Meta also provides continuing updates through its transparency reporting about the Board.<sup>22</sup>

## II. Governance Structure

The Oversight Board is independent of Meta. Meta set up an independent, irrevocable trust responsible for receiving and managing the funds for the Board’s operations and expenses.<sup>23</sup> Meta appointed independent trustees for this purpose in accordance with the Charter, Bylaws, and Trust Agreement. The trustees maintain and approve the Board’s operating budget, including member compensation, administration, and other needs. The Oversight Board’s operational and financial autonomy contributes to its effectiveness as an operational-level grievance mechanism under Principle 31 of the UNGPs.

The Charter provides that there should be a minimum of 11 and a likely total of 40 Board Members.<sup>24</sup> At present, there are 20 Board Members, with new appointments expected to be made within the year.<sup>25</sup> The Board Members have a different role from the trustees. The trustees serve to ensure governance and accountability of the Oversight Board, while the Board Members are those tasked to review content and issue reasoned binding decisions on Meta and provide policy recommendations, as necessary.<sup>26</sup>

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<sup>16</sup> See Meta, [Oversight Board Recommendations](#) (January 14, 2022).

<sup>17</sup> Oversight Board Case Decisions: [2021-005-FB-UA](#). ()

<sup>18</sup> Oversight Board, [Case decision 2020-006-FB-FBR \(Claimed COVID Cure\)](#); Nick Clegg, [Facebook’s response to the Oversight Board’s first decisions](#) (Feb. 25, 2021).

<sup>19</sup> Oversight Board, [Case decision 2020-004-IG-UA \(Breast Cancer Symptoms and Nudity\)](#).

<sup>20</sup> Oversight Board, [Case decision 2021-003-FB-UA \(Punjabi concern over RSS in India\)](#).

<sup>21</sup> Nick Clegg, [In Response to Oversight Board, Trump Suspended for Two Years; Will Only Be Reinstated if Conditions Permit](#) (June 4, 2021).

<sup>22</sup> Meta’s Quarterly Updates on the Oversight Board, [available here](#).

<sup>23</sup> Article 5, section 1, Charter.

<sup>24</sup> Article 1, section 1, Charter.

<sup>25</sup> Oversight Board, [Meet the Board](#).

<sup>26</sup> Article 5, sections 1 and 2, Charter.



### III. Application of the UNGPs in the oversight of content moderation

#### A. Case decisions and Policy advisory opinions

##### Case selection

The Oversight Board identifies potential cases from those referred to it by Meta or appealed to it by users of Facebook and Instagram.<sup>27</sup> The Board selects cases based on the following criteria: (i) the content's critical importance to public discourse, (ii) if the impugned content directly or indirectly affects a substantial number of individuals, (iii) and/or the content raises significant questions about Meta's policies. The Board selects cases that reflect the user base of Facebook and Instagram and ensures regional and linguistic diversity of cases.<sup>28</sup> The cases the Board has selected reflect these considerations, with the majority of the cases affecting countries outside the US & Canada (notwithstanding that most appeals originate from this region), and several cases arising from situations of conflict or civil unrest occurring in Ethiopia, Israel/Palestine, and Myanmar.<sup>29</sup> This focus reflects Principles 12, 23, and 24 of the UNGPs, which highlight the need for increased efforts to minimize human rights risks where the consequences are "most severe".<sup>30</sup>

##### Assessing the Board's own human rights impacts

In line with Principle 31(f) of the UNGPs, the Oversight Board Administration conducts a human rights impact assessment (HRIA) for each case that is selected to ensure its effectiveness as a grievance mechanism. The HRIA entails identifying rightsholders who may be impacted by the selection of a case, as well as specific risks and corresponding mitigating actions for the Board's consideration. When warranted, conflict sensitivity analysis is incorporated into the HRIA with recommendations to avoid or mitigate human rights risks. As part of this, the Case Selection Team within the Administration has an escalation protocol for alerting Meta to content left up on the platform that requires expeditious attention. The HRIA is continually updated throughout the case, and mitigation often includes steps the Board or Meta can take to ensure the privacy rights and safety of people in the content or participating in the Board's processes. After the decision is published, the Oversight Board administration continues to monitor the impact of the decision for any lessons learned.

##### Case decisions

The Charter and Bylaws require the Board to consider international human rights standards in its work. The Board's decisions further reference the International Bill of Human Rights, among many other instruments, showing adherence to Principle 12 of the UNGPs.

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<sup>27</sup> Article 1, section 3, By-laws.

<sup>28</sup> Bylaws, article 2, section 2.1.1; Oversight Board, Overarching Criteria for Case Selection, <https://oversightboard.com/sr/overarching-criteria-for-case-selection>

<sup>29</sup> See Oversight Board, [Board Decisions](#)

<sup>30</sup> See BSR, [A Human-Rights based approach to Content Governance](#) (March 2021), p. 6.



The Board has examined in numerous cases how an individual decision raises concerns about Meta’s approach to identifying, mitigating, preventing and accounting for its adverse human rights impacts. For instance, in the ‘alleged crimes in Raya Kobo’ decision, the Board made clear that attention to this issue would show how Meta’s products and services might be misused and how hate speech might heighten the risk of violence in the country.<sup>31</sup> In the ‘Shared Al Jazeera Post’ decision, the Board emphasized that further due diligence would help determine whether Meta’s content moderation in Arabic and Hebrew, including its use of automation, have been applied without bias.<sup>32</sup> With respect to the account suspension of former US President Donald Trump, the Board made recommendations relating to how due diligence could help identify necessary changes to prevent the same adverse human rights impacts in the future.<sup>33</sup>

All case decisions of the Board reference international human rights standards when assessing Meta’s actions in relation to content, including but not limited to the right to freedom of expression.<sup>34</sup> The work of the various UN treaty bodies and Special Rapporteurs are also cited. Each decision contains a section listing all human rights standards referenced for that case. The transparency reports published by the Board also show a tally of these references.<sup>35</sup>

Case decisions are structured to ensure that human rights analysis is addressed consistently. As all cases involve limitations Meta has placed or is being petitioned to place on expression, the decisions include analysis based upon the three-part test of legality, legitimacy, necessity and proportionality, enshrined in Article 19 of the International Covenant on Civil and Political Rights. The decisions explain whether Meta’s actions and the policies they are based upon adhered to these principles in a specific case.

The Board has emphasized in several decisions that the principle of legality is met when content policies are clear and accessible such that users know the rules and moderators are able to apply them accurately. In one case, the Board concluded that relevant terms such as “praise”, “support”, and “representation” of a covered entity in the Facebook Dangerous Individuals and Organizations policy should be clearly defined so that users know which types of activity to avoid.<sup>36</sup> In another case, the Board found that the definitions of substances under the Restricted Goods and Services Community Standard are not sufficiently clear.<sup>37</sup> Conversely, the Board concluded in another case that a relevant term in the Violence and Incitement policy is sufficiently clear as applied to that case, and therefore meets the principle of legality.<sup>38</sup> The Board has also found that the principle of

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<sup>31</sup> Oversight Board Case Decisions: [2021-014-FB-UA](#) (Alleged Crimes in Raya Kobo).

<sup>32</sup> Oversight Board Case Decisions: [2021-009-FB-UA](#) (Shared Al Jazeera Post).

<sup>33</sup> Oversight Board Case Decisions: [2021-001-FB-FBR](#) (Former US President Trump’s Suspension).

<sup>34</sup> See BSR, [A Human-Rights based approach to Content Governance](#) (March 2021), p. 4.

<sup>35</sup> See Oversight Board, [Oversight Board demands more transparency from Facebook](#) (October 2021); See also Oversight Board, [Oversight Board publishes transparency report for third quarter of 2021](#) (December 2021).

<sup>36</sup> Oversight Board Case Decision: [2020-005-FB-UA](#) (“Two Buttons” Meme).

<sup>37</sup> Oversight Board Case Decision: [2021-015-FB-UA](#).

<sup>38</sup> Oversight Board Case Decision: [2021-014-FB-UA](#) (Alleged Crimes in Raya Kobo).



legality as applied to content moderation also requires that content policies are translated into various languages to be clear and accessible to all.<sup>39</sup>

Case decisions similarly affirm the principle of legitimacy (“legitimate aim”) in content moderation. In all cases to date, the Board has found Meta’s the applicable content policies to be in pursuit of a legitimate aim. In one case, the Board affirmed that protecting public health in a time of a global pandemic constitutes a legitimate aim for moderating content.<sup>40</sup> Protecting children’s physical and mental health is also a legitimate aim consistent with the rights of the child and their best interests.<sup>41</sup> The Board has recognized Meta’s hate speech policies as having a legitimate aim in protecting the rights of others, such as the right to equality and non-discrimination.<sup>42</sup> The Board has also found the Dangerous Individuals and Organizations policy to reflect a legitimate aim of protecting, among others, the right to life and security of persons.<sup>43</sup>

Case decisions include a determination on whether removal of the content is compatible with the principle of necessity and proportionality. In one case, the Board recommended that Meta explore “less intrusive measures” than removing content when content “distorts” the message of public health authorities, yet the risk of harm is not imminent. In this context, less intrusive measures would include labeling impugned content to alert users that the content of the post is disputed, introducing friction to make the content harder to view, or reducing its visibility on other users’ News Feed.<sup>44</sup> In another case, the Board has also found that content falling within the “newsworthiness” exception and discussion of human rights concerns should remain on the platform.<sup>45</sup>

## B. Stakeholder Engagement

Stakeholder engagement forms a crucial component of the Board’s approach to case deliberations, consistent with Principle 18(b) and 31(h) of the UNGPs. While the Board’s governing documents permit engagement with outside experts, they do not require it. Nevertheless, the Board has made such engagement routine, as stakeholders frequently provide important insights to inform the Board’s deliberations. Once a case is selected, the Administration solicits public comments with respect to that case, based on a case summary and policy prompts, and has held office hours to inform stakeholders of the public comment process and the types of input that the Board would be interested to receive. Stakeholder engagement in the context of a case decision

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<sup>39</sup> Oversight Board Case Decisions: [2021-003-FB-UA](#) (Punjabi Concern over RSS in India); [2021-009-FB-UA](#) (Shared Al Jazeera Post).

<sup>40</sup> Oversight Board Case Decision: [2020-006-FB-FBR](#) (Claimed COVID Cure).

<sup>41</sup> Oversight Board Case Decision: [2021-016-FB-FBR](#).

<sup>42</sup> Oversight Board Case Decisions: [2021-012-FB-UA](#) (Wampum Belt); [2021-011-FB-UA](#) (South Africa slurs); [2021-007-FB-UA](#) (Myanmar Bot).

<sup>43</sup> Oversight Board Case Decisions: [2021-003-FB-UA](#) (Punjabi Concern over the RSS in India); [2020-005-FB-UA](#) (Nazi Quote).

<sup>44</sup> Oversight Board Case Decisions: [2021-008-FB-FBR](#) (Breast Cancer Symptoms and Nudity).

<sup>45</sup> Oversight Board Case Decisions: [2021-009-FB-UA](#) (Shared Al Jazeera Post).



aims to ensure the Board hears from people with experience of relevant geographies, including people with direct experience of issues addressed in the case.

The public comment process forms part of the 90-day timeline within which the Oversight Board must issue a final decision on the case, and in response to feedback from stakeholders the Board has extended the time for submissions to 14 days in all cases.<sup>46</sup> Public comments are annexed to every decision and at times referred to in the decision itself.<sup>47</sup> In 2022, the Board is seeking to share even more information about cases in calls for public comments, provide stakeholders with advanced notice of when public comments will be opening, and to hold office hours for every call for public comment announcement.

Stakeholder engagement also provides a key part of the Board’s processes for arriving at a policy advisory opinion. As there is no time limit to issue policy advisory opinions, the Oversight Board allows a longer window for written public comment and has experimented with other formats for stakeholder engagement. For the first policy advisory opinion on the sharing of private residential information on the platform,<sup>48</sup> the Oversight Board held two roundtables and commissioned research on the topic to inform its deliberation in addition to the solicitation of public comments. Because of the global nature of the policy questions involved, the stakeholders consulted for the policy advisory opinion is also more geographically diverse.

### C. Case Implementation

Principles 20 and 21 of the UNGPs provide that for companies efforts to respect human rights to be effective, they should track and externally communicate their efforts to prevent, mitigate, and address adverse human rights impacts. Monitoring implementation is also a “source of continuous learning” for the Oversight Board as an operational-level grievance mechanism under Principle 31(g) of the UNGPs. Article 4 of the Oversight Board’s Charter partly ensures this publicity. This provision provides that individual case decisions are binding on Meta, but policy recommendations are not binding. However, Meta is required to respond and explain why it will adopt or disregard those recommendations. To allow Meta time to ensure those responses are more comprehensive, it now has 60 days to respond.

The Board has sought to ensure Meta does not have the last word on implementation. The Board has publicly pushed Meta to be more transparent on its ‘cross-check’ system, which provides an

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<sup>46</sup> Article 1, section 3.1, By-laws.

<sup>47</sup> See, e.g., Oversight Board Case Decisions:, [2021-009-FB-UA](#) (Shared Al Jazeera Post); [2021-008-FB-FBR](#) (Breast Cancer Symptoms and Nudity).

<sup>48</sup> Oversight Board, [Oversight Board publishes policy advisory opinion on the sharing of private residential information](#) (February 2022).





additional tier of review for certain high-profile users, in follow-up to prior recommendations on this topic.<sup>49</sup> The ‘cross-check’ system is now the subject of a policy advisory opinion.<sup>50</sup>

The Oversight Board works to ensure that its decisions and policy recommendations have a positive impact for respect of human rights on Facebook and Instagram. The Board recently created an Implementation Committee, currently made up of five Board Members, to prioritize monitoring and follow-up to Meta’s implementation of the Board’s policy recommendations. The Board intends to share more about this work through its transparency reporting.

#### D. Transparency

The Board seeks to be transparent in its work, in line with Principle 31(e) of the UNGPs. In October 2021, the Board published transparency reporting for 2020 (Quarter 4) and 2021 (Quarters 1 and 2) detailing further statistics and analysis about its operations.<sup>51</sup> This includes information on the number and geographic breakdown of user appeals received by the Board; which policy areas are most prevalent in user appeals; the human rights standards referenced in each decision and cumulatively; and Meta’s responsiveness to the Board’s questions, among others.

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<sup>49</sup> See Oversight Board, To [treat users fairly, Facebook must commit to transparency](#) (September 2021); Oversight Board, [Oversight Board demands more transparency from Facebook](#) (October 2021).

<sup>50</sup> See Oversight Board, [Oversight Board opens public comments for policy advisory opinion on cross-check](#) (December 2021); Oversight Board, [Oversight Board demands more transparency from Facebook](#) (October 2021).

<sup>51</sup> See Oversight Board, [Oversight Board demands more transparency from Facebook](#) (October 2021); See also Oversight Board, [Oversight Board publishes transparency report for third quarter of 2021](#) (December 2021).