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UPHELD

# SRI LANKA PHARMACEUTICALS

March 9, 2023

The Oversight Board has upheld Meta's decision to leave up a Facebook post asking for donations of pharmaceutical drugs to Sri Lanka during the country's financial crisis.

## TYPE OF DECISION

Standard

## POLICIES AND TOPICS

Governments, Health, Safety

Regulated goods

## REGION/COUNTRIES

Sri Lanka

## PLATFORM

## ATTACHMENTS

[Sri Lanka pharmaceuticals public comments](#)

[Tamil translation - Sri Lanka pharmaceuticals](#)

[Sinhala translation - Sri Lanka pharmaceuticals](#)

This decision is also available in **Sinhala** and **Tamil**.

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இந்த முடிவைத் தமிழில் படிக்க இங்கே கிளிக் செய்யவும்.

## CASE SUMMARY

The Oversight Board has upheld Meta's decision to leave up a Facebook post asking for donations of pharmaceutical drugs to Sri Lanka during the country's financial crisis. However, the Board has found that secret, discretionary policy exemptions are incompatible with Meta's human rights responsibilities, and has made recommendations to increase transparency and consistency around the "spirit of the policy" allowance. This allowance permits content where a strict reading of a policy produces an outcome that is at odds with that policy's intent.

### About the case

In April 2022, an image was posted on the Facebook page of a medical trade union in Sri Lanka, asking for people to donate drugs and medical products to the country, and providing a link for them to do so.

At the time, Sri Lanka was in the midst of a severe political and financial crisis, which emptied the country's foreign currency reserves. As a result, Sri Lanka, which imports 85% of its medical supplies, did not have the funds to import drugs. Doctors reported that hospitals were running out of medicine and essential supplies, and said they feared an imminent health catastrophe.

The Meta teams responsible for monitoring risk during the Sri Lanka crisis identified the content in this case. The company found that the post violated its Restricted Goods and Services Community

Standard, which prohibits content that asks for pharmaceutical drugs but applied a scaled “spirit of the policy” allowance.

“Spirit of the policy” allowances permit content where the policy rationale, and Meta’s values, demand a different outcome to a strict reading of the rules. Scaled allowances apply to entire categories of content, rather than just individual posts. The rationale for the Restricted Goods and Services policy includes “encouraging safety.” Meta referred this case to the Board.

## Key findings

The Oversight Board finds that the post violates the Restricted Goods and Services Community Standard. However, it finds that applying a scaled “spirit of the policy” allowance to permit this and similar content was appropriate, and in line with Meta’s values and human rights responsibilities.

In the context of the Sri Lankan crisis, where people’s health and safety were in grave danger, the allowance pursued the Community Standard’s aim of “encouraging safety,” and the human right to health. Though allowing drug donations can present risks, the acute need in Sri Lanka justified Meta’s actions.

However, the Board is concerned that Meta has said that the “spirit of the policy” allowance “may” apply to content posted in Sinhala outside Sri Lanka, in addition to the Sri Lanka market. Meta should be clear about where its allowances apply. It should also ensure that at-scale allowances are sensitive to the ethnic and linguistic diversity of the people they may impact in order to avoid inadvertent discrimination. Sri Lanka has two official languages, Sinhala and Tamil, the latter largely spoken by Tamil and Muslim minorities.

The Board also finds that, to meet its human rights responsibilities, Meta should take action to increase users’ understanding of the “spirit of the policy” allowance, and to ensure it is applied consistently.

Users who report content are not notified when it benefits from a “spirit of the policy” allowance, nor do users have any way of knowing that the exception exists. The “spirit of the policy” allowance is not mentioned in the Community Standards, and Meta has not published information on it in the Transparency Center, as it has on the newsworthiness exception, partly thanks to recommendations from the Board. Secret, discretionary exemptions to Meta’s policies are incompatible with Meta’s human rights responsibilities.

There appear to be no clear criteria in place to govern when “spirit of the policy” allowances are issued and terminated. The Board emphasizes the importance of such criteria in ensuring decisions

are made consistently, and recommends Meta make them public. It also finds that where Meta regularly uses an allowance for the same purpose, it should assess whether a standalone exception to the relevant policy is needed.

## **The Oversight Board's decision**

The Oversight Board upholds Meta's decision to leave the post on Facebook.

The Board also recommends that Meta:

- Publish information on the “spirit of the policy” allowance in its Transparency Center, including the criteria Meta uses to decide whether to scale the allowance.
- Explain in the Community Standards that allowances may be made when a policy’s rationale, and Meta’s values, demand a different outcome than a strict reading of the rules. This should link to the “spirit of the policy” allowance information in the Transparency Center.
- Notify users when content they have reported benefits from the “spirit of the policy” allowance.
- Publicly share aggregated data in the Transparency Center on the “spirit of the policy” allowances issued, including the number, and the regions and languages impacted.

\* Case summaries provide an overview of the case and do not have precedential value.

# **FULL CASE DECISION**

## **1. Decision summary**

The Board upholds Meta's decision to leave a post on Facebook which asks for donations of pharmaceutical drugs in Sri Lanka. Despite violating Meta's Restricted Goods and Services Community Standard, the content was left on Facebook as a result of an at-scale “spirit of the policy” allowance, issued by Meta. This allowance permitted content that was seeking to donate, gift, or ask for pharmaceutical drugs in Sri Lanka between April 27 and November 10, 2022. The Board finds that this allowance was appropriate in light of Sri Lanka's severe and compounding political, economic, and healthcare crises but urges Meta to provide more information to users on how the “spirit of the policy” allowance is applied, especially in times of crisis.

## **2. Case description and background**

In April 2022, a Facebook user posted an image on the Facebook page of a medical trade union in Sri Lanka. The image includes a button which reads “donate” and a caption in English stating that people can now donate drugs and medical products to Sri Lanka by clicking on the link provided.

The link in the caption leads to a page on the trade union's external website that describes a crisis in the Sri Lankan healthcare sector and states that there is a need for people to donate pharmaceutical drugs to support the healthcare system. The webpage also provides instructions for donors, including obtaining: 1) a letter from the recipient of the donated drugs; 2) a commercial invoice specifying the type, quantity, and value of the drugs; and 3) a scanned image of the drugs' label. The post has been viewed over 80,000 times, shared fewer than 1,000 times, and has not been reported by anyone.

At the time the content was posted, Sri Lanka was in the midst of a severe **financial crisis**, which emptied the country's foreign currency reserves. Many Sri Lankans were engaged in protests against members of the government for their role in the country's economic crisis. In June 2022, the United Nations reported that about **three-quarters of the population** had reduced their food intake due to the country's severe food shortages. Eighty-five **per cent** of Sri Lanka's medical supplies are imported from other countries, particularly from India. The currency crisis meant that Sri Lanka no longer had the funds to import these drugs. In April 2022, doctors across Sri Lanka reported that **hospitals were running out of medicines** and essential supplies, and said they feared an imminent health catastrophe. Routine medical procedures were cancelled and doctors feared mortality would increase exponentially. In September 2022, the United Nations Development Program (UNDP) in Sri Lanka came forward to procure and **deliver vital and essential medicines** and medical supplies for the country, together with the World Health Organization (WHO) in Sri Lanka, with the financial support of the United Nations' Central Emergency Response Fund (CERF).

Meta's Global Operations team identified the content at issue in this case during a risk-monitoring effort related to the ongoing crisis in Sri Lanka. The company stated that this type of monitoring effort is typically carried out during high-risk events, prompted by the team's expertise and its assessment of off-platform situations. The case content was escalated for additional review twice before reaching Meta's Content Policy team.

Meta issued a time-bound and scaled "spirit of the policy" allowance to permit this post as well as other content attempting to donate, gift, or ask for pharmaceutical drugs in Sri Lanka. Meta makes "spirit of the policy" exceptions when a strict application of the relevant Community Standard is producing results that are inconsistent with its rationale and objectives. Scaled policy allowances are general allowances that apply to all content that fulfils certain criteria. They can only be issued by Meta's internal teams on escalation. Once issued, scaled policy allowances are enforced by at-scale reviewers. The "spirit of the policy" allowance was issued on April 27, 2022, for a period of two weeks (effective from April 27, 2022, to May 10, 2022). The allowance was extended multiple times, after being periodically reviewed and renewed.

Since November 10, 2022, when the allowance ended, Meta reviews any content attempting to donate, gift, or ask for pharmaceutical drugs in Sri Lanka against the Restricted Goods and Services policy and enforces the policy without the allowance.

Meta referred the case to the Board, stating that it is difficult, as it involves balancing the competing values of “Safety” and “Voice,” and significant, as it concerns the Sri Lankan financial crisis, which could lead to preventable deaths due to a lack of medical drugs. Meta has asked the Board to evaluate how the company makes temporary, region-specific “spirit of the policy” allowances to its Restricted Goods and Services policy, particularly during crisis or conflict situations.

### **3. Oversight Board authority and scope**

The Board has authority to review decisions that Meta submits for review (Charter Article 2, Section 1; Bylaws Article 2, Section 2.1.1). The Board may request that Meta refer decisions to it.

The Board may uphold or overturn Meta’s decision (Charter Article 3, Section 5), and this decision is binding on the company (Charter Article 4). Meta must also assess the feasibility of applying the Board’s decision in respect of identical content with parallel context (Charter Article 4). The Board’s decisions may include policy advisory statements with non-binding recommendations that Meta must respond to (Charter Article 3, Section 4; Article 4). Where Meta commits to act on recommendations, the Board monitors their implementation.

### **4. Sources of authority and guidance**

The following standards and precedents informed the Board’s analysis in this case:

#### *1. Oversight Board decisions:*

The most relevant previous decisions of the Oversight Board include:

- “Iran protest slogan” ( [2022-013-FB-UA](#)): This case concerned how Meta’s other overriding policy allowance, the newsworthiness allowance, may be applied during times of crisis. The Board recommended that Meta provide more data to the public on newsworthiness allowances that have been granted, and that the company announce when they have been introduced.
- “Colombia protests” ( [2021-010-FB-UA](#)): This case concerned allowances made for newsworthiness. The Board recommended that Meta “notify all users who reported content which was assessed as violating but left on the platform for public interest reasons that the newsworthiness allowance was applied to the post. The notice should link to the Transparency Center explanation of the newsworthiness allowance.”

- “Former President Trump’s suspension” ( **2021-001-FB-FBR**): This case concerned how Meta responds to crises and makes policy exceptions. The Board recommended that Meta “develop and publish a policy that governs its response to crises or novel situations where its regular processes would not prevent or avoid imminent harm.”

## *II. Meta’s content policies:*

### Restricted Goods and Services Community Standard

Under the **Restricted Goods and Services** Community Standard, Meta “prohibits attempts by individuals, manufacturers, and retailers to purchase, sell, raffle, gift, transfer or trade certain goods and services.” This includes “attempts to donate or gift pharmaceutical drugs,” as well as requests “for pharmaceutical drugs except when content discusses the affordability, accessibility or efficacy of pharmaceutical drugs in a medical context.” The policy rationale for this Community Standard encourages safety while deterring potentially harmful activity. Under this Community Standard, “pharmaceutical drugs” are described as “drugs that require a prescription or medical professionals to administer.”

### Spirit of the Policy Allowance

Meta may apply a “spirit of the policy” allowance to content when the policy rationale (the text that introduces each Community Standard) and Meta’s values demand a different outcome than a strict reading of the rules (the rules set out in the “do not post” section and in the list of prohibited content).

In this case, Meta applied a “spirit of the policy” allowance to allow content that is seeking to donate, gift, or ask for pharmaceutical drugs in Sri Lanka. It did so due to the economic crisis and the acute need for medicine. In Meta’s answers to the Board, Meta said that the allowance applies to content posted in Sri Lanka and that “it may also include content posted in the Sinhalese language outside of Sri Lanka” due to their “market routing.” Meta did not mention the allowance was applied outside of Sri Lanka to content posted in Tamil, another official language of the country.

The Board’s analysis was also informed by Meta’s value of “Voice,” which the company describes as “paramount,” and its value of “Safety.”

## *III. Meta’s human rights responsibilities*

The UN Guiding Principles on Business and Human Rights (UNGPs), endorsed by the UN Human Rights Council in 2011, establish a voluntary framework for the human rights responsibilities of

private businesses. In 2021, Meta **announced** its **Corporate Human Rights Policy**, where it reaffirmed its commitment to respecting human rights in accordance with the UNGPs.

The Board's analysis of Meta's human rights responsibilities in this case was informed by the following international standards:

- The right to freedom of opinion and expression: Article 19, International Covenant on Civil and Political Rights ( **ICCPR**), **General Comment No. 34**, Human Rights Committee, 2011; UN Special Rapporteur on freedom of opinion and expression, reports: **A/HRC/38/35** (2018) and **A/74/486** (2019).
- The right to life: Article 6, ICCPR.
- The right to health: Article 12, International Covenant on Economic, Social and Cultural Rights ( **ICESCR**); **General Comment No. 14**, the Committee on Economic, Social and Cultural Rights, (2000).

## 5. User submissions

The author of the post was notified of the Board's review and provided with an opportunity to submit a statement to the Board. The user did not submit a statement.

## 6. Meta's submissions

Meta explained to the Board that, while its Community Standards do not allow content that asks for pharmaceutical drugs, the company determined that the need for “pharmaceutical drugs precipitated by an economic crisis in Sri Lanka justified an allowance under the policy rationale of the Restricted Goods and Services policy.” This rationale provides that the goal of this policy is “[t]o encourage safety and deter potentially harmful activities.” Meta also stated that the decision to issue a scaled allowance was “particularly challenging” because it required Meta to “balance the needs of Sri Lankans during a crisis against the dangers of allowing people to share and exchange potentially harmful drugs” on the company's platforms. Meta also stated that most countries, including Sri Lanka, have “strict drug distribution laws that broadly criminalize the sale, transport, or transfer of controlled substances.” However, the company claims its decision to issue the “spirit of the policy” allowance in this case also furthered the legitimate aim of user safety and the protection of public health because of the safety risks associated with the shortage of medical drugs in Sri Lanka.

Meta believes its decision is consistent with its values as well as with international human rights principles on protecting public health. Meta provided examples of other allowances made for pharmaceutical donations, including: (a) a three-month allowance in Cuba in 2022 based on an acute shortage of medication linked to an economic crisis; (b) a nine-month allowance in Lebanon in

2021 based on an acute shortage and unaffordability of medication during an economic crisis; and (c) an ongoing allowance in Ukraine since February 27, 2022, based on supply disruptions caused by Russia's invasion.

Meta said it had also issued "spirit of the policy" allowances limited to COVID-19 related medicines and medical goods, "allowing content donating and soliciting donations for medical-grade oxygen in Afghanistan (1 month), Indonesia (1 month) and Myanmar (5 months) as well as content offering to donate or soliciting donations for Remdesivir, Fabiflu, and Tocilizumab in India (1 month) and Nepal (2 weeks)." Meta also stated that in each situation, the company relied on "independent reporting to verify the crisis."

In its responses to the Board's questions, Meta explained that the criteria used to issue and terminate an at-scale "spirit of the policy" allowance in crisis situations vary depending on the nature of the policy and the context of the crisis. The company added that its decisions were typically based on input from internal teams and, in some cases, external stakeholders. In this case, Meta stated that the company's decision was influenced by the existence of a "well-demonstrated crisis" including "news coverage and economic analysis" on the shortages of medical drugs. Meta took into account that "the need for medical drugs is mentioned by reputable medical authorities."

Meta also stated in response to the Board's questions that in the past three years, only a minority of the allowances issued by the company were scaled, and a low proportion of these related to the Restricted Goods and Services policy. Policy allowances can only be introduced by Meta's internal teams "on escalation." Scaled policy allowances are general allowances that apply to all content that fulfills certain criteria when first reviewed by at-scale reviewers. Allowances that are not scaled are specific to individual posts.

The Board asked Meta nine questions in writing. Questions related to the "spirit of the policy" allowance in Sri Lanka, Meta's Crisis Protocol, and Meta's general approach to initiating and terminating spirit of the policy allowances. Meta answered all questions fully.

## 7. Public comments

The Oversight Board received three public comments relevant to this case. Two of the comments were submitted from the United States and Canada and one was from Latin America and the Caribbean.

The submissions covered the following themes: the risks of accepting donations of drugs; the harms caused by Meta not allowing the coordination of pharmaceutical donation drives on its platforms;

and the need for clear, human rights-respecting criteria when Meta creates exceptions to its policies.

To read public comments submitted for this case, please click [here](#).

## 8. Oversight Board analysis

The Board chose to take this case because Meta's decisions on whether to issue allowances for pharmaceutical donations in crisis situations will have a critical impact on people's access to health and information about health crises in the countries affected. The case also allows the Board to assess Meta's approach to "spirit of the policy" allowances and issue recommendations in this regard, as well as the company's approach to country-specific applications of its rules. The Board examined whether this content should be removed by analyzing Meta's content policies, human rights responsibilities and values. The Board also assessed the implications of this case for Meta's broader approach to content governance.

### 8.1 Compliance with Meta's content policies

The Board finds that the content in this case violates the Restricted Goods and Services Community Standard's prohibition of content that "asks for pharmaceutical drugs." However, the Board finds that an at-scale "spirit of the policy" allowance was appropriately issued to allow this post, and similar content, to remain on Facebook at a time of pressing need in Sri Lanka.

#### *I. Content rules*

Meta's Restricted Goods and Services policy prohibits "attempts to donate or gift pharmaceutical drugs" as well as posts that ask for pharmaceutical drugs "except when content discusses the affordability, accessibility or efficacy of pharmaceutical drugs in a medical context."

The Board notes that the content in this case was part of a donation coordination effort. However, it does not itself "attempt to donate or gift pharmaceutical drugs," rather it urges people to donate medical supplies. Therefore, the Board finds that the content is "asking for pharmaceutical drugs."

Meta's internal guidelines to content moderators further clarify that discussing "affordability" means mentioning discounts or offers (for example, "\$5 off prescription,") comparing the value of generic and brand-name versions of pharmaceutical drugs, or listing the price of vaccines. Additionally, content discussing accessibility in a medical context may indicate suggestions on how to address a medical condition (for example, "If you're having trouble with allergies, go to ABC Pharmacy to buy methylprednisolone.") The content was posted in a context where the affordability and the accessibility of pharmaceutical drugs in Sri Lanka were at risk. However, the Board finds that the

content is not in line with the examples of affordability and accessibility discussions, set out in Meta's internal guidelines. It therefore violates the Community Standard. The Board notes that these examples are not part of the public-facing language of Meta's Restricted Goods and Services policy.

According to Meta, a "spirit of the policy" allowance can be issued when the policy rationale of the relevant Community Standard, and Meta's values, demand a different outcome than a literal reading of the rules. The Restricted Goods and Services policy aims at "encouraging safety and deterring potentially harmful activities." Similarly, under the value of "Safety," Meta "removes content that could contribute to a risk of harm to the physical security of persons."

Safety requires different considerations depending on the context. During this period in Sri Lanka, there was an acute crisis arising out of a shortage of medicines and this posed a serious safety risk. However, there are also serious safety concerns in allowing pharmaceutical donations, especially in times of crisis. The WHO cautions that donated pharmaceutical drugs may be expired, improperly stored, or cause costly vetting and storage burdens for countries already in crisis (World Health Organization, **Guidelines for medicine donations**, page 6). Meta should also keep this in mind when issuing allowances to the Restricted Goods and Services policy. Additionally, allowing users to share and exchange potentially harmful drugs on Meta's platforms may result in their misuse for illicit or dangerous purposes.

Despite these valid concerns, the Board finds that Meta's decision to issue an at-scale "spirit of the policy" allowance to permit content that is seeking to donate, gift, or ask for pharmaceutical drugs in Sri Lanka is justified, given the country's economic crisis and the shortage of medical supplies. The more acute need in a time of severe economic crisis should prevail so that people's access to healthcare is minimally preserved. Concerns around the storage of drugs, as well as their misuse, can be mitigated by other responsible parties, such as local authorities and organizations engaged in the distribution of medicine, if properly notified by Meta of the policy allowance.

## *II. Enforcement action*

In a response to one of the Board's questions, Meta explained that various internal teams might be involved in a decision to grant a "spirit of the policy" allowance, and in a decision to terminate such an allowance. These include teams with safety, human rights and region-specific expertise. When an allowance is time-bound, Meta assesses it periodically and decides whether to renew or terminate it. Meta explained that the allowance in this case was terminated on November 10, 2022, after the company's internal teams communicated that the "medical crisis in Sri Lanka had abated to an extent that the risk of potential abuse from unfettered calls for donations of medical drugs on

Facebook outweighed the remaining benefits.” After the Board asked a follow-up question, Meta explained that:

*Two things occurred that appeared to ease the crisis: (i) new donations of medicine from multilateral donor agencies, NGOs and governments which eased the shortages and (ii) a new caretaker government reprioritized spending on obtaining essential medicine. We also saw other positive developments including local hospitals setting up a centralized system for coordinating medical supplies and new credit lines from international agencies and India, some of which was specifically directed to purchasing medicine.*

In response to another of the Board’s questions, Meta explained that:

*The policy allowance applied in the Sri Lanka market only. We did not extend it to posts outside of that market. While the Sri Lanka market includes content posted in Sri Lanka, due to our market routing, it may also include content posted in the Sinhalese language outside of Sri Lanka.*

The Board notes Meta’s uncertainty about whether the allowance was actually applied outside of Sri Lanka, and urges the company to review its enforcement systems and practices to ensure Meta is in a better position to anticipate the allowance’s impact. The Board further noted Meta seemingly restricted the application of this allowance to the Sri Lanka market and the Sinhala language. Sri Lanka has two official languages, Sinhala and Tamil, the latter also being largely spoken in the country and diaspora, primarily by Tamil and Muslim ethnic minorities. At-scale allowances should be sensitive to the ethnic and linguistic diversity of people they may impact in order to avoid inadvertent discrimination.

### *III. Transparency*

The Board notes that Meta has not published information on the “spirit of the policy” allowance in its **Transparency Center**, nor in the Community Standards. Users would benefit from a page that presents the criteria Meta uses to decide whether to issue “spirit of the policy” allowances and when to scale them. Additionally, Meta should publicize examples of content which benefited from this allowance. Finally, the company should include, in its Transparency Center, a list of all the “spirit of the policy” allowances it has issued at scale, with explanations of why they were issued and terminated. This page in the Transparency Center should also include aggregated data about the “spirit of the policy” allowances issued, including the number of instances in which they were issued, and the regions and/or languages impacted. This would be similar to Meta’s current approach towards the **newsworthiness allowance**, which has evolved and substantially improved following action the company has taken in response to recommendations issued by the Board. This is

especially important because the “spirit of the policy” allowance, like the newsworthiness allowance, is a general exception applicable to all content policies across Facebook and Instagram.

## 8.2 Compliance with Meta’s human rights responsibilities

The Board finds that keeping the content on the platform is consistent with Meta’s human rights responsibilities. Meta has committed itself to respect human rights under the UN Guiding Principles on Business and Human Rights ( [UNGPs](#)). Its **Corporate Human Rights Policy** states that this commitment includes respecting the International Covenant on Civil and Political Rights (ICCPR).

Meta’s decision to issue an allowance was also guided by a concern with people’s right to health and life. Additionally, the Board notes that access to health-related information is particularly important from a freedom of expression perspective (A/HRC/44/49, para. 6). Such rights were endangered in Sri Lanka given the severe political and economic crisis, which greatly hindered access to medical supplies.

### *Freedom of expression (Article 19 ICCPR)*

The scope of the right to freedom of expression is broad. Article 19, para. 2, of the ICCPR gives heightened protection to expression, including on public affairs ( [General Comment No. 34](#), para. 11). Expression can be particularly important during a health crisis as it relates to matters of great public importance. The UN Special Rapporteur on freedom of expression highlighted that “the free flow of information, unhindered by threats and intimidation and penalties, protects life and health and enables and promotes critical social, economic, political and other policy discussions and decision-making” ( [A/HRC/44/49](#)). In this case the content coordinates action aiming to mitigate risks to people’s right to health and life in Sri Lanka resulting from a severe economic crisis.

Where restrictions on expression are imposed by a state, they must meet the requirements of legality, legitimate aim, and necessity and proportionality (Article 19, para. 3, ICCPR). These requirements are often referred to as the “three-part test.” The Board uses this framework to interpret Meta’s voluntary human rights commitments, both in relation to the individual content decision under review and what this says about Meta’s broader approach to content governance. As the UN Special Rapporteur on freedom of expression has stated, although “companies do not have the obligations of Governments, their impact is of a sort that requires them to assess the same kind of questions about protecting their users’ right to freedom of expression” ( [A/74/486](#), para. 41). In this case, the Board applied the “three-part test” to Meta’s relevant rules under the Restricted Goods and Services Community Standard and its overarching “spirit of the policy” allowance.

## *I. Legality (clarity and accessibility of the rules)*

The principle of legality requires rules used by states to limit expression to be clear and accessible (General Comment 34, para. 25). Lack of specificity can lead to subjective interpretation of rules and their arbitrary enforcement. Individuals must have enough information to determine if and how their expression may be limited, so that they can adjust their behavior accordingly. In a 2018 report addressing content moderation and ICCPR Article 19's legality standards, the UN Special Rapporteur on freedom of expression highlighted the need for "clarity and specificity" in rules that govern online speech ( [A/HRC/38/35](#), para. 46). Applied to Meta's content rules for Facebook, users should be able to understand what is allowed and what is prohibited. The Board concluded that, although Meta's prohibition of content "asking for pharmaceutical drugs" is intelligible to users, exceptions to it, including the rules governing "spirit of the policy" allowances, are not sufficiently clear and accessible to users. As restrictions on rights must be clear, any exceptions to those restrictions should also be clear enough for users to understand what they can and cannot post. However, while the failure to properly articulate an allowance which permits more speech falls short of the standard of legality, it does not undermine the application of that allowance in this case, given the context in Sri Lanka when it was applied.

The Board notes that in the public facing language of the Restricted Goods and Services policy, Meta does not provide sufficient information on how the exception to allow content discussing "the affordability, accessibility or efficacy of pharmaceutical drugs in a medical context" is interpreted. Meta's internal guidelines to content moderators provide examples in this regard. The Board is concerned with the lack of clarity around these exceptions because users need to understand what they are allowed to post without breaching the rules. Meta should provide users with clearer guidance on how the company interprets its content policies by providing examples which align with its internal guidelines.

The Board also notes that the "spirit of the policy" allowance is not mentioned anywhere in the Community Standards. The Facebook Community Standards do not explain that the company occasionally introduces at-scale short-term "spirit of the policy" allowances to its rules in certain regions or countries. Users currently have no way of knowing about the "spirit of the policy" allowance, or its application across all Community Standards, since no public explanation of it exists. Secret discretionary exemptions to Meta's policies are incompatible with the legality standard. In one of its responses to the Board's questions, Meta explained that at the time the crisis in Sri Lanka began, the company had not yet launched its Crisis Policy Protocol but that for future crisis, "the allowance for content soliciting, donating, or gifting pharmaceuticals in times of conflict is one of the policy levers [...] documented as part of the protocol." However, the Board notes, in its

exchanges with Meta, the lack of clear criteria and protocols (e.g., consultation with local authorities and external stakeholders) for the application of such exceptions. The Board emphasizes the importance of ensuring that the application of allowances is guided by objective criteria, resulting in consistent decisions to issue and terminate them. Therefore, the Board urges Meta to publicly disclose information on the “spirit of the policy” allowance, and the criteria used by the company to apply it across all Community Standards.

The Board accepts that when moderating vast amounts of content on a global scale, it is necessary to have a “catch-all” allowance that can be applied to prevent clear injustices. The criteria used to assess when such an allowance is warranted should however be set out publicly. Further, where such an allowance is repeatedly used in the same way, as Meta has occasionally done for pharmaceutical donations in times of crisis, the company should carefully assess whether or not this should be specifically provided for as an exception to the relevant policy.

Finally, users reporting content are not notified when content reported by them benefits from a “spirit of the policy” allowance. Meta confirmed in its answers to the Board that the company “does not directly notify users of at-scale policy allowances.” In its “Colombia protests” decision (**2021-010-UA**), the Board recommended that Meta notify users who reported content as violating when the content was left on the company’s platforms because it benefitted from the newsworthiness allowance. Meta is still assessing whether to implement this recommendation. Similarly, notifying users who reported content benefiting from a “spirit of the policy” allowance would increase users’ understanding of what such an allowance entails and why content that appears to contravene a policy might still be available on the platform.

## *II. Legitimate aim*

ICCPR Article 19 provides that when states restrict expression, they may only do so in furtherance of legitimate aims, which are set forth as: “respect for the rights or reputations of others . . . [and] the protection of national security or of public order (ordre public), or of public health or morals.”

Meta’s general prohibition on “attempts to donate or gift” and “asks for” pharmaceutical drugs seeks to protect public safety and public health (Art. 19, para. 3, ICCPR), and the right of others to health (Art. 12, ICESCR) and to life (Art. 6, ICCPR), which are all legitimate aims. Meta stated in its decision rationale that “this content could facilitate the illicit transfer of controlled substances or trade of pharmaceutical drugs to users who do not have a prescription or instructions from a medical professional.” This aligns with Meta’s rationale in the preamble to the Restricted Goods and Services policy, which indicates that it was designed to “encourage safety and deter potentially harmful activities.”

### *III. Necessity and proportionality*

The principle of necessity and proportionality provides that any restrictions on freedom of expression “must be appropriate to achieve their protective function; they must be the least intrusive instrument amongst those which might achieve their protective function; [and] they must be proportionate to the interest to be protected” (General Comment 34, para. 34).

The application of the Restricted Goods and Service Policy in this case would not have been a proportional restriction on speech given the severe political and economic crisis in Sri Lanka, which hindered Sri Lankans’ access to medicines, endangering their right to health and life. However, Meta’s decision to issue a “spirit of the policy” allowance protected Sri Lankans’ right to life and health during this crisis.

## **9. Oversight Board decision**

The Oversight Board upholds Meta’s decision to leave up the content.

## **10. Policy advisory statement**

### **A. Content Policy**

1. To provide more clarity to users, Meta should explain in the landing page of the Community Standards, in the same way the company does with the newsworthiness allowance, that allowances to the Community Standards may be made when their rationale, and Meta’s values, demand a different outcome than a strict reading of the rules. The company should include a link to a Transparency Center page which provides information about the “spirit of the policy” allowance. The Board will consider this recommendation implemented when an explanation is added to the Community Standards.

### **B. Enforcement**

2. To provide more certainty to users, Meta should communicate when reported content benefits from a “spirit of the policy” allowance. In line with Meta’s recent work to audit its user notification systems as stated in its response to the Board’s recommendation in the “Colombia protests” case (2021-010-FB-UA), Meta should notify all users who reported content which was assessed as violating but left on the platform because a “spirit of the policy” allowance was applied to the post. The notice should include a link to a Transparency Center page which provides information about the “spirit of the policy” allowance. The Board will consider this recommendation implemented when Meta introduces the notification protocol described in this recommendation.

### C. Transparency

3. In line with the Board's recommendations five and six in the "Iran protest slogan" case (2022-013-FB-UA) the Board specifies that Meta should publish information about the "spirit of the policy" allowance in its Transparency Center, similar to the information it has published on the newsworthiness allowance. In the Transparency Center, Meta should: (i) explain that "spirit of the policy" allowances can be either scaled or narrow; (ii) publicize examples of content which benefited from this allowance; (iii) provide criteria Meta uses to determine when to scale "spirit of the policy" allowances; and (iv) include a list of all "spirit of the policy" allowances Meta has issued at scale in the past three years with explanations of why Meta decided to issue and terminate each of them. Meta should keep this list updated as new allowances are issued. The Board will consider this recommendation implemented when Meta makes this information publicly available in the Transparency Center.

4. In line with the Board's recommendations five and six in the "Iran protest slogan" case (2022-013-FB-UA) the Board specifies that Meta should publicly share aggregated data, in its Transparency Center, about the "spirit of the policy" allowances issued, including the number of instances in which they were issued, and the regions and/or languages impacted. Meta should keep this information updated as new "spirit of the policy" allowances are issued. The Board will consider this recommendation implemented when Meta makes this information publicly available in the Transparency Center.

#### **\*Procedural note:**

The Oversight Board's decisions are prepared by panels of five Members and approved by a majority of the Board. Board decisions do not necessarily represent the personal views of all Members.

For this case decision, independent research was commissioned on behalf of the Board. The Board was assisted by an independent research institute headquartered at the University of Gothenburg which draws on a team of over 50 social scientists on six continents, as well as more than 3,200 country experts from around the world. The Board was also assisted by Duco Advisors, an advisory firm focusing on the intersection of geopolitics, trust and safety, and technology. Memetica, an organization that engages in open-source research on social media trends, also provided analysis.

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