**The Case of Image of gender-based violence**

**Case Analysis**

***Meta-Data*:**

* **Case Number**:
* **Date of decision**:
* **Featured case**: N/A
* **Region**:
* **Country**:
* **Type of expression**:
* **Judicial Body**:
* **Type of law**:
* **Main Themes**:
* **Outcome**:
* **Status**:
* **Tags**:

***Analysis:***

* **Summary and Outcome**:

On August 1, 2023, the Oversight Board overturned Meta’s original decision not to remove a photo depicting an identifiable Syrian activist with visible injuries and a caption mocking gender-based violence and implying that women who get abused bring it on themselves. The Board found the decision incompatible with Meta’s Bullying and Harassment as the policy prohibits any content mocking physical injuries or medical conditions which the content in this case does. Additionally, the Board expressed concern that there is a gap in Meta’s current policies when dealing with content normalizing gender-based violence as no policy is of general application on content of this nature.

* **Facts**:

In May 2021, a Facebook Iraqi user posted a photo of a woman with visible marks of violence against her. The caption was in Arabic and said that the woman was hit by her husband after writing him a letter which he misunderstood due to a spelling mistake. The caption said the man thought his wife asked him for a “donkey” when she wanted a “veil” due to the Arabic word for donkey "حمار" and the Arabic word for veil "خمار" looking similar. The caption said the woman got what she deserved and mocked the situation with laughing emojis.

The woman in the photo was a Syrian activist who has been imprisoned and beaten by the regime of Bashar Al-Assad, the caption did not name her, but her face was clearly visible. The post used a hashtag used by Syrian pages and groups to support women. The post had around 20,000 views and under 1,000 reactions.

In February 2023, a Facebook user reported the content thrice for violation the Violence and Incitement policy, the reports were closed without human review and the content remained on the platform. Meta prioritizes content for human review based on the virality of the content and how severe the company considers the violation type. If content is not reviewed within 48 hours, the report is automatically closed which happened at the case at hand.

The user who reported the content appealed the decision to the Oversight Board. After the case was selected, Meta removed the post for violating the Bullying and Harassment policy.

* **Decision Overview**:

The Oversight Board analyzed whether Meta’s original decision not to remove a photo of an identifiable Syrian active with a caption making fun of domestic violence was compliant with Meta’s policies and Meta’s obligations under the international human rights law.

Despite being notified of the Board’s selection of the case, neither the user who posted the photo or the user who reported it submitted a statement.

On its end, Meta explained that the content should have been taken down for violating the Bullying and Harassment policy. Meta’s regional team identified the woman in the photo to be a Syrian activist who was beaten after her arrest by the regime of Bashar Al-Assad. The content is violating as it mocked the injuries sustained by a woman and it implied she brought them upon herself. Meta also saw that the made-up story implied she lacked intelligence. Meta further explained that even though they amended the policy after the content was posted, the content remained violating; in fact, it moved from Tier 4 to Tier 1 under the new modifications.

The Board asked Meta 11 questions related to policies regulating content depicting gender-based violence, the enforcement of the Bullying and Harassment policy and any research on the offline harms of depictions of gender-based violence. Meta answered 10 questions, but the company did not answer a question asking for regional enforcement data for the Bullying and Harassment policy.

*Compliance with Meta’s content policies*

1. Content rules

The Board found the post violating of Meta’s Bullying and Harassment policy both before and after the update of the policy because it mocked the serious injury sustained by the woman in the photo. Meta defined “mocking” in the internal guidance for its reviewers as “an attempt to make a joke about, laugh at, or degrade someone or something”. The Board saw that the content fulfilled this definition as the caption made a joke that she deserved to be attacked. Furthermore, the policy prohibits mocking serious injuries.

The post further noted that the post had multiple interpretations as the woman might be targeted as an activist or a target of abuse, or both. Furthermore, her gender and the gendered nature of the mocking alongside the identifiability of her make the post violating.

1. Enforcement action

The Board underlined its concern about challenges in the enforcement of the policy. First, the content was not reviewed by a human reviewer despite being reported multiple times, this might indicate that this type of violation is not prioritized for review. Second, the Board highlighted the challenges of moderating Arabic language content. Meta informed the Board that there is a classifier targeting Bullying and Harassment for ‘General Language Arabic’.

The Board recalled an independent report done by BSR that noted problems in Meta’s enforcement in Arabic due to inadequate sensitivity to different dialects of Arabic. The Board expressed concern of challenges with proactive and reactive paths for enforcement of the policy in the region. The Board was also concerned of the lack of transparency on auditing of the classifiers enforcing the policy.

*Compliance with Meta’s human rights responsibilities*

The Board analyzed Meta’s original decision through the lens of the three-part test introduced in article 19 of the International Covenant on Civil and Political Rights (ICCPR). The three-part test requires any restriction on freedom of expression to pass the test of legality, pursue a legitimate aim, and be necessary and proportionate.

1. Legality

For a restriction to pass the legality test, the rules on which it is based should be accessible and sufficiently clear for users and content reviewers to know what is permitted on the platform and what is not. The Board noted and welcomed the Meta modified the Bullying and Harassment policy to align the public-facing policy with the internal guideline. Before the update, the public-facing policy prohibited mocking “serious physical injury” while the internal guide prohibited mocking a “medical condition”. However, the Board recommended Meta clarify that “medical condition” includes “serious physical injury”.

1. Legitimate aim

The Board recognized that Meta’s Bullying and Harassment policy was in pursuant of the aim of protecting the rights of other, especially the right to equality and non-discrimination and freedom of expression. The policy further aimed to prevent harms resulting from bullying and harassment. The Board noted that all the aim were linked as social media platforms have an obligation to protect women from online violence as online violence negatively impacts freedom of expression.

1. Necessity and proportionality

This principle of necessity and proportionality require restrictions must correspond to a pressing social need and must be the least intrusive measure to achieve the legitimate aim pursued.

The Board found that Meta’s Bullying and Harassment policy was necessary and proportionate to protect users from online bullying and harassment. This policy further protects women human rights defenders from online violence which they are disproportionately affected by and often pushes them to leave online spaces or even the profession altogether. Such harassment can manifest into real life physical assault. The Board referenced a UN Women study which stated that 70% of women activists in Arab states reported feeling unsafe due to online violence.

The Board decided that the post mocked the woman in the picture as it implied she deserved to be attacked, even if as a joke and that its removal was necessary as it was the least restrictive means to stop online harassment and its consequences. The Board found the post normalizing of gender-based violence through joking about such violence and that the hashtag used showed the intent of the user to reach a broad group of women.

The Board underlined concern about Meta’s existing policies not being efficient to moderate content normalizing gender-based violence by praise or implying it was deserved. The content in this case was analyzed under the Bullying and Harassment policy which cannot be used to limit the harm of gender-based violence, as the Board noted, because the post wouldn’t violate such policy if the woman depicted in the photo was not identifiable or was fictional. Meta explained that this content did not violate their Hate Speech policy as it did not target anybody based on their protected characteristics. In the Board’s view this indicates a gap in the existing policies.

Meta provided the company have focused on identifying enforcing gaps on content praising gender-based violence in a recent policy development process, during the process Meta determined that the Bullying and Harassment policy was applicable in such content. However, the Board found that the existing policies and their enforcement do not capture all gender-based violence praising content.

The Board reiterated its stance that discriminatory or hateful content can be removed to its cumulative effect without the need to show that every piece of such content can lead to imminent physical harm. The content in this case, alongside any similar content, can lead to an increase in gender-based violence as a correlation between normalization of gender-based violence and an increase in its occurrence has been found. The Board further noted that harmful content creates an environment where more discriminatory and violent acts occur more often.

The Board noted that Meta has an obligation to limit threats of physical violence and suppression of women’s freedom of expression. Content similar to the one in this case normalizes gender-based violence by praising and mocking aggression and domestic abuse. The cumulative effect of such content heightens the risk of offline violence and women self-censorship. Consequently, the Board overturned Meta’s original decision not to remove the content as it wasn’t compliant with Meta’s policies or obligations towards human rights.

*Recommendations*

1. The Board recommended Meta modifies the public-facing Bullying and Harassment policy to match the internal guidance and explain that “medical condition” includes “serious physical injury”.
2. The Board recommended Meta undertakes a policy development process to create a policy to monitor content that normalizes gender-based violence through praise, justification, or mocking.

***Direction***

* **Outcome**: Contracts Expression/Mixed Outcome/Expands Expression
  + This should be based on international standards
  + However, if you have knowledge of national standards, and can provide insights into how the decision impact precedent nationally, please do so.
* **Explanation for why and how it contracts or expands expression or has a mixed outcome.** You can also provide additional context about the case here.

***Perspective***:

* **Related International and/or regional laws**:

**Example:**

[ECHR, art. 10](https://www.echr.coe.int/Documents/Convention_ENG.pdf);

[ECHR, art. 11](https://www.echr.coe.int/Documents/Convention_ENG.pdf);

* **National law or jurisprudence**:
* **Example:** [Sp. Constitution art. 14](http://www.congreso.es/portal/page/portal/Congreso/Congreso/Hist_Normas/Norm/const_espa_texto_ingles_0.pdf);

**Other national law or jurisprudence**:

* **List here any references to national case law outside the Court’s jurisdiction**. For instance, if a UK Court relies on Canadian or Australian case law, it would be listed here.

***Significance***:

* **Binding or persuasive precedent within jurisdiction**; **Decision establishes influential or persuasive precedent outside jurisdiction**; **Explanation**:

Standard I: The decision establishes a binding or persuasive precedent within its jurisdiction.

Information: i.e. Judgments of the European Court of Human Rights are binding upon parties to the decision.

Standard II: Decision (including concurring or dissenting opinions) establishes influential or persuasive precedent outside its jurisdiction.

Information: i.e. The decisions of the European Court of Human Rights have precedential value on the interpretation of the right to freedom of expression for other States Parties to the European Convention for the Protection of Human Rights and Fundamental Freedoms.

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

***Docs***:

* **Official Case Documents**:

**Examples:**

Judgment (in English) [Attached]

Press Release issued by …. (in English) [Attached]

* **Reports, Analysis, and News Articles**:
  + Please list any titles and URLS of interesting articles or analyses about the case that might be of interest to readers