



Public Comment Appendix for

2021-006-IG-UA

Case number

Case description

In January 2021, an Instagram user in the United States posted a picture of Abdullah Öcalan, one of the founding members of the Kurdistan Workers' Party (PKK). The picture included the words "y'all ready for this conversation". Underneath the picture, the user wrote that it was time to talk about ending Öcalan's isolation in prison on Imrali Island. They encouraged readers to engage in conversation about his imprisonment and the inhumane nature of solitary confinement.

Facebook removed the content for violating Instagram's [Community Guidelines](#) after the post was automatically flagged for review (at this stage, the Board does not know if the content was removed by an automated system or through human review). These Guidelines under the heading "follow the law", set out that "Instagram is not a place to support or praise terrorism, organised crime or hate groups." The Guidelines link to Facebook's Community Standard on [Dangerous Individuals and Organisations](#). These rules clarify that Facebook also prohibits any support or praise for groups, leaders or individuals involved in terrorist activity or other serious crimes committed by these groups. The PKK has been designated a terrorist organisation by multiple countries, including Turkey, the United States and the EU.

The user states in their appeal that Öcalan has been a political prisoner for decades and that banning any reference to him prevents discussions that could advance the position of the Kurdish people. They argue that Öcalan's philosophy is peaceful and that his writings are widely available in bookshops and online. The user compares Öcalan's imprisonment to that of former South African President Nelson Mandela, noting that discussion of Öcalan's imprisonment should be allowed and encouraged.

The Board has previously addressed the Dangerous Individuals and Organisations Community Standard. In case 2020-005-FB-UA, the Board overturned Facebook's decision and found that Facebook's rules did not clearly explain the terms "praise" and "support".

The Board would appreciate public comments that address:

- Whether the decision to remove this content was consistent with the Community Guidelines on Dangerous Individuals and Organisations, specifically the rule against praising or supporting dangerous individuals and organisations.
- Whether Facebook's decision to remove the post is consistent with the company's [stated values](#) and [human rights commitments](#), including on freedom of expression.
- Any specific insights from commenters with knowledge of the social, political and cultural context in Turkey, as well as in Kurdish communities in Syria, Iran, Iraq and the wider Kurdish diaspora regarding the impact of censorship of Kurdish political discussion on social media.
- How Facebook should account for differing positions globally on whether an individual or organisation should be designated "dangerous".
- The freedom that users should have to discuss dangerous individuals and organisations on social media, and how the Board should consider criteria for potential harm praise of dangerous individuals and organisations may cause.



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The Oversight Board is committed to bringing diverse perspectives from third parties into the case review process. To that end, the Oversight Board has established a public comment process.

Public comments respond to case descriptions based on the information provided to the Board by users and Facebook as part of the appeals process. These case descriptions are posted before panels begin deliberation to provide time for public comment. As such, case descriptions reflect neither the Board's assessment of a case, nor the full array of policy issues that a panel might consider to be implicated by each case.

To protect the privacy and security of commenters, comments are only viewed by the Oversight Board and as detailed in the [Operational Privacy Notice](#). All commenters included in this appendix gave consent to the Oversight Board to publish their comments. For commenters who did not consent to attribute their comments publicly, names have been redacted. To withdraw your comment, please email contact@osbadmin.com.

To reflect the wide range of views on cases, the Oversight Board has included all comments received except those clearly irrelevant, abusive or disrespectful of the human and fundamental rights of any person or group of persons and therefore violating the [Terms for Public Comment](#). Inclusion of a comment in this appendix is not an endorsement by the Oversight Board of the views expressed in the comment. The Oversight Board is committed to transparency and this appendix is meant to accurately reflect the input we received.



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2021-006-IG-UA

Case number

12

Number of Comments

Regional Breakdown

0	0	4	0
Asia Pacific & Oceania	Central & South Asia	Europe	Latin America & Caribbean
2	0	6	
Middle East and North Africa	Sub-Saharan Africa	United States & Canada	

2021-006-IG-UA

Case number

PC-10045

Public comment number

Middle East and North Africa

Region

Yoav

Commenter's first name

Moran

Commenter's last name

English

Commenter's preferred language

DID NOT PROVIDE

Organization

No

Response on behalf of organization

Short summary provided by the commenter

As an Israeli, I'm aware of the problem with designating a group as terrorists, making it illegitimate and this stagnating any possible peace process. Avoiding mentioning Öcalan will only help too keep the ongoing state of war.

Full Comment

Israel has many enemies, some also designated as terror organizations (like Hamas, Hizbullah). What we learned through the years is that we can't avoid recognizing these enemies. Rabin started a peace process with Arafat which was the head of a terror organization (PLO). There was a lot of anger in Israel for that, but he said "peace is fine with enemies" - and he was right. Today the PLO is the base of the Palestinian leadership, no more a terror organization. As long as Öcalan is mentioned in a non-violent context, allowing these conversations to happen is essential for conflict resolution. Banning it will only increase mistrust, hate and violence.

Link to Attachment

No Attachment

2021-006-IG-UA

Case number

PC-10050

Public comment number

Europe

Region

Gabrielle

Commenter's first name

Guillemin

Commenter's last name

English

Commenter's preferred language

ARTICLE 19

Organization

Yes

Response on behalf of organization

Short summary provided by the commenter

In this public comment, ARTICLE 19 addresses Q1, 2, 4 and 5 posed by the Oversight Board. ARTICLE 19 has done significant work on freedom of expression in Turkey, including on terrorism-related cases. In our view, Facebook's policy on dangerous individuals or organisations should have been inapplicable in this case as it was unrelated to incitement to terrorism. In any event, the focus of human rights analysis should not be on support or praise of particular individuals or organisations per se but on incitement to commit terrorist acts. ARTICLE 19 identifies a number of other issues with Facebook's policy in this area and draws attention to relevant international standards and case-law on incitement to terrorism.

Full Comment

See [link to attachment](#).

Link to Attachment

[PC-10050](#)

2021-006-IG-UA

Case number

PC-10051

Public comment number

Europe

Region

Yaman

Commenter's first name

Akdeniz

Commenter's last name

English

Commenter's preferred language

**İfade Özgürlüğü Derneği
("İFÖD – the Freedom of Expression Association")**

Organization

Yes

Response on behalf of organization

Short summary provided by the commenter

İFÖD, believes that political speech should enjoy wider protection. İFÖD submits that the above mentioned UN Rabat Threshold Test as well as the European Court's Multi-Pronged Incitement Test should be considered by the Oversight Board together with the potential impact of the medium of expression concerned as an important factor in determining whether social media content such as those shared on Facebook and/or Instagram can result in incitement to violence or be regarded as terror propaganda. The assessment of the context and the content of the disputed content is an important necessary element for assessing this and similar applications in the future with regards to Facebook and/or Instagram. See full submission.

Full Comment

See the full submission in the attached PDF file.

Link to Attachment

[PC-10051](#)

2021-006-IG-UA

Case number

PC-10053

Public comment number

Europe

Region

Marlena

Commenter's first name

Wisniak

Commenter's last name

English

Commenter's preferred language

European Center for Not-for-Profit Law

Organization

Yes

Response on behalf of organization

Short summary provided by the commenter

The user was raising awareness of the conditions of imprisonment of Mr. Öcalan, namely solitary confinement. The goal of the post was to encourage discussion of solitary confinement and defense rights (a topic of great public interest), and was not intended to “praise” the PKK nor to directly coordinate “support” for the organization. There are no indications that the user was calling for or inciting violence, nor did the user praise any previous acts of violence. Considering that the post violated the Community Standards and taking down the post was unjustified. The exception to the CS should be interpreted narrowly.

Full Comment

In its recent human rights policy, Facebook committed to respecting human rights as set out in the United Nations Guiding Principles on Business and Human Rights (UNGPs), which includes the International Covenant on Civil and Political Rights (ICCPR), among other instruments. From a legal point of view, particularly relevant for this case is the right to freedom of expression (articles 19 and 20 ICCPR), including General Comment No. 34 of the Human Rights Committee (2011), UN Special Rapporteur on freedom of opinion and expression reports (A/69/335 (2014); A/HRC/38/35 (2018); A/73/348 (2018), and A/HRC/44/49 (2020), the Joint Declaration on Freedom of Expression and Elections in the Digital Age (2020), and the Rabat Plan of Action. Given that this case concerns issues related to anti-discrimination (particularly on the basis of religion and ethnicity), the right to non-discrimination (Articles 2 and 26 ICCPR), the International Convention on the Elimination of All Forms of Racial Discrimination (articles 1, 4 and 5 ICERD), the 2013 General Recommendation No. 35 of the Committee on the Elimination of Racial Discrimination (GR35), and the 2018 report of the UN Special Rapporteur on Racism (A/HRC/38/53) are also relevant. Finally, the post raises issues related to the right to life (Article 6 ICCPR, Human Rights Committee General Comment No. 36 of 2018

(GC36), the right to security (Article 9 ICCPR, as interpreted by 2014 General Comment No. 35, para. 9, Human Rights Committee), and the prohibition of arbitrary detention (articles 8, 9, and 10 ICCPR). Defense rights, the prohibition of arbitrary detention, and limitations on solitary confinements are pillars of international human rights law. Nilz Melzer, the UN Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, warned in 2020 that “The severe and often irreparable psychological and physical consequences of solitary confinement and social exclusion are well documented and can range from progressively severe forms of anxiety, stress, and depression to cognitive impairment and suicidal tendencies. This deliberate infliction of severe mental pain or suffering may well amount to psychological torture,” the Special Rapporteur said. Inflicting solitary confinement on those with mental or physical disabilities is prohibited under international law.” Discussing issues related to solitary confinement, detention, and defense rights do not constitute incitement to violence or “praising a dangerous individual or organization”, merely because the person subject to detention is considered by some countries as dangerous and/or belonging to a dangerous institution. To avoid unjustly infringing on users’ right to freedom of expression, the exception introduced in the Community Standards should interpret “content that praises” or “coordination of support” of dangerous individual and organizations on a very narrow basis. This exception should aligned with article 20 ICCPR, whereas “Any propaganda for war shall be prohibited by law [and a]ny advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law.” In this case, the post was not promoting real-world harm, nor advocating for any kind of discrimination or violence. Furthermore, the list featuring these individuals and organizations is not made publicly available by Facebook. As such, even if the content was somehow considered to “praise” or coordinate terrorist content, the fact that the user couldn’t know that the PKK was considered “dangerous” prevented them from understanding what is permitted online or not. As Jillian York writes in her book “Silicon Values”, “So what expertise do internet companies have or rely upon to make decisions about terrorist content? Do they rely on lists issued by the United States or other governments, or do they create their own guidelines? And how do external actors play into their decisions about what constitutes a terrorist organization? The answer, it turns out, is not so clear.” Given the lack of clarity, a higher level of transparency from Facebook is expected and required. This is consistent with a recent decision of the Oversight Board itself, which “noted a gap between the rules made public through Facebook’s Community Standards and additional, non-public rules used by the company’s content moderators. In its publicly available rules, Facebook is not sufficiently clear that, when posting a quote attributed to a dangerous individual, the user must make clear that they are not praising or supporting them. While Facebook confirmed to the Board that [X] is designated as a dangerous individual, the company does not provide a public list of dangerous individuals and organizations, or examples of these. The Board also notes that, in this case, the user does not seem to have been told which Community Standard their content violated.” In light of the above, removing users’ posts because they merely mention a dangerous individual or organization, especially

when they raise public interest issues such as solitary confinement, is an overly broad interpretation of the Community Standards and is unjustified. Such an approach disproportionately impacts human rights defenders, activists, political dissidents, journalists, and civil society organizations more generally. Indeed, the issues that they work on often center or relate to so-called dangerous individuals and organizations. Framed as “counter-terrorism” efforts and legal obligations, content take-downs disproportionately silence Muslim activists. While they are the primary target of terrorist acts, Muslim users are also disproportionately impacted by restrictions to freedom of expression and freedom of assembly in this context. Open and inclusive civic space cannot exist under such tight – and unjustified – restrictions.

[Link to Attachment](#)

No Attachment

2021-006-IG-UA

Case number

PC-10054

Public comment number

United States and Canada

Region

Will

Commenter's first name

Duffield

Commenter's last name

English

Commenter's preferred language

Cato

Organization

Yes

Response on behalf of organization

Short summary provided by the commenter

Facebook's current Dangerous Organizations and Individuals policies privilege governments at the expense of stateless peoples, and cannot guide user behavior if not published publicly.

Full Comment

Oversight Board Public Comment Will Duffield, Policy Analyst, Cato Institute The internet may be ephemeral, but Facebook's offices, servers, and employees exist physically, in the jurisdictions of various governments. Facebook cannot ignore this reality, but its appeasement of governments needn't be unlimited. American legal prohibitions on Material Support do not extend to third party praise, requiring coordination or direction to criminalize mere speech. Some geo-blocking may be necessary to maintain access to Turkish markets. And yet, inescapably, to the extent that Facebook's decisions have real-world consequences, or alter the likelihood of real-world violence, these effects are not one-sided. If the ability to speak on Facebook is important to recruitment and military organization, denying it to the YPG in their multi-front war in northern Syria ensures that more YPG fighters and Kurdish civilians, and perhaps fewer members of the Turkish military, or jihadist groups, will be killed in that conflict. Facebook's ongoing privileging of states and government leaders harms stateless peoples. As a matter of practice, it leads to interference with the right to self-determination. Article I of the International Covenant on Civil and Political Rights states: All peoples have the right to self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development. Yet in practice, in conflicts between independence or successionist movements and existing states, Facebook's rules around the praise or support of "any non-state actor" that "engages in, advocates, or lends substantial support to" "acts of violence" in opposition to a state or with political aims has the effect of capturing even legitimate or constrained nonstate military activity. One need not target civilians to

influence governments to be deemed a terrorist by Facebook. Using these rules, a Facebook existent in May of 1775, reviewing the events at Lexington and Concord, would have deemed America's founding fathers and Committees of Correspondence "Dangerous Individuals and Organizations". Should Facebook have prohibited Giuseppe Garibaldi's worldwide fan following in the 19th century? Even as Facebook banned Tatmadaw accounts in a futile effort to prevent its campaign of ethnic cleaning, any Rohingya who took up arms against their tormentors would be deemed a terrorist under Facebook's rules. On the other hand, governments may regularly do violence to civilians, to say nothing of armed secessionists, without risking designation as a Dangerous Organization. In a community of nations loathe to admit new members, some bias is inescapable. There are good reasons to privilege existing governments over revolutionary upstarts. However, Facebook need not pick the government's side in conflicts as a blanket rule. - To the extent that Facebook makes particular designations of dangerousness, it should make them publicly, accepting public comment and criticism. If these decisions are kept secret, they can be made with perfect unaccountability. This might be politically convenient, but it cannot provide legitimate governance. Left unstated, determinations of dangerousness cannot guide user behaviour. Secret rules are pretense, not law. However, despite the Oversight Board's recommendation that Facebook, "Provide a public list of the organizations and individuals designated as 'dangerous' under the Dangerous Individuals and Organizations Community Standard," in its January 28th 2020-005-FB-UA Case Decision, in the intervening four months Facebook has failed to act on this recommendation. Finally, as a blunt, practical determination, it seems hard to deem Abdullah Öcalan a dangerous individual when he is 72 years old and has been imprisoned on an island, alone, for twenty years, after being kidnapped in Nairobi by the Turkish government. He has advocated a peaceful solution to the Kurdish/Turkish conflict since his imprisonment. Praise or discussion of Öcalan might present an ideological threat to the aims of the Turkish government. Facebook has no business policing such threats.

Link to Attachment

[PC-10054](#)

2021-006-IG-UA

Case number

PC-10055

Public comment number

Europe

Region

Professor Fionnua Ni Aolain

Commenter's first name

Commenter's last name

English

Commenter's preferred language

United Nations

Organization

No

Response on behalf of organization

Short summary provided by the commenter

See below.

Full Comment

1.The United Nations Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism established pursuant to Human Rights Council resolution 40/16 is pleased to submit views to the Facebook Oversight Board on its “Community Guidelines” and “Community Standard on Dangerous Individuals and Organizations.” 2. The submission of these views is provided by the Special Rapporteur on a voluntary basis without prejudice to, and should not be considered as, a waiver, express or implied, of any privileges or immunities which the United Nations, its officials or experts on mission enjoyed, pursuant to the 1946 Convention on the Privileges and Immunities of the United Nations. Authorization for the positions and views expressed by the Special Rapporteur, in full accordance with her independence, was neither sought nor given by the United Nations, including the Human Rights Council or the Office of the High Commissioner for Human Rights, or any of the officials associated with those bodies. 3. The Special Rapporteur reports regularly to the UN Human Rights Council and General Assembly on the promotion and protection of human rights and fundamental freedoms while countering terrorism, countering violent extremism and extremism including broadly related security regulation by States. As a result, the Special Rapporteur is in a position to assess the broad human rights implications of the regulatory actions by both State and private entities in the area of terrorism, violent extremism and extremism. 4. The Special Rapporteur will share its broad assessments of the guidelines and standard used by Facebook but will not make judgement on the specifics of the case, given the potential for conflict of interest should this case be submitted or reviewed by her mandate. 5.The Special Rapporteur has been engaged in a long-term and constructive conversation with Facebook concerning its previous definition of terrorist entities as well as its

Community Guidelines on Dangerous Individuals and Organizations. I have welcomed Facebook's effort to update its definition of terrorist entities with the aim of bringing it in line with international law standards and note some improvements brought by the amendments. Nonetheless, the Special Rapporteur remains very concerned that the Guidelines and Standard are insufficiently consistent with international law and may function in practice to undermine certain fundamental rights, including but not limited to freedom of expression, association, participation in public affairs and non-discrimination. 6. The Special Rapporteur has advised Facebook to develop a definition of terrorism as opposed to relying primarily on a definition of terrorist entities or dangerous organizations. The language of dangerous organizations raises complex issues about assessing and establishing membership in and/or affiliation with such groups. The Special Rapporteur notes in this respect that Facebook does not seem to have publicly available criteria on how such assessments are to be conducted. 7. The Special Rapporteur is particularly concerned about the use of the opaque term 'dangerous' to define the regulation of organizations and individuals on the internet. There is no agreed international law or even domestic law meaning of this term. The term creates undisputable legal uncertainty and is vague and imprecise. It is regrettable that the regulatory basis for removal is premised on a standard that suffers from these defects making the concerns about improper, discriminatory or repressive speech restrictions more acute. 8. While acknowledging the importance of regulating advocacy to violence, Facebook must make clear that the company maintains a robust protection of freedom of expression, including speech that may be offensive, distasteful or unacceptable to some. The mandate therefore reiterates its earlier recommendations² that Facebook consider adopting the model definition of incitement to terrorism advanced by the mandate of the Special Rapporteur and be guided by Articles 19(3) and 20 of the International Covenant on Civil and Political Rights and the standards spelled out in the Rabat Plan of Action when addressing advocacy of national, racial or religious hatred that may constitute incitement to discrimination, hostility or violence. 9. I further wish to express my concern at the overly broad definition of terrorism / dangerous organizations used by Facebook combined with the seeming lack of a human rights approach to content moderation policies. The combination provides what might be described as a sub-optimal protection of human rights on the platform, which may be enormously consequential in terms of the global protection of certain rights, the narrowing of civic space, and the negative consolidation of trends on governance, accountability and rule of law in many national settings. Moreover, the Special Rapporteur warns against the use of overly broad and imprecise definitions as the basis for regulating access to and the use of Facebook's platform as such approaches may lead to indiscriminate implementation, over-censoring and arbitrary denial of access to and use of Facebook's services. 10. The Special Rapporteur underscores the role and influence of the private sector and, in particular, of companies such as Facebook, which own and operate major social media platforms and enable and facilitate communication between a wide variety of stakeholders. As a consequence, such companies, including Facebook, control significantly impact the public's access to seek, receive and impart information. Companies like Facebook exert considerable

influence over individuals' access to information, freedom of opinion, expression, and association, and over interlinked political and public interest processes. 11. The growing role of corporate actors and their increased impact on the enjoyment of human rights is addr

Link to Attachment

[PG-10055](#)