***The Case of Cambodian Prime Minister***

**Case Analysis**

***Meta-Data*:**

* **Case Number**: 2023-003-FB-MR
* **Date of decision**: June 2023
* **Featured case**: N/A
* **Region**: International
* **Country**: Cambodia
* **Type of expression**: Electronic / Internet-based Communication
* **Judicial Body**: Meta’s Oversight Board
* **Type of law**: Meta's content policies, International Human Rights Law
* **Main Themes**: Violence and Incitement
* **Outcome**: Overturned Meta’s initial decision
* **Status**: closed
* **Tags**: Facebook, government or state speech, head of state / government, incitement, internet, Meta newsworthiness allowance, Oversight Board content policy recommendation, Oversight Board enforcement recommendation, Oversight Board transparency recommendation, political speech, public figures, public interest, public safety, rights of others, social media, threatening statements.

***Analysis:***

* **Summary and Outcome**:

The Oversight Board has overturned Meta's decision to leave up a video on Facebook in which the Cambodian Prime Minister Hun Sen threatened his political opponents with violence, including statements such as they would have to choose between the "legal system" and "a bat", and threatened to "gather ‘CPP’ people to protest and beat you up". The Board held that Meta's decision of granting the content newsworthiness allowance was incorrect, and that the video clearly violated Meta’s Violence and Incitement policy. This, along with Hun Sen’s history of human rights violations and his use of social media to incite violence and threaten people, particularly his political opponents, caused the Board to request that Meta immediately suspends Hun Sen's Facebook Page and Instagram account for at least six months.

The Board also recommended that Meta updates its system to ensure that content from heads and senior members of the state are prioritized for immediate human review, and clarify that its policy is not applied only on single incidents of violence, but also where political expression is censored or threatened with violence by the state. As for Meta’s newsworthiness allowance policy, the Board recommended that it should exclude content that directly incites violence.

* **Facts**:

On 9 January 2023, Cambodia's Prime Minister, Hun Sen, live-streamed a video showing a one hour 41-minute speech delivered by him in Cambodia's official language -Khmer, on his official Facebook Page. In the speech, he pressed his political opponents, who asserted that his ruling party (CPP) “stole votes” in the country's 2022 elections, to “choose between the legal system and a bat”, and stated that “they can choose the legal system”, or he will “gather CPP people to protest and beat you up”. He also said "if you say that's freedom of expression, I will also express my freedom by sending people to your place”, threatening to send “gangsters” to their homes. In addition to that, he named certain individuals, warning them to “behave”, and that “he may arrest a traitor with sufficient evidence at midnight”. He then stated later on in the video that "we don't incite people and encourage people to use force". [p. 3,4]

The video was automatically uploaded onto the Prime Minister Hun Sen's Facebook Page after the livestream ended, gaining around 600,000 views, and was shared by approximately 3,000 users almost 4,000 times.

Between 9 January and 26 January 2023, three users reported the video five times for violating Meta's Violence and Incitement policy. Meta’s automated systems, which usually gives priority to content for human reviewing “based on its severity, virality and likelihood of violating content policies”, did not prioritize the content in the present case and closed these reports without human review. However, upon the users’ appeal, two human reviewers saw the content and deemed it as not violating, but the content was escalated to Meta’s “policy and subject matter experts”. [p. 4]

On 18 January 2023, the “policy and subject matter experts” decided that, while the video violated the Violence and Incitement policy, it was newsworthy, and thus gave it a ‘newsworthiness allowance’ to stay on the platform. ‘Newsworthiness allowance’ permits content that would be considered as violating to remain on Meta's platforms, because “its public interest value outweighs the risk of it causing harm”. One of the users who reported the content appealed Meta's decision to the Board, and Meta made a separate submission to the Board as well. [p. 4]

Hun Sen is a 70-year-old former Khmer Rouge commander that had been in power since 1985, and was running for re-election in Cambodia’s July 2023 elections. His opposition were subjected to targeted political violence, with over 30 opposition activists attacked between 2017 and 2022, some have been killed under “deeply suspicious circumstances”. In 2015, Hun Sen threatened that if anyone protested his diplomatic visit to France, his opposition, the Cambodian National Rescue Party (CNRP), would face attacks. And after the protests took place, two opposition members of parliament were “beaten by a mob and hospitalized with serious injuries”. [p. 4]

Multiple experts and organizations have submitted public comments to the Board, explaining and expressing concern over Hun Sen and his governments’ history of violence, such as the UN Office of the High Commissioner of Human Rights, who issued several reports, and in one of them in November 2021 “expressed concern over the killing of a CNRP affiliate who was receiving threats”, weeks after Hun Sen threatened to "do what it takes to crack down [on] protests during Cambodia's ASEAN chairmanship". As well as the Dangerous Speech Project that “warned that Hun Sen's inflammatory language increases his audience's willingness to commit and condone violence against his opponents”. In addition to the International Commission of Jurists (ICJ) submitting that “Hun Sen and the Cambodian authorities have systematically restricted human rights and fundamental freedoms through actions such as mass convictions of opposition party leaders on spurious charges and often in absentia”. [p. 4,5]

In 2020, Meta published its summary of a Human Rights Impact Assessment from Business for Social Responsibility (BSR) of the Meta's activities in Cambodia. It found that “Facebook was essential to freedom of information and expression in the country, where FM radio stations have been shut down and almost all print, radio and TV media are now controlled by the government”. Despite the fact that the Board obtained the full report from BSR, Meta refused to submit it, classifying it as confidential. And in response to any questions from the Board, Meta stated that “it has not carried out a full assessment of Hun Sen's Pages and accounts, but that the Page in question had a piece of content removed for breaching the Violence and Incitement policy in December 2022.” [p. 5]

* **Decision Overview**:

The main issue that the Oversight Board was analyzing in the present case was whether Facebook’s decision to leave up a video on Facebook, in which the Cambodian Prime Minister Hun Sen threatened his political opponents with violence, was consistent with Meta's Violence and Incitement Community Standard Policy, as well as its values and human rights responsibilities.

The user who appealed Meta's decision to the Board submitted that Hun Sen “had made such threats on previous occasions”, as Hun Sen used Facebook to “threaten others with violence and to suppress opposition activity” in the time preceding the July 2023 general election. [p. 7]

Meta submitted that, when the video was escalated to policy and subject matter experts for review, it determined that two parts from Hun Sen's speech violated the Violence and Incitement policy, but ultimately decided that it should remain on the platform under the newsworthiness allowance. Those two parts were, “the choice offered to his political opponents between the "legal system" and "a bat"”, and “his threat to "gather CPP people to protest and beat you up"”. [p. 7]

Meta explained that the majority of the hour and 41-minute speech was “related to governance or politics, such as Cambodia's relationship with China and the COVID-19 pandemic”, while the two violating parts were only a few minutes long and fell within the “mid-severity tier of the Violence and Incitement policy”. Meta also submitted that political speech by a country's leader “has high public interest value, particularly in an election year”, and that there is a public interest in “hearing warnings about potential violence by their government, particularly when those threats are not reported by local media”. [p. 7]

Meta additionally stated that, as to this context, the content in the present case “does not involve ongoing violence or armed conflict”, distinguishing the case from the cases of "[Former President Trump's suspension](https://globalfreedomofexpression.columbia.edu/cases/oversight-board-case-of-former-president-trumps-suspension/)" and "[Tigray Communication Affairs Bureau](https://globalfreedomofexpression.columbia.edu/cases/oversight-board-case-of-tigray-communication-affairs-bureau/)". Meta also said that it cannot prove Hun Sen's intent at the time the speech was made. However, Meta noted that "given the CPP's use of court proceedings to undermine political opponents, it appears that [Hun Sen] has chosen to use the courts rather than force, although this does not rule out the possibility of future violence". [p. 8]

Furthermore, Meta stated that "threats to sue or use the legal system against opposition figures, standing alone, would not violate the Violence and Incitement policy, as they do not involve a physical threat of violence", and that as a social media platform, they are “not in a position to independently determine whether a threat by the government to use legal process is undue”. [p. 9]

Meta lastly submitted that it found its decision to be consistent with its values and international human rights principles. Meta said that the “key factors” in reaching this conclusion were “the context” and “lack of imminent harm”, as the threat was "not connected to an ongoing armed conflict or violent event" and "non-specific". Yet, Meta acknowledged the "challenge in handling threats that lack a nexus to imminent violence, but nevertheless, may contribute to a climate of fear when issued by an authoritarian government", thus, it referred the case to the Board as it involved “a challenging balance between the company's values of "Safety" and "Voice"”, asking the Board for “guidance on how to evaluate such content, particularly in the context of an authoritarian regime where the right to access information is at stake”. [p. 5,8]

*Compliance with Meta’s Community Standards*

The Board decided that the video in the present case should be removed from the platform, as it included “unequivocal statements of intent to incite not only mid-severity violence (serious injury), but also high-severity violence (risk of death and other forms of high-severity violence)”, which is a clear violation to the Violence and Incitement policy. The Board added that this was also supported by “the broader political context”, which makes those threats more credible; as it includes the repeated threats and violence done by Hun Sen and members of his party against their opposition, while regularly using social media to communicate those threats. The Board additionally found that Hun Sen stating that "we don't incite people and encourage people to use force" contradicts the “clear message of the speech and is not credible”. [p. 8]

The Board found that in the present case, as to Meta’s submission regarding its inability to “independently determine whether a threat by the government to use legal process is undue”, it did not stand alone. The Board highlighted that when a regime, “following through on threats of violence against its opposition,” uses Meta's platforms, Meta should depend on its regional teams to “assess whether threats to use the legal system against political opponents amount to threatening or intimidating with violence”. The Board explained that, in Cambodia, courts are usually controlled and used by the leading party to censor the opposition. And thus, Hun Sen’s threats of pursing his opposition through the legal system, which include arresting the opposition at midnight, is “tantamount to a threat of violence”. [p. 9]

Furthermore, the Board decided that Meta’s decision to grant the content in the present case a newsworthiness allowance was wrong, as “the harms inherent in having the content on the platform outweigh the public interest in publicizing the speech.” The Board expressed concern over the fact that a political leader's “sustained campaign of harassment and intimidation against independent media and the political opposition can be a factor within a newsworthiness assessment that leads to violating content not being removed and the account avoiding penalties”, stating that Meta should not apply the newsworthiness allowance to government speech when “that government has made its own content more newsworthy by limiting free press.” [p. 9]

And while the Board acknowledged that a “delicate balance must be struck when assessing violating speech made by political leaders”, and that the people of Cambodia should be aware of their leader threatening his opposition, the Board stated that the required balance cannot be satisfied when public figures exploit Meta's platforms to directly incite violence. The Board also noted that the video was not posted by third parties who were “reporting on Hun Sen's threats”, but was posted by Hun Sen on his official Facebook account. That allows Hun Sens’s threats to “spread more broadly” by using Meta's platforms to have them “amplify the threats and resulting intimidation.” [p. 9]

In addition, the Board found that the present case is “clearly in line with the spirit of” Meta’s policy on restricting the accounts of public figures who post violating content during ongoing violence or civil unrest, despite believing that Meta should explain “the extent of the situations in which the policy should apply”. As the Board highlighted that violence is not only ongoing when “a single continuous violent incident or period of civil unrest is present”, but also in times of civil "peace" when political leaders threaten to use “state backed violence” to prevent and suppress opposition, using “widespread repression and repeated acts of violence”. [p. 10]

Moreover, the Board explained that there are three conditions for imposing a restriction under the aforementioned policy. Firstly, the severity of the violation and the public figure's history on Meta's platforms. Secondly, the public figure's potential influence over, and relationship to, the individuals engaged in violence. Finally, the severity of the violence and related physical harm. While analyzing the first criterion, the Board found that “incitement to send violent mobs to people's homes is at the highest level of severity”. [p. 10]

The Board found the second criterion to also be at the highest level, as “Hun Sen is a Prime Minister with complete control over his party, the military, law enforcement and the judiciary of Cambodia, as well as a high degree of loyalty from a section of the population”, with his influence clearly displayed “by the fact that both this speech and previous incitements have resulted in violence being committed against his targets.” And the final criterion, the Board found to also be met, as the speech in the present case instigated armed attacks, in addition to “the previous incitements that resulted in killings”. [p. 10]

The Board also observed that Hun Sen referred to at least one member of the political opposition by name, unlike what Meta submitted that the threats were "non-specific". The Board additionally noted that Meta should take into consideration “the political context and human rights situation of the country when assessing behavior on the platform”, finding that Hun Sen's repeated use of Meta’s platforms to incite violence against his opposition, “taken in the context of his history, his government's human rights abuses and the upcoming election, combine to require immediate action”, and that the content in this case is a “serious breach warranting an immediate suspension from Facebook and Instagram”. [p. 11]

*Compliance with Meta's human rights responsibilities*

The Board, in order to ensure that Meta’s actions comply with its obligations under the International Human Rights Law, respecting freedom of expression (ICCPR, Article 19) and the rights to vote and participate in public affairs (ICCPR, Article 25), the right to peaceful assembly (ICCPR, Article 21), the right to physical security (ICCPR, Article 9) and to life (ICCPR, Article 6), applied the three-part test that is provided by Article 19 of the International Covenant on Civil and Political Rights (“ICCPR”). The three-part test provides that for the legitimacy of the restriction on the right to freedom of expression, the restriction shall be prescribed by law (legality), pursuant of a legitimate aim, and necessary and proportionate.

1. *Legality*

While referencing the UN General Comment no. 34 (para. 25) and the UN Special Rapporteur on freedom of expression (A/HRC/38/35, para. 46), The Board highlighted that Meta’s rules should be accessible and clear to both the people using Meta's platforms, and the content reviewers to “have a clear guidance on their enforcement.” [p. 11]

Meta’s Violence and Incitement Community Standard Policy aims:

*“[…] to prevent potential offline harm that may be related to content on Facebook. While we understand that people commonly express disdain or disagreement by threatening or calling for violence in non-serious ways, we remove language that incites or facilitates serious violence. We remove content, disable accounts and work with law enforcement when we believe there is a genuine risk of physical harm or direct threats to public safety […]”*

Additionally, Meta's policy on restricting accounts of public figures applies when "standard restrictions may not be proportionate to the violation or sufficient to reduce the risk of further harm". [p. 12]

The Board held that Hun Sen and “those maintaining his social media presence” could have determined with no difficulty that the content in the present case was in violation of the Violence and Incitement Community Standard policy. The Board explained that threatening opponents with the "bat" and with “being beaten up by partisans” is clearly a violation to the policy, “especially in the context of an upcoming election”. [p. 11, 12]

The Board additionally highlighted that Meta's policy on restricting accounts of public figures, which the Board found to be applicable to the present case, makes it clear that, “severe violations from public figures leading to violence and physical harm, in a broader context of ongoing violence, warrant suspension”. [p. 12]

1. *Legitimate aim*

The Board found that “prohibiting calls for violence and threats of arbitrary arrest on the platform” to ensure public safety pursues the legitimate aim, under Article 19(3), of protecting the rights of others to life (ICCPR, Article 6) and to physical security against arbitrary arrest and detention (ICCPR, Article 9 para. 1), the right to peaceful assembly (ICCPR, Article 21), the right to vote and participate in public affairs (ICCPR, Article 25). [p. 12]

1. *Necessity and proportionality*

The Board decided that removing the content in the present case was a necessary and proportionate restriction that meets Meta's human rights responsibilities as “the content poses imminent and likely harm”. In reaching this conclusion, the Board relied on the six-part threshold test for determining whether the content could be considered as incitement to violence (UN Rabat Plan of Action). [p. 12]

The Board found that all six elements of content, context, intent, extent of reach, status of the speaker, and likelihood of imminent harm were satisfied in the case at hand, highlighting that the speaker in this case was the head of the Cambodian government– a public figure that “has significant reach and authority”, thus, “the speech amounts to state action”. The Board also took into consideration that, Hun Sen's government reportedly used “both physical violence and the Cambodian court system to silence and persecute dissenters and opposition members”. The Board cited the “[Former President Trump's suspension case](https://www.oversightboard.com/news/226612455899839-oversight-board-upholds-former-president-trump-s-suspension-finds-facebook-failed-to-impose-proper-penalty/)” to state that “these factors increase both the level of the risk of harm associated with his statements and the public interest in his remarks.” [p. 12]

The Board additionally observed that “the speech was made just over six months prior to the July 2023 parliamentary elections in Cambodia”, and that it covered matters of public interest, further discussion of the elections and issues of national infrastructure, the kind of information which the Cambodian people could have access to through other means, “including other social media accounts and reporting of the speech that did not mention the threats”. However, the Board stated that use of such terms as "bat", which can clearly be understood from the context “as a reference to a weapon” and "sending gangsters to [your] house" or “legal action including midnight arrests” amounts to incitement to violence and “threats of arbitrary arrests to stifle political dissent and weaken the opposition”. [p. 12]

Furthermore, The Board rejected Meta's description of the threats as “non-specific”, stating that “the threat was thrown into stark relief by the backdrop of an impending election and the identification of Hun Sen's political opponents as its targets”. And taking into consideration the history of Hun Sen's supporters’ violence and intimidation of political opponents, the Board held that “any call for violence made by the Prime Minister will be credible and have a chilling effect”. [p. 12]

As to the proportionality of the limitation, the Board decided that only removing the content in the present case is not sufficient to protect the rights of others, as “it does nothing to prevent future violations and incitement to violence”, and that the suspension of Hun Sen's official Facebook Page and Instagram account is proportionate and necessary. [p. 12]

*Recommendations*

The Board recommended that Meta should immediately suspend Cambodian Prime Minister Hun Sen’s official Facebook Page and Instagram account for at least six months, subject to Meta's policy on restricting accounts of public figures, and that Meta, concerning content posted by heads of state and senior members of governments, should update its review prioritization systems to prioritize for immediate human review when they potentially violate the Violence and Incitement policy, and should publicly reveal the extent of the decision it takes regarding these posts and the reasoning behind it.

With regards to the policies, the Board recommended that Meta should update its newsworthiness allowance policy to exclude content that directly incites violence, and its policy for restricting accounts of public figures to include contexts in which citizens are “under continuing threat of retaliatory violence from their governments” and to clarify that the policy is not restricted to “single incidents of civil unrest or violence”, but it applies when “political expression is pre-emptively suppressed or responded to with violence or threats of violence from the state.” [p. 13]

The Board additionally recommended that Meta should ensure a more accurate review of long-form video, by using a product and/or changing operational guideline (e.g. use of algorithms for predicting the timestamp of violation, ensuring proportional review time with length of the video, allowing videos to run 1.5 times or 2 times faster).

***Direction:***

* **Outcome**: Mixed Outcome

This decision has a mixed outcome, because while the Board highlighted free expression and generally accepted Meta’s newsworthiness allowance policy, it found that the policy should exclude content that explicitly and directly incites violence, as the harm caused by allowing such content on the platform outweighs its public interest value, and to also ensure that Meta's platforms are not contributing or amplifying the threats and the resulting harm and intimidation. This specially applies in the present case in which the Board decided that the content was a clear violation to the Violence and Incitement Policy, and that the removal of the content was necessary to protect the rights of others, with the added request of the immediate suspension of Hun Sen’s accounts on Facebook and Instagram for at least six months.

***Perspective***:

* **Related International and/or regional laws**:
* Article 19, [International Covenant on Civil and Political Rights (ICCPR](https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights)): the right to freedom of expression: The Board highlighted the importance of the right to freedom of opinion and expression, and how to legitimately restrict it.
* [General Comment No. 34](https://www2.ohchr.org/english/bodies/hrc/docs/gc34.pdf), Human Rights Committee, 2011: The Board analysed Meta’s human rights responsibilities, regarding the right to freedom of expression under Article 19 of the ICCPR and its general comment.
* UN Special Rapporteur on freedom of opinion and expression, reports: [A/HRC/38/35](https://undocs.org/Home/Mobile?FinalSymbol=A%2FHRC%2F38%2F35&Language=E&DeviceType=Desktop&LangRequested=False) (2018) and [A/74/486](https://undocs.org/Home/Mobile?FinalSymbol=A%2F74%2F486&Language=E&DeviceType=Desktop&LangRequested=False) (2019): The Board referenced this to apply the legality test of the three-part test for the legitimacy of the restriction on the right to freedom of expression.
* Rabat Plan of Action, UN High Commissioner for Human Rights report: [A/HRC/22/17/Add.4](https://l.facebook.com/l.php?u=https%3A%2F%2Fundocs.org%2FHome%2FMobile%3FFinalSymbol%3DA%252FHRC%252F22%252F17%252FAdd.4%26amp%3BLanguage%3DE%26amp%3BDeviceType%3DDesktop%26amp%3BLangRequested%3DFalse&h=AT2WFGPkvvlwFuYds8nX37OO38jWM-pAvzaG5hiiFDLXfIKNHcgsc1XdxnB9G-PbEwzdM2jOLaUvqU7eDycp91KuCuzH66dFVz3v3Zz9H_LVgQnRzIT5DUynBoQx_1eZxr4F3ojhPw0) (2013): The Board referenced the Plan of Action to assess whether the speech could create a risk of inciting to discrimination, violence, or hatred.
* Article 21, [ICCPR](https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights): Freedom of peaceful assembly: The Board referred to this Article to highlight Meta’s human rights responsibilities regarding peaceful assembly.
* Article 9, [ICCPR](https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights): The right to physical security: The Board referred to this Article to highlight Meta’s human rights responsibilities regarding the right to physical security.
* Article 6, [ICCPR](https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights): The right to life: The Board referred to this Article to highlight Meta’s human rights responsibilities regarding the right to life.
* Article 25, [ICCPR](https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights): The right to participation in public affairs and the right to vote: The Board referred to this Article to highlight Meta’s human rights responsibilities regarding the right to participate in public affairs and the right to vote.
* United Nations Guiding Principles on Business and Human Rights (2011): The Board referred to this instrument to highlight Facebook’s businesses’ human rights responsibilities.
* **General Law notes:**

Oversight Board decisions:

* ["Tigray Communication Affairs Bureau" (case decision 2022-006-FB-MR)](https://oversightboard.com/decision/FB-E1154YLY/): This case was used in Meta’s submission to refer to violating content.
* ["Former President Trump's suspension" (case decision 2021-001-FB-FBR)](https://www.oversightboard.com/decision/FB-691QAMHJ/): The Board mentioned this case to refer to aggravating factors that require removal of content.

***Significance***:

**The decision establishes a binding or persuasive precedent within its jurisdiction.**

According to Article 2 of the [Oversight Board Charter](https://www.oversightboard.com/governance/), “For each decision, any prior board decisions will have precedential value and should be viewed as highly persuasive when the facts, applicable policies, or other factors are substantially similar.” In addition, Article 4 of the Oversight Board Charter establishes, “The board’s resolution of each case will be binding and Facebook (now Meta) will implement it promptly, unless implementation of a resolution could violate the law. In instances where Facebook identifies that identical content with parallel context – which the board has already decided upon – remains on Facebook (now Meta), it will take action by analyzing whether it is technically and operationally feasible to apply the board’s decision to that content as well. When a decision includes policy guidance or a policy advisory opinion, Facebook (now Meta) will take further action by analyzing the operational procedures required to implement the guidance, considering it in the formal policy development process of Facebook (now Meta), and transparently communicating about actions taken as a result.”

* **Related Cases**: Self-generated
* **Date updated**: N/A

***Docs***:

* **Official Case Documents**:

**Examples:**

Decision (in English) [<https://www.oversightboard.com/decision/FB-6OKJPNS3/>]

Press Release issued by The Oversight Board (in English) [<https://www.oversightboard.com/news/656303619335474-oversight-board-overturns-meta-s-decision-in-cambodian-prime-minister-case/>]

* **Amicus Briefs and Other Legal Authorities:**
* Public comments
* **Attachments:**

Decision (in English)