

# HUMAN RIGHTS REVIEW

Facebook Oversight Board

DECEMBER 2019



BSR<sup>®</sup>

The Business of a Better World

## About This Report

Facebook Inc. commissioned BSR to undertake a human rights review of the Oversight Board. The purpose of this review is to identify improvements that would help align the final charter and bylaws, as well as operations of the Oversight Board, with human rights-based approaches.

BSR undertook this human rights review from May to November 2019. This review combines human rights assessment methodology based on the UN Guiding Principles on Business and Human Rights (UNGPs) with a consideration of the various human rights principles, standards, and methodologies upon which the UNGPs were built. This review was funded by Facebook, though BSR retained editorial control over its contents.

### **ACKNOWLEDGEMENTS**

This report was researched and written by Dunstan Allison-Hope, Michaela Lee, and Joanna Lovatt with BSR, with input from Ouida Chichester and Alison Taylor with BSR.

BSR wishes to thank all Facebook employees, rightsholders, and stakeholders who participated in this assessment.

### **DISCLAIMER**

The conclusions presented in this report represent BSR's best professional judgment, based upon the information available and conditions existing as of the date of the review. In performing its assignment, BSR must rely upon publicly available information, information provided by Facebook, and information provided by third parties. Accordingly, the conclusions in this report are valid only to the extent that the information provided to BSR was accurate and complete. This review is not intended as legal advice, nor is it an exhaustive review of legal or regulatory compliance. BSR makes no representations or warranties, express or implied, about the business or its operations. BSR maintains a policy of not acting as a representative of its membership, nor does it endorse specific policies or standards. The views expressed in this publication are those of its authors and do not necessarily reflect those of BSR members.

### **SUGGESTED CITATION**

BSR, 2019. "Human Rights Review: Facebook Oversight Board."

## Contents

<b>1. Executive Summary</b>	<b>3</b>
<b>2. Project Overview and Methodology</b>	<b>9</b>
<b>3. Recommendations: Harms and Impacts</b>	<b>15</b>
<b>4. Recommendations: Vulnerable Groups</b>	<b>21</b>
<b>5. Recommendations: Remedy</b>	<b>29</b>
<b>6. Recommendations: Decision-Making</b>	<b>35</b>
<b>7. Recommendations: Informed Consent</b>	<b>42</b>
<b>8. Recommendations: Safety and Integrity</b>	<b>45</b>
<b>9. Recommendations: Transparency</b>	<b>48</b>
<b>10. In Depth: Access to Remedy and Operational-Level Grievance Mechanisms</b>	<b>51</b>
<b>11. Conclusion</b>	<b>58</b>
<b>Annex A: Recommendations, Organized by Relevant Actor</b>	<b>59</b>
<b>Annex B: Human Rights Impacts of Select Cases</b>	<b>62</b>

# 1. Executive Summary

## PROJECT OVERVIEW

In January 2019, Facebook published a draft charter setting out the proposed scope and structure of an Oversight Board. Once established, the Oversight Board would make independent decisions about the most challenging content on the Facebook and Instagram platforms and issue policy advisory opinions on Facebook's content policies.

In May 2019, Facebook commissioned BSR to undertake a human rights review of the Oversight Board. The purpose of this review is to inform the final charter, bylaws, and operations of the Oversight Board such that it is consistent with human rights-based approaches. The specific objectives of the review are to:

- » Identify improvements that would help align the Oversight Board with human rights principles, standards, and methodologies.
- » Apply the Global Network Initiative (GNI) Principles and Implementation Guidelines.
- » Improve the quality, consistency, and coherence of decision-making by the Oversight Board.
- » Set out considerations for a prevention and mitigation plan to address actual or potential adverse human rights impacts associated with the Oversight Board.

BSR undertook this human rights review in parallel with Facebook's public consultation on the draft charter and bylaws for the Oversight Board. The final charter for the Oversight Board was published in September 2019 as BSR's work came to a close, and the bylaws were still under development. For this reason, BSR's review sets out an ideal human rights-based approach for the Oversight Board, rather than a "point-by-point" comparison between a human rights-based approach and Facebook's final approach in practice. Readers can make that comparison once the complete Oversight Board governance documentation is published.

## PROJECT METHODOLOGY

BSR deployed a methodology that combined the human rights assessment methodology based on the UN Guiding Principles on Business and Human Rights (UNGPs) with a deeper consideration of the various human rights principles, standards, and methodologies upon which the UNGPs were built.

Specifically, BSR identified seven key human rights themes and 16 accompanying questions to explore in this review, and these are described alongside the summary of recommendations below. To inform our analysis, BSR reviewed written contributions to Facebook's public consultation on the Oversight Board, reviewed notes from in-person stakeholder consultations undertaken by Facebook, and undertook an extensive examination of internal Facebook documentation and decision-making. Given the unique and novel nature of the Oversight Board, BSR also arranged for five business and human rights experts to undertake a peer review of the BSR report prior to its final submission to Facebook.

## SIGNIFICANCE

The question of how social media platforms can respect the freedom of expression rights of users while also protecting rightsholders from harm is one of the most pressing challenges of our time. Moreover, while efforts to provide access to remedy in other industries are typically designed to meet the needs of a

bounded number of rightsholders, based in clearly defined geographical areas and speaking a limited number of languages, the Facebook Oversight Board needs to be designed to meet the needs of billions of rightsholders (both users and non-users), who could be anywhere in the world and who may speak any language.

Given the unique challenges of scale, speed, and volume, it will be impossible for a “perfect” system to be created, and reasonableness criteria consistent with human rights-based approaches will need to be applied. In this context, the Oversight Board represents an important innovation and will set a precedent in ongoing attempts to define new methodologies, processes, and accountability mechanisms for use across the social media industry. We hope that other social media companies, alone or in collaboration, adopt similar approaches.

The Oversight Board will be unlike anything previously created by a company—to our knowledge, no company in any industry has ever established an oversight mechanism with binding decision-making power—and represents a leap into the unknown. BSR has sought to make recommendations that apply human rights-based principles in a practical manner, recognizing the significant operational challenges that the Oversight Board will face, and the important learning that will take place in both the short- and long-term. While the BSR recommendations that follow are specific to the Facebook Oversight Board, we hope they will provide considerable value to other companies, civil society organizations, governments, and intergovernmental organizations seeking to define human rights-based approaches to decisionmaking, governance, and accountability.

## SUMMARY OF RECOMMENDATIONS

BSR’s recommendations focus on both substantive issues (i.e., how content decisions can incorporate human rights-based criteria) and procedural issues (i.e., how the Oversight Board can meet expectations for operational-level grievance mechanisms and be truly accessible to vulnerable groups). This table provides only a very high-level summary of BSR’s recommendations, with significant additional detail and explanations found in the main body of this report.

Objective	Recommendations
<p><b>Harms and Impacts</b>  <i>Address all human rights issues and prioritize the most severe cases.</i></p>	<ul style="list-style-type: none"> <li>» A wide range of relevant human rights harms (beyond just freedom of expression) that may result from content decisions should be identified by Facebook and the Oversight Board.</li> <li>» The relevant human rights impacted by a content decision should be referenced by the Oversight Board in every case.</li> <li>» Over time, the Oversight Board should ensure that the mix of cases it reviews encompasses a wide range of potential human rights harms.</li> <li>» The Oversight Board should prioritize cases that present the most severe human rights harms, using the UNGPs’ scope, scale, and remediability criteria.</li> <li>» Cases that involve sexual harassment and gender-based violence should be prioritized by the Oversight Board as severe human rights impacts.</li> </ul>

	<ul style="list-style-type: none"> <li>» Facebook and the Oversight Board can use strategic foresight (or “futures”) methodologies to help identify cases that may become more common in the future.</li> <li>» The Oversight Board’s scope should expand over time.</li> </ul>
<p><b>Vulnerable Groups</b>  <i>Address the rights and needs of individuals from groups or populations at heightened risk of becoming vulnerable or marginalized.</i></p>	<ul style="list-style-type: none"> <li>» The Oversight Board should be diverse across multiple dimensions of diversity.</li> <li>» The Oversight Board should establish and maintain the diversity of its Administration staff.</li> <li>» Facebook should undertake a structured identification of different vulnerable user “personas,” identities, and categories.</li> <li>» The mix of cases reviewed by the Oversight Board should encompass a wide range of impacted vulnerable groups.</li> <li>» Facebook should establish measures to ensure the Oversight Board is accessible to vulnerable groups, including while cases are under consideration.</li> <li>» Facebook should undertake a marketing and communications campaign to increase the awareness of appeal mechanisms (including the Oversight Board) among vulnerable and marginalized groups.</li> <li>» The Oversight Board should take measures to ensure the needs and challenges of vulnerable users and marginalized groups are addressed while cases are under consideration.</li> <li>» The Oversight Board should provide a “user advocate” to support users making their case to the Oversight Board.</li> <li>» Facebook should provide resources to allow the Oversight Board to hear cases in multiple languages.</li> </ul>
<p><b>Remedy</b>  <i>Provide pathways to effective remedy.</i></p>	<ul style="list-style-type: none"> <li>» Facebook should implement Oversight Board decisions by providing remedy to users in the form of satisfaction (i.e., apology and explanation) and restitution.</li> <li>» Where warranted, the Oversight Board should have the power to require Facebook to provide remedy in the form of rehabilitation and financial compensation.</li> <li>» Facebook’s review of an Oversight Board decision should consider appropriate measures to minimize the risk of the same adverse impact reoccurring in the future.</li> <li>» Non-Facebook/non-Instagram users should have a channel to access the Oversight Board for use if content directly or indirectly impacts them.</li> <li>» The Oversight Board process should be clear, transparent, and predictable.</li> </ul>

	<ul style="list-style-type: none"> <li>» Facebook should review its own appeals process (i.e., the process prior to a case reaching the Oversight Board) against the effectiveness criteria for operational-level grievance mechanisms contained in Principle 31 of the UNGPs.</li> </ul>
<p><b>Decision-making</b> <i>Make rights-based decisions and ensure that decisions made by the Oversight Board are effectively integrated into Facebook.</i></p>	<ul style="list-style-type: none"> <li>» Facebook should incorporate a firm commitment to international human rights standards into the Oversight Board's governance charter and bylaws.</li> <li>» Facebook should explain the link between human rights and Facebook's values.</li> <li>» The Oversight Board should provide or procure training for all Oversight Board members and Administration staff in human rights, including best practice for operational-level grievance mechanisms.</li> <li>» Facebook should include the Oversight Board in consultations about potential changes to the Community Standards.</li> <li>» Facebook should respond formally to any changes to the Community Standards recommended by the Oversight Board.</li> </ul>
<p><b>Informed Consent</b> <i>Ensure that relevant users provide consent for each case and can understand both risks and rights when consenting.</i></p>	<ul style="list-style-type: none"> <li>» Facebook should ensure that all participants in Oversight Board processes, especially vulnerable users and rightsholders, provide informed consent for participation in a case.</li> <li>» Facebook should ensure that the users/rightsholders who have cases reviewed by the Oversight Board are privy to all the information and evidence used in the Board's decision, aside from that withheld for privacy, security, and other legitimate reasons.</li> </ul>
<p><b>Safety and Integrity</b> <i>Address new human rights risks arising from the existence of the Oversight Board.</i></p>	<ul style="list-style-type: none"> <li>» Facebook and the Oversight Board should apply the Global Network Initiative (GNI) Principles and record any efforts by governments to interfere with the work of the Oversight Board.</li> <li>» There should be a comprehensive safety and security plan for Oversight Board members and Administration staff.</li> <li>» Facebook should anticipate and mitigate the risk of retaliation (or other security risks) for users/rightsholders associated with individual cases.</li> </ul>
<p><b>Transparency</b> <i>Account for how human rights impacts are addressed through external communications.</i></p>	<ul style="list-style-type: none"> <li>» The Oversight Board should publish an annual report.</li> <li>» The Oversight Board should compile a public repository of cases and decisions made by the Oversight Board.</li> </ul>

## VISUAL SUMMARY

# SUBSTANTIVE RECOMMENDATIONS

Oversight Board **expresses** commitment to a human rights-based approach

### Governance Charter

International human rights standards are incorporated into the Oversight Board's Governance Charter and Bylaws.

### Values

The link between human rights and Facebook's list of values is explained.

### Principles

Legitimacy, necessity, proportionality, and nondiscrimination.



Oversight Board **reviews** cases that represent a wide range of human rights harms, and understands the human rights impacts associated with each case.

### Physical Harm and Bodily Integrity Risk

(e.g., psychological harm and mental integrity; right to life; human trafficking)

### Civil Liberties Risk

(e.g., nondiscrimination; democratic participation; privacy; fair public hearing)

### Risk to Basic Needs

(e.g., inability to access services or opportunities; right to rest and leisure)



Oversight Board **prioritizes cases** that present the most severe human rights harms.

### Scale

How serious the impacts are for the victim.

### Scope

The number of people affected

### Irremediable Character

Whether a remedy will restore the victim to the same or equivalent position before the harm.



Oversight Board reviews cases that encompass a **wide range of vulnerable users** and marginalized groups.

### Formal Discrimination

Laws or policies that favor one group over another.

### Societal Discrimination

Cultural or social practices that marginalize some and favor others.

### Practical Discrimination

Marginalization due to life circumstances (e.g., poverty).

### Hidden Groups

People who can't speak up for their rights (e.g., undocumented migrants, rape victims).





## VISUAL SUMMARY

# PROCEDURAL RECOMMENDATIONS

Oversight Board is consistent with **UNGPs' effectiveness criteria** for operational grievance mechanisms.

**Legitimate**

**Accessible**

**Predictable**

**Equitable**

**Transparency**

**Transparent**

**Source of Continuous Learning**

UNITED NATIONS  
SUSTAINABLE PRINCIPLES  
ON BUSINESS  
& HUMAN RIGHTS

Oversight Board and Facebook provide **effective access to remedy** when Facebook causes or contributes to harm.

**Satisfaction**

(e.g., apology; acknowledging the harm)

**Restitution**

(Restoring or removing content)

**Guarantee of Non-Repetition**

(Altering policies, processes, products)

**Rehabilitation**

(e.g., social services; psychological support)

**Compensation**

(e.g., money in cases when damage can be economically assessed)



Oversight Board is accessible to **vulnerable populations** and marginalized groups.

**Diverse Oversight Board Members and Administration Staff**

**Promoting Availability**

**Multiple Languages**

**Access for Non-Users**

**Providing a "User Advocate"**

**Securing Informed Consent**

**Protecting Privacy and Security**



Oversight Board is transparent, and Facebook incorporates Oversight Board decisions into **business operations**.

**Timely Communication of Decisions**

**Annual Oversight Board Report**

(Qualitative narrative and quantitative data)

**Gender-Disaggregated Data**

**Repository of Cases**

**Downstream Impacts**

(Facebook revises policies, processes, products)



## 2. Project Overview and Methodology

### 2.1 PROJECT OVERVIEW

In November 2018, Facebook CEO Mark Zuckerberg announced plans to “create a new way for people to appeal content decisions to an independent body, whose decisions would be transparent and binding”.<sup>1</sup> The independent body would be designed to prevent the concentration of too much decision-making within Facebook teams, establish accountability and oversight for content decisions, and provide assurance that content decisions are made in the best interests of the community, rather than for commercial reasons.

In January 2019, Facebook published a draft charter setting out the scope and structure of an Oversight Board, including membership (such as the number of Board members, their diversity, and how they are selected) and further details on how decisions would be made (such as how cases would be selected, how decisions are made and disclosed, and how independence can be assured).<sup>2</sup>

In May 2019, Facebook commissioned BSR to undertake a human rights review of the Oversight Board. The purpose of this review is to inform the final charter and operations of the Oversight Board such that it is consistent with human rights-based approaches. The specific objectives of the review agreed with Facebook are to:

- » Identify improvements that would help align the Oversight Board with human rights principles, standards, and methodologies.
- » Apply the Global Network Initiative (GNI) Principles and Implementation Guidelines.
- » Improve the quality, consistency, and coherency of decision-making by the Oversight Board.
- » Inform a prevention and mitigation plan for potentially adverse human rights impacts associated with the Oversight Board.

BSR undertook this human rights review in parallel with Facebook’s public consultation on the draft charter and bylaws for the Oversight Board. The final charter for the Oversight Board was published in September 2019 as BSR’s work came to a close, with the bylaws still under development. It should also be noted that the BSR review focuses on human rights issues of relevance to the Oversight Board and is not intended to be a comprehensive review of the Oversight’s Board’s overall charter, bylaws, procedures, or operations.

Furthermore, this human rights review of the Oversight Board is not a human rights assessment of Facebook’s Community Standards themselves or of the Facebook appeals process. This review is also not an audit of Facebook Community Standards implementation.

---

<sup>1</sup> <https://www.facebook.com/notes/mark-zuckerberg/a-blueprint-for-content-governance-and-enforcement/10156443129621634>.

<sup>2</sup> <https://newsroom.fb.com/news/2019/01/oversight-board/>.

## 2.2 THE FACEBOOK COMMUNITY STANDARDS AND THE OVERSIGHT BOARD

The Facebook Community Standards outline what is and is not allowed on Facebook and apply globally to all types of content across all Facebook products. They are founded upon the values of authenticity, safety, privacy, and dignity. The stated goal of the Community Standards is to “encourage expression and create a safe environment,”<sup>3</sup> and key topics include violence and criminal behavior, safety, objectionable content, integrity and authenticity, and respecting intellectual property.

Facebook removes content that violates the Community Standards, and sometimes takes further action against people who repeatedly violate the Community Standards. However, sometimes Facebook makes mistakes regarding Community Standards enforcement decisions, so Facebook also maintains a process for appealing and restoring content. In Q1 2019, around 25 million pieces of content were appealed, and around 6.4 million pieces of content were restored after appeal.

The purpose of the Oversight Board is to make independent decisions about the most challenging content on the Facebook and Instagram platforms and issue policy advisory opinions on Facebook’s content policies. The Oversight Board will be made up of independent experts and will provide oversight of Facebook’s content decisions.

This human rights review took as its starting point the draft charter for the Oversight Board that was published in January 2019<sup>4</sup> and subsequently, the full charter published in September 2019.<sup>5</sup> Our analysis was also supplemented by decisions taken by Facebook about the Oversight Board during the time this BSR review was being undertaken. Key features of the charter include:

Membership	Decision-Making
<ul style="list-style-type: none"> <li>» Forty global experts with experience in matters relating to digital content and governance, including free expression, civic discourse, equality, safety, privacy and technology</li> <li>» Supported by full-time staff</li> <li>» Initial members of the cohort are selected by Facebook, then the remaining members are jointly chosen by Facebook and the initial members with special consideration for diversity and balance</li> <li>» Future cohorts selected by the Oversight Board</li> <li>» Removal only when terms of appointment are violated</li> </ul>	<ul style="list-style-type: none"> <li>» Make principled, independent decisions about important pieces of content</li> <li>» Decisions are binding on specific content being reviewed, and will influence policy</li> <li>» Cases referred by Facebook/Instagram users who disagree with a decision, and by Facebook itself (e.g., difficult decisions, debated decisions, decisions inconsistent with Facebook values)</li> <li>» Cases heard and selected by rotating panels</li> <li>» Ability to call upon experts (e.g., for linguistic, cultural, sociopolitical expertise), Facebook/Instagram users, or other relevant stakeholders</li> </ul>

<sup>3</sup> <https://www.facebook.com/communitystandards/>.

<sup>4</sup> <https://newsroom.fb.com/news/2019/01/oversight-board/>.

<sup>5</sup> <https://newsroom.fb.com/news/2019/09/oversight-board-structure/>.

<ul style="list-style-type: none"> <li>» Three-year terms, for a maximum of three terms</li> </ul>	<ul style="list-style-type: none"> <li>» Panels will be expected, in general, to defer to past decisions</li> <li>» Board decisions will be made publicly available and archived in a database of case decisions</li> <li>» Board member names will be made public but not associated with particular decisions</li> <li>» No policy setting mandate, but policy recommendations may be requested or provided</li> <li>» No cases in which reversing Facebook’s decision would violate the law</li> <li>» Facebook and Instagram are in-scope; WhatsApp and Messenger are not in-scope</li> </ul>
--	---

Facebook’s more detailed plans for the Oversight Board evolved in parallel with this BSR human rights review. Key elements of relevance to this human rights review in-process, or recently decided at the time of writing, include:

- » **Oversight Board Membership**—criteria for ensuring Oversight Board member independence and addressing conflicts of interest; plans for training and onboarding.
- » **Oversight Board Decision-Making**—criteria for selecting cases based on “Significance” (severity, scale, public discourse) and “Difficulty” (disputed, uncertain, competing); a process to select five-member panels to hear each case.
- » **Facebook Implementation**—use of “impact meetings” inside Facebook to review the impact of Oversight Board decisions on Facebook policies, products, and processes, and to establish plans to address them.
- » **Oversight Board Support**—creation of an Oversight Board Administration that will be housed outside Facebook in a Limited Liability Company created by the Trust.

However, while BSR used our most up-to-date understanding of how the Oversight Board will work in practice in this review, the real-time nature of this review meant that ***it was not possible to undertake a “point-by-point” comparison between a human rights-based approach for the Oversight Board and Facebook’s approach in practice.*** To overcome this sequencing challenge, this review centers on BSR’s perspective on what an ideal human rights-based approach for the Oversight Board requires, and readers can compare BSR’s recommendations against the complete Oversight Board governance documentation, once it’s published.

## 2.3 HUMAN RIGHTS REVIEW METHODOLOGY AND THEMES

BSR deployed a methodology that combined a human rights assessment methodology based on the UN Guiding Principles on Business and Human Rights (UNGPs) with a deeper consideration of the various human rights principles, standards, and methodologies upon which the UNGPs were built.

### Human Rights Themes and Key Questions

After reviewing the draft charter for the Oversight Board, BSR identified seven human rights themes and 16 accompanying questions to explore in this review, as listed in the table below.

Theme	Questions
<b>Harms and Impacts</b>	<ul style="list-style-type: none"> <li>» How can the severity of actual or potential human rights impacts influence the selection and prioritization of cases considered by the Oversight Board?</li> <li>» Which internationally recognized human rights are most relevant to the content of the Community Standards and work of the Oversight Board?</li> <li>» How can the Oversight Board anticipate the harms of the future, not just the known harms of the past?</li> <li>» How can the Oversight Board consider the cumulative impacts that might arise from individual content decisions?</li> </ul>
<b>Vulnerable Groups</b>	<ul style="list-style-type: none"> <li>» How can the interests of vulnerable and marginalized populations be effectively integrated into the work of the Oversight Board?</li> <li>» Who are vulnerable and marginalized groups in the context of the Facebook and Instagram platforms?</li> </ul>
<b>Remedy</b>	<ul style="list-style-type: none"> <li>» What role should the Oversight Board play in helping Facebook provide users with pathways to effective remedy?</li> <li>» How should the effectiveness criteria for operational-level grievance mechanisms contained in Principle 31 of the UNGPs be integrated into the work of the Oversight Board?</li> </ul>
<b>Decision-Making</b>	<ul style="list-style-type: none"> <li>» How should the Oversight Board counterbalance rights that may be in conflict (e.g., security and freedom of expression)?</li> <li>» How can Facebook ensure that Oversight Board members are fully aware of the international human rights standards and human rights-based approaches relevant to their work?</li> <li>» What is required for the Oversight Board’s decisions to be embedded into Facebook’s own decision-making process, consistent with the UNGPs?</li> </ul>
<b>Informed Consent</b>	<ul style="list-style-type: none"> <li>» How can Facebook ensure that consent to have a case reviewed is informed? Consent is defined by both participation (i.e., the ability to participate in decisions) and empowerment (i.e., the ability to understand both risks and rights when consenting).</li> <li>» What privacy risks will arise from the work of the Oversight Board, and how can they be prevented or mitigated?</li> </ul>
<b>Safety and Integrity</b>	<ul style="list-style-type: none"> <li>» Is there risk that governments will seek to interfere in the work of the Oversight Board (e.g., data requests, case requests, local regulations)? What form might this interference take, and what response from Facebook would be consistent with the company’s GNI commitments?</li> <li>» Is there a risk that Oversight Board members and the users participating in its processes will be placed at risk, such as by retaliation? What form</li> </ul>

	might this take, and what response from Facebook would be consistent with the company's GNI commitments?
<b>Transparency</b>	» How can the Oversight Board fulfill the transparency, reporting, and communications expectations contained in Principle 21 of the UNGPs?

### Relevant Human Rights

Companies today are expected to respect all human rights, and it is understood that businesses can potentially impact any of them. Furthermore, all human rights are indivisible, interdependent, and interrelated: The improvement of one right facilitates advancement of the others; the deprivation of one right adversely affects others.

In this review, BSR used the international legal human rights framework, with the following international instruments providing the baseline:

- » The Universal Declaration of Human Rights
- » The International Covenant on Civil and Political Rights
- » The International Covenant on Economic, Social and Cultural Rights
- » The International Convention on the Elimination of All Forms of Racial Discrimination
- » The Convention on the Elimination of All Forms of Discrimination against Women
- » Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
- » Convention on the Rights of Persons with Disabilities
- » The eight International Labour Organization (ILO) Core Conventions
- » The Convention on the Rights of the Child
- » ILO Convention 169 on Indigenous Peoples
- » The Geneva Conventions and the Rome Statute

In specific cases, additional international human rights instruments may be applicable. Where geographically relevant, regional human rights instruments may also be applied.

### Rightsholder and Stakeholder Consultation

Effective human rights due diligence requires meaningful engagement with rightsholders whose human rights may be impacted by the company, or such reasonable alternatives as independent expert resources, human rights defenders, and other representatives from civil society. Particular attention should be paid to human rights impacts on individuals from vulnerable groups or on populations that may be at heightened risk of marginalization.

For this human rights review, BSR incorporated stakeholder perspectives as follows:

- » All written contributions to Facebook's public consultation on the draft charter and operations Oversight Board, including more than 100 essays.<sup>6</sup>
- » Notes from in-person stakeholder consultations undertaken by Facebook about the draft charter and operations of the Oversight Board, including six workshops and 22 roundtables attended by more than 650 people from 88 countries.
- » A peer review by five experts in business and human rights.

<sup>6</sup> <https://newsroom.fb.com/news/2019/06/global-feedback-on-oversight-board/>.

BSR engages with a diverse range of rightsholders and stakeholders when undertaking human rights due diligence for companies across all industries. While these multiple engagements were not specifically designed to inform this review, BSR supplemented the stakeholder inputs listed above with our own insights into the human rights concerns of rightsholders and stakeholders gathered in a variety of contexts, including previous human rights impact assessments undertaken for Facebook.

### Project Phases

BSR undertook this human rights review from May to November 2019 following four main phases. As mentioned above, Facebook's plans for the Oversight Board evolved in real time while BSR undertook this review; for this reason, it was not possible to undertake a single "moment in time" comparison between a human rights-based approach for the Oversight Board and Facebook's approach in practice. However, BSR did gather significant in-depth insights into evolving plans for the Oversight Board through extensive document review and discussions with relevant Facebook staff members.

Phase	Activities
<b>Immersion and Engagement</b> Increase familiarity with human rights issues relevant to the Oversight Board	<ul style="list-style-type: none"> <li>» Interview relevant Facebook staff</li> <li>» Review submissions to Facebook consultations about the draft charter and operations of the Oversight Board</li> <li>» Review outputs from Facebook Oversight Board dialogues and workshops</li> <li>» Extensive review of internal Facebook planning and decision-making documents</li> <li>» Review of relevant public literature</li> </ul>
<b>First Draft</b> Write an initial human rights review of the Facebook Oversight Board	<ul style="list-style-type: none"> <li>» Dialogue and review with Facebook</li> </ul>
<b>Peer Review</b> Structured engagement with independent external stakeholders and experts	<ul style="list-style-type: none"> <li>» Written peer review comments by five experts in human rights, freedom of expression, and social media</li> </ul>
<b>Final Draft</b> Finalize the report and commence implementation of its recommendations	<ul style="list-style-type: none"> <li>» Revised and final BSR draft</li> <li>» Presentation to Facebook staff</li> <li>» Presentation to Oversight Board</li> </ul>

## 3. Recommendations: Harms and Impacts

### 3.1 ANALYSIS

Companies have a responsibility to address all their actual and potential human rights impacts through prevention, mitigation, and remediation. However, it is not always possible for companies to address all actual and potential human rights impacts simultaneously, and for this reason the UNGPs expect companies to prioritize the most severe human rights impacts. Severity can be judged by characteristics such as scope (i.e., the number of people affected by the harm), scale (i.e., the seriousness of the harm for the victim), and remediability (i.e., whether a remedy will restore the victim to the same or equivalent position before the harm).

The Oversight Board is a good example of a situation wherein not all actual and potential impacts can be addressed simultaneously. Facebook makes millions of content decisions every week and receives around four to five million appeals against these decisions every year. The Oversight Board cannot realistically review even a small portion of these cases and will need a method to prioritize cases (or patterns of cases) for review.

#### ***How can the severity of actual or potential human rights impacts influence the selection and prioritization of cases considered by the Oversight Board?***

BSR's starting point in this human rights review is that all human rights—not just the right to freedom of expression—can be impacted by content decisions. Human rights as diverse as the right to democratic participation, the right to a fair public hearing, and the right to bodily security can be impacted by a decision to remove or retain content.

This starting point brings three key implications: (1) that it will be important to understand the human rights at stake in each case that could be reviewed by the Board; (2) that different human impacts bring different levels of severity; and (3) that the most severe cases should be prioritized.

However, the question then becomes “how” to prioritize cases, given the three UNGPs criteria of scope (i.e., the number of people affected by the harm), scale (i.e., the seriousness of the harm for the victim), and remediability (i.e., whether a remedy will restore the victim to the same or equivalent position before the harm).

The scope criteria can be addressed to an extent by Facebook and the Oversight Board having insight into volume trends relating to the number of cases that impact a particular human right; the more cases of a particular type, the more important it will be for the Oversight Board to consider them. However, the scale and remediability criteria are more difficult to prioritize and, in BSR's experience, require judgment on a case-by-case basis. For this reason, BSR's recommendations are based on the premise that the Oversight Board should use its best professional judgment when selecting cases (rather than having any quantitative formula), and that this judgment should be based on the three criteria of scope, scale, and remediability. This will be especially important, given challenges relating to the scale of cases of potential relevance to the Oversight Board.

BSR notes that this recommendation is similar to—but, in some important respects, different than—the model being proposed by Facebook for how they will prioritize cases they submit to the Oversight Board. This model is based on the twin dimensions of “Significance” (severity, scale, public discourse) and



“Difficulty” (disputed, uncertain, competing). BSR notes that the Oversight Board may adopt its own approach for selecting and prioritizing cases.

***Which internationally recognized human rights are most relevant to the content of the Community Standards and work of the Oversight Board?***

To inform this human rights review, BSR undertook a gap assessment between the content of Facebook’s Community Standards and the full list of internationally recognized human rights. A key insight from this comparison is that a very wide range of human rights—not just freedom of expression—will be relevant to the Oversight Board. As we describe in our recommendations, it will be essential that the relevant human rights impacts are well-understood for each case considered by the Oversight Board and that a wide range of different human rights impacts is reflected in the portfolio of cases considered by the Oversight Board over time.

***How can the Oversight Board anticipate the harms of the future, not just the known harms of the past?***

While the primary function of the Oversight Board is to review cases that have happened in the past, the real promise of the Oversight Board is to help avoid, prevent, and mitigate harms that may occur in the future. A significant source of leverage for the Oversight Board will be the ability to influence the guidance, training, and direction received by a variety of functions in Facebook—such as Community Standards enforcement, Community Standards policy, and product design—and raise the profile of emerging human rights risks. The “impacts meeting” that Facebook plans to hold following Oversight Board meetings will be an essential focal point for this leverage.

For this reason, it will be important that the Oversight Board does not just select cases based on their prevalence today, but also has a mechanism to identify novel cases, emerging trends, and cases that may arise alongside upcoming social, political, or economic developments. In this sense, by helping to identify and raise the profile of emerging human rights risks, the Oversight Board has an essential role to play in Facebook’s overall human rights due diligence approach. It will be important that Oversight Board members charged with selecting cases can discuss emerging trends and future risks with relevant Facebook staff in a structured manner, as described in our recommendations below.

It is also important to recognize the opportunity to learn from lessons of the past as a means of anticipating the harms of the future. While some risks may appear to be unforeseeable, they may in fact be rooted in patterns of behavior that repeat themselves in different but similar ways, evolving over time with the advent of new technology and behavioral environments.

***How can the Oversight Board consider the cumulative impacts that might arise from individual content decisions?***

The concept of cumulative impacts is the notion that one case taken in isolation may not have significant human rights impacts but, when combined with thousands of similar cases, may result in severe human rights impacts. This can be especially challenging in the case of Community Standards enforcement: One case alone may not violate the Community Standards, but a combination of cases may, for example, create a hostile environment for users and lead to human rights violations.

The relevance of cumulative impacts varies case-by-case and can impact issues of policy. For this reason, it will be important that the notion of cumulative impacts is made a conscious consideration in Oversight Board case selection, deliberations, and content decisions.

## 3.2 BSR'S RECOMMENDATIONS

Recommendation	Explanation
<p><b>A wide range of relevant human rights harms (beyond just freedom of expression) that may result from content decisions should be identified by Facebook and the Oversight Board.</b></p> <p>Using international human rights law as the foundation, this list will likely include the following.</p> <ul style="list-style-type: none"> <li>» <b>Physical Harm and Bodily Integrity Risk:</b> Psychological harm and mental integrity; Right to life; Physical security, integrity, and bodily harm; Slavery, forced labor, human trafficking; Right to asylum; Identify theft.</li> <li>» <b>Civil Liberties Risk:</b> Freedom from discrimination; Equality before the law; Remedy by competent tribunal; Freedom from arbitrary arrest; Fair public hearing; Innocent until proven guilty; Loss of confidentiality or privacy; Loss of control over use of data; Freedom of thought, conscience, and religion; Freedom of opinion; Freedom of expression; Freedom of movement; Freedom of assembly and association; Cultural, religious, linguistic diversity; Democratic participation.</li> <li>» <b>Risk to Basic Needs:</b> Inability to access services or opportunities; Financial loss; Right to education; Right to social security; Right to engage in desirable work; Right to rest and leisure; Right to adequate standard of living; Intellectual property rights; Right to participate in the cultural life of the community; Tangible property rights.</li> </ul>	<p>While freedom of expression is the most apparent potentially adverse impact arising from a content decision, many other human rights can be impacted, too. These human rights impacts may vary significantly from case to case.</p> <p>For example, a decision to leave photos of “wanted suspects” up may impact the right to a fair public hearing; a decision to remove content warning of impending danger may impact the right to physical security, integrity, and bodily harm.</p> <p>For this reason, a human rights-based approach implies that the Oversight Board should be aware of the human rights impacts at stake in each case and should not limit itself to considerations of freedom of expression.</p> <p>Principle 12 of the UNGPs states that the business responsibility to respect human rights refers to all internationally recognized human rights—understood, at a minimum, as those expressed in the International Bill of Human Rights. Because business enterprises can have an impact on virtually the entire spectrum of internationally recognized human rights, their responsibility to respect applies to all such rights.</p> <p>Here, BSR has listed human rights, using a three-part structure that we have found to be practical and decision-useful for companies; this three-part structure is not itself based on international human rights law.</p>
<p><b>The relevant human rights impacted by a content decision should be referenced by the Oversight Board in every case.</b></p> <p>BSR recommends that material reviewed by the Oversight Board reference the relevant human rights potentially impacted by that case for each case it considers. This can be achieved by</p>	<p>Providing this information to Oversight Board members is an essential component of taking a rights-based approach. This approach will also help the Oversight Board make decisions when potentially competing human rights are under consideration, such as freedom of expression and bodily security.</p>

<p>incorporating a human rights impact section into the standard case template used by the Board.</p> <p>This reference needn't go into significant detail but should be enough to make Oversight Board members aware of the human rights impacts at stake in each case. Multiple examples are provided in Annex B.</p>	
<p><b>Over time, the Oversight Board should ensure that the mix of cases it reviews encompasses a wide range of potential human rights harms.</b></p> <p>While an even distribution of cases across all human rights is neither feasible nor desirable, it would be highly beneficial for the portfolio of cases considered by the Oversight Board to encompass a wide range of potentially impacted human rights.</p> <p>Implementing this recommendation will require that the Administration staff record the human rights impacted in each case and that the distribution of cases across potential human rights harms be tracked over time. In addition, the Administration staff would proactively seek cases impacting human rights that have not been considered (or very rarely considered) by the Oversight Board in the past.</p> <p>BSR notes that the Oversight Board will have the authority to select its own cases, but hopes that the Oversight Board implements this recommendation.</p>	<p>The Oversight Board will play an important role in improved enforcement of the Facebook Community Standards. For example, the policy enforcement or product reforms that follow an Oversight Board decision will reduce the risk of the same error occurring again, and the Oversight Board's decisions will set precedent for future cases. For this reason, it is important that the Oversight Board consider cases that, taken in combination, cover all relevant human rights.</p> <p>Principle 12 of the UNGPs states that the business responsibility to respect human rights refers to internationally recognized human rights—understood, at a minimum, as those expressed in the International Bill of Human Rights. Because business enterprises can have an impact on virtually the entire spectrum of internationally recognized human rights, their responsibility to respect applies to all such rights.</p>
<p><b>The Oversight Board should prioritize cases that present the most severe human rights harms, using the UNGPs' scope, scale, and remediability criteria.</b></p> <p>The UNGPs judge severity according to scale (how serious the impacts are for the victim), scope (the number of people affected) and irremediable character (whether a remedy will restore the victim to the same or equivalent position before the harm). The Oversight Board should use these three criteria when prioritizing which cases to select.</p> <p>In BSR's conversations with Facebook, it was clear that scale and scope were already being</p>	<p>Taking this approach helps ensure that cases selected by the Oversight Board are those with the greatest significance to rightsholders—either individually or collectively, as part of groups—rather than ones that happen to be of interest to well-resourced organizations or that stir the greatest public interest.</p> <p>While companies should address all their adverse human rights impacts, it may not always be possible to address them simultaneously. Principle 24 of the UNGPs states that where it is necessary to prioritize actions to address actual and potential adverse human rights impacts, business enterprises should first seek to prevent and mitigate those that are most severe or where</p>

<p>well considered for the selection of cases, while irreparable character would be a new criterion.</p> <p>Taking this approach requires that the Oversight Board be provided with good insight into the volume of cases that exist for each harm so that it can understand trends and patterns.</p> <p>However, in BSR's experience, there is no satisfactory way of using quantitative methods to "rank" human rights according to their scope and remediability; instead, we increasingly use qualitative judgement for those elements—for example, by prioritizing immediate risks to bodily security over other adverse impacts. We recommend the same approach for the Oversight Board.</p> <p>In doing so, BSR recommends that the Oversight Board prioritize cases that raise issues of physical harm and bodily integrity risk and those civil liberty issues (such as freedom of expression, right to privacy, freedom of assembly, freedom from discrimination, and right to democratic participation) that are most closely associated with the impact of Facebook on human rights.</p> <p>BSR notes that the Oversight Board will have the authority to select its own cases, but hopes that the Oversight Board implements this recommendation.</p>	<p>a delayed response would make them irreparable.</p>
<p><b>Cases that involve sexual harassment and gender-based violence should be prioritized by the Oversight Board as severe human rights impacts.</b></p> <p>When selecting and prioritizing cases, those that involve sexual harassment and gender-based violence should be given high priority.</p>	<p>The new gender framework for the UNGPs (Gender dimensions of the Guiding Principles on Business and Human Rights) states that companies should always regard sexual harassment and gender-based violence as severe human rights impacts.</p>
<p><b>Facebook and the Oversight Board can use strategic foresight (or "futures") methodologies to help identify cases that may become more common in the future.</b></p> <p>The Oversight Board (and/or its Administration) can participate in structured processes designed to identify the more common and severe cases of the future. These processes would take into consideration ways in which the Facebook/Instagram platforms may evolve (e.g.,</p>	<p>By identifying emerging cases that may become more common in the future, the Oversight Board has the opportunity to propose improvements to the Community Standards and their implementation prior to the worst harms occurring. This increases the likelihood of intervention before cases become irreparable and before cumulative impacts happen.</p> <p>Principle 17 of the UNGPs states that human rights due diligence should recognize that human</p>

<p>greater prominence of Groups and private communications), as well as how the surrounding social context may change over time (e.g., the “camera’s everywhere” trend).</p> <p>This recommendation can be implemented at a later date once the Oversight Board has gained experience.</p>	<p>rights risks may change over time as the business enterprise’s operations and operating context evolve.</p> <p>Principle 18 of the UNGPs states that to gauge human rights risks, companies should identify and assess any actual or potential adverse human rights impacts with which they may be involved, either through their own activities or as a result of their business relationships.</p>
<p><b>The Oversight Board’s scope should expand over time.</b></p> <p>At present, the Oversight Board’s scope does not include Facebook algorithms or changes to the visibility of a piece of content, such as its promotion or de-prioritization in the News Feed.</p> <p>These elements can have significant human rights impacts. For example, while one piece of content may not violate the Community Standards in isolation, it might result in significant adverse impact when taken in combination with a large volume of similar content and promoted via the News Feed algorithm.</p> <p>Finally, the Board’s scope at the time of writing does not encompass rightsholders who may have been impacted by content on Facebook or Instagram, but who themselves are not Facebook or Instagram users.</p> <p>An increase in the Board’s scope could also account for the cumulative impacts associated with an aggregation of user and actor behavior over time.</p> <p>BSR recommends that the Oversight Board’s scope be revisited annually with the intention of expanding the Oversight Board’s scope over time, beyond content decisions, to include items such as advertisements, the visibility of content, additional products, non-users, and the cumulative impact of multiple posts.</p>	<p>The Oversight Board is a unique and innovative approach to content moderation and a thoughtful response to the complex dilemmas associated with freedom of expression and personal security on social media platforms. It is therefore to be expected that some features will not be available at the inception of the Board and in its early work.</p> <p>However, once operations of the Oversight Board become better known in practice, and lessons begin to be learned, it will be necessary to take a continuous-improvement approach and expand the Oversight Board’s responsibility over time.</p> <p>Expanding the Oversight Board’s scope to include algorithms and content visibility would bring new elements that may require changes to membership, expertise, decision-making, processes, and procedures. These elements should accordingly be reviewed by Facebook and the Oversight Board as scope changes are considered.</p> <p>Expanding the Oversight Board’s scope to encompass WhatsApp and Messenger would bring obstacles associated with the encrypted and private nature of WhatsApp and Messenger communications. BSR has not developed recommendations for how these obstacles could be overcome in practice; however, Facebook’s longer-term emphasis on interoperability and private communications suggests that this issue will merit deeper exploration in the future.</p> <p>BSR notes that, at the time of writing, Facebook is intending to create a clear amendment process for reviewing and expanding the Board’s scope over time.</p>

## 4. Recommendations: Vulnerable Groups

### 4.1 ANALYSIS

All human beings are born free and equal in dignity and rights. However, while the UNGPs should be implemented in a nondiscriminatory manner, they emphasize that companies should pay particular attention to the rights, needs, and challenges of individuals from groups or populations that may be at heightened risk of becoming vulnerable or marginalized. In addition, the recently published gender framework for the UNGPs emphasizes the differentiated and disproportionate impact of business activities for women and girls.<sup>7</sup>

Vulnerable groups are those that face being marginalized, discriminated against, or exposed to other adverse human rights impacts with greater severity and/or lesser potential for remediation. However, while examples of vulnerable groups frequently include children, women, indigenous peoples, ethnic minorities, lesbian, gay, bisexual, transgender/transsexual, and intersexed (LGBTI) people, or persons with disabilities, a human rights-based approach requires a more nuanced method. Vulnerability depends on context, and someone who may be powerful in one context may be vulnerable in another. BSR's human rights methodologies are based on four dimensions of vulnerability:

- » **Formal Discrimination**—laws or policies that favor one group over another.
- » **Societal Discrimination**—cultural or social practices that marginalize some and favor others.
- » **Practical Discrimination**—marginalization due to life circumstances, such as poverty.
- » **Hidden Groups**—people who might need to remain hidden and consequently may not speak up for their rights, such as undocumented migrants and rape victims.

BSR considered two questions to inform the theme of how the Oversight Board can pay particular attention to vulnerable and marginalized groups.

#### ***How can the interests of vulnerable and marginalized populations be effectively integrated into the work of the Oversight Board?***

During this review, BSR identified four main ways in which the interests of vulnerable and marginalized groups can be integrated into the work of the Oversight Board. These efforts will be especially important to prevent a U.S.-centric approach to decision-making.

First, the Oversight Board should be diverse and include members who are themselves from vulnerable or marginalized groups, or at least have a well-developed insight into the concept of vulnerability and the needs of marginalized groups. BSR notes that achieving Oversight Board diversity has been a significant priority for Facebook during the Oversight Board setup phase. However, while diversity is necessary, there is no way this will be sufficient by itself. The Oversight Board will never be big enough to adequately represent all vulnerable and marginalized populations.

Second, vulnerable and marginalized populations should be able to access the Oversight Board. In order to do so, they may require additional support to overcome barriers of language, literacy, technological fluency, social stigma, or cultural expectations related to gender roles, among others. While it may be impractical for the appeals function and Oversight Board process to be available in the language of every

---

<sup>7</sup> <https://www.ohchr.org/EN/Issues/Business/Pages/Reports.aspx#hrc>.

user on the Facebook platform, for example, Facebook should invest in making the function and the process as accessible as is reasonably possible, such as by offering it in the same languages the Community Standards are made available. Facebook can also seek to address other barriers, such as women who don't have autonomous or independent access to their phones, or Facebook/Instagram users who don't have a personal email address but were able to sign up to Facebook/Instagram via a third party.

Third, it is important that cases are selected by the Oversight Board with particular attention to the rights, needs, and challenges faced by individuals from vulnerable populations that may be at heightened risk of harm or marginalization. This implies that the Oversight Board and its staff should proactively identify the full range of groups that may be considered vulnerable or marginalized in a Facebook context and select cases that address their needs. When faced with a large number of potential cases and a limited amount of time to consider them, the Oversight Board should prioritize the selection of cases that will address the interests of vulnerable and marginalized populations.

Fourth, the interests of vulnerable and marginalized groups should be proactively addressed during the review of a case. Achieving this in practice will vary from case to case, but would likely include one or more of the following: commissioning research into the perspectives of vulnerable groups that may be relevant to a case; providing guidance, support, and advice to a vulnerable user to ensure that they can present their case effectively; and calling upon independent expert resources, human rights defenders, and civil society organizations that can provide insights and context relevant to the case.

### ***Who are vulnerable and marginalized groups in the context of the Facebook and Instagram platforms?***

With around 2.4 billion users from every country in the world, the task of identifying vulnerable and marginalized groups on Facebook is a highly complex undertaking. While a list of vulnerable groups can be created, there is no guarantee that this would be exhaustive. Identities intersect, and the importance of context is such that a list would never be static: Someone who is powerful in one context may be vulnerable in another.

A striking example is provided by the interests of celebrities on Facebook. In many contexts, celebrities are powerful, but their public profile can make them particularly vulnerable, especially when combined with characteristics such as gender, gender identity, sexuality, religion, ethnicity, or national origin.

For this reason, in order for the Oversight Board to pay particular attention to the rights, needs, and challenges of individuals from vulnerable and marginalized groups, it will be important to consider the status of rightsholders in each case from the following four perspectives:

- » **Formal Discrimination**—are there laws or policies that discriminate against the rightsholder?
- » **Societal Discrimination**—are there cultural, social, or political factors that might marginalize the rightsholder?
- » **Practical Discrimination**—are there life circumstances, such as poverty, that might marginalize the rightsholder?
- » **Hidden Groups**—are there barriers, such as fear of retaliation, that might prevent the rightsholder from speaking up about their interests?

It will be especially important to prioritize groups that have experienced prolonged or well-documented discrimination on Facebook/Instagram.

## 4.2 BSR'S RECOMMENDATIONS

Recommendation	Explanation
<p><b>The Oversight Board should be diverse across multiple dimensions of diversity.</b></p> <p>BSR notes that Facebook is actively seeking to achieve this goal for the first Oversight Board, considering factors such as geography, culture, gender, political viewpoints, religions, languages, race, age, ethnicity, and LGBTI status, among other factors. It will be important to ensure that special effort is made to recruit Oversight Board members from the Global South and from vulnerable and marginalized groups.</p> <p>Consistent with the diversity ambition, Facebook is also actively seeking Oversight Board members who are experts in technology or are human rights professionals, as well as Oversight Board members who are not.</p> <p>In addition to seeking a diverse Oversight Board membership, it is important for Facebook to remove such barriers for participation as financial compensation, language barriers, and time zone location. While BSR did not undertake a full audit of Facebook's approach to these factors, the Facebook staff establishing the Board is well-versed in these needs.</p>	<p>This recommendation has been a near-consensus view among everyone that has commented on the makeup of the Oversight Board.</p> <p>The UNGPs state that they should be implemented with particular attention to the rights and needs of, as well as the challenges faced by, individuals from groups or populations that may be at heightened risk of becoming vulnerable or marginalized.</p>
<p><b>The Oversight Board should establish and maintain the diversity of its Administration staff.</b></p> <p>BSR recommends that the Administration staff be diverse, taking into consideration such aspects as geography, culture, gender, political viewpoint, religion, language, race, age, ethnicity, and LGBTI status, among other factors.</p>	<p>While most commentary has focused on the diversity of the Oversight Board, we believe that it is essential for the Administration staff to itself be diverse, given the significant day-to-day role it will play. The staff must understand the needs and interests of Facebook users globally, especially vulnerable users and marginalized groups in the Global South.</p> <p>Principle 18 of the UNGPs states that to enable business enterprises to assess their human rights impacts accurately, they should seek to understand the concerns of potentially affected stakeholders by consulting them directly in a manner that takes into account language and other potential barriers to effective engagement.</p>



	<p>In situations wherein such consultation is not possible, business enterprises should consider reasonable alternatives such as consulting credible, independent expert resources, including human rights defenders and others from civil society.</p>
<p><b>Facebook should undertake a structured identification of different vulnerable user “personas,” identities, and categories.</b></p> <p>Facebook and the Board Administration can make use of a “list” of vulnerable groups and refer to this list when considering cases to ensure that the interests of vulnerable users and marginalized groups are prioritized during case selection. For example, this list can include: Children; LGBTI; Women and girls; Indigenous peoples; Elderly; Low income groups; People with disabilities; Ethnic or racial communities; Non-binary gender Identity; Immigrants, refugees, and migrants; Incarcerated people; Linguistic minorities; Political activists; Human rights defenders; Faith-based communities; and Rural communities.</p> <p>However, vulnerability is contextual. Someone considered powerful in one context may be vulnerable in a different context; vulnerability is overlapping and intersectional</p> <p>Moreover, Facebook’s base of over 2 billion users will include a much wider range of vulnerability factors than listed above.</p> <p>BSR recommends that Facebook develop a longer, more granular list of vulnerability “personas,” using the four dimensions of vulnerability listed below. Given the challenge of achieving this at a global level, we believe this exercise could be best undertaken at a country or regional level.</p> <ul style="list-style-type: none"> <li>» <b>Formal Discrimination:</b> Laws or policies that favor one group over another.</li> <li>» <b>Societal Discrimination:</b> Cultural or social practices that marginalize some and favor others.</li> <li>» <b>Practical Discrimination:</b> Marginalization due to life circumstances, such as poverty.</li> </ul>	<p>The UNGPs state that they should be implemented with particular attention to the rights and needs of, as well as the challenges faced by, individuals from groups or populations that may be at heightened risk of becoming vulnerable or marginalized.</p> <p>BSR recommends that the identification of different vulnerable user “personas” take place at the country or regional level, given the significant impact that local context has on vulnerability. As Facebook further develops its approach in conflict-affected markets, a locally informed appreciation of vulnerable groups will enhance the work of both Facebook itself and the Oversight Board.</p> <p>The UNGPs gender framework emphasizes the intersectional nature of discrimination and vulnerability.</p>

<p>» <b>Hidden Groups:</b> People who might need to remain hidden and consequently may not speak up for their rights, such as undocumented migrants and rape victims.</p>	
<p><b>The mix of cases reviewed by the Oversight Board should encompass a wide range of impacted vulnerable groups.</b></p> <p>While an even distribution of cases across all vulnerable groups is neither feasible nor desirable, it would be highly beneficial for the portfolio of cases considered by the Oversight Board to encompass a very wide range of different vulnerable groups.</p> <p>BSR notes that the Oversight Board will have the authority to select its own cases but hopes that the Oversight Board implements this recommendation.</p>	<p>Taking this methodical approach to case selection will help ensure that the Oversight Board doesn't focus a disproportionate amount of time on cases raised by well-resourced organizations that know how to use the system. By deliberately reviewing the mix of cases through a vulnerability lens, the Oversight Board can help ensure that vulnerable and marginalized groups benefit from the Oversight Board's work.</p> <p>The UNGPs state that they should be implemented with particular attention to the rights and needs of, as well as the challenges faced by, individuals from groups or populations that may be at heightened risk of becoming vulnerable or marginalized.</p>
<p><b>Facebook should establish measures to ensure the Oversight Board is accessible to vulnerable groups, including while cases are under consideration.</b></p> <p>It has been BSR's experience in conducting stakeholder engagement in low- and middle-income countries that a variety of accessibility barriers arise in different cultural, geographic, and political contexts. These may not be accommodated for during product design.</p> <p>For example:</p> <p>» Some Facebook/Instagram users may not have a personal email address and may have signed up to the platform using a third party. This might impede them from accessing the Oversight Board if it requires the use of third-party applications, which in turn require email addresses to download.</p> <p>» Some Facebook/Instagram users may not have autonomous or independent access to their phones or computers, particularly women. They may be prevented by their families from submitting an appeal, be afraid of submitting an</p>	<p>The UNGPs' effectiveness criteria for remedy describe the need for accessibility: "A mechanism must be publicized to those who may wish to access it and provide adequate assistance for aggrieved parties who may face barriers of access. ... Barriers to access may include a lack of awareness of the mechanism, language, literacy, costs, physical location, and fear of reprisal."</p> <p>Principle 18 of the UNGPs states that to enable companies to assess their human rights impacts accurately, they should "seek to understand the concerns of potentially affected stakeholders by consulting them directly in a manner that takes into account language and other potential barriers to effective engagement."</p>

<p>appeal, or experience retaliation as a result of submitting an appeal.</p> <p>BSR recommends that Facebook periodically consult with vulnerable groups about any risks, fears, or barriers they have associated with using the appeals function and process, and use the four dimensions of vulnerability “personas,” described above, to inform the consultations. This consultation should inform the design of the Oversight Board’s process so that it respects cultural norms and other social dynamics, such as assigning female case workers for cases with a sensitive gender dimension.</p>	
<p><b>Facebook should undertake a marketing and communications campaign to increase the awareness of appeal mechanisms (including the Oversight Board) among vulnerable and marginalized groups.</b></p> <p>This should be targeted at those who may face significant barriers to access, users who have been deliberately and discriminatorily targeted on Facebook, and users who have been historically marginalized and censored.</p>	<p>The UNGPs’ effectiveness criteria for remedy describe the need for accessibility: “A mechanism must be publicized to those who may wish to access it and provide adequate assistance for aggrieved parties who may face barriers of access. ... Barriers to access may include a lack of awareness of the mechanism, language, literacy, costs, physical location, and fear of reprisal.”</p> <p>Principle 18 of the UNGPs states that to enable companies to assess their human rights impacts accurately, they should “seek to understand the concerns of potentially affected stakeholders by consulting them directly in a manner that takes into account language and other potential barriers to effective engagement.”</p>
<p><b>The Oversight Board should take measures to ensure the needs and challenges of vulnerable users and marginalized groups are addressed while cases are under consideration.</b></p> <p>Potential mechanisms include the ability of Board Administration staff to commission relevant independent research to inform cases, having potentially affected stakeholders (or reasonable alternatives) present during the consideration of a case, and maintaining a wider network of expert advisors that the Oversight Board can draw upon.</p> <p>BSR notes that at the time of writing, these elements are all under active consideration by Facebook. For example, the charter states that the Oversight Board “may gather additional information, including through subject matter</p>	<p>There are far too many dimensions of diversity for them all to be present on the Oversight Board; in practice, panels of five Oversight Board members will be reviewing each individual case. For this reason, it is important for Board members to have access to insights that present the needs and challenges of vulnerable users and marginalized groups with which they may not be familiar.</p> <p>Principle 18 of the UNGPs states that to enable companies to assess their human rights impacts accurately, they should “seek to understand the concerns of potentially affected stakeholders by consulting them directly in a manner that takes into account language and other potential barriers to effective engagement. In situations where such consultation is not possible, business enterprises</p>

<p>experts, research requests or translation services, that may be required to provide additional context for the content under review.”</p> <p>It is important that this mechanism be used to engage the most vulnerable users and marginalized groups, especially from the Global South, and enable them to participate effectively. This includes support for the resources and capability necessary to submit effective arguments, such as provision of independent coaching and training for the development of their statements, or financial support to recoup expenses associated with travel or time spent on the case.</p> <p>It is also important that this expertise cover the role of visual content (e.g., pictures, memes, video) in adverse human rights impacts, in addition to the role of written text.</p>	<p>should consider reasonable alternatives such as consulting credible, independent expert resources, including human rights defenders and others from civil society.”</p>
<p><b>The Oversight Board should provide a “user advocate” to support users making their case to the Oversight Board.</b></p> <p>When a user’s case is selected for review by the Oversight Board, they should have the option to be advised and supported by a staff member or other designated expert assigned to play a “user advocate” role. Facebook should be proactive in communicating this option to users.</p>	<p>Principle 31 of the UNGPs highlights equity as one of the effectiveness criteria for grievance mechanisms. It states that “aggrieved parties have reasonable access to sources of information, advice, and expertise necessary to engage in a grievance process on fair, informed, and respectful terms.”</p> <p>It is BSR’s perspective that a “user advocate” role will be required for the user to be on an equitable footing with the Board liaison role that will represent Facebook’s interests to the Oversight Board. This will be especially true for users from vulnerable groups and marginalized populations.</p>
<p><b>Facebook should provide resources to allow the Oversight Board to hear cases in multiple languages.</b></p> <p>It is very likely that cases will be reviewed by Oversight Board panels that are unfamiliar with the language or local dialect used in the case, as well as such cultural nuances of the language as satire, euphemisms, stereotypes, and other forms of locally specific rhetoric.</p> <p>It is therefore important that the Oversight Board have access to independent translation support, which can also provide contextual translation of the text. This shall be used to interpret the content</p>	<p>The UNGPs state that they should be implemented with particular attention to the rights and needs of, as well as the challenges faced by, individuals from groups or populations that may be at heightened risk of becoming vulnerable or marginalized.</p>

under consideration, as well as statements and other forms of evidence submitted by users/rightsholders.

BSR notes that access to translation services is planned at the time of writing.

All communication regarding the status and outcome of a case should be provided to the user/rightsholder in their language.

## 5. Recommendations: Remedy

### 5.1 ANALYSIS

Everyone has the right to an effective remedy for acts violating their fundamental rights. In a business context, remedy can be provided both by states (such as through judicial, administrative, or legislative means) and by companies (such as through access to operational-level grievance mechanisms). Remedy should seek to restore the victim to the same or equivalent position before the harm, and may include satisfaction, restitution, rehabilitation, compensation, or guarantees of non-repetition.

By providing a new mechanism for the independent review of content decisions, the Oversight Board is, by its design and very purpose, intended to increase access to remedy for Facebook users and other relevant rightsholders. It would break new ground for establishing a comprehensive approach for access to remedy.

BSR considered two questions—one procedural and one substantive—to inform our recommendations for how the Oversight Board can help Facebook achieve its responsibility to provide access to effective remedy.

This section is complemented by a more in-depth section on access to remedy and effective operational-level grievance mechanisms in section 10, below.

***How should the effectiveness criteria for operational-level grievance mechanisms contained in Principle 31 of the UNGPs (e.g., legitimacy, accessibility, predictability, equitability, transparency, rights compatibility) be integrated into the work of the Oversight Board?***

Principle 29 of the UNGPs states that “to make it possible for grievances to be addressed early and remediated directly, business enterprises should establish or participate in effective operational-level grievance mechanisms for individuals and communities who may be adversely impacted.” Principle 31 builds on this by providing effectiveness criteria for non-judicial operational-level grievance mechanisms.

Operational-level grievance mechanisms perform two key functions regarding human rights: First, they help identify adverse human rights impacts by providing a channel for rightsholders to raise concerns; second, they make it possible for grievances to be remediated. Operational-level grievance mechanisms can also act as an early warning mechanism for issues that may become more significant or have a greater potential for harm over time.

Facebook’s core operational-level grievance mechanism for users will be the main Facebook content decision appeals process; however, the Oversight Board will provide an additional channel for users to raise concerns once the appeals process has been exhausted. For this reason, BSR has used the effectiveness criteria for operational-level grievance mechanisms contained in Principle 31 of the UNGPs to inform our perspective on best practices for the Oversight Board.

To further inform our appraisal, we also considered existing best practice relating to operational-level grievance mechanisms that are available from the International Finance Corporation (IFC), the Compliance Advisor Ombudsperson, IPIECA, and the International Council on Metals and Mining (ICMM).

Key issues arising from this appraisal, found in section 10 below, are the need for the Oversight Board to be accessible by vulnerable users, for cases to be presented to the Board in a fair and equitable manner, and for the work of the Oversight Board to be transparent.

At this point, it is essential to contrast the characteristics of operational-level grievance mechanisms at Facebook (and other social media platforms) with operational-level grievance mechanisms that have been developed by companies in other industries. Operational-level grievance mechanisms in other industries are typically designed to meet the needs of a bounded number of rightsholders based in clearly defined geographical areas and speaking a limited number of languages. By contrast, Facebook's operational-level grievance mechanisms need to meet the needs of billions of rightsholders (both users and non-users), who could be anywhere in the world and who may speak any language known to humankind. It will be impossible to create a "perfect" operational-level grievance mechanism, and reasonableness criteria will need to be applied.

Furthermore, an effective grievance mechanism also depends on stakeholder engagement and dialogue to ensure that it meets the needs of the users/rightsholders, that they will use it in practice, and that there is shared interest in its success. For this reason, it will be important over time for input to be solicited from users/rightsholders, including vulnerable groups, on the effectiveness of the Oversight Board and on improvements that can be made; it is essential that users/rightsholders experience an effective remedial process.

***What role should the Oversight Board play in helping Facebook provide users with pathways to effective remedy (satisfaction, restitution, guarantees of non-repetition, rehabilitation, compensation)?***

Principle 22 of the UNGPs states that "where business enterprises identify that they have caused or contributed to adverse impacts, they should provide for or cooperate in their remediation through legitimate processes." Effective remedy restores the victim as much as possible to their position prior to when the harm occurred. It can be provided in five different ways:

- » **Satisfaction**—acknowledging the harm and providing an apology, including verification of the facts.
- » **Restitution**—restoring, to the extent possible, anything that has been lost, and returning the victim to the original position before the harm took place.
- » **Guarantee of non-repetition**—taking measures to prevent further abuses, such as changes to policies and procedures.
- » **Rehabilitation**—providing medical, psychological, legal, and social services to restore the victim.
- » **Compensation**—money or other trade-offs for the cost of the harm in those cases where damage can be economically assessed.

The Oversight Board will help Facebook fulfill Principle 22 of the UNGPs by providing a mechanism for content decisions to be appealed and potentially reversed. By reinstating or removing content, Facebook will be providing restitution—restoring content that has been lost or removing content that shouldn't be available—and this will go some distance toward returning the victim to the original position before the harm occurred. By explaining the rationale behind a decision to restore or remove content, Facebook will also have provided a form of apology and an acknowledgment of the facts of the case.

However, restitution and satisfaction are not the only forms of remedy, and different types of harm may require different types of remedy.

For example, making various changes at Facebook as a result of an Oversight Board decision (such as revising the Community Standards, providing new guidance to content moderators, or altering product features) will help “guarantee non-repetition” and support continuous learning. BSR notes that non-repetition can rarely be “guaranteed” by Facebook in the context of millions of content decisions; however, best efforts can be undertaken to minimize the likelihood of repetition and achieve the best result in the circumstances. BSR further notes that the “impacts meeting” that Facebook will hold following Oversight Board meetings will offer a clear focal point for efforts to minimize the likelihood of repetition.

The most severe harms (such as bodily harm arising from violence incited by online speech) may require other forms of remedy, such as rehabilitation and compensation.

For this reason, BSR has compared the Oversight Board with the pathways to effective remedy identified by the UN Principles on Right to Remedy,<sup>8</sup> and this comparison is found in section four below. A key issue arising in this comparison is determining when it is appropriate for Facebook to provide remedy in the form of rehabilitation or compensation, as well as the level of severity and attribution to Facebook that would be needed for that threshold to be passed.

However, these more severe harms may not have been caused or contributed to by Facebook, in which case—and in accordance with Principle 22 of the UNGPs—Facebook may choose to take a role in providing access to remedy, but it is not required to do so. This is covered in BSR’s recommendations.

It is important to note that the Oversight Board will not be the only (or always the correct) pathway to remedy available to rightsholders; other state-based judicial mechanisms may be available, too, especially for harms inflicted by one user upon another user, such as a loss of income owing to sustained defamation. Instances in which harm occurs, but the harm was not caused or contributed to by Facebook, are properly resolved elsewhere and are outside the scope of the Oversight Board’s powers.

## 5.2 BSR’S RECOMMENDATIONS

Recommendation	Explanation
<p><b>Facebook should implement Oversight Board decisions by providing remedy to users in the form of satisfaction (i.e., apology and explanation) and restitution.</b></p> <p>BSR recommends that the Oversight Board be granted the power to require both of the following pathways to remedy:</p> <p>» <b>Satisfaction</b>, such as an apology, an acknowledgement of the harm, a verification of the facts, and a public disclosure of the truth. This should also include providing a notice</p>	<p>The Oversight Board’s purpose already assumes that it has the power to require “restitution” through the restoration of content. Restitution is one of the five main pathways to remedy, and in many cases, restoration will return the victim to their prior condition before the harm occurred. There may be other cases in which alternate forms of restitution are needed. By providing an explanation for the content decision, Facebook is also providing a form of apology, and by acting upon the Oversight Board’s decisions, Facebook is seeking to guarantee non-repetition.</p>

<sup>8</sup> <https://www.ohchr.org/EN/ProfessionalInterest/Pages/RemedyAndReparation.aspx>.



<p>alongside content that is restored or removed describing the outcome of the decision and the rationale.</p> <p>» <b>Restitution</b>, by restoring or removing content, including, to the greatest extent possible, iterations, variations, and repetitions of content that meets the same criteria as the Oversight Board’s decision.</p>	<p>In some cases, consideration should be given to the visibility of restitution to avoid further harm. Consultation with the victim would be warranted in these situations.</p> <p>Principle 22 of the UNGPs states that “where business enterprises identify that they have caused or contributed to adverse impacts, they should provide for or cooperate in their remediation through legitimate processes.”</p>
<p><b>Where warranted, the Oversight Board should have the power to require Facebook to provide remedy in the form of rehabilitation and financial compensation.</b></p> <p>BSR recommends that the Oversight Board be granted the power to require one or both of the following pathways to remedy:</p> <p>» Rehabilitation, including the provision of other services (such as psychological support or social services) that help restore the victim to their prior condition. This could include, for example, paying into funds that seek to support the rehabilitation of victims.</p> <p>» Compensation, such as money or other benefits, where damage can be economically assessed.</p> <p>However—and very important—BSR recommends that these two pathways to effective remedy should be used by the Oversight Board only when this is the most appropriate form of remedy. For example, this could be in rare cases where impacts such as severe psychological harm, physical security, and bodily integrity have been demonstrated, and where it is clear that Facebook has caused or contributed to the harm. BSR cautions against establishing a system whereby users file frivolous or distracting cases in search of compensation.</p>	<p>In some cases, restitution and satisfaction alone may not always be sufficient remedy.</p> <p>Principle 22 of the UNGPs states that “where business enterprises identify that they have caused or contributed to adverse impacts, they should provide for or cooperate in their remediation through legitimate processes.”</p>
<p><b>Facebook’s review of an Oversight Board decision should consider appropriate measures to minimize the risk of the same adverse impact reoccurring in the future.</b></p> <p>These measures may include changes to the Community Standards, changes to the enforcement protocols and guidance provided to</p>	<p>One of the five pathways to effective remedy is a “guarantee of non-repetition.” By acting upon the Oversight Board’s decisions, Facebook is seeking to guarantee non-repetition. The sheer volume of content on Facebook means that a “guarantee of non-repetition” will never be possible; however, Facebook can deploy its best efforts to minimize</p>

<p>content moderators enforcing the Community Standards, strengthening the appeals process, additional training for content moderators, product changes, preventing repeat offenders from continuing to post content banned by the Oversight Board, developing new technical tools, or other actions.</p> <p>BSR notes that Facebook plans to hold “impact meetings” after each Oversight Board meeting to identify and coordinate follow-up actions and to monitor progress. These measures will also support the process of continuous learning.</p>	<p>the risk that the same error will happen again and to achieve the best result under the circumstances.</p> <p>Principle 20 of the UNGPs states that “in order to verify whether adverse human rights impacts are being addressed, business enterprises should track the effectiveness of their response.”</p>
<p><b>Non-Facebook/non-Instagram users should have a channel to access the Oversight Board for use if content directly or indirectly impacts them.</b></p> <p>While most cases will likely be submitted by Facebook/Instagram users, there are scenarios wherein rightsholders could be harmed by content while not being a Facebook/Instagram user—such as having been victims of speech that incited violence. These rightsholders should be provided with a channel to raise cases with the Oversight Board.</p> <p>BSR notes that at the time of writing, non-users will be out of scope for the Oversight Board. For this reason, BSR recommends that the inclusion of non-users in the Oversight Board’s scope be considered at a future date, when the scope of the Oversight Board is being reviewed.</p>	<p>At the time of writing, the Oversight Board process will require a Facebook user to log in. BSR is proposing that an alternative channel be made available for those without Facebook user log-ins, either because they are not Facebook users or because they don’t have access to an independent email address.</p> <p>Principle 22 of the UNGPs states that “where business enterprises identify that they have caused or contributed to adverse impacts, they should provide for or cooperate in their remediation through legitimate processes.” This principle applies to all rightsholders, not just company users or customers.</p>
<p><b>The Oversight Board process should be clear, transparent, and predictable</b></p> <p>The Oversight Board purpose, function, and process should be clearly described on the platform. Users who submit an appeal should receive a notification confirming receipt of the appeal and whether it has been successful or unsuccessful.</p> <p>Users/rightsholders who participate in the appeals process should receive regular and proactive updates about the status of the case. Facebook should also describe the different kinds of remedy outcomes that may result from Board decisions</p>	<p>Principle 31 of the UNGPs states: “In order for a mechanism to be trusted and used, it should provide public information about the procedure it offers. Time frames for each stage should be respected wherever possible, while allowing that flexibility may sometimes be needed.”</p>

<p>and the circumstances that predicate each outcome.</p> <p>Final communications about the outcomes of each appeal should be communicated to the user/rightsholder in appropriate, timely, and accessible ways.</p>	
<p><b>Facebook should review its own appeals process (i.e., the process prior to a case reaching the Oversight Board) against the effectiveness criteria for operational-level grievance mechanisms contained in Principle 31 of the UNGPs.</b></p> <p>While out of scope for this BSR review, the BSR analysis in section 10 can be used to review the effectiveness of the Facebook appeals mechanism (i.e., the appeals process prior to a case reaching the Oversight Board).</p>	<p>Principle 29 of the UNGPs states that “to make it possible for grievances to be addressed early and remediated directly, business enterprises should establish or participate in effective operational-level grievance mechanisms for individuals and communities who may be adversely impacted.”</p> <p>Operational-level grievance mechanisms should reflect certain criteria to ensure their effectiveness in practice, set out in Principle 31 of the UNGPs.</p>

## 6. Recommendations: Decision-Making

### 6.1 ANALYSIS

Principle 19 of the UNGPs makes it clear that companies should integrate the findings from their impact assessments across relevant internal functions and processes and take appropriate action. This action can include assigning responsibility to the appropriate level and function, allocating budgets, and undertaking training.

In the context of the Oversight Board, there are two main elements to this human rights theme: first, ensuring that the Oversight Board itself is capable of making rights-based decisions; second, ensuring that decisions made by the Oversight Board are embedded into Facebook's own decision-making process. BSR considered three questions to inform the theme of how the Oversight Board can make rights-based decisions that are then effectively implemented by Facebook.

***How should the Oversight Board counterbalance rights that may be in conflict (e.g., security and freedom of expression)?***

All human rights are indivisible, interdependent, and interrelated: The improvement of one right facilitates advancement of the others; the deprivation of one right adversely affects others. Freedom of expression is a necessary condition for the realization, promotion, and protection of many other human rights, such as rights to freedom of assembly and association, freedom of belief and religion, and democratic participation.

However, the Oversight Board will encounter cases wherein different human rights might conflict with one another. Given the Oversight Board's focus on user-generated content, these cases are most likely to exist where one right (such as personal security, privacy, discrimination, or democratic participation) conflicts with the right to freedom of expression. In these cases, it will be important for the Oversight Board to have a clear approach to "counterbalancing" different human rights. For example, where appropriate, risks to physical harm and bodily integrity may be prioritized over civil liberties risks.

The Oversight Board should apply certain key principles in defining when the right to freedom of expression is restricted or compromised:

- » **Necessary**—that the same goal cannot be achieved by other means.
- » **Proportionate**—that restrictions are not overbroad and are the least intrusive to achieve the legitimate purpose.
- » **Legitimate**—that restrictions must pursue an objectively legitimate purpose and address a precise threat.
- » **Non-Discrimination**—that restrictions to freedom of expression are implemented in a non-discriminatory manner.<sup>9, 10</sup>

This method would allow the Oversight Board to take a principled approach to counterbalancing rights, especially restrictions to freedom of expression.

---

<sup>9</sup> [HRC General Comment No. 34.](#)

<sup>10</sup> [Necessary and Proportionate International Principles on the Application of Human Rights to Communications Surveillance.](#)

***How can Facebook ensure that Oversight Board members are fully aware of the international human rights standards and human rights-based approaches relevant to their work?***

Taking a human rights-based approach to the Oversight Board requires that Oversight Board members and Administration staff have a good working knowledge of international human rights standards. However, the desire to establish a diverse Oversight Board implies that only a portion of Oversight Board members may be experts in international human rights standards prior to joining the Board.

BSR makes three observations: first, that a subset of the Oversight Board should be experts in international human rights standards and bring that expertise to Oversight Board deliberations; second, that the rest of the Oversight Board should be trained in the essential elements of international human rights standards, especially those relating to freedom of expression (and its limits, in certain contexts); and third, that the Administration staff needs to maintain a good working knowledge of international human rights standards and documents in order to effectively prepare both users and Oversight Board members for each case.

***What is required for the Oversight Board's decisions to be embedded into Facebook's own decision-making process?***

Two Principles in the UNGPs are directly relevant to how Facebook responds to decisions made by the Oversight Board. Principle 19 of the UNGPs states that companies should integrate the findings from impact assessments across relevant internal functions and processes and take appropriate action. This requires that responsibility for addressing impacts is clearly assigned and that the response—for example, in terms of budget allocation and oversight—is effective. Principle 31 of the UNGPs states that grievance mechanisms should be a source of continuous learning, including the identification of lessons learned to prevent future harms.

In BSR's conversations with Facebook to inform this review, it became clear that the company is keenly aware of the need to systematically identify the implications of Oversight Board decisions for Facebook's operations, such as through the "impacts meeting." These implications may include changes to the Community Standards, revisions to guidance on how to interpret the Community Standards, training of relevant staff, and changes to the Facebook product itself.

## **6.2 BSR'S RECOMMENDATIONS**

Recommendation	Explanation
<p><b>Facebook should incorporate a firm commitment to international human rights standards into the Oversight Board's governance charter and bylaws.</b></p> <p>BSR recommends that, at a minimum, this commitment reference the International Bill of Human Rights, consisting of the Universal Declaration of Human Rights (UDHR), the International Covenant of Civil and Political Rights</p>	<p>For the Oversight Board to make decisions consistent with international human rights standards, it is essential that international human rights become a founding principle of the Oversight Board. This will enable the Oversight Board to ground its decision in agreed international standards, providing a firm defense against those who question the legitimacy of the Oversight Board's decisions.</p> <p>There is an increasingly common perspective (such as from the UN Special Rapporteur on the</p>

<p>(ICCPR), and the International Covenant on Economic, Social and Cultural Rights (ICESCR).</p> <p>In addition, BSR recommends that the Board’s governance charter also reference other key instruments, including the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Elimination of All Forms of Discrimination against Women, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the Convention on the Rights of Persons with Disabilities, and the Convention on the Rights of the Child. This can be updated if and when new instruments are created.</p> <p>It should be noted that BSR recommends reference to all international human rights, not simply freedom of opinion and expression—this is because all human rights could potentially be impacted by decisions made about content. Freedom of expression is integral to the enjoyment of other human rights.</p> <p>Specifically, BSR recommends that the following text be included in the governance charter: “The Oversight Board is committed to respecting human rights in its operations and decision-making, as defined by the International Bill of Human Rights: the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, and the International Covenant on Economic, Social and Cultural Rights.</p> <p>“For relevant cases, the Oversight Board will make decisions that respect the human rights defined in the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Elimination of All Forms of Discrimination against Women, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the Convention on the Rights of Persons with Disabilities, and the Convention on the Rights of the Child.”</p>	<p>Promotion and Protection of the Right to Freedom of Opinion and Expression) that principles of international human rights law should be used as a framework for social media content policies, such as Facebook’s Community Standards; however, there is a counter view that the inclusion of “inaccessible language” would reduce the effectiveness of the Community Standards by making them less accessible.</p> <p>BSR has previously recommended that Facebook create a public stand-alone human rights policy—separate from, but linking to, the Community Standards—as an effective solution to this problem, especially if the Community Standards are conceptually consistent with the human rights policy.</p> <p>The Oversight Board charter and bylaws will, by their nature, be formal documents, so the “inaccessible language” arguments do not apply. Indeed, the charter in particular seems especially well-suited to a formal commitment to international human rights standards.</p> <p>Principle 14 of the UNGPs states that, as the basis for embedding their responsibility to respect human rights, companies should express their commitment through a statement of policy.</p> <p>Principle 12 of the UNGPs states that the business responsibility to respect human rights refers to all internationally recognized human rights—understood, at a minimum, as those expressed in the International Bill of Human Rights. Because business enterprises can have an impact on virtually the entire spectrum of internationally recognized human rights, their responsibility to respect applies to all such rights.</p>
<p><b>Facebook should explain the link between human rights and Facebook’s values.</b></p>	<p>It is clear from the charter and from conversations with Facebook staff that the values will play an</p>

<p>The charter states that Facebook’s values (updated in September 2019 to consist of voice, authenticity, safety, privacy, and dignity<sup>11</sup>) will shape independent decisions and judgments made by the Oversight Board. BSR recommends that Facebook describe the link between human rights and the list of values.</p> <p>Specifically, BSR recommends that the following text be included in the governance charter: “Respect for human rights is core to the Oversight Board’s mandate. To support this commitment, Oversight Board members will uphold the values of voice, safety, equity, dignity, equality, and privacy. These values will service as the basis for Oversight Board governance, operations, and decision-making.”</p> <p>Further, certain key principles underpin the right to freedom of expression and can be included as values, namely “legality,” “necessity,” “proportionality,” and “nondiscrimination.” While these were written for states, rather than companies, these values could also be referenced as important values for the Oversight Board when reviewing content decisions, where “law” is taken to mean the Facebook Community Standards, rather than national laws.</p> <p>Specifically, BSR recommends that the following text be included in the bylaws: “When making decisions that may restrict the right to freedom of expression, the Oversight Board will apply the following principles: The restriction must be necessary (the same goal cannot be achieved by other means); proportionate (restrictions are not overbroad and are the least intrusive to achieve the legitimate purpose); legitimate (the precise nature of the threat to user rights is clear); and nondiscriminatory (restrictions are implemented in a nondiscriminatory manner).”</p>	<p>essential “soft power” role in shaping the work, judgment, and decisions of the Oversight Board.</p> <p>BSR believes that explaining the link between human rights and the Oversight Board’s values will have a similarly important “soft power” influence, keeping human rights at the front and center of decision-making, and making sure that human rights form an important part of the Oversight Board’s narrative.</p> <p>By adding the additional principles of “legality,” “necessity,” “proportionality,” and “non-discrimination,” the Oversight Board would be utilizing an internationally recognized framework for evaluating content decisions; for example, this could mean deciding whether the removal of some content is consistent with the Community Standards, “necessary” to avoid a harm, and “proportional” to that harm.</p>
<p><b>The Oversight Board should provide or procure training for all Oversight Board members and Administration staff in human rights, including best practice for operational-level grievance mechanisms.</b></p>	<p>Principle 19 of the UNGPs states that internal decision-making, budget allocations, and oversight processes should enable effective responses to human rights impacts.</p>

<sup>11</sup> <https://newsroom.fb.com/news/2019/09/updating-the-values-that-inform-our-community-standards/>

This training should include four main segments:

- » **International human rights law**, including key elements such as the international bill of human rights and relevant human rights conventions, treaties, and institutions.
- » **Business and human rights**, especially the UNGPs, the UNGPs Gender Framework, and the GNI.
- » **Key human rights principles**, such as the importance of vulnerable groups and informed consent.
- » **Significant internet industry and freedom of expression issues**, such as debates around legitimate, necessary, and proportionate limits on the right to freedom of expression.

BSR is recommending that Oversight Board members become familiar with key human rights issues and associated areas of international law and be provided access to human rights expertise. BSR is not recommending that they all become human rights experts; however, a higher level of human rights expertise can be expected of Administration staff members, and BSR recommends that they receive more in-depth training.

Human rights training can be developed at four levels:

- » Initial training for Oversight Board members during onboarding.
- » Ongoing training for Oversight Board members, such as in-person sessions with expert speakers on specific topics.
- » Detailed training for Administration staff on human rights, especially all concepts and methodologies that are integrated into the Oversight Board's processes and procedures.
- » Guidance document (or "manual") to be used by the Oversight Board members and the Board Administration as a reference point for daily operations of the Oversight Board.

The effective implementation of BSR's recommendations requires a basic level of understanding of human rights. BSR notes that the selection of Oversight Board members will also affect the level of human rights expertise on the Board. The criteria set out in Facebook's Candidate Review Guide establish expectations for the level of experience and credibility of potential Oversight Board members. The selection of candidates who have significant experience defending vulnerable groups' rights will help ensure that human rights are considered throughout the decision-making process.



<p>If needed, Oversight Board members should be able to consult human rights experts during the course of their work.</p> <p>BSR also recommends that the Oversight Board members and Administration staff receive unconscious bias training.</p>	
<p><b>Facebook should include the Oversight Board in consultations about potential changes to the Community Standards.</b></p> <p>The charter provides ample room for the Oversight Board to recommend changes to Facebook’s Community Standards, while retaining final decision-making authority over policy within Facebook. It states that “the board can provide policy guidance, specific to a case decision or upon Facebook’s request, on Facebook’s content policies.”</p> <p>In June 2019, Facebook published three new principles (inclusiveness, expertise, and transparency) to shape the company’s stakeholder engagement on Community Standards policy. This post described Facebook’s methods for consulting a wide range of stakeholders about the content of the Community Standards.</p> <p>BSR recommends that Facebook regularly engage the Oversight Board during consultations about changes to the Community Standards, with three caveats: (1) that responsibility for setting policy remains with Facebook’s Product Policy Forum, rather than the Oversight Board; (2) that the volume of consultation undertaken does not detract from the core purpose of the Oversight Board; and (3) the independence of the Oversight Board in providing impartial recommendations to Facebook to change Community Standards should remain clear.</p>	<p>Principle 18 of the UNGPs states that companies should “draw on internal and/or independent external human rights expertise” and “meaningful consultation with potentially affected groups and other relevant stakeholders” when assessing human rights.</p> <p>Principle 20 of the UNGPs states that when tracking the effectiveness of their human rights approach, companies should “draw on feedback from both internal and external sources, including affected stakeholders.”</p> <p>The Oversight Board will contain diverse perspectives and expertise. Over time, it will become increasingly familiar with matters of Community Standards policy—for example, insights into where Community Standards may need to be revised to more fully respect human rights, or address situations wherein content is allowed under the Community Standards but causes significant human rights harm. For these reasons, it seems that the Oversight Board’s perspective would add significant value to Facebook’s Community Standards policymaking process and play an essential role in stimulating an informed public dialogue about the content of Facebook’s Community Standards.</p> <p>BSR recommends that Facebook retain control over Community Standards policy-setting for essential accountability reasons: We do not believe that Facebook should evade its responsibility to establish its own policies and standards.</p>
<p><b>Facebook should respond formally to any changes to the Community Standards recommended by the Oversight Board.</b></p> <p>The charter provides ample room for the Oversight Board to recommend changes to</p>	<p>If BSR’s recommendation (above) about integrating a commitment to international human rights standards into the Board’s governance charter and bylaws is adopted, then this commitment to respond to Oversight Board policy recommendations would provide one effective</p>

Facebook’s Community Standards, while Facebook retains final decision-making authority over policy within Facebook. It states that “the board can provide policy guidance, specific to a case decision or upon Facebook’s request, regarding Facebook’s content policies.”

BSR recommends that the Facebook Product Policy Forum (where policy decisions about Facebook’s Community Standards are made) review all policy recommendations from the Oversight Board and publish conclusions in the Product Policy Forum minutes. BSR notes that these minutes are already published on a regular and timely basis, and that Facebook intends to respond formally to recommendations made by the Oversight Board.

channel toward the integration of human rights-based thinking into Facebook’s policymaking process.

Principle 19 of the UNGPs states that effective integration of human rights requires that responsibility for addressing impacts be assigned to the appropriate level and function within the company, and that internal decision-making, budget allocations, and oversight processes enable effective responses to human rights impacts.

## 7. Recommendations: Informed Consent

### 7.1 ANALYSIS

A human rights-based approach puts peoples' human rights at the center of policies and practices and requires that people be involved in decisions that affect their rights. This approach enables people to know and assert their rights, and it creates accountability so individuals can seek remedies when their rights are violated.

The notion of informed consent is derived from the human rights-based approach and requires the consultation of and participation of rightsholders. Consent is defined by both participation (i.e., the ability to participate in decisions) and empowerment (i.e., the ability to understand both risks and rights when consenting). To obtain consent, information upon which a decision is made should be accurate and in a form that is accessible and understandable, including in a language that vulnerable groups such as children, indigenous peoples, and persons with disabilities will fully understand.

#### ***How can Facebook ensure that consent to have a case reviewed is informed?***

For Facebook to secure consent, it should be confident that the users/rightsholders in question are aware of the criteria, procedures, and timelines of an Oversight Board process, as well as the potential ramifications associated with participating in a case, such as scrutiny by friends, contacts, community members, and the wider general public. Care should be taken to ensure that vulnerable users are accommodated in ways that account for language and literacy barriers or heightened risk to personal security, and to confirm that they are acting of their own free will, not as the result of coercion by a third party. These will be important responsibilities for the Board Administration staff, and will benefit from both formal procedures and the soft skills of Administration staff members.

#### ***What privacy risks will arise from the work of the Oversight Board, and how can they be prevented or mitigated?***

Two categories of users/rightsholder may potentially face privacy risks as a result of the operations of the Oversight Board.

The first group is users/rightsholders who submit an appeal for the removal or restoration of content and who may be at risk of being identified in public correspondence published by the Board, such as in statements relating to individual case outcomes or in the annual report. It should be straightforward to mitigate the privacy risks associated with this group by ensuring that they provide informed consent regarding both the processing of their case and all public communications associated with it.

The second group is the users/rightsholders who are featured in the content in question, in secondary content that may be used in the investigation, and/or in other forms of data that will be submitted to the Board for consideration. Informed consent can be sought for all users/rightsholders implicated in any piece of content/data considered by the Board; if consent is not given, information can be meaningfully redacted from the record so the reluctant users/rightsholders are no longer identifiable. BSR's conversations with Facebook staff and an accompanying document review revealed a high level of awareness of these challenges, as well as the mitigation measures they require.

## 7.2 BSR'S RECOMMENDATIONS

Recommendation	Explanation
<p><b>Facebook should ensure that all participants in Oversight Board processes, especially vulnerable users and rightsholders, provide informed consent for participation in a case.</b></p> <p>Informed consent is defined by both participation (i.e., the ability to participate in decisions) and empowerment (i.e., the ability to understand both risks and rights when consenting).</p> <p>Achieving informed consent in practice may require providing additional accommodations and coaching to users/rightsholders, in the form of language, literacy, and process-related support, to ensure that they fully understand the appeals process.</p> <p>For Facebook to secure consent, it should be confident that the users/rightsholders in question are aware of the criteria, procedures, and timelines of an Oversight Board process, as well as the potential ramifications associated with participating in a case, such as scrutiny by friends, contacts, community members, and the wider general public, or government retaliation.</p> <p>Care should be taken to ensure that vulnerable users are accommodated in ways that account for language and literacy barriers or heightened personal security risk, and to confirm that they are acting of their own free will, not as the result of coercion by a third party. These will be important responsibilities for the Board Administration, and will benefit from both formal procedures and the soft skills of Administration staff members.</p> <p>Procedural guidelines should exist for taking statements and collecting and exchanging evidence, with particular concern for confidentiality, privacy, and the use of investigative techniques.</p> <p>Users/rightsholders should also have the right to request anonymity, either from disclosure or during the case investigation.</p>	<p>Principle 13 of the UNGPs states that “businesses should avoid causing or contributing to adverse human rights impacts through their own activities and address such impacts when they occur.”</p>
<p><b>Facebook should ensure that the users/rightsholders who have cases reviewed</b></p>	<p>For a grievance and remedy mechanism to be effective, it must also be equitable. Principle 31 of</p>

**by the Oversight Board are privy to all the information and evidence used in the Board's decision, aside from that withheld for privacy, security, and other legitimate reasons.**

The information provided to the user/rightsholder should include all the data provided by Facebook to support the Oversight Board's investigation, except data that cannot be shared for privacy, security, and other legitimate reasons.

Users/rightsholders should also have the opportunity to provide a rebuttal after reviewing the evidence used against them.

the UNGPs states: "In grievances or disputes between business enterprises and affected stakeholders, the latter frequently have much less access to information and expert resources, and often lack the financial resources to pay for them. Where this imbalance is not redressed, it can reduce both the achievement and perception of a fair process and make it harder to arrive at a durable solution."

While Facebook will need to balance its obligations to uphold the privacy of its users, it should take special care to ensure that it is not taking advantage of this position to influence the investigation through the selective use and disclosure of evidence/data.

## 8. Recommendations: Safety and Integrity

### 8.1 ANALYSIS

The Oversight Board will be an entirely new creation that, like any new business operation, may be accompanied by new forms of potentially adverse human rights impacts. Consistent with the UNGPs, human rights due diligence should be undertaken to identify, prevent, and mitigate these potentially adverse human rights impacts.

It is challenging to undertake human rights due diligence of the Oversight Board itself, owing to the lack of historical precedent and the targeted scope of the Oversight Board's operations and mandate. However, of particular relevance to this review will be new risks relating to Facebook's implementation of the GNI Principles and Implementation Guidelines, such as whether governments may seek to interfere with its decision-making or operations and whether Board members or users participating in its processes may be placed at greater risk. For this reason, BSR considered two questions to inform this due diligence.

***Is there risk that governments will seek to interfere in the work of the Oversight Board (e.g., data requests, case requests, local regulations)? What form might this interference take, and what response from Facebook would be consistent with the company's GNI commitments?***

BSR concludes that there is a real risk that governments will seek to interfere with the work of the Oversight Board; the form this will take is, as yet, unclear. Among the risks that became evident during discussions, desk research, and analysis for this due diligence are the following:

- » **Intimidation**—the risk that governments will seek to coerce or pressure Oversight Board members into making favorable decisions or public comments.
- » **Interference**—the risk that governments or their proxies will submit large volumes of cases to the Oversight Board for consideration (for example, in an effort to restrict content they dislike or to sidestep their own legal processes).
- » **Data requests**—the risk that governments will demand data and content from the Oversight Board, such as evidence collected for specific cases.
- » **Capture**—the risk that governments will nominate candidates for Oversight Board membership that are insufficiently independent.
- » **Imitation**—the risk that governments will establish “shadow” national or regional Oversight Boards that seek to duplicate the work of the Oversight Board while arriving at different decisions.

***Is there a risk that Oversight Board members and the users participating in its processes will be placed at risk, such as by retaliation? What form might this take, and what response from Facebook would be consistent with the company's GNI commitments?***

As described above, BSR concludes that there is a risk that Oversight Board members and users could be placed at risk, such as via retaliation stemming from case proceedings or public communications relating to the case. Appropriate responses include establishing privacy and security controls for at-risk cases, especially for cases that are politically controversial or involve users/rightsholders from conflict-affected or high-risk areas. Among the risks that surfaced during discussions, desk research, and analysis for this due diligence are the following:

- » **Legal risk**—the risk that local laws criminalizing freedom of expression are used to unjustly target Oversight Board members or users, or that Oversight Board public correspondence is used as evidence in criminal proceedings in a way that violates international human rights standards.
- » **Personal security risk**—the risk that publicly available information pertaining to Oversight Board members or users is used to identify and target these individuals and their families, including with threats of violence and death threats.
- » **Collective security risks**—the risk that the individual or cumulative outcomes of Oversight Board deliberations “changes the facts on the ground” (especially in conflict-affected areas) in ways that result in social or political destabilization; harassment and intimidation; and even mob justice, communal violence, or armed conflict. This might include, for example, action taken against activists, political figures, members of the military, or armed groups.

Facebook will need to deploy strategies and plans in each case to anticipate the likelihood of these risks, with particular concern for the needs of vulnerable and marginalized groups. Mitigation strategies and plans should focus on protecting the privacy and identity of Oversight Board members and users in public correspondence. This should be a responsibility of the Board Administration.

## 8.2 BSR’S RECOMMENDATIONS

Recommendation	Explanation
<p><b>Facebook and the Oversight Board should apply the Global Network Initiative (GNI) Principles and record any efforts by governments to interfere with the work of the Oversight Board.</b></p> <p>Interference could take many forms but might include requests to see information related to specific cases, direct communications with Oversight Board members, or the submission of cases for review made outside formal Oversight Board channels.</p> <p>Where relevant, Facebook and/or the Oversight Board should communicate insights about this interference in Transparency Reports and with the GNI, including as part of GNI compliance assessments.</p>	<p>The GNI Principles state that companies should respect the freedom of expression of their users by seeking to avoid or minimize the impact of government restrictions on freedom of expression; they should protect users’ rights to freedom of expression when confronted with government demands, laws, and regulations to suppress freedom of expression, remove content, or otherwise limit access to communications, ideas, and information in a manner inconsistent with internationally recognized laws and standards.</p>
<p><b>There should be a comprehensive safety and security plan for Oversight Board members and Administration staff.</b></p> <p>This plan should include multiple factors, including data security, Board member security, and confidentiality around panel composition and the decisions associated with individuals (i.e., decision/opinion anonymity). It should also consider the security implications for Board members who are residents or citizens of conflict-</p>	<p>BSR is not a security advisory firm, and so our recommendation lacks specificity. However, BSR is cognizant of the real risk that governments may interfere with the work of the Oversight Board, such as by intimidating or threatening Oversight Board members originating from their own country, seeking to place Oversight Board members under surveillance, or seeking to</p>

<p>affected or high-risk areas and who may be targeted by national authorities or communities for participating in the Oversight Board.</p> <p>BSR notes that a security plan is being developed by Facebook at the time of writing.</p>	<p>interfere with the private communications of Oversight Board members.</p>
<p><b>Facebook should anticipate and mitigate the risk of retaliation (or other security risks) for users/rightsholders associated with individual cases.</b></p> <p>Some users/rightsholders, particularly vulnerable groups or individuals from conflict-affected and high-risk areas, may be targeted by their national authorities, community members, or family members for participating in the Oversight Board appeals process. This risk could manifest after the conclusion of a case, particularly if identifying information is published in the public correspondence of the Oversight Board. The risk could be present even if the user/rightsholder has provided consent for the publication of the information.</p> <p>Facebook should anticipate the risk for users/rightsholders on a case-by-case basis, and develop a mitigation plan that includes selective censorship, anonymity, or redaction of sensitive information.</p> <p>There is also the possibility that the existence of the Oversight Board, and its impact on individual content-moderation decisions over time, could result in collective risk to a community, ethnic group, or other defined group of users. Facebook should, to the greatest extent possible, be aware of this risk and seek to mitigate it.</p>	<p>Principle 13 of the UNGPs states that “businesses should avoid causing or contributing to adverse human rights impacts through their own activities and address such impacts when they occur. They should also seek to prevent or mitigate adverse human rights impacts that are directly linked to their operations, products or services by their business relationships.”</p>



## 9. Recommendations: Transparency

### 9.1 ANALYSIS

The UNGPs expect companies to account for how they address human rights impacts by communicating externally in a form and frequency that is accessible to intended audiences and that provides enough information to evaluate the adequacy of the company's approach.

Facebook already publishes information covering issues of relevance to the Oversight Board, most notably a Community Standards Enforcement Report containing metrics on how Facebook is performing on preventing and removing content that violates the Community Standards. The Community Standards Enforcement Report includes data relating to the amount of content Facebook takes action on across nine categories of violation; since May 2019, it now contains data relating to the volume of content restricted that users appealed against and the volume of content that was later restored, either as a result of an appeal or for some other reason. The data relating to the content appeals process are especially relevant for the Oversight Board.

BSR considered one broad question to inform our recommendations on transparency:

***How can the Oversight Board fulfill the transparency, reporting, and communications expectations contained in Principle 21 of the UNGPs?***

Principle 21 of the UNGPs states that in order to account for how they address their human rights impacts, companies should be prepared to communicate this externally, particularly when concerns are raised by, or on behalf of, affected stakeholders. While the Oversight Board will be independent of Facebook, BSR interprets this Principle as applying to the Facebook Oversight Board as a stand-alone entity. The purpose of the Oversight Board is precisely to address concerns raised by affected stakeholders, so it is especially important that the outcomes of its deliberations are communicated publicly.

BSR observes that public communications from the Oversight Board (i.e., in addition to communication with the individual user/rightsholder) can take three main forms.

First, the Oversight Board can communicate its decisions publicly. These public communications should not just describe the decision but also describe the reasoning behind the decision, so users can better understand how the Community Standards are interpreted in practice, and so that, over time, a compilation of case law can accumulate. Principle 18 of the UNGPs states that public communications should not “pose risks to affected stakeholders, personnel or to legitimate requirements of commercial confidentiality,” as such, it will be important to protect user privacy and Oversight Board member security in public communications, especially for contentious or controversial decisions.

Second, the individual pieces of content restored, arising from an Oversight Board decision, can be labeled as such, with an accompanying explanation. Content that is removed as the result of an Oversight Board decision should be subsequently unavailable for viewing, but the outcome of the decision can be made publicly available, such as in place of the original content.

Third, the Oversight Board can report on a regular basis (such as annually), providing a channel to share analysis, trends, and other insights that inform the public on matters relating to human rights, freedom of

expression, and social media. If the Oversight Board takes a rights-based approach to its work, the opportunity to inform the broader dialogue about what rights-based approaches to social media content moderation look like in practice could significantly inform the work of governments, intergovernmental organizations, civil society organizations, social media platforms, and other stakeholders worldwide.

## 9.2 RECOMMENDATIONS

Recommendation	Explanation
<p><b>The Oversight Board should publish an annual report.</b></p> <p>This Transparency Report would summarize the work of the Oversight Panel during the previous year and lay out priorities for the year ahead. Editorial control of the Transparency Report should reside with the Oversight Board. Key content should include:</p> <ul style="list-style-type: none"> <li>» A narrative covering patterns, trends, insights, and observations about the work of the Oversight Board, including their relation to the implementation of international human rights law and the “state of play” on freedom of expression internationally.</li> <li>» Data relating to the number of cases considered, the source of cases (e.g., Facebook, user, civil society, government), the percentage of successful/failed appeals, and actions taken (e.g., keep up, take down, or demote content).</li> <li>» The data should be segmented by both (1) the sections of the Community Standards and (2) the list of relevant human rights harms described above.</li> <li>» To the extent possible, the data should also be gender-disaggregated.</li> <li>» The number of data or content restriction requests received by the Oversight Board (as distinct from Facebook) from governments.</li> </ul>	<p>The annual Transparency Report would increase public understanding of how the Oversight Board has influenced content on Facebook and inform important legal, regulatory, and policy discussions about freedom of expression and content moderation. The annual Transparency Report would also influence the work of other social media platforms.</p> <p>The new gender framework for the UNGPs emphasizes the value of gender-disaggregated data, as a means of informing gender-responsive human rights assessments and gender-transformative measures and remedies.</p> <p>Principle 21 of the UNGPs states that “in order to account for how they address their human rights impacts, business enterprises should be prepared to communicate this externally, particularly when concerns are raised by or on behalf of affected stakeholders.” In this context, public communications from the Oversight Board will be especially important, given that its very purpose is to respond to concerns raised by affected stakeholders.</p>
<p><b>The Oversight Board should compile a public repository of cases and decisions made by the Oversight Board.</b></p> <p>This repository would take the form of “platform case law” that will help users, civil society organizations, and governments to better</p>	<p>This recommendation is derived from comments made by the UN Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression as means for users, civil society, and States to better understand how</p>

<p>understand and interpret the Facebook Community Standards.</p> <p>This repository would constitute precedent that can be used by the Oversight Board to inform future content decisions.</p> <p>The cases in this repository would be as detailed as possible—for example, in describing the reasons for a decision—without compromising privacy or placing rightsholders at risk.</p> <p>BSR notes that Facebook is planning to maintain a repository of cases on the Oversight Board’s website.</p>	<p>Facebook interprets and implements its Community Standards.</p>
--	--

## 10. In Depth: Access to Remedy and Operational-Level Grievance Mechanisms

Everyone has the right to an effective remedy for acts violating their fundamental rights. In a business context, remedy can be provided both by states (such as through judicial, administrative, or legislative means) and by companies (such as through access to operational-level grievance mechanisms). Remedy should seek to restore the victim to the same or equivalent position before the harm, and may include satisfaction, restitution, rehabilitation, compensation, or guarantees of non-repetition.

By providing a new mechanism for the independent review of content decisions, the Oversight Board is, by its design and very purpose, intended to increase access to remedy for Facebook users and other relevant rightsholders. Further, the Oversight Board would be breaking new ground for the establishment of a comprehensive approach for access to remedy.

In section five (above), BSR considered two questions—one procedural and one substantive—to inform our recommendations for how the Oversight Board can help Facebook achieve its responsibility to provide access to effective remedy.

In this section, BSR provides more depth to our analysis by (1) describing in more detail how the effectiveness criteria for operational-level grievance mechanisms contained in Principle 31 of the UNGPs can be integrated into the work of the Oversight Board and (2) describing in more detail the role the Oversight Board can play in helping Facebook provide users with pathways to effective remedy.

### 10.1 EFFECTIVENESS CRITERIA FOR OPERATIONAL-LEVEL GRIEVANCE MECHANISMS

This table describes the effectiveness criteria for operational-level grievance mechanisms contained in Principle 31 of the UNGPs and describes the *ideal scenario* for how the Oversight Board can implement these effectiveness criteria in practice.

Effectiveness Criteria	BSR's Ideal Scenario: <i>Implementing Effectiveness Criteria in Practice</i>
<p><b>Legitimate</b></p> <p><i>A mechanism must enable trust from the stakeholder groups for whose use they are intended and be accountable for the fair conduct of grievance processes.</i></p> <p><i>Stakeholders for whose use a mechanism is intended must trust it if they are to choose to use it. Accountability to ensure that the parties to a grievance process cannot interfere with its fair conduct is an important</i></p>	<ul style="list-style-type: none"> <li>» The Oversight Board charter and bylaws are publicly available, use accessible language, and are translated into the languages in which Facebook is available. Changes made to the charter and bylaws over time are kept on public record.</li> <li>» Oversight Board members are independent of Facebook and are provided with security of tenure and fixed salary.</li> <li>» The Oversight Board members and Administration staff receive skill training in all aspects of the Board values and management, including quality control, monitoring, and grievance mechanism ethics.</li> <li>» The Oversight Board selects its own cases for review.</li> <li>» Oversight Board members and Administration staff speak appropriate languages to independently engage with</li> </ul>

<p><i>factor in building stakeholder trust.</i></p>	<p>users/rightsholders, or have access to translation support that is independent from Facebook.</p> <ul style="list-style-type: none"> <li>» Oversight Board membership and Administration staff includes vulnerable groups. Additional efforts should be made to include the interests of groups that are not represented.</li> <li>» Oversight Board members and Administration staff have the expertise to be able to identify the human rights issues in each case.</li> <li>» Oversight Board members are not currently, or were not previously, employees of government or of Facebook and will recuse themselves from participating in decisions that create a conflict of interest.</li> <li>» Oversight Board members are prohibited from accepting any bribes, incentives, or any financial or other fungible benefit offered with the purpose of influencing their decisions.</li> <li>» Anti-retaliation measures are in place and are communicated to users/rightsholders (e.g., assurances that the act of submitting an appeal will not result in the loss of use of a user’s Facebook account).</li> <li>» Oversight Board decisions on whether to remove or reinstate content are independent and irrevocable (except by the Board itself), and Facebook establishes a binding process for the implementation of the Oversight Board’s decisions.</li> <li>» The Oversight Board publishes its outcomes in a timely manner and publishes an independent annual report.</li> <li>» The Oversight Board retains editorial independence from Facebook for all public correspondence, aside from the redaction of information for reasons of user privacy and consent.</li> <li>» Independent experts with proficiency in grievance-resolution mechanisms conduct an evaluation of the Oversight Board every three to five years.</li> <li>» The Oversight Board maintains a “user advocate” role.</li> </ul>
<p><b>Accessible</b></p> <p><i>A mechanism must be known to all stakeholder groups for whose use they are intended, and must provide adequate assistance for those who may face particular barriers of access.</i></p> <p><i>Barriers to access may include a lack of awareness of the mechanism, language, literacy,</i></p>	<ul style="list-style-type: none"> <li>» The Oversight Board’s purpose, function, and process is clearly described on the platform and in communications that users receive following unsuccessful appeals.</li> <li>» Oversight Board mechanisms use accessible language and are translated into all 52 languages that Facebook supports. The mechanisms also accommodate different forms of disabilities and education levels.</li> <li>» Vulnerable and marginalized groups are consulted about risks, fears, or barriers they have associated with using the Oversight Board process. The Oversight Board and Administration staff</li> </ul>

<p><i>costs, physical location, and fear of reprisal.</i></p>	<p>understand what accommodations these users will need in order to voice a complaint and participate effectively.</p> <ul style="list-style-type: none"> <li>» Users/rightsholders have the right to request anonymity, either from disclosure or during the case investigation.</li> <li>» The Administration staff has the capability and resources to respond to appeals in the languages of the users/rightsholders.</li> <li>» A marketing and communications campaign is undertaken to specifically inform vulnerable and marginalized groups of users/rightsholders that may not have autonomous or independent access to Facebook, such as women, non-users, or persons with mental or physical disabilities, or those with well documented discrimination.</li> <li>» Language, literacy, and other forms of assistance are provided for vulnerable and marginalized users to ensure that they can effectively participate in the appeals process (e.g., in the development of their case).</li> <li>» Rightsholders who may not be Facebook users should be able to access the appeals process (e.g., because they are offline victims of online content).</li> <li>» The appeals process should be designed to respect cultural norms and other social dynamics (e.g., ensuring a female case worker is provided for cases with a sensitive gender dimension).</li> <li>» A mix of cases should be selected to ensure that the voices of vulnerable and marginalized rightsholders from different geographic locations, cultures, ethnicities, and religions are included over an appropriate time frame.</li> <li>» Final communications about the outcomes of each appeal should be communicated to the users/rightsholders in appropriate, accessible ways.</li> </ul>
<p><b>Predictable</b></p> <p><i>A mechanism must provide a clear and known procedure with an indicative time frame for each stage, as well as clarity on the types of process and outcome available and the means of monitoring implementation.</i></p> <p><i>In order for a mechanism to be trusted and used, it should provide public information about the procedure it offers. Time frames for each stage should be</i></p>	<ul style="list-style-type: none"> <li>» The criteria, procedures, timelines, and milestones for each step of the process (including selecting and assessing cases) are made public in accessible form that accommodates different languages, disabilities, and education levels. The timelines and milestones are communicated to the user/rightsholder who has submitted an appeal.</li> <li>» The Oversight Board makes resolutions that are reasonable and consistent with the handling of previous cases, and their decision-making process focuses on substance and facts without speculating or making value judgments.</li> <li>» Facebook describes the different kinds of remedy outcomes that may result from Board decisions (e.g., removing or leaving content up, amending policies or protocols, or changing design</li> </ul>

<p><i>respected wherever possible, while allowing the flexibility that may sometimes be needed.</i></p>	<p>features of the product) and the circumstances that predicate each outcome.</p>
<p><b>Equitable</b></p> <p><i>A mechanism must ensure that aggrieved parties have reasonable access to sources of information, advice, and expertise necessary to engage in a grievance process on fair, informed, and respectful terms.</i></p> <p><i>In grievances or disputes between business enterprises and affected stakeholders, the latter frequently have much less access to information and expert resources and often lack the financial resources to pay for them. Where this imbalance is not redressed, it can reduce both the achievement and perception of a fair process and make it harder to arrive at a durable solution.</i></p>	<ul style="list-style-type: none"> <li>» All users/rightsholders whose appeals are accepted for consideration have access to free counseling and support (for example, in the form of coaching and training) to develop their submission.</li> <li>» All cases have an assigned case worker to oversee the investigation and communicate with the user/rightsholder.</li> <li>» Case workers have the capacity to handle each case with the time and resources sufficient to provide the user/rightsholder with adequate support.</li> <li>» Procedural guidelines exist for taking statements and collecting and exchanging information and case material, with particular concern for confidentiality, privacy, and the use of invasive investigative techniques.</li> <li>» Independent support (e.g., a “user advocate”) is offered to the users/rightsholders whose cases have been selected for review to support the investigation and help guide them through the process.</li> <li>» Procedures are in place to ensure that any bias in an investigation is accounted for and addressed (e.g., training in unconscious bias for Oversight Board members or case workers).</li> <li>» Once the rightsholders in each case have been established, in addition to the user/rightsholder who submitted the claim, all receive the same treatment with regard to consent, communications, and remedy.</li> <li>» The user/rightsholder whose case is reviewed by the Oversight Board is privy to all the information and evidence that is used in the Board’s decision, to the greatest extent possible, while the privacy and security concerns of other users/rightsholders who may be implicated in the case are respected.</li> <li>» The user/rightsholder whose case is reviewed by the Oversight Board has the opportunity to submit a rebuttal after reviewing the evidence used against them.</li> </ul>
<p><b>Rights-Compatible</b></p> <p><i>A mechanism must ensure that its outcomes and remedies accord with internationally recognized human rights standards.</i></p>	<ul style="list-style-type: none"> <li>» The Oversight Board charter and bylaws reference a human rights-based approach, as well as the key human rights elements of their structure and composition.</li> <li>» A mix of cases is selected to cover a wide range of human rights over an appropriate time frame.</li> </ul>

*Grievances are frequently not framed in terms of human rights, and many do not initially raise human rights concerns.*

*Regardless, where outcomes have implications for human rights, care should be taken to ensure that they are in line with internationally recognized human rights.*

- » The Oversight Board has access to credible and authoritative external expertise and research in order to understand cultural nuances when needed.
- » The criteria for selecting and assessing cases are informed by a human rights-based approach, particularly as they relate to prioritizing the severity of the human rights impact/harm.
- » The criteria for making judgements include a process to ensure that the outcome is rights-compatible, including a consideration of the five forms of human rights remedy (restitution, rehabilitation, compensation, satisfaction, and non-repetition).
- » Procedures are established to ensure the users'/rightsholders' safety throughout the process (e.g., ensuring that communication with users/rightsholders does not put them at risk).
- » Procedures are in place to protect the identities of those involved in the case.
- » Escalation procedures are established to protect the user/rightsholder from harm, and the Oversight Board members and support staff are trained in how to use these procedures (e.g., details of a sensitive case are leaked to the media, exposing the user/rightsholder to security risks).

### **Transparent**

*A mechanism must keep parties to a grievance informed about its progress, providing sufficient information about the mechanism's performance to build confidence in its effectiveness and meet any public interest at stake.*

*Communicating regularly with parties about the progress of individual grievances can be essential to maintaining confidence in the process. Providing transparency about the mechanism's performance to wider stakeholders—through statistics, case studies or more detailed information about the handling of certain cases—can be important to demonstrate its legitimacy and retain broad trust. At the same time,*

- » Users/rightsholders who submit an appeal are notified that their appeal has been received and accepted or rejected by the Oversight Board within a guaranteed and appropriate time frame.
- » Users/rightsholders whose cases undergo review by the Oversight Board receive regular and proactive updates about case status.
- » The outcome of the case is clearly communicated to the user/rightsholder in an appropriate way, in the right language.
- » The Oversight Board publishes descriptions of its procedures and the outcomes of its decisions. The detail provided can be constrained for reasons of privacy, security, and consent.
- » Data are published about the work of the Oversight Board, including the number of cases referred, selected, and reviewed, as well as the source of cases, etc.
- » Facebook communicates the actual impact of Board decisions (e.g., if content is taken down or restored), including data on the number and types of remedy. Content that is removed or restored on the platform is tagged appropriately.
- » Facebook provides commentary on the impact of Oversight Board decisions and case precedents on the future



<i>confidentiality of the dialogue among parties and of individuals' identities should be provided when necessary.</i>	interpretation of its Community Standards (e.g., changes to policies, protocols, enforcement, or product).
<p><b>Source of Continuous Learning</b></p> <p><i>The mechanism should draw on relevant measures to identify lessons for improving the mechanism and preventing future grievances and harms.</i></p> <p><i>Regular analysis of the frequency, patterns, and causes of grievances can enable the institution administering the mechanism to identify and influence policies, procedures, or practices that should be altered to prevent future harm.</i></p>	<ul style="list-style-type: none"> <li>» The implications of each decision for Facebook (e.g., on policy, protocols, enforcement, or product) are systematically reviewed after each case.</li> <li>» Regular reviews are conducted, based on case history, to improve operational performance of the Oversight Board and Facebook.</li> <li>» A process exists to track and analyze patterns of grievances and related processes to mitigate and prevent future harm (for example, by amending the Community Standards).</li> <li>» A process exists to aggregate and publish the findings and outcomes of grievances.</li> </ul>

## 10.2 PATHWAYS TO EFFECTIVE REMEDY

This table describes five different pathways to effective remedy and sets out the *ideal scenario* for how the Oversight Board can apply these in practice.

Pathway to Remedy	BSR's Ideal Scenario: <i>Providing Pathways to Effective Remedy in Practice</i>
<p><b>Satisfaction</b></p> <p><i>An acknowledgement of the harm and an apology from those responsible, including verification of the facts, public disclosures of the truth, and sanctions against those responsible for the harm.</i></p>	<ul style="list-style-type: none"> <li>» Users/rightsholders involved in a case are notified of the Oversight Board's decision and receive an apology on behalf of Facebook for any harms sustained. This notification includes a narrative describing the process and outcome of the case, including the rationale behind the decision.</li> <li>» Content that has been restored following a Board decision is tagged accordingly and accompanied by a narrative describing the process and outcome of the case, including the rationale behind the decision.</li> <li>» Content that has been removed following a Board decision is replaced by a narrative describing the process and outcome of the case, including the rationale behind the decision.</li> <li>» Sanctions may be taken against Facebook staff and content moderators/agencies if the harm resulted from deliberate and malicious (mis)application of the Community Standards.</li> </ul>
<p><b>Restitution</b></p>	<ul style="list-style-type: none"> <li>» Content is restored to the Facebook platform following the successful appeal of a content removal decision.</li> </ul>

<p><i>Restoration, to the extent possible, of whatever has been lost (e.g., position in the community, property, liberty, etc.) and of the victim to the original position before the harm took place.</i></p>	<ul style="list-style-type: none"> <li>» In some cases, other forms of restitution—beyond restoration of content—are considered and provided.</li> <li>» Board decisions result in best efforts to restore other content that meets the same criteria as restored content, even if it does not undergo a formal review by the Oversight Board, insofar as it remains stored on Facebook’s servers.</li> <li>» Using best efforts, all iterations, repetitions, and variations of content that violates the Community Standards are removed following a successful appeal to remove the content.</li> </ul>
<p><b>Guarantee of Non-Repetition</b></p> <p><i>Measures to prevent further abuses, including changes in policies and procedures to prevent future harms and/or disciplinary action.</i></p>	<ul style="list-style-type: none"> <li>» Oversight Board decisions on whether to remove or restore content are irrevocable (unless overturned by the Board itself), and content moderators are informed of the decision, including additional training, guidance, or communication to reduce the risk of repetition.</li> <li>» Oversight Board decisions are incorporated into Facebook’s operations, specifically any necessary changes to the (1) Facebook Community Standards (2) Community Standards enforcement protocols and guidance, and (3) product features.</li> </ul>
<p><b>Rehabilitation</b></p> <p><i>Medical, psychological, legal, and social services to restore the victim</i></p>	<ul style="list-style-type: none"> <li>» Facebook provides medical, psychological, legal, and social services to the user/rightsholder in cases in which it is deemed that Facebook contributed to or caused the harm, and that resulted in impacts such as severe psychological harm, physical security, and threat to bodily integrity.</li> <li>» In the instances whereby the harm is collective, rather than individual, Facebook could, for example, pay into funds for victims, or fund organizations dedicated to supporting victims.</li> </ul>
<p><b>Compensation</b></p> <p><i>Money or other trade-offs for the cost of the harm in those cases wherein damage can be economically assessed.</i></p>	<ul style="list-style-type: none"> <li>» Facebook compensates the victim (either in the form of money or other fungible trade-offs) in cases in which it is deemed that Facebook contributed to or caused the harm, and that resulted in severe impacts whose cost can be measured.</li> <li>» These include: (a) physical or mental harm; (b) lost opportunities, including employment, education, and social benefits; (c) material damages and loss of earnings, including loss of earning potential; (d) moral damage; and (e) costs required for legal or expert assistance, medicine and medical services, and psychological and social services.</li> </ul>

## Conclusion

Facebook's Oversight Board represents a paradigm shift in the way content decisions are made and appealed—one with the intended objectives of increased transparency, legitimacy of decision-making, and independent judgment. The integration of human rights is crucial to the design, development, and operations of the Oversight Board in order to ground its approach in international human rights norms and standards.

This human rights review provides a clear action plan for Facebook to integrate human rights into the governance and operations of the Oversight Board. However, this human rights review also raises important elements for any company, organization, or government to consider with regard to social media platforms. As other approaches to content moderation and appeals are proposed or put in place, we hope the analysis and recommendations in this report provide considerable value to the advancement of this field.

## Annex A: Recommendations, Organized by Relevant Actor

In this annex, we structure BSR’s recommendations by those that are *primarily* directed toward each actor: Facebook and the Oversight Board. We have categorized each recommendation as “Y” (primarily directed) and “N” (not primarily directed).

Recommendation	Facebook	Oversight Board
<b>Harms and Impacts</b>		
<i>Address all human rights issues and prioritize the most severe cases.</i>		
A wide range of relevant human rights harms (beyond just freedom of expression) that may result from content decisions should be identified by Facebook and the Oversight Board.	Y	Y
The relevant human rights impacted by a content decision should be referenced by the Oversight Board in every case.	N	Y
Over time, the Oversight Board should ensure that the mix of cases it reviews encompasses a wide range of potential human rights harms.	N	Y
The Oversight Board should prioritize cases that present the most severe human rights harms, using the UNGPs’ scope, scale, and remediability criteria.	N	Y
Cases that involve sexual harassment and gender-based violence should be prioritized by the Oversight Board as severe human rights impacts.	N	Y
Facebook and the Oversight Board can use strategic foresight (or “futures”) methodologies to help identify cases that may become more common in the future.	N	Y
The Oversight Board’s scope should expand over time.	Y	Y
<b>Vulnerable Groups</b>		
<i>Address the rights and needs of individuals from groups or populations at heightened risk of becoming vulnerable or marginalized.</i>		
The Oversight Board should be diverse across multiple dimensions of diversity.	Y	Y
The Oversight Board should establish and maintain the diversity of its Administration staff.	Y	Y
Facebook should undertake a structured identification of different vulnerable user “personas,” identities, and categories.	Y	N
The mix of cases reviewed by the Oversight Board should encompass a wide range of impacted vulnerable groups.	N	Y

Facebook should establish measures to ensure the Oversight Board is accessible to vulnerable groups, including while cases are under consideration.	N	Y
Facebook should undertake a marketing and communications campaign to increase the awareness of appeal mechanisms (including the Oversight Board) among vulnerable and marginalized groups.	Y	N
The Oversight Board should take measures to ensure the needs and challenges of vulnerable users and marginalized groups to be addressed while cases are under consideration.	N	Y
The Oversight Board should provide a “user advocate” to support users making their case to the Oversight Board.	N	Y
Facebook should provide resources to allow the Oversight Board to hear cases in multiple languages.	Y	N
<b>Remedy</b>		
<i>Provide pathways to effective remedy.</i>		
Facebook should implement Oversight Board decisions by providing remedy to users in the form of satisfaction (i.e., apology and explanation) and restitution.	Y	N
Where warranted, the Oversight Board should have the power to require Facebook to provide remedy in the form of rehabilitation and financial compensation.	Y	Y
Facebook’s review of an Oversight Board decision should consider appropriate measures to minimize the risk of the same adverse impact reoccurring in the future.	Y	N
Non-Facebook/Non-Instagram users should have a channel to access the Oversight Board for use if content directly or indirectly impacts them.	Y	Y
The Oversight Board process should be clear, transparent, and predictable.	Y	Y
Facebook should review its own appeals process (i.e., the process prior to a case reaching the Oversight Board) against the effectiveness criteria for operational-level grievance mechanisms contained in Principle 31 of the UNGPs.	Y	N
<b>Decision-Making</b>		
<i>Make rights-based decisions and ensure that decisions made by the Oversight Board are effectively integrated into Facebook.</i>		
Facebook should incorporate a firm commitment to international human rights standards into the Oversight Board’s governance charter and bylaws.	Y	Y
Facebook should explain the link between human rights and the Oversight Board’s values.	Y	N

The Oversight Board should provide or procure training for all Oversight Board members and Administration staff in human rights, including best practice for operational-level grievance mechanisms.	N	Y
Facebook should include the Oversight Board in consultations about potential changes to the Community Standards.	Y	Y
Facebook should respond formally to any changes to the Community Standards recommended by the Oversight Board.	Y	N
<b>Informed Consent</b>		
<i>Ensure that relevant users provide consent for each case and can understand both risks and rights when consenting.</i>		
Facebook should ensure that all participants in Oversight Board processes, especially vulnerable users and rightsholders, provide informed consent for participation in a case.	Y	N
Facebook should ensure that the users/rightsholders who have cases reviewed by the Oversight Board are privy to all the information and evidence used in the Board's decision, aside from that withheld for privacy, security, and other legitimate reasons.	R	N
<b>Safety and Integrity</b>		
<i>Address new human rights risks arising from the existence of the Oversight Board</i>		
Facebook and the Oversight Board should apply the GNI Principles and record any efforts by governments to interfere with the work of the Oversight Board.	Y	Y
There should be a comprehensive safety and security plan for Oversight Board members and Administration staff.	Y	Y
Facebook should anticipate and mitigate the risk of retaliation (or other security risks) for users/rightsholders associated with individual cases.	Y	Y
<b>Transparency</b>		
<i>Account for how human rights impacts are addressed through external communications.</i>		
The Oversight Board should publish an annual report.	R	Y
The Oversight Board should compile a public repository of cases and decisions made by the Oversight Board.	Y	Y

## Annex B: Illustrative Cases

### INTRODUCTION

In this annex, we use examples to illustrate BSR’s recommendation that the relevant human rights impacted by a content decision should be referenced for the Oversight Board in every case.

In these examples, BSR does not make a recommendation on whether content should be retained or removed; the Facebook Community Standards go into significantly more detail than international human rights standards, and the full nuances of each case are not presented here. Rather, our objective is to illustrate the range of relevant human rights impacts for each case, and to note that these human rights impacts should form part of the Oversight Board’s deliberations.

Illustrative Case	Human Rights Impacted
A Facebook user discovers a post in a closed group containing photos of themselves and comments relating to sexual behavior	<p><b>Freedom of expression (UDHR 19, ICCPR 19).</b> An accumulation of such online comments as this can be linked to increased violence against women and violations of the right to security of person. The Oversight Board can consider whether a restriction in this case is legitimate (i.e., pursues an objectively legitimate purpose and addresses a precise threat).</p> <p><b>Right to equality and dignity (UDHR 1).</b> All human beings are born free and equal in dignity and rights. The complainant believes her right to human dignity has been violated.</p> <p><b>Right to life, liberty, and security of person (UDHR 3, ICCPR 9).</b> The complainant believes her security of person is placed at risk by the posts (i.e., that real-world harm to bodily integrity may result from them).</p> <p><b>Right against attacks upon honor and reputation (UDHR 12, ICCPR 17).</b> The complainant believes the posts constitute an attack on her “honor and reputation.”</p>

Illustrative Case	Human Rights Impacted
Videos are posted discussing European demographic replacement—i.e., the white population becoming a minority over time—but do not “promote” white	<p><b>Freedom of expression (UDHR 19, ICCPR 19).</b> The user posting the content has a right to express opinions about immigration policy in Europe and to participate in debate on the topic. The right to freedom of expression can be restricted for the protection of public order; the Oversight Board can consider whether a restriction in this case is necessary (i.e., can’t be achieved by other means) and proportionate (i.e., not overbroad) to protect public order.</p>

<p>nationalism or white separatism.</p>	<p><b>Right to participate in elections (UDHR 21, ICCPR 25).</b> The user has a right to take part in the government of his/her country, directly or through freely chosen representatives, and removing this post may hinder the user’s right to participate in the democratic process.</p> <p><b>Incitement to discrimination, hostility, violence (ICCPR 20).</b> The complainant believes that the post clearly supports white nationalism and separatism in all but name, and could lead to real-world harm, especially when considered in combination with similar posts. ICCPR 20 states that advocacy of national, racial, or religious hatred that constitutes incitement to discrimination, hostility, or violence should be prohibited.</p> <p><b>Right to life, liberty, and security of person (UDHR 3).</b> The complainant believes their security of person is placed at risk by the posts (i.e., that harm to bodily integrity may result from them).</p> <p><b>Nondiscrimination (UDHR 2, ICCPR 2).</b> The complainant believes that the post is an implicit/implied attack on the right against distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.</p>
---	---

Illustrative Case	Human Rights Impacted
<p>A user posts a list of individuals who have allegedly engaged in sexual harassment in the workplace.</p>	<p><b>Access to effective remedy (UDHR 8).</b> By raising the profile of these cases, the user believes that the post will enhance the right to an effective remedy for the victims of sexual harassment and sexually predatory behavior, especially in a context that lacks effective implementation of protections against sexual harassment.</p> <p><b>Right to a fair trial and innocent until proven guilty (UDHR 10, 11 and ICCPR 14).</b> The individuals listed have a right to a fair and public hearing and to be presumed innocent until proved guilty. If the post is widely shared, these rights may be placed in jeopardy.</p> <p><b>Right of honor and reputation (UDHR 12, ICCPR 17).</b> The post could constitute an attack upon the “honor and reputation” of individuals who may be proven innocent of sexual harassment.</p> <p><b>Freedom of expression (UDHR 19, ICCPR 19).</b> The right to freedom of expression can be restricted for “respect of the rights or reputations of others.” The Oversight Board can consider whether a restriction in this case is necessary (i.e., can’t be achieved by other means),</p>



proportionate (i.e., not overbroad) to protect public order, and legitimate (i.e., addresses a precise threat).

**Right to life, liberty, and security of person (UDHR 3).** The user believes that the post is intended to help prevent future harms to bodily integrity for women. On the other hand, this listing may be linked to social unrest aimed at the alleged perpetrators.

Illustrative Case	Human Rights Impacted
<p>A Facebook Group exists posting violent videos of gun use for the purposes of entertainment.</p>	<p><b>Freedom of expression (UDHR 19, ICCPR 19, ICCPR 20).</b> There is no prohibition regarding speech about guns, and the content does not appear to be propaganda for war, which would be prohibited under ICCPR 20. The Oversight Board can consider whether a restriction in this case is necessary (i.e., can't be achieved by other means), proportionate (i.e., not overbroad) to protect public order, and legitimate (i.e., addresses a precise threat).</p> <p><b>Right to life, liberty, and security of person (UDHR 3).</b> The human rights implications of this case arise from the potential accumulation of similar content that “glorifies” gun violence in ways that are linked to real-world harm.</p>

Illustrative Case	Human Rights Impacted
<p>A post shows pictures of alleged “criminals” alongside text encouraging viewers to call the police with information on the people pictured. Many of the alleged criminals are also political activists.</p>	<p><b>Right to a fair trial (UDHR 10, ICCPR 14) and the right to be considered innocent until proven guilty (UDHR 11, ICCPR 14).</b> Those pictured, if they are alleged to have committed crimes, may believe that their right to a fair trial will be jeopardized by the wide circulation of these posts.</p> <p><b>Incitement to discrimination, hostility, violence (ICCPR 20).</b> ICCPR 20 states that advocacy of national, racial, or religious hatred that constitutes incitement to discrimination, hostility, or violence should be prohibited. By targeting known political activists, the post may be inciting hostility and violence toward them.</p> <p><b>Right to life, liberty, and security of person (UDHR 3).</b> The security of persons may be placed at risk by the posts—i.e., harm to bodily integrity may result from the posts.</p>

**Right to freedom of expression (UDHR 19, ICCPR 19).** It may be necessary to restrict the right to freedom of expression in order to respect the rights or reputations of others. The Oversight Board can consider whether a restriction in this case is necessary (i.e., can't be achieved by other means) and proportionate (i.e., not overbroad) to respect the rights of the complainant.

**Right of honor and reputation (UDHR 12, ICCPR 17).** The post could constitute an attack upon the "honor and reputation" of the political activists featured.

**Right to participate in elections (UDHR 21, ICCPR 25).** Everyone has the right to take part in the government of his/her country, directly or through freely chosen representatives. Removing this post may hinder the democratic process by removing content upon which citizens can make informed decisions—or retaining the post may hinder or dissuade citizens from actively participating in the electoral process.

Page intentionally left blank.

## About BSR

BSR is a global nonprofit organization that works with its network of more than 250 member companies and other partners to build a just and sustainable world. From its offices in Asia, Europe, and North America, BSR develops sustainable business strategies and solutions through consulting, research, and cross-sector collaboration. Visit [www.bsr.org](http://www.bsr.org) for more information about BSR's 25 years of leadership in sustainability.