

## **Shaun King Appeal to META Oversight Board**

### **INTRODUCTION AND ARGUMENT SUMMARY**

Shaun King, an individual, human rights defender, New York Times bestselling author, and award-winning journalist, is the owner and user of multiple Instagram and Facebook accounts. Hailed by Time Magazine as one of the 25 most important people in the world on the Internet, Mr. King is the most followed activist in North America. His Instagram account, @ShaunKing had over 5.7 million followers as of December 2023. His Facebook page (<https://www.facebook.com/shaunking>) has over 2.5 million followers. He also has an active presence on Twitter, LinkedIn, TikTok, and on various websites via his writing and speaking activities to promote human rights, and most recently, to seek a ceasefire, peace, and an end to the violence and atrocities in Palestine while supporting accountability efforts. He is also a published author of two books. Further documentation and details are set forth in his attached statement and email correspondence between Mr. King and Meta staff and internal counsel.

On Christmas Day, Meta informed Mr. King that it had suspended his account, gutting his ability to communicate with his activist following, crippling his ability to support his family, and causing substantial and irreparable harm to his reputation. This decision fell on the heels of Meta removing Mr. King's content about both domestic civil rights issues around policing, and the war in Gaza—many decisions that Meta subsequently reversed, but only after causing serious harm to his reputation.

Throughout the week, Mr. King submitted multiple appeals, both personally and through legal counsel, to try to resolve any issues with his account. Meta staff repeatedly told Mr. King and his team that members of the Meta team were on vacation. On January 5<sup>th</sup>, Mr. King's counsel finally met with Meta and their outside counsel at Orrick. They were told that Mr. King's account would not be restored and that, astoundingly, he had no appellate recourse despite the existence of an Oversight Board whose stated purpose is to provide checks on arbitrary decisions. Such a precedent is dangerous and a threat to democracy. Meta runs a platform that has become critical to the world's political discourse. Allowing a small group of individuals and an outside law firm to make decisions about who can and cannot speak, and on what, with no transparency, is a threat to freedom of expression.

Mr. King is submitting this appeal on multiple instances of removal of content and the suspension of his Instagram account (his Facebook account still remains active) to the Oversight Board on a number of procedural and substantive grounds. Due to Meta's own violations of the Bylaws and Charter (which will be set out in further detail below), and technical difficulties, he has been unable to submit via the online portal. Despite months of communication with Meta (attached to this submission), Meta has also refused to assist Mr. King in filing this appeal, refused to provide him with the necessary information and data to do so, including the history of alleged violations and removals that Mr. King has been unable to access for months, and even misled and/or omitted important information from Mr. King despite specific requests about his rights and access to remedies, and what we have reason to believe were government requests to remove content and suspend Mr. King's Instagram account. Even the notification Mr. King received (attached hereto), states that he has 180 days to appeal the suspension of his account. And yet as stated above, Meta's position is

currently that he has no appellate rights. Such a decision is astounding in and of itself, but is even more so given that Mr. King has not actually violated any of Meta's standards and guidelines.

Meta, likely concerned about the improper removal of content and errors made via automated or human review, and with full knowledge that Mr. King intended to appeal to this Board, suspended Mr. King's Instagram account on 25 December 2023, before he could file an appeal, and now takes the Kafkaesque position that because he does not have an Instagram account, he cannot appeal. As will be set forth below, not only is this inconsistent with the plain language contained in the Charter and the Bylaws, it violates long-standing precedent under human rights treaties and norms, as the right to access to remedy is both specifically protected and customary international human rights law, and it is contrary to and frustrates the intent and purpose of creating the Oversight Board if Meta can arbitrarily prevent particular content removal decisions from ever being challenged.

Although recent Board decisions and recommendations have specifically highlighted the lack of access to remedy due to Meta's procedures and actions, we respectfully request that the Board consider this appeal and find that Mr. King has standing because the Bylaws only require an active Instagram OR Facebook account. The Bylaws contain no text requiring that the account needs to be the one where content was removed. Mr. King has an active Facebook account as of the date of this submission, and as you can see from the attached screenshot, the account is also linked to the Instagram account in his name. The Bylaws do not require a reference identification number for an appeal, they only discuss that this is an administrative aspect that allows identification of the content and matter. Further, denying Mr. King access to remedy would further violate his human rights, in addition to the wrongful removal of content restricting his rights to free speech and expression.

Allowing this appeal would also be consistent with the Oversight Board's Overarching Criteria for Case Selection which sets forth as its priorities concerns about the automated enforcement of policies and curation of content, cases arising from crisis and conflict situations, and, most importantly, "**Treating users fairly**: The Board is interested in exploring how people who use Meta's platforms are affected by the way the company moderates content and enforces its policies. They may raise issues of due process, notice to users, equal treatment and prioritization of content for review, strikes, and penalties, and the availability and treatment of appeals. This priority intersects with all those above, and may engage multiple content policy areas, as well as Meta's commitment to remedy outlined in its corporate human rights policy."<sup>1</sup>

This case is emblematic of hundreds, if not thousands of other cases of users experiencing the same or similar difficulty with Meta's Instagram and Facebook platforms. For example, a press release from the American-Arab Anti-Discrimination Committee reported that between 30 December 2023 and 8 January 2024, they received "over 1,100 reports of social media users facing issues with censorship, with a majority of the complaints against Instagram, which is owned by Meta. ... Many of the complaints are from individuals who have been de-platformed and permanently banned from their accounts." A copy of the press release is attached to this submission.

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<sup>1</sup> <https://oversightboard.com/sr/overarching-criteria-for-case-selection#:~:text=The%20Oversight%20Board%20will%20select,Facebook's%20Community%20Standards%20and%20Values.>

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It is critically important that the Oversight Board review this case given its implications for how people can document atrocities and develop political commentary. Our world is in a great crisis, with two major regional armed conflicts being fought in Ukraine and the Middle East, combined with human rights violations in other areas such as Afghanistan, Syria, Yemen, and throughout the world. It is also a year when two of the world's superpowers, the United States and the United Kingdom, will be holding general elections to select their next leader. It is therefore more important than ever that the Oversight Board determine its rightful and logical jurisdiction over cases according to the plain language of the Bylaws and Charter, and consistent with International Human Rights law, and provide a meaningful access to remedy and review of content removal, censorship, and the disabling of accounts. Failure to do so will give a small group of individuals unchecked power over political speech.

It is also critical that the Oversight Board review this case because currently, Meta is removing content that does not violate its publicly stated policies. If there are other policies that have been violated, they are not transparent. As we will argue in the final section of this submission, Mr. King was not attempting or intending to praise dangerous organisations or otherwise violate the Standards and Guidelines as to Dangerous Individuals and Organisations in the content that Meta removed and alleged was in violation. Mr. King submits a personal statement with this submission and asserts that he made his posts to raise awareness, document atrocities, and educate his followers as to an on-going and rapidly evolving armed conflict. Additionally, we assert that, in line with this Board's reasoning in some of the decisions related to Afghanistan following the Taliban takeover, greater nuance and evaluation is required for content involving, depicting, or otherwise portraying organisations that have been designated as terrorist or other similar groups but who now are State (Government) actors. When these groups become the Government authority and control the military and military operations, as well as the daily civic lives of the citizens of the nation in which they operate, content about them needs to be evaluated distinguishing between the previously proscribed non-state actor and the present national Government authority. In this case, Mr. King was not praising, supporting, or otherwise violating the Standards as to the Houthis as a designated organisation, he was discussing the actions of the Yemen Government and military forces of Yemen engaged in actions pursuant to their international legal obligations according to the responsibility to protect and the Convention to Prevent Genocide.

Had Mr. King received the opportunity to meaningfully engage with content reviewers and present his case (something he attempted to do for months with Meta), this could have been addressed. Given the existing situations involving proscribed organisations who are also Government actors and control militaries, it is thus even more appropriate for the Board to consider this case and others, and for Meta to revise its policies and guidance to recognise the nuances of these situations and allow for users to engage in public debates and information sharing (including critiques of wrongdoing or praise when a government does something positive for the lives of the people). This aspect can be more fully briefed and analysed upon receipt of the data and historical evidence of violations. It is also an aspect that should be

opened for public comment and expert contributions as there are a number of global experts presently researching and writing on this precise topic.<sup>2</sup>

Thus, as will be set forth below, we respectfully request that this Board accept this appeal under these exceptional circumstances, and consistently with its authority under the Bylaws and Charter, require that Meta provide all relevant information and data to evaluate this case, and open this matter for public comment and submission given the broad reach of these issues and impact on tens of millions Instagram and Facebook users and the need to address these problems in light of ongoing conflicts and crisis and the important need to protect fair and free elections, speech, and human rights in a year that will contain at least two major (and highly contested) elections.

### **FACTUAL BACKGROUND AND TIMELINE OF EVENTS**

The attached personal statement of Mr. King sets out in full detail what transpired in the months prior to this submission. His detailed description, along with supporting documentation, demonstrates the regular and repeated challenges he faced with his account, but, more importantly, his efforts to help correct content removals that were made in error, and engage in dialogue with Meta to understand more fully their policies, and help explain his intent and context. All of this was in the hopes of cooperating fully with the platform, and ensuring a better experience for all users who were facing the same or similar restrictions or difficulties. Unfortunately, Meta, for reasons unknown, failed to even follow their own policies, or seek the benefit of engaging with a user to ensure that Meta's responses to content removals complied with human rights norms and Meta's internal policies. We do not repeat the information contained in Mr. King's statement here, but would refer the Board to his statement and the attachments.

On 25 December 2023, Mr. King received a notice that content had been removed and that his Instagram account had been suspended. The notice indicated that he had 180 days to appeal (a copy of the screenshot is attached hereto). Despite multiple attempts to appeal the suspension via the online link or the in-app tools, he has been unable to do so.

On 2 January 2024, undersigned counsel sent a letter via email to Meta's counsel requesting a number of items, but most specifically the reference identification numbers for the removed content and for the history of alleged violations, removals, and any resolution of Mr. King disputing them. Counsel indicated the urgency and necessity in obtaining this information given the fifteen-day window to file an appeal with the Oversight Board. Additionally, counsel hoped that we could specifically address the content, the intent and purpose behind the posts to demonstrate that Mr. King had not violated the standards or guidelines, and hope that with a dialogue and human review, the matter could be resolved and Mr. King's account could be restored. Counsel for Meta then engaged in discussions to schedule a meeting for later in the week, but despite undersigned counsel's repeated requests, they failed to comply with the requests for information, nor did they even acknowledge them in their emails.

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<sup>2</sup> See, e.g. *Sophie Haspelagh, Proscribing Peace*. <https://manchesteruniversitypress.co.uk/9781526157591/>. See also her article in Just Security specifically addressing the Yemen Government under the Houthis, and the impacts of terrorist designations of a state actor: <https://www.justsecurity.org/74340/us-terrorist-designation-for-houthis-is-bad-for-yemen-even-beyond-crippling-aid-efforts/>.

On Friday 5 January 2024, an online video meeting was held between undersigned counsel, Attorney Abed Ayoub from ADC National, Meta attorneys Manar Waheed and Roy Austin, and Meta's outside counsel from Orrick, Caroline Simons and Jacob Heath. The attorneys informed Mr. King's counsel that his account was suspended and that he had no recourse.

Specifically, Attorney Simons stated that she would send an email to counsel confirming Meta's position that since Mr. King's Instagram account had been suspended, he could not appeal to the Oversight Board. She also promised to confirm in writing that Meta would not be providing any of the information requested in undersigned counsel's email request providing the basis for the decision (request attached hereto), but that she would provide the link for Mr. King to request a download of all his data and personal and intellectual property from his accounts (which he no longer had access to). As of the date of the submission, no correspondence has been received from any of Meta's lawyers, once again demonstrating their questionable behaviour, stonewalling, and refusal to provide pertinent and necessary information in regards to Mr. King's account and his appeal to the Oversight Board. Given that Meta's lawyers never sent the correspondence as responses as promised, attached to this submission is an affidavit from Abed Ayoub attesting as to the representations and statements made in the meeting by Meta's internal and outside counsel.

We are submitting this appeal to the Oversight Board, via email, on 8 January 2024, within fifteen days of the notice that content was removed and Mr. King's Instagram account was suspended. We attempted to submit the appeal via the online portal, but were unable to do so because Meta never provided reference identification numbers for any of the content it removed from Mr. King's account (all of which were contested).

Given the failure of Meta to provide necessary and relevant information or data, or to comply with their own written policies on users having access to violation history, we would ask, should the Board accept this appeal and request the information and data from Meta, that we would be allowed to make an additional submission following receipt and review of the data and history. At this juncture, our submission below is based on the limited data and evidence we have and Mr. King's recollection to the best of his abilities.

**I. STANDING AND JURISDICTION: THE OVERSIGHT BOARD HAS AUTHORITY TO ACCEPT THIS APPEAL DESPITE META'S DANGEROUS ATTEMPTS TO INSULATE ITS DECISIONS FROM BOARD REVIEW AND OVERSIGHT**

It is critically important that the Board review this appeal and make clear that Meta cannot insulate its decisions, including one that removes an account with over five million followers, from Board oversight. Failure to address this issue now will lead to terrible precedent and will diminish the democratic-role of the board. Further, a plain reading of the governing documents for the Oversight Board, combined with the intent and purpose of the Board makes clear that Mr. King is eligible to appeal the removal of content (and thus the suspension of his Instagram account).

In order to analyse the issue of access to remedy and review, we must look at the founding principles for the Board. Mark Zuckerberg envisioned a “Supreme Court of Facebook,”<sup>3</sup> as a “quasi-judicial unit with autonomous powers” inspired by constitutional law.<sup>4</sup>

The Charter establishing the Oversight Board describes its purpose as protecting free expression with clear statements as to the governing documents and authority of the Board:

“by making principled, independent decisions about important pieces of content and by issuing policy advisory opinions on Facebook’s content policies The board will operate transparently and its reasoning will be explained clearly to the public, while respecting the privacy and confidentiality of the people who use Facebook, Inc.’s services, including Instagram (collectively referred to as “Facebook”). It will provide an accessible opportunity for people to request its review and be heard.

This charter specifies the board’s authority, scope and procedures, including how Facebook and the people registered to use its services (from here, referred to just as “people”) can access the board. It provides for the creation of an independent, irrevocable trust with trustees who will follow the guidelines stated in this charter when supporting the board. The board’s bylaws will specify the operational procedures of the board.”<sup>5</sup>

Independence is a core principle of the Oversight Board. And yet currently, it appears that Meta is exercising authority over how and when the Oversight Board can review its decisions. In this case, it has done so by simply disabling accounts of a user—who has over five million followers - and implementing internal practices that arbitrarily take cases outside of the “appeal eligible” review process. That eliminates any shred of independence and impedes the entire purpose for the existence of the Oversight Board.

Article 2 of the Charter specifically states: “Authority to Review. People using Facebook’s [used collectively in the Charter to refer to Facebook and Instagram] services and Facebook itself may bring forward content for board review. The board will review and decide on content in accordance with Facebook’s content policies and values.”

The Charter continues on to Section 1, titled “Scope”: “In instances where people disagree with the outcome of Facebook’s decision and have exhausted appeals, a request for review can be submitted to the board by either the original poster of the content or a person who previously submitted the content to Facebook for review. Separately, Facebook can submit requests for review, including additional questions related to the treatment of content beyond whether the content should be allowed or removed completely. Detailed procedures on submission and requirements for review by the board will be publicly available.”

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<sup>3</sup> Steven Levy, *Why Mark Zuckerberg’s Oversight Board May Kill His Political Ad Policy*, Wired (Jan. 28, 2020), <https://www.wired.com/story/facebook-oversight-board-bylaws>.

<sup>4</sup> Mark Sullivan, *Exclusive: The Harvard Professor Behind Facebook’s Oversight Board Defends Its Role*, Fast. CO. (July 8, 2019), <https://www.fastcompany.com/90373102/exclusive-the-harvard-professor-behind-facebooks-oversight-board-defends-its-role>.

<sup>5</sup> Oversight Bd., Oversight Board Charter intro. (2019), <https://www.oversightboard.com/governance>

Under the well accepted standards for statutory construction or legal foundations of contract law, the purpose of the Board is to provide users of Meta’s platforms with a forum to appeal decisions on content moderation. For Meta to now take the position that its unilateral decision to disable an account renders the opportunity for review obsolete is simply contrary to the expressly stated provisions of the Charter.

The Charter establishing the Oversight Board (2019) and the current version of the Charter as of February 2023 specifically state in Article 6, Section 2, as to the governing authority of the Board: “Section 2: Bylaws. The board’s operational procedures will be outlined in its bylaws. The charter and bylaws will act as companion documents.” Under “Legal Definitions”, the Charter states: “Governing Documents. The Bylaws, LLC Agreement, Trust Agreement, Member Contracts, Code of Conduct, and Facebook-LLC Service Provider Contract,” and “Bylaws: The documents governing the operational procedures of the board, adopted by board members.”

Section 1.1 of the Oversight Board Bylaws (version as of February 2023) states: “In order to request a review by the board, a person must have an active Facebook or Instagram account.” Section 1.2.1 sets out specific types and categories of content not eligible for Board review. None of the content in Mr. King’s case falls into those categories. Nor does it state that content removals under escalation policies are excluded from Board review.

Section 1.2.2 sets forth procedures and policies as to illegal content; however, to date, Meta has not made any assertions that Mr. King’s removed content falls under these categories, Mr. King has never received a notice that his content was removed pursuant to a government request or notice of illegality, and most importantly, none of Mr. King’s content was illegal. **We do note the recent investigation<sup>6</sup> revealing the Israeli prosecutor’s office misuse of content removal policies in the months following 7 October 2023, and if Mr. King’s account was subject to content removals due to Government requests, Meta violated its own policies and prior Board practices in failing to advise Mr. King of this, and this is a matter that should be reviewed given that thousands of users had content removed at the request of the Israeli Government.**

In Article 3, addressing requests for appeal by “people”, the sections set forth specific requirements for the appeal, including types of content – all of which apply to Mr. King’s case. It also includes a statement that content that was previously appealed to the Board cannot be appealed again. No other exclusions or exceptions are listed.

Furthermore, neither Article 2 of the Bylaws (referencing Meta submissions to the Oversight Board) or Article 3 (referencing “People” submissions), contain any language to support the position taken by Meta as to a user’s ability to appeal to the Oversight Board, or the arbitrary limitations and restrictions being imposed without any support from the clear language of the Bylaws and the Charter.

Strangely, the webpage listing criteria for an appeal<sup>7</sup> contains different language than that in the official Bylaws. For example, the webpage states: “You must have an active account *where the content was posted*. This means that the account cannot be deleted or disabled and

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<sup>6</sup> <https://www.forbes.com/sites/thomasbrewster/2023/11/13/meta-and-tiktok-told-to-remove-8000-pro-hamas-posts-by-israel/?sh=3f418ce7f6ce>.

<sup>7</sup> <https://oversightboard.com/appeals-process/> (Last accessed 7 January 2023).

you must be able to log in to it.” (Emphasis added). However, nowhere in the Charter or Bylaws is this language found. Additionally, the webpage includes language that a user “can only appeal content decisions that have been given a reference number. This reference number can be found on the final decision notification from Facebook or Instagram.”

The Bylaws do not contain any provision requiring that the active account is the one where the content was posted, nor do the Bylaws state anything about deletions, disabling, or being able to log in, or the impact of that on a user’s standing and right to appeal the content removal. The Bylaws do mention that a user will receive a reference identification number, but this is not stated as a requirement for appeal, it is presented as an administrative measure, similar to assigning case numbers, allowing for “identification” and “access to the website.”

Meta has two primary policies on restricting accounts (updated 23 February 2023) and disabling accounts (updated 19 January 2022), which discuss these as penalties for removed content for violations of the Guidelines and/or Standards. Neither of these policies contains any provisions addressing the right to appeal to the Oversight Board or warning users that restrictions or disabling accounts will deem a user ineligible to appeal to the Oversight Board.

Furthermore, the Oversight Board’s October 2023 Quarterly Report<sup>8</sup>, includes a Table of Recommendations, many of which are directly applicable to the present case.

Facebook should improve its transparency reporting to increase public information on error rates by making this information viewable by country and language for each Community Standard. The Board underscores that more detailed transparency reports will help the public spot areas where errors are more common, including potential specific impacts on minority groups, and alert Facebook to correct them.

Restrictions on speech are often imposed by or at the behest of powerful state actors against dissenting voices and members of political oppositions. Facebook must resist pressure from governments to silence their political opposition. When assessing potential risks, Facebook should be particularly careful to consider the relevant political context.

In evaluating political speech from highly influential users, Facebook should rapidly escalate the content moderation process to specialised staff who are familiar with the linguistic and political context and insulated from political and economic interference and undue influence. This analysis should examine the conduct of highly influential users off the Facebook and Instagram platforms to adequately assess the full relevant context of potentially harmful speech.

Facebook should publicly explain the rules that it uses when it imposes account-level sanctions against influential users. These rules should ensure that when Facebook imposes a time-limited suspension on the account of an influential user to reduce the risk of significant harm, it will assess whether the risk has receded before the suspension term

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<sup>8</sup> <https://www.oversightboard.com/news/228158946731169-q2-2023-transparency-report-board-s-recommendations-lead-to-key-changes-in-meta-s-cross-check-program/>.



expires. If Facebook identifies that the user poses a **serious risk of inciting imminent violence, discrimination, or other lawless action at that time**, another time-bound suspension should be imposed when such measures are necessary to protect public safety and proportionate to the risk.

When Facebook implements special procedures that apply to influential users, these should be well documented. It was unclear whether Facebook applied different standards in [the Trump] case, and the Board heard many concerns about the potential application of the newsworthy allowance. It is important that Facebook address this lack of transparency and the confusion it has caused.

Facebook has a responsibility to collect, preserve, and where appropriate, share information to assist in the investigation and potential prosecution of grave violations of international criminal, human rights, and humanitarian law by competent authorities and accountability mechanisms. Facebook's corporate human rights policy should make clear the protocols the company has in place in this regard. The policy should also make clear how information previously public on the platform can be made available to researchers conducting investigations that conform with international standards and applicable data protection laws.

Make technical arrangements to ensure that notice to users refers to the Community Standard enforced by the company. If Facebook determines that (i) the content does not violate the Community Standard notified to user, and (ii) that the content violates a different Community Standard, the user should be properly notified about it and given another opportunity to appeal. **They should always have access to the correct information before coming to the Board.**

The opening pages of the December 2019 BSR Report "Human Rights Report: Facebook Oversight Board,"<sup>9</sup> ("BSR Report") state: "[t]he Facebook Oversight Board needs to be designed to meet the needs of billions of rightsholders (both users and nonusers), who could be anywhere in the world and who may speak any language." The BSR Report, in analysing both the Facebook level and Oversight Board grievance processes, and comparing them to other corporate bodies in various industries, states "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."

The BSR Report continues on to counsel that "[n]on-Facebook / non-Instagram users should have a channel to access the Oversight Board for use if content directly or indirectly impacts them. 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."

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<sup>9</sup> [https://www.bsr.org/reports/BSR\\_Facebook\\_Oversight\\_Board.pdf](https://www.bsr.org/reports/BSR_Facebook_Oversight_Board.pdf).

In expanding on this, and providing further evidence: “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. 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.”

The BSR report also, in its examination of scope of the Board’s jurisdiction “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,” and then goes on in the commentary to discuss those who have content posted about them or those who endure human rights violations or other harms because of content posted, and even situations involving WhatsApp and Messenger. This distinction between user and non-user by its plain meaning indicates those who have accounts and those who have chosen not to use the platforms. At the risk of sounding like a broken record, it is simply unfathomable that Meta could disable an account due to content removal decisions that are otherwise appealable, and then claim the person is a non-user without the ability to appeal the decision.

The October 2023 Recommendation from the Oversight Board also included one from *Meta’s Cross-check programme policy advisory opinion*, that “Meta should establish clear criteria for removal. One criterion should be the amount of violating content posted by the entity. Disqualifications should be based on a transparent strike system, in which users are warned that continued violation may lead to removal from the system and/or Meta’s platforms. **Users should have the opportunity to appeal such strikes through a fair and easily accessible process.**”

At the time of the content removal that would otherwise be eligible for Board review, Mr. King was a user of Instagram and had an active account. As of the date of this submission, Mr. King maintains an active Facebook account.

Commentators on the Board’s creation and limits to Facebook or Instagram users with an active account focused on the concern that “non-users” who are otherwise impacted by content or posts on the platforms should have access to remedy and redress.<sup>10</sup> The distinction made between users and non-users under the plain meaning would indicate those with accounts and posting content, versus those without, by their own choice and volition. The BSR Report also set forth its conclusion that a main purpose of this Board is to provide rightsholders and individual users with remedies.

Read in its entirety and considering the purpose of the Board, if the Board considered that users whose accounts were disabled based on content removal were ineligible for making an appeal, this would have been specifically stated as an exclusion. Of course, such a requirement would be absurd, because it would insulate Meta decisions from Board review. The only reason that an individual does not have an active account is due to a decision and action taken by the “opposing party”, Meta, to disable the user’s account in an attempt to

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<sup>10</sup> BSR, Human Rights Review: Facebook Oversight Board 3 (2019), [https://www.bsr.org/reports/BSR\\_Facebook\\_Oversight\\_Board.pdf](https://www.bsr.org/reports/BSR_Facebook_Oversight_Board.pdf).

preclude review or examination by this Board. That exclusions would therefore render the Board obsolete in numerous important cases.

Further, Board precedent to date contradicts Meta's position that there is no right to appeal once Meta has disabled a user's account. In prior decisions addressing a mootness concern – this Board rejected Meta's argument that removing or restoring the content at issue deprives the Board of jurisdiction. In *Breast Cancer Symptoms and Nudity*, No. 2020-004-IG (Jan. 28, 2021), the decision states: “[T]he Board has the authority to review cases from users even when Meta chooses to later rectify its mistake and restore the content.” If such is the case, then certainly the Board would also retain the authority to review cases from users when Meta chooses to disable the user account based on Meta's decision to remove content it believed to be in violation of its standards.

#### A. Right to Access to Remedy

Every person has the right to pursue effective remedies for violations of fundamental rights, either through state mechanisms or grievance mechanisms set up by companies. The right to remedy is a core tenet of the international human rights system under the ICCPR and other human rights instruments. The need for victims to have access to an effective remedy is recognized in the UN Guiding Principles on Business and Human Rights (UNGPs).

The International Covenant on Civil and Political Rights (“ICCPR”) Article 2.3(a) states that “any person whose rights or freedoms as herein recognised are violated shall have an effective remedy...,” a concept echoed and repeated in Article 14 of the Convention Against Torture (“CAT”), Article 2 of the Convention on the Elimination of Discrimination Against Women (“CEDAW”), Article 6 of the Convention on the Elimination of All Forms of Racial Discrimination (“CERD”), and implied in Article 4 of the Convention on the Rights of Persons With Disabilities (“CPRD”).

Article 13 of the European Convention on Human Rights (“ECHR”) requires states to provide an “effective remedy” before a “national authority” for any person whose rights under the ECHR have been violated. All ECHR signatory states have incorporated this into domestic law. Article 25 of the American Convention on Human Rights as to the Right of Judicial Protection states that: “[e]veryone has the right to simple and prompt recourse, or any other effective recourse, to a competent court or tribunal for protection against acts that violate his fundamental rights recognized by the constitution or laws of the state concerned or by this Convention, even though such violation may have been committed by persons acting in the course of their official duties.”

The right to non-discrimination also pertains to the right to equality before courts and tribunals, contained in Article 26 of the ICCPR. It incorporates the right of equal access to courts and to be treated without discrimination, the protection of what has been deemed “equality of arms”. Equality of arms means that all parties should be provided with the same procedural rights unless there is an objective and reasonable justification not to do so, and there is no significant disadvantage to either party. The oft cited examples are where rights to appeal are only afforded to prosecution, and not the defendant, in a criminal matter, or in immigration cases where a government will deport an individual and then claim the aggrieved person has no right to appeal the errors in the underlying determination that they were deportable. The same concept could be applied here, wherein Meta can appeal virtually

any content related decision, but under its sole arbitrary power to disable or remove accounts, it is then preventing users from appealing the removal of content that led to Meta's decision to disable the accounts, without affording users the opportunity to request review of the content removal. The logic is simply non-existent and is contrary to human rights norms and the entire purpose and existence of the Oversight Board.

Finally, the UN Guiding Principles on Business and Human Rights (“UNGPs”) specifically address the importance of both state and non-state grievance mechanisms and access to remedies. Principle 31 sets forth criteria of effective state and non-state mechanisms against which Meta's procedures should be evaluated:

- (a) Legitimate: enabling trust from the stakeholder groups for whose use they are intended, and being accountable for the fair conduct of grievance processes;
  - (b) Accessible: being known to all stakeholder groups for whose use they are intended, and providing adequate assistance for those who may face particular barriers to access;
  - (c) Predictable: providing a clear and known procedure with an indicative time frame for each stage, and clarity on the types of process and outcome available and means of monitoring implementation;
  - (d) Equitable: seeking to 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;
  - (e) Transparent: keeping parties to a grievance informed about its progress, and providing sufficient information about the mechanism's performance to build confidence in its effectiveness and meet any public interest at stake;
  - (f) Rights-compatible: ensuring that outcomes and remedies accord with internationally recognized human rights;
  - (g) A source of continuous learning: drawing on relevant measures to identify lessons for improving the mechanism and preventing future grievances and harms;
- Operational-level mechanisms should also be:
- (h) Based on engagement and dialogue: consulting the stakeholder groups for whose use they are intended on their design and performance, and focusing on dialogue as the means to address and resolve grievances.

The Commentary to Principle 31 states: “[a] grievance mechanism can only serve its purpose if the people it is intended to serve know about it, trust it and are able to use it.”<sup>11</sup> The UN Human Rights Office of the High Commissioner published a report in 2017 on “Access to remedy for business-related human rights abuses,” looking at non-judicial mechanisms for individuals to seek justice and redress for when businesses violate their human rights, and noted that “[i]n virtually every jurisdiction in the world, people face significant, and in many cases insurmountable, barriers to remedy for business-related human rights impacts. ...

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<sup>11</sup> [https://www.ohchr.org/documents/publications/guidingprinciplesbusinesshr\\_en.pdf](https://www.ohchr.org/documents/publications/guidingprinciplesbusinesshr_en.pdf).

Access to remedy is the “third pillar” of the UN Guiding Principles on Business and Human Rights<sup>12</sup>, endorsed by the Human Rights Council in June 2011.”<sup>13</sup>

This Board previously addressed concerns about access to remedy in the *UK Drill Case*; however, it is unclear whether it considered any arguments as to the actual language contained in the Bylaws and Charter and different standards and language being applied by Meta and the Board in determining standing and the ability to bring a case. Notably, despite the time that has transpired since the decision, no amendments were made to the Charter or Bylaws to include clarifying or new language to legally and officially adopt the restrictions, requirements, or limitations imposed on standing that are not found in the governing documents. Meta does not appear to have done anything in this regard except to further strengthen and aggressively use this practice to restrict or prohibit the right of users to have access to an established remedy.

What the *UK Drill* case does provide us with is insight into the arbitrary practices Meta engages in during content removal, including practices that limit a user’s access to remedy or redress. For example, “when the company takes content decisions “at escalation,” by Meta’s internal specialist teams, users cannot appeal to the Board. According to Meta, all decisions on law enforcement requests are made “at escalation” (unless the request is made through a publicly available “in-product reporting tool”), as are decisions on certain policies that can only be applied by Meta’s internal teams.” This Board further noted that in an only two-month time period, May and June 2022, approximately Meta prevented one-third of the content in the cross-check system from being appealed to the Board, and that despite Meta’s referral of escalated content to the Board, “the Board is concerned that users have been denied access to remedy when Meta makes some of its most consequently content decisions. The company must address this problem urgently.” It also creates a double and unequal standard where a large number of cases can only be appealed (or referred) by Meta, not the user.

In the *UK Drill Case*, the Board requested Meta refer content in relation to the account of the artist who produced it, in order to allow for a better analysis and decision. However, due to Meta’s refusal to do so, “Meta’s actions in this case have effectively excluded the artist from formally participating in the Board’s processes, and have removed [the artist’s] account from the platform without access to remedy.” One can only surmise that this has become Meta’s *modus operandi* when it wishes to avoid Oversight Board review of content removal decisions, and likely what has transpired in Mr. King’s case.

Of great import to the issues raised in the present context is the statement within the *UK Drill Case* that the “case raises concerns about Meta’s relationships with law enforcement, which has the potential to amplify bias,” and a call for greater transparency and respect for due process. Further, “[w]hile law enforcement can sometimes provide context and expertise, not every piece of content that law enforcement would prefer to have taken down should be taken down. It is therefore critical that Meta evaluates these requests independently, particularly ... for whom the risk of cultural bias against their content is acute.”

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<sup>12</sup> See A/HRC/17/31. The three “pillars” of the Guiding Principles are the “State duty to protect human rights,” the “Corporate responsibility to respect human rights” and “Access to remedy”.

<sup>13</sup> See [https://media.business-humanrights.org/media/documents/files/images/ARPII\\_FINAL\\_Scoping\\_Paper.pdf](https://media.business-humanrights.org/media/documents/files/images/ARPII_FINAL_Scoping_Paper.pdf).

Finally, as this Board poignantly stated in the *UK Drill Case*, “[t]he principle of legality requires laws limiting expression to be clear and accessible, so people understand what is permitted and what is not. Furthermore, it requires those laws to be specific, to ensure that those charged with their enforcement are not given excessive discretion.” Unfortunately, Meta’s policies and practices are vague, confusing, at times inconsistent with international human rights norms, and often created behind walls of secrecy and changing policies that are enacted and enforced for lengths of time without being made public.

Meta’s current practices and interpretation of standing and jurisdiction requirements, including denial of access to the Oversight in a large number of cases, and a lack of transparency demonstrate that the grievance mechanism Meta designed and set into force is not compliant with the UNGPs or international human rights norms. However, as repeatedly noted by this Board, its underlying bylaws and Charter, if implemented according to their plain language and purpose, would allow increased compliance with the above criteria and greater protection of the human rights to users. The Oversight Board becomes largely irrelevant if it is inaccessible or if the pipeline of cases is controlled solely by opaque or secretive Meta practices and procedures.

The purpose of the requirement of a person having a Facebook or Instagram account to request review at the Oversight Board grew out of the Oversight Board being viewed as a benefit to the users of the platform; however, the BSR report and other experts still noted this was a problem when content potentially impacted non-users. It is a human rights violation and contrary to the governing documents of Meta and the Oversight Board for Meta to disable or suspend accounts based on Meta’s decision to remove content before the user can dispute or request review or appeal of the content removal. Continuing to allow Meta to do so results in a widespread prohibition of review of Meta’s decisions, and widespread violation of the human rights, and contractual rights, of Meta platform users.

Aside from the international legal conventions and principles, reports and even this Board’s decisions and recommendations support the contention that Meta’s interpretation and application of policy as to access to the Board’s appeal process is misplaced, inconsistent, and in violation of Meta’s own governing documents and international law. The text of the official Bylaws is what should control, not content on the website that has not gone through the official amendment and voting process. Neither version of the Charter nor the Bylaws contain any language as to the arbitrary restrictions or requirements on the website. Thus, the plain language contained within the legally binding and governing documents should control. If Meta intended to further restrict the scope of the Board or its jurisdiction or the ability of users to bring appeals, it would have amended its Bylaws and Charter, as it has done so for other provisions and articles.

Even if Meta has this escalated process – it is in violation of the purposes, principles, and intent of the charter and bylaws establishing the Oversight Board, and thus Meta’s own obligations and duties under the Trust and Charter – and the Board should review these cases. Nothing in the bylaws requires that the standing or jurisdictional or procedural requirements that Meta is asserting – in fact the opposite is true and the plain language of the bylaws allows for review. Nothing in bylaws mandates submission via the online portal with a reference number.

Despite the clearly stated provision that all restrictions, warnings, and violations will be viewable in account status on Facebook and Instagram, Mr. King had been unable to view

this content for months, despite having multiple pieces of content removed, warnings placed, or adverse and erroneous fact-check decisions reversed. As well documented in the attached emails, Mr. King was addressing this problem with Meta, including personnel, internal counsel, and tech support, but never received a resolution and was prevented repeatedly from appealing content removal decisions believed to be in error as he was unable to access the alleged violations. Meta was thus in violation of its own policies and procedures, and because of this, arbitrarily and possibly intentionally prevented Mr. King from having access to a remedy of multiple improper content removals and restrictions on his Instagram account.

Thus, Mr. King has standing to bring the appeal of his content removals because as of the date of this submission, Mr. King still has an active Facebook account, he has filed within fifteen days, and he has exhausted (or attempted to exhaust) all avenues with Meta.

*B. The Suspension of Mr. King's Account, Removal Of Content, And Subsequent Denial Of The Right To Access A Remedy Violates Mr. King's Right To Free Speech And Free Expression*

The Charter and the Delaware Trust establishing this Board refer to the purpose to “protect free expression” and these and subsequent policies and guidance reference the consideration that international human rights standards have great weight and that international human rights law will be the primary authority when there is a conflict with Meta policies or regulations. Internationally, there is a movement towards the “right to truth” – the right “to know the truth about past events concerning the perpetration of heinous crimes and about the circumstances and reasons that led ... to the perpetration of those crimes.”<sup>14</sup> The right and freedom to seek, receive, and impart information and ideas of all kinds is also included in Article 19(2) of the ICCPR. The International Convention for the Protection of All Persons from Enforced Disappearance states in its preamble the right of any victim to know the truth. Multiple other international, regional, and domestic covenants contain protections for free speech and expression, and, given the Board’s extensive expert understanding and knowledge of these covenants, we will not discuss those further here. If the Board desires additional briefing on this aspect, we will be more than happy to provide an addendum or subsequent brief.

The Board noted in the *Armenians in Azerbaijan* and *Khin Cartoon* decisions that a private company has greater discretion to limit or censor speech than a government, but that the company must still articulate the underlying rationale for its restrictions or prohibitions on speech and demonstrate that these determinations and actions are necessary and proportionate. The Board noted, given the growing influence and reach of social media companies, that they have heightened responsibilities when there is a dominant market share or one of the primary sources of information and news sharing, especially in venues where media or news may be restricted or strictly controlled. See *Punjabi Concern over the RSS in India*, *Shared Al Jazeera Post*.

The *Ocalan's Isolation* case highlighted that Meta’s due diligence obligations, including those under the UNGPs, are higher during situations of conflict, increased risk of harm, or restrictions on freedom of expression or government retaliation or reprisals. In the present

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<sup>14</sup> E/CN.4/2005/102.Add.1, endorsed by the UN Commission on Human Rights Res 2005/81 (21 April 2005).

conflict, this is of increased concern given the importance of preserving evidence during violent conflict (as will be more fully described below), the allegations of extensive interference and requests from the Israeli government and thousands of users whose accounts have been impacted, and most concerning, the number of Palestinians imprisoned in Israel or held in infinite administrative detention based on social media posts.

Therefore, based on the foregoing, this Board should find that it has the authority, and in fact international human rights law demands, that it review Mr. King's case and proceed with information requests to Meta so that a more detailed analysis can be made of the content removed and protect the human rights of users, including the right of free expression.

**II. MR. KING DID NOT VIOLATE THE COMMUNITY STANDARDS AND GUIDELINES AS TO DANGEROUS INDIVIDUALS AND ORGANISATIONS AND THE REMOVAL OF CONTENT LEADING TO SUSPENSION OF HIS INSTAGRAM ACCOUNT WAS IN ERROR AND SHOULD BE REVERSED.**

As evidenced in the attached screen shots, the only information Mr. King presently has is that content was removed from his account under the Dangerous Individuals and Organizations (“DIO”) Policy in the Guidelines and Standards. Mr. King asserts that the removals were in error, that either the automated or human review failed to understand the context, intent, and purpose of his posts, and that Meta's revised “emergency” practices did not comply with their own regulations and guidelines. Our analysis and argument in this section is limited due to the lack of information from Meta and the refusal of Meta to provide Mr. King with the history of alleged violations and content removals. We would welcome the opportunity to provide further analysis and specific explanations as to particular content once Meta makes that evidence available.

It is notable that the Instagram Community Guidelines, (accessed as of 31 December 2023) state their purpose to allow the platform to be “an authentic and safe place for inspiration and expression”, “reflection of our diverse community of cultures, ages, and beliefs” ... “different points of view that create a safe and open environment for everyone” and to “allow content for public awareness which would otherwise go against our Community Guidelines – if it is newsworthy and in the public interest. We do this only after weighing the public interest value against the risk of harm and we look to international human rights standards to make those judgments.”

Whilst the Guidelines do rightfully point out that “Instagram is not a place to support or praise terrorism, organized crime, or hate groups,” the application of this policy can and often does lead to the improper flagging or removal of content due to interpretations based on explicit or implicit bias in the automated or human reviewer, or a lack of understanding of the broader purpose or intent of the post. Reviews often fail to consider a set of stories or sequence of posts, thus evaluating text out of context. For example, is a post stating that the Proud Boys or January 6<sup>th</sup> defendants received excessive sentences a support of a hate or terrorism group? In reality, such a post is a commentary on sentencing practices in the United States. But an automated or human reviewer could also conclude that it is a comment supportive of actions on January 6<sup>th</sup>.



Finally, the Instagram Guidelines clearly state: “We understand that many people use Instagram to share important and newsworthy events. Some of these issues can involve graphic images. ... We understand that people often share this kind of content to condemn, raise awareness, or educate. If you do share content for these reasons, we encourage you to caption your photo with a warning about graphic violence.”

Meta’s guidance on DIOs is similar, but it is significantly more comprehensive and includes examples and more detailed descriptions, including some specific references on particular groups that are not included in the Instagram provisions. The Board recommended that Meta standardize and create uniform guidance for the two platforms, but Meta has thus far failed to do so. Additionally, the guidance on praise or support for groups is a vague concept that attempts to impose objective requirements and restrictions on content that is subjective and has great potential for different interpretations depending on a person’s knowledge, experience, and/or bias.

Throughout its decisions, the Board has focused on a range of contextual aspects that should be considered in addition to and to provide meaning and background and understanding to the words or photos used. These include whether a post relates to a situation of armed conflict; how widely is it disseminated; response of other users to the post; location of the user; timing of the post with respect to offline events; whether the content is “used in protest contexts or other crisis situations where the role of government is a topic of political debate”; the existence of “government campaigns of disinformation against opponents and their supporters” in a particular country; the history of the region; the identity of reputation of the poster; and inferences about the user’s intent from the language of the post. Had these factors been examined as to the removed content in Mr. King’s case, the removals either would not have occurred, or, upon subsequent review, the content would have been reinstated and Mr. King’s Instagram account would not have been suspended.

Based on the *Ocalan’s Isolation* case, the Board in October 2023 recommended that the DIO policy needs “a clear explanation of what ‘support’ excludes. Users should be free to discuss alleged violations and abuses of the human rights of members of designated organisations. ... It should include discussion of rights protected by the UN human rights conventions as cited in Facebook’s Corporate Human Rights Policy. This should allow, for example, discussions on allegations of torture or cruel, inhuman, or degrading treatment or punishment, violations of the right to a fair trial, as well as extrajudicial, summary, or arbitrary executions, enforced disappearance, extraordinary rendition and revocation of citizenship rendering a person stateless. Calls for accountability for human rights violations and abuses should also be protected. ... The user’s intent, the broader context in which they post, and how other users understand their post, is key to determining the likelihood of real-world harm that may result from such posts.”

In a similar vein, the *Mention of the Taliban in News Reporting* case also influenced a recommendation that “Meta should narrow the definition of ‘praise’ in the Known Questions guidance for reviews, by removing the example of content that ‘seeks to make others think more positively about’ a designated entity by attributing to them positive values or endorsing their actions.” The recommendations further addressed distinguishing between reporting versus praise, especially in situations of conflict or crisis, and raised concerns about accuracy of reviews and enforcement errors under this category.

A number of the existing recommendations include concerns about lack of transparency about the use of automation and human review in content moderation, the fact-checking process and error prevalence, but also an overarching trend about the importance of users having all relevant information “to ensure users have clarity regarding permissible content” and the ability to appeal adverse decisions in a broad range of concerns and actions taken by Meta.

Finally, from a procedural standpoint, and an aspect that this Board has repeatedly noted, is that one such problem in the DIO context is Meta’s use of a secret list to designate individuals and organisations. The “secret list” of designated organisations and individuals has also been the subject of public scrutiny and criticism, out of concerns of discriminatory application, infringement on user’s rights to free speech, lack of transparency or advance warning or guidance to users, as well as concerns over the methodology and standards used to include an individual or group, and whether any recourse exists for removal from the list (such as in sanctions or other designations). This has been the subject of press investigations and articles<sup>15</sup>, raising questions as to the legality of penalties or content removals when the offending conduct is not made public. There is simply no reason for Meta to keep its list secret – as all Governments and international organisations publish theirs so that individuals and companies are aware of who or what is designated and can take steps to avoid violating the law as to proscribed or designated entities.

The dangers of the secret list and DIO policies have been described as “a serious risk to political debate and free expression,” ... “particularly in the Muslim world, where DIO-listed groups exist not simply as military foes but part of the socio-political fabric. What looks like glorification from a desk in the U.S. ‘in a certain context, could be seen [as] simple statements of facts,” because “[p]eople living in locales where so-called terrorist groups play a role in governance need to be able to discuss those groups with nuance, and Facebook’s policy doesn’t allow for that.” ... “A commentator on television could praise the Taliban’s promise of an inclusive government in Afghanistan, but not on Facebook.”<sup>16</sup>

The Electronic Freedom Foundation expressed concerns especially in situations where entities included in Facebook’s “banned” list become the government (as is the case in Afghanistan (Taliban), Yemen (Houthis), Lebanon (Hezbollah) or even Hamas controlled territory in Palestine:<sup>17</sup>

a Lebanese citizen must carefully avoid coming across as supporting Hezbollah, one of many political parties in their country that have historically engaged in violence against civilians. An Afghan seeking essential services from their government may simply not be able to find them online. And the footage of violence committed by extremist groups diligently recorded by a Syrian citizen journalist may never see the light of day, as it will likely be blocked by an upload filter. ... While

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<sup>15</sup> <https://www.justsecurity.org/78786/so-what-does-facebook-take-down-the-secret-list-of-dangerous-individuals-and-organizations/>.

<sup>16</sup> <https://theintercept.com/2021/10/12/facebook-secret-blacklist-dangerous/>;  
<https://theintercept.com/2023/08/30/meta-censorship-policy-dangerous-organizations/>;  
<https://www.brennancenter.org/our-work/analysis-opinion/so-what-does-facebook-take-down-secret-list-dangerous-individuals-and->

<sup>17</sup> <https://www.eff.org/deeplinks/2021/12/facebooks-secret-dangerous-organizations-and-individuals-list-creates-problems>.

companies are, as always, well within their rights to create rules that bar groups that they find undesirable—be they U.S.-designated terrorist organizations or domestic white supremacist groups—the lack of transparency behind these rules serves absolutely no one.

...But Facebook also has a responsibility to be transparent to its users and let them know, in clear and unambiguous terms, exactly what they can and cannot discuss on its platforms.

Meta's policies and practices as to designating individuals or groups is highly secretive, unlike the designations by Governments or international bodies, which are official regulations, made available to the public, and often the subject of prominent press releases or speeches by Government officials. Given the prominence of the 7 October events and the sheer volume of content from all ranges of opinion, Meta should have made new designations and policies clear directly to every user, something they clearly have the capacity to do via sending mass messages or creating notifications. Even Meta's WhatsApp platform allows Meta to send notices of updates or new policies to every user, certainly this would have been possible on Instagram and Facebook given the in-app messaging capabilities.

Further, in the October 2023 Oversight Board report, cited above, the Board appears to agree with this, recommending that Meta “[p]rovide a public list of the organisations and individuals designated ‘dangerous’ under the Dangerous Individuals and Organisations Community Standard. At a minimum, illustrative examples should be provided. This would help users to better understand the policy and conduct themselves accordingly.”

The December 2023 *Hostages Kidnapped from Israel, 2023-050-FB-UA* and *Al-Shifa Hospital* decisions provide some of the most comprehensive and insightful analysis and information that impacts and helps understand the context of the circumstances leading to the erroneous and arbitrary decisions in Mr. King's case.

In the *Hostages* case Meta removed content under Dangerous Organisations and Individuals Community Standard, but the user was able to appeal. After this Board identified the case for review, Meta restored the content with a warning screen. The Board still proceeded with appeal of original decision, rejecting any “mootness” argument, and overturned the original decision to remove content. Providing support for why this and other similar cases should be reviewed and a correct approach to standing and jurisdiction should be applied, this Board noted that “the terrorist attacks and Israel's subsequent military actions have been the subjects of intense worldwide publicity, debate, scrutiny and controversy, much of which has taken place on social media platforms, including Instagram and Facebook.”

As explained by the Board, “Meta immediately designated the events of 7 October a terrorist attack under its Dangerous Organisations and individuals policy. Under its Community Standards, this means that Meta would remove any content on its platforms that ‘praises, substantively supports or represents’ the 7 October attacks or their perpetrators.” These temporary measures resulted in lowering of confidence thresholds for automated systems to remove content, using “its automated tools more aggressively to remove content that *might be prohibited*. ... Whilst this reduced the likelihood that Meta would fail to remove violating content that might otherwise evade detection or where capacity for human review was

limited, it also **increased the likelihood of Meta mistakenly removing non-violating content related to the conflict.**” (Emphasis added).

Meta also used its controversial Media Matching Service banks to automatically remove content, raising “the concern of over-enforcement, including people facing restrictions on or suspension of their accounts following multiple violations of Meta’s content policies (sometimes referred to as ‘Facebook jail’). Meta did issue news releases on its website<sup>18</sup>, but there is no indication as to any attempts by Meta to directly notify users of either platform via the platform itself, and it is questionable whether news releases on a separate website would even be readily or normally accessed by users in their day to day regular use of the platforms, or if users are even aware of this.

This decision also sheds light on Meta’s inconsistent application of its policies and exceptions, including the sudden and arbitrary rescission of allowing for the sharing of otherwise potentially prohibited content if it is informational, condemning, or awareness-raising. Yet again, there are grave questions as to the lack of transparency and lack of awareness of users as to changes to already vague and unclear policies and practices. In a move similar to a Government decision to suspend the writ of habeas corpus or apply martial law, Meta’s new policies also resulted in disparate and unequal application of policies and content moderation to users and in the inability of a user to appeal decisions internally, have access to the history of alleged violations and any resolution, or to receive reference identification numbers to appeal to the Oversight Board.

In the *Hostages* case, the Board reiterated its prior holding from the *Armenian Prisoners of War Video* case that the protections for freedom of expression under Article 19 of the ICCPR “remain engaged during armed conflicts, and should continue to inform Meta’s human rights responsibilities, alongside the mutually reinforcing and complementary rules of international humanitarian law that apply during such conflicts.” Additionally, the UNGPs impose a heightened responsibility on businesses operating in a conflict setting.<sup>19</sup> This Board specifically called attention to the problem that “[t]hroughout the conflict, the rules that Meta has applied have changed several times but have not been made fully clear to users,” further expressing concerns about the lack of warning screens that indicate specific policies at issue.

In the *Hostages* case, this Board found that “excluding content raising awareness of potential human-rights abuses, conflicts or acts of terrorism from recommendations is not a necessary or proportionate restriction on freedom of expression, in view of the very high public interest in such content,” that “Meta’s rapidly changing approach to content moderation during the conflict has been accompanied by an ongoing lack of transparency that undermines effective evaluation of its policies and practices, and that can give it the outward appearance of arbitrariness,” and, the “lack of transparency can also have a chilling effect on users who may fear that their content will be removed and their account penalized or restricted if they make a mistake.”

The Board also noted problems with Meta’s decision to use the cross-check programme, including “unequal treatment of users, lack of transparent criteria for the cross-check lists, the

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<sup>18</sup> See <https://about.fb.com/news/2023/10/metasp-efforts-regarding-israel-hamas-war/>.

<sup>19</sup> “Business, human rights and conflict-affected regions towards heightened action” A/75/212. <https://undocs.org/Home/Mobile?FinalSymbol=A%2F75%2F212&amp%3Bamp%3BLanguage=E&amp%3Bamp%3BDeviceType=Desktop&fbclid=IwAR0OhN16WNOozg38JK39tzYa0j05-1mWgZ8YNDklShGWj-PUmSp0McyFruw>.

need to ensure greater representation of users whose content is likely to be important from a human rights perspective, such as journalists and civil society organisations, and overall lack of transparency about how cross-check works,” continuing on to express concerns that Meta’s systems will favour certain “speakers” over others, or allow for imbalance in perspectives if one viewpoint receives favourable treatment in the content moderation practices.

In the *Al-Shifa Hospital* decision, this Board stated that “social media platforms such as Facebook and Instagram are an important vehicle for transmitting information about violent events in real time, including news reporting (e.g. *Mention of the Taliban in News Reporting*). They play an especially important role in contexts of armed conflicts, especially where there is limited access for journalists, of the importance of not needlessly curtailing freedom of expression, especially when “journalistic sources are often subject to physical and other attacks, making news reporting by ordinary citizens on social media especially essential,” or where, as present, over one hundred journalists have been killed in Gaza since 7 October. Furthermore, referencing the *Sudan Graphic Video* decision, “content depicting violent attacks and human rights abuses is of great public interest.”

Repeatedly, the Board “emphasizes the need to respond to such content in a manner consistent with human rights and fundamental freedoms. The Board believes that safety concerns do not justify erring on the side of removing graphic content that has the purpose of raising awareness about or condemning potential war crimes, crimes against humanity, or grave violations of human rights. Such restrictions can even obstruct information necessary for the safety of people on the ground in those conflicts.”

The world is facing multiple situations that require a nuanced approach in content removal determinations under this policy, as proscribed groups and individuals take on official government or military roles (or assert complete or almost complete control over a nation). This is the case in Colombia, Yemen, Afghanistan, Russia, Palestine, Lebanon, and a host of other countries. It is a delicate balance to strike between the free speech and expression of the people to discuss the leaders and Government of the country in which they live (or from which they are exiled) and the important counterterrorism and counter-hate policies of social media platforms. Unfortunately, Meta’s policies have not been sufficiently revised to address these concerns and the result is a biased platform with content moderation policies that take the “letter of the law” to unintended extremes and devastating consequences for human rights and free expression.

The hashtag #CeasefireNow and calls to halt humanitarian suffering and deaths of civilians pervade social media, the news, and are at the heart of protests around the world where hundreds of thousands have taken to the streets demanding an end to the armed conflict and resulting bloodshed and deaths. Emotions, psychological pain, and distress are pervasive, as this conflict comes as the world is still grappling with the horrors of the Taliban takeover in Afghanistan, the conflicts in Yemen, Syria, and Iraq, and the seemingly never-ending war in Ukraine. Social media becomes the outlet in which people can express their fears, anger, frustrations, pain, and hope for peace. This must be kept in mind as in moments of great anguish or grief, especially upon learning of the deaths of colleagues or loved ones, or seeing the graphic footage that has pervaded the news cycle, individuals may not engage in the most eloquent writing or thoughtful prose and editing of their posts on social media. Often posts or stories or tweets are quick reactions fuelled by emotion, and the pure, peaceful, intent behind the post may be lost due to a mere choice of words.

At the heart of this, from a legal perspective, are two overriding principles of an obligation to protect others from human rights abuses, atrocity crimes, and most notably, genocide. The purpose behind the Responsibility to Protect, or R2P, is the notion that a ‘residual responsibility’ also lied with the broader community of states, which was ‘activated when a particular state is clearly either unwilling or unable to fulfil its responsibility to protect or is itself the actual perpetrator of crimes or atrocities.

In paragraphs 138 and 139 of the 2005 World Summit Outcome Document ([A/RES/60/1](#)) Heads of State and Government affirmed their responsibility to protect their own populations from genocide, war crimes, ethnic cleansing and crimes against humanity and accepted a collective responsibility to encourage and help each other uphold this commitment. They also declared their preparedness to take timely and decisive action, in accordance with the United Nations Charter and in cooperation with relevant regional organizations, when national authorities manifestly fail to protect their populations.<sup>20</sup>

It is with these principles in mind that much of the content on Meta’s platforms needs to be considered, both as individuals advocate for peace and engage in deliberate action and speech to halt the atrocities, or attempt to document abuses and raise awareness and ensure all sides of the conflict were being told. We are in a nuanced situation where individuals saw genocide and atrocity crimes and war crimes unfolding and are supportive of the effort of nations to come to the defence of Palestinian civilians and other protected persons such as journalists, UN workers and medical personnel. This was not support for or praise for particular dangerous groups or individuals, it was support for nations providing assistance and protection in a quickly escalating armed conflict occurring in civilian territory with widespread destruction of civilian infrastructure, mass forced displacement, an emerging humanitarian disaster with the potential to be the worst in decades, and an astronomically fast growing civilian death count.

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<sup>20</sup> 138. Each individual State has the responsibility to protect its populations from genocide, war crimes, ethnic cleansing and crimes against humanity. This responsibility entails the prevention of such crimes, including their incitement, through appropriate and necessary means. We accept that responsibility and will act in accordance with it. The international community should, as appropriate, encourage and help States to exercise this responsibility and support the United Nations in establishing an early warning capability.

139. The international community, through the United Nations, also has the responsibility to use appropriate diplomatic, humanitarian and other peaceful means, in accordance with Chapters VI and VIII of the Charter, to help protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity. In this context, we are prepared to take collective action, in a timely and decisive manner, through the Security Council, in accordance with the Charter, including Chapter VII, on a case-by-case basis and in cooperation with relevant regional organizations as appropriate, should peaceful means be inadequate and national authorities manifestly fail to protect their populations from genocide, war crimes, ethnic cleansing and crimes against humanity. We stress the need for the General Assembly to continue consideration of the responsibility to protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity and its implications, bearing in mind the principles of the Charter and international law. We also intend to commit ourselves, as necessary and appropriate, to helping States build capacity to protect their populations from genocide, war crimes, ethnic cleansing and crimes against humanity and to assisting those which are under stress before crises and conflicts break out.

Additionally, in recent years, social media platforms have been a vital resource for those documenting war crimes and human rights abuses, including important open source intelligence (“OSINT”) investigations by entities such as Bellingcat, or the preservation of evidence through the Yemen Archive, and a multitude of organisations assisting in the investigation and prosecution of war crimes in the Ukraine-Russia conflict. This Board has repeatedly recognized that Meta has a “responsibility to preserve evidence of potential human rights violations and violations of international humanitarian law,” for purposes of investigation, documenting pivotal points of history to ensure accurate stories are told for centuries to come, and assisting with future accountability efforts. The ability of users to share such information also helps civil society and government actors working on investigations identify possible crimes and abuses and further investigate them, at times via directly contacting the poster of such content.

Mr. King asserts that his posts should not have been removed because he was condemning human rights abuses and war crimes, raising awareness of the ongoing atrocities in the Israel-Palestine war, and attempting to educate his followers. Mr. King and many others were merely reacting to the actions of the Yemen government – actions similar to an economic blockade or other sanctions imposed by the UN, which are lawful attempts to coerce nations into halting bad behaviour, noting that the Yemeni military forces took care not to kill anyone, and in response the other forces engaged in extrajudicial killings via military action – an aspect and exception that is a human rights violation and something that is allowable content even if about an organisation. To view Mr. King’s posts as praise for a terrorist or dangerous organisation is simply misplaced and ignores the greater geopolitical and factual contexts.

Additionally, as noted above, distinctions need to be made between a previously proscribed or designated organization (i.e. the Houthis) and the Yemen Government and military, presently controlled primarily by Houthi officials and military leaders. Any statements, descriptions, or content was in reference to the actions and activities of the Yemeni Government, irrespective of which party or group is in control of it, should not by default be viewed as praise or support for terrorism. This aspect is one that must be fully explored, on a global scale, to ensure that the intent of the guidelines is being met whilst still ensuring that government and other organisations (and individuals) are able to engage with, speak about, and share information regarding Governments, even if they are now controlled by previously proscribed individuals or groups. Even sanctions regimes have exceptions for humanitarian relief or democracy or human rights efforts, and if the guidelines as applied to Mr. King were applied to others, there are certainly a large number of UN and other official statements that would be banned from Facebook or Instagram. Meta’s policy, as written and as applied, goes to an extreme beyond even that which international or domestic law requires in the sanctions field, violates human rights norms, and possibly increases the likelihood of continued abuses or interference with efforts at peace and accountability.

Despite Meta’s own admission to the Board that “the decision on how to treat this [Israel – Palestine conflict] content is difficult and involves competing values and trade-offs,” in the present case, when Meta had the opportunity to provide meaningful human review to multiple erroneous content removals, it instead chose to remove the content, suspend the account, and attempt to cut all off meaningful access to review of its actions and decisions. Further, disregarding the Board’s prescient guidance that the “question of whether content was shared to raise awareness of or condemn events on the ground should be the starting point for any reviewer assessing such content,” and expressions of the importance of

documenting and raising awareness as to human rights abuses and violations of international humanitarian law, Mr. King was subjected to the incorrect removal of content and denial of ability to have human review of whether applicable exceptions applied to his posts.

This topic is one that undersigned counsel and Mr. King are willing to elaborate more fully on, and to provide specific context and explanations to individual posts and content that Meta removed. Unfortunately, Mr. King has been unable to even access the history of alleged violations, including those cases where Meta admitted it made mistakes and reinstated content or removed fact-check warnings that were erroneously placed on Mr. King's account. Despite repeated requests to Meta for access to the alleged violation history, Meta has refused to comply and provide this information. Therefore, Mr. King's submission to the Board is based on the limited information and evidence he does have within his possession, and we would request the opportunity to supplement this filing and address each individual content removal once that evidence is provided to us.

Finally, it cannot be ignored that this case, and hundreds and thousands likely to follow, also come in the wake of years of investigation and criticism into Meta's policies and practices specifically as to the situation of Israel and Palestine. Multiple media reports and journalist investigations highlight the risks and lack of transparency or unbiased decision making on Meta's platforms, including allegations that Meta has discriminatorily applied its policies to silence particular voices or viewpoints.<sup>21</sup> This Board has raised concerns and called for independent investigations. Most notably, as Mr. King's case was evolving, Human Rights Watch released a lengthy and comprehensive report on Meta's censorship and discriminatory practices towards pro-Palestine users.<sup>22</sup> It is unknown how much content or how many users have been impacted by Meta's policies and practices over the last three months, or how many of these cases are being denied access to remedy or appeal. It is something that civil society organisations and attorneys are investigating and preparing to defend and protect the human rights of those individuals using the Instagram and Facebook platforms.

Therefore, based on the foregoing, Mr. King respectfully requests that the Oversight Board accepts his appeal for consideration given the multitude of legal and policy issues, but also the broader context and far-reaching implications of the present state of affairs of Meta's platforms.

Respectfully submitted this 8<sup>th</sup> day of January, 2024.

Shaun King, through his legal counsel,

Sara Elizabeth Dill, Esq.  
Anethum Global

Abed Ayoub, Esq.  
Arab-American Anti-Discrimination Committee

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<sup>21</sup> [https://meta.7amleh.org/  
https://www.forbes.com/sites/emmawoolacott/2023/12/22/meta-suppressing-peaceful-expression-on-palestinian-conflict/?sh=4ac6223febbf](https://meta.7amleh.org/https://www.forbes.com/sites/emmawoolacott/2023/12/22/meta-suppressing-peaceful-expression-on-palestinian-conflict/?sh=4ac6223febbf)

<sup>22</sup> <https://www.hrw.org/report/2023/12/21/metass-broken-promises/systemic-censorship-palestine-content-instagram-and>