

Response from the Oversight Board to the United Nations Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression

Ref.: OL OTH 90/2023

August 31, 2023

Dear Ms. Irene Khan, Special Rapporteur on the promotion and protection of the right to freedom of expression,

The Oversight Board appreciates your communication about several of the Board's recent cases focused on gender and welcomes the opportunity to respond with additional information about the Board's mandate, its use of the international human rights framework, and these cases.

The Oversight Board is comprised of [22 members](#) with diverse backgrounds and expertise. It was created to help answer some of the most significant and difficult questions Meta faces around freedom of expression online, with respect for international human rights embedded in its decision-making processes and procedures by design. People from around the world who use Facebook and Instagram can appeal Meta's content decisions to the Board. The Board selects cases to examine whether Meta has acted in accordance with its policies, values and human rights responsibilities. In addition to making binding decisions on individual pieces of content, the Board makes non-binding policy recommendations that Meta must respond to publicly. Our recommendations have led to changes to Meta's policies and processes which have impacted millions of Meta's users around the world.

Gender as a strategic priority

In October 2022, the Board announced seven [strategic priorities](#), which were chosen based on an analysis of cases submitted to the Board and issues facing users globally. They aim to increase the Board's impact in critical areas for content moderation. Gender is one of these seven priorities. Through selecting and deciding cases that focus on gender, the Board aims to explore the gendered obstacles that women and LGBTQI+ people face in exercising their rights to freedom of expression, including gender-based violence and harassment, and the effects of gender-based distinctions in content policy.

Respecting human rights while making decisions about content governance

The Board's [Charter](#) establishes that it will "pay particular attention to the impact of removing content in light of human rights norms protecting free expression." Since its first cases were published in 2021, the Board has consistently used the international human rights framework to inform its decisions. Applying the United Nations Guiding Principles on Business and Human Rights (UNGPs), each case relies upon the three-part test framework in Article 19 of the International Covenant on Civil and Political Rights (ICCPR) to interpret [Meta's human rights responsibilities](#). Depending on the nature of each case, the Board also looks to other sources, including the reports your mandate has published. A full list of these references is available in the Board's [transparency reports](#).

In your communication, you highlighted key sources on gender justice and freedom of expression, including the [Joint Declaration on Freedom of Expression and Gender Justice](#) (2022) and the Special Rapporteur's report presented to the UN General Assembly in 2021 on Gender justice and freedom of opinion and expression ([A/76/258](#)). These sources, as well as previous reports presented to the UN General Assembly in 2019 on Online hate speech ([A/74/486](#)), and to the Human Rights Council in 2018 on Online content regulation ([A/HRC/38/35](#)), have been influential and repeatedly cited by the Board.

For example, in our recent [Violence against women decisions](#) concerning a Facebook user describing intimate partner violence, the Board emphasized that “the Internet has become the new battleground in the struggle for women’s rights, amplifying opportunities for women to express themselves” ([A/76/258](#), para. 4). The Board further cited the [Joint Declaration on Freedom of Expression and Gender Justice](#), noting that “social media is an important pathway to raise awareness about intimate partner violence and women's rights.” The Board recommended that Meta include the exception for allowing content that condemns or raises awareness of gender-based violence in the public language of its Hate Speech policy.

In our [Gender identity and nudity decisions](#), the Board overturned Meta’s original decisions to remove two Instagram posts depicting transgender and non-binary people with bare chests. The Board cited a report from the Special Rapporteur on Violence Against Women in noting that “the Internet is being used in a broader environment of widespread and systemic structural discrimination and gender-based violence against women and girls” ([A/HRC/38/47](#)). We recommended that Meta change its Adult Nudity and Sexual Activity Community Standard so that it is governed by clear criteria that respects international human rights standards. Meta welcomed the decision and committed to conducting internal human rights due diligence on its Adult Nudity and Sexual Activity policy.

Additionally, in our [Breast cancer symptoms and nudity decision](#), Meta’s automated systems failed to apply exceptions for breast cancer awareness, which led to important health information being removed from Instagram. The Board noted that the removal reflects the limitations of automated technologies to understand context and grasp the complexity of communication ([A/73/348](#), para. 15). We emphasized that using inaccurate automation to enforce rules disproportionately affects women's freedom of expression. The Board recommended that Meta improve its automated detection of images with text-overlay to ensure that posts raising awareness of breast cancer symptoms are not wrongly flagged for review. As a result, Meta tested and deployed a new health content classifier to further enhance the company’s techniques for identifying breast cancer context content on Instagram.

Lastly, in the [Image of gender-based violence decision](#), the Board overturned Meta’s original decision to leave up a Facebook post that mocks a target of gender-based violence. The Board again cited the [Joint Declaration on Freedom of Expression and Gender Justice](#), noting that “online violence against women has particular significance for freedom of expression.” The Board recommended that Meta establish a policy aimed at addressing content that normalizes gender-based violence through praise, justification, celebration or mocking.

Meta's implementation of the Board's recommendations

Between January 2021 and early April 2023, [the Board issued](#) 191 recommendations to Meta. The Oversight Board is dedicated to closely monitoring Meta's implementation of each recommendation. As of now, two-thirds of these recommendations have been either fully or partially implemented by Meta, or the company has reported significant progress towards their implementation. We consider this a sign of our impact on Meta's systems and the importance of independent oversight.

In the Board's [Q1 2023 Report](#), we released data showing this impact. In upcoming reports, we will provide information on recent recommendations related to gender, including our recently published [Violence against women decisions](#) and the forthcoming [United States posts discussing abortion](#) decisions.

Opportunities for continued engagement

We encourage the Special Rapporteur to consider submitting public comments on cases or policy advisory opinions. Public comments are an effective way to inform the Board's decisions, which, in turn, impact the way that Meta treats billions of its users. We have been grateful for comments submitted by Special Procedures, including those from the United Nations Special Rapporteur on the promotion and protection of human rights in the [Armenians in Azerbaijan](#) case and the UN Special Rapporteur on human rights and counter-terrorism in the [Öcalan's isolation](#) case. Your insights and expertise would be a welcome contribution to our deliberations, as the Board seeks to strengthen respect for freedom of expression and other human rights in the digital sphere.

We look forward to a continued dialogue on how companies can best respect freedom of expression and other human rights.

Warmest regards,

Evelyn Aswad

Catalina Botero Marino

Michael McConnell

Helle Thorning-Schmidt