



Public Comment Appendix for

**2020-007-FB-FBR**

Case number

Case description

A user posted a photo in a Facebook group, depicting a man in leather armour holding a sheathed sword in his right hand. The photo has a text overlay in Hindi that discusses drawing a sword from its scabbard in response to "infidels" criticising the prophet. The photo includes a logo with the words "Indian Muslims" in English. The accompanying text, also in English, includes hashtags calling President Emmanuel Macron of France "the devil" and calling for the boycott of French products.

Facebook removed the content for violating its policy on [violence and incitement](#). In its referral, Facebook stated that it considered this case to be significant, because the content could convey a "veiled threat" with a specific reference to an individual, President Macron. Facebook referred to heightened tensions in France at the time when the user posted the content.

Facebook further indicated that, although its policies allow it to determine a potential threat of real-world violence and to balance that determination against the user's ability to express their religious beliefs, it was difficult to draw the line in this case.



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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](mailto: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.

2020-007-FB-FBR PC-00100

Case number

Public comment number

United States and Canada

Region

Daniel

Commenter's first name

Gainor

Commenter's last name

English

Commenter's preferred language

Media Research Center

Organization

Yes

Response on behalf of organization

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Short summary provided by the commenter

Facebook appears to have gone too far silencing a post that posed no threat to anyone. If the image and words had been used by another group, it likely would not have been censored.

Full Comment

Facebook says it is difficult to draw the line in this case only because Facebook has no line. There's content about family, puppies and cats that Facebook allows. There are threats of violence, support for terrorism and worse that is forbidden. And then there's everything else. That "everything else" falls into an area Facebook attempts to muddle by censoring free speech. Do Indian Muslims have a right on Facebook to criticize actions and government policies that they deem unfair to their fellow Muslims? Of course they should. Just as French posters should have the right to support their government. It is not a threat of violence to use a historic and heroic image to indicate how heroic you wish your side to be. There was no threat of violence in doing so. As for calling Macron "the devil," who cares? People in America call President Donald Trump Hitler, and that is allowed. (One might even argue, given the political leanings of the Facebook staff, that it's encouraged.) Mentioning a world leader is not a threat. Were it such, nearly every political post in America would have to be taken down. Let's flip this around. Couldn't an American poster use an image of a Revolutionary War soldier and criticize China for its role in COVID-19 and call Xi a murderer? Of course, he or she should be able to do so. Either you remove all political speech (and most speech is political in some way) or you work hard to allow all but the dangerous and criminal. This does not meet that standard. Prominent American Civil Rights advocate Frederick Douglas's words concerning free speech in his "Plea for Freedom of Speech in Boston" appear to be prophetic. Indeed, he hit the nail of Big Tech censorship right on the head in expressing what suppression of speech does not only to the speaker but also to the listener: "To suppress free speech is a double wrong. It violates the rights of the hearer as well as those of the speaker. It is just as criminal to rob a man of his right to speak and hear as it would be to rob him of his money." Don't let Facebook do that to its 2.7 billion users.

Link to Attachment

**No Attachment**

2020-007-FB-FBR PC-00141

Case number

Public comment number

Asia Pacific and Oceania

Region

Raphael

Commenter's first name

Ren

Commenter's last name

English

Commenter's preferred language

Faculty of Law, University of Malaya

Organization

No

Response on behalf of organization

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Short summary provided by the commenter

This case ought to be reviewed through the universal three-part test of legality, necessity, and proportionality under international human rights law. The principle of legality is easily met as restrictions to freedom of expression are justified to protect public order. The principle of necessity requires a causal nexus between the expression and threat. Guidance should be drawn from the six-part test in the Rabat Action Plan: (1) content and form; (2) status of speaker; (3) extent of speech; (4) context; (5) intent; and (6) imminence of harm. The principle of proportionality requires that least-intrusive measures be taken (e.g. affixing labels and reducing virality), and removal of content reserved as a measure of last resort.

Full Comment

[1] This public comment aims to recommend a set of legal factors to be considered by the Facebook Oversight Board (FOB) when reviewing this case. Due to the limited factual matrix provided in the summary, we will focus on examining the case through the lens of international norms of human rights (without expressing any strong views on the merits). The starting point of the FOB's review ought to be the universal three-part test of legality, necessity, and proportionality applied by international bodies and tribunals. [2] First, the principle of legality requires policies set by online intermediaries on content moderation to be formulated with sufficient precision to enable users to know the consequence of their actions. Restrictions aimed at preventing 'potential threat of real-world violence' are well-recognised internationally ('public order' and 'advocacy of hatred' under the ICCPR) and nationally ('imminent lawless action' or 'fighting words' under US law). This accords with Facebook's policy of removing content where 'there is a genuine risk of physical harm or direct threats to public safety'. Hence, this limb is easily met. [3] Second, the principle of necessity requires 'a direct and immediate connection between the expression and the threat' established by convincing evidence. The FOB should draw guidance from the Rabat Action Plan – a soft law instrument concerning 'hate speech' and 'incitement to violence' widely recognised by international bodies, including the CERD, UN Special Rapporteurs, and European Court

of Human Rights (ECtHR). The test of whether an expression ought to be prohibited turns upon six factors: (1) content and form; (2) status of speaker; (3) extent of speech; (4) context; (5) intent; and (6) imminence of harm. [4] The content and form refers to the substance of the expression, and the form and style in which it was conveyed. Freedom of expression protects even information or ideas that may 'offend, shock, or disturb', including the use of disturbing imagery. The line is crossed, however, when the expression calls for violence, such as terrorism or bloody revenge. Although the photo ominously depicted an armoured man drawing a sword, the explicit call to action was to boycott French products (and not violence against President Macron). [5] The status of speaker refers to the standing of the user in the context of the audience the speech is being directed to. The extent of speech refers to the means of dissemination, and the size and magnitude of the audience. Those with a large following and clout deserve stricter scrutiny, especially public figures. However, it is unclear from the factual matrix as to the extent of the user's influence and the post's reach. [6] The context refers to the prevailing socio-political background. Provocative speech uttered during a tense security situation or atmosphere of hostility risks exacerbating violence. Timing and location matters. In *Leroy*, the ECtHR opined: 'The timing of the publication could only increase the applicant's responsibility.... the impact of such a message in a politically sensitive region was not to be overlooked... and could provoke a reaction that could have stirred up violence and suggested that it may well have affected public order in the region.' Hence, Facebook was right in accounting for the 'heightened tensions in France at the time'. [7] The intent of speaker requires more than mere negligence or recklessness. The test is objective, not subjective. In *Nix*, the ECtHR noted that the applicant's blog may have posted a picture of an infamous Nazi officer (in uniform with a swastika armband) to raise awareness on the discrimination of immigrant children at schools and employment offices, yet ultimately considered that such an intent would not be 'immediately understandable' to third-party readers. In *Tagiyev*, the ECtHR held that the Azerbaijani court erred in examining the author's remarks critical of Islam 'without assessing the author's intention' to make a 'comparison between Western and Eastern values'. Hence, what ultimately matters is how the user's immediate audience would reasonably interpret the post, and not the user's subjective intent. [8] The imminence of harm requires 'a reasonable probability that the speech would succeed in inciting actual action against the target'. This factor should be considered in tandem with the other factors above. [9] Third, the principle of proportionality requires that the least-intrusive measures be taken to achieve the desired aim. There is a 'range of options short of deletion available' to sophisticated intermediaries such as Facebook, as aptly observed by David Kaye (former Special Rapporteur on freedom of expression) in 2019: '[T]hey can delete content, restrict its virality, label its origin, suspend the relevant user, suspend the organization sponsoring the content, develop ratings to highlight a person's use of prohibited content, temporarily restrict content while a team is conducting a review, preclude users from monetizing their content, create friction in the sharing of content, affix warnings and labels to content, provide individuals with greater capacity to block other users, minimize the amplification of the content, interfere with bots and coordinated online mob behaviour, adopt geolocated restrictions and even promote counter-messaging.' [10] In sum, the FOB's review is a highly fact-specific inquiry interwoven with the socio-political context in France. Facebook's decision of removal would be justified if the FOB considers that the post carried a high risk of inciting the wider public to threaten violence against President Macron and his family. [full version with citations in the document attached]

Link to Attachment

[Attachment PC-00141](#)

2020-007-FB-FBR PC-00142

Case number

Public comment number

Latin America and Caribbean

Region

Eduardo

Commenter's first name

Ferreya

Commenter's last name

English

Commenter's preferred language

Asociación por los Derechos Civiles

Organization

Yes

Response on behalf of organization

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Short summary provided by the commenter

Facebook's decision to remove the post under the argument it could convey a "veiled threat" with a specific reference to President Emmanuel Macron of France is hard to justify both from the international human rights law and the Community Standards. Threats to public figures have to transmit a serious expression of intent to harm, which - according to the facts of the summary- couldn't be argued it has happened in this case. That doesn't preclude the potential existence of other reasons -such as potential incitement of violence to ordinary citizens- that may justify the removal of the post, if proved.

Full Comment

Death threats are not protected by freedom of expression. But in order to avoid affecting free speech, human rights standards require threats to meet various conditions. For instance, they have to be serious, meaning there must be clear intent to cause death. The evaluation of the seriousness of the threat must vary depending on whether the recipient of it is a public figure or an ordinary citizen. In the case of Macron, it's a remarkable public figure due to his condition of president of France. Politicians have the duty to endure offensive, disgusting or hostile speech directed at them. Under this rationale, only clear, explicit and serious death threats can be punished. According to the summary of the case, the post was considered by Facebook a "veiled threat" to Macron. Thus, it doesn't meet the requirement of being a clear threat. Also, it seems the user doesn't represent a serious menace to the life of the president. Facebook's Community Standards doesn't conflict with this rationale. They try to "consider the language and context in order to distinguish casual statements from content that constitutes a credible threat to public or personal safety". Thus, the credibility of the threat has to take into account that the president of France is a public figure and therefore, any attempt to suppress speech directed at him may have a chilling effect on legitimate political speech. Furthermore, Facebook states that in cases of "veiled threats", it may require additional information or context to enforce its policy. But from the summary of the case it's not clear that these additional details were actually



required. As stated in the summary, this conclusion doesn't exclude that other grounds may exist to justify the removal of the post. The test to consider a death threat as such is different when the safety of private citizens is in danger. But since the argument of Facebook was the implicit threat to Emmanuel Macron, we don't need to consider such issues in this comment. Nevertheless, we want to stress that according to the summary, Facebook does mention that a potential threat of real-world violence was considered to take the decision to remove the post. In this regard, it would be a great opportunity for the Oversight Board to recommend an improvement on Facebook's Policy on Violence and Incitement, by distinguishing between public figures and private citizens when considering the seriousness of a death threat.

[Link to Attachment](#)

**No Attachment**

**2020-007-FB-FBR PC-00143**

Case number

Public comment number

**United States and Canada**

Region

**Russell**

Commenter's first name

**Amos**

Commenter's last name

**English**

Commenter's preferred language

**None**

Organization

**No**

Response on behalf of organization

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Short summary provided by the commenter

**I don't believe you're independent, just smoke. I'd bet you're all picked by Zuckerberg, all I'm sure Democrats and being paid by Mr Antitrust , you're never go against Facebook. That's fine. New York Times was my first contact on this case. The first of many.**

Full Comment



Link to Attachment

**No Attachment**

2020-007-FB-FBR PC-00145

Case number

Public comment number

Central and South Asia

Region

Withheld

Commenter's first name

Withheld

Commenter's last name

English

Commenter's preferred language

Withheld

Organization

No

Response on behalf of organization

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Short summary provided by the commenter

Indian researchers contributed to this public comment but cannot include their name for security purposes. This comment is based on their research, broader research on Islamophobia, and my research and work on the issue of “terrorist and violent extremist content” and offline violence. This comment includes links below, including a public letter to Facebook about issues of bias at their India offices.

Full Comment

Indian researchers contributed to this public comment but cannot include their name for security purposes. This comment is based on their research, broader research on Islamophobia, and my research and work on the issue of “terrorist and violent extremist content” and offline violence. This comment includes links below, including a public letter to Facebook about issues of bias at their India offices.

**This post should not be reinstated.** It may fall under Facebook’s Hate Speech policy; but from the information provided it doesn’t seem like it falls under Facebook’s current Violence and Incitement policy. The Oversight Board should direct Facebook to further develop its policies on Violence and Incitement and Hate Speech in an evidence-based manner, investing in research on how online content and violence are connected, and working with civil society.

It is imperative that the Oversight Board explain how they determine the appropriate application of Facebook’s Community Standards- including under what policy the content should come down and how context comes into play in their decisions. Indian Muslims have been the target of both ongoing mass killings and increased genocidal rhetoric. Islamophobia is rampant globally online and off. Finally, France has

experienced a rash of horrific attacks and unfortunately is responding with measures that threaten the basic human rights of French Muslims.

**Missing information in the case description:**

First, the original post with the photo has not been made available and the description does not thoroughly describe the image. This is important because details such as the appearance of the sword and armor, the features of the person depicted, the style of clothing, and the arrangement of text, could indicate the intent of the post.

Second, information about the text is missing. The description refers to Hindi text but neither shares the complete text in Hindi nor an English translation—key to understanding whether the post violates Facebook’s policies. The complete accompanying English text is also missing.

Third, it is imperative to know the context of this post, including where it was posted and in what group, to understand the intent behind it. Facebook acknowledges that in determining whether this was a threat or expression, “*it was difficult to draw the line in this case.*” Was this posted in France? By a French Muslim? A Hindu nationalist in France? We get no hint in the case description. The post should come down regardless, but for policy development purposes this must be explored by the Oversight Board in their deliberations

**The context for Indian Muslims: communal violence and viral mis- and disinformation**

Right wing Facebook users and pages have prolifically shared [Islamophobic content](#) on Facebook pages, groups and profiles in India, which has led to real life consequences for Indian Muslims. One of the common Islamophobic tropes against Indian Muslims is that Muslims are violent and Islam as a religion preaches violence. Depending on the missing details of the case, this content could have been created with the intention of encouraging the harmful stereotype that Indian Muslims are violent; brandishing a sword and threatening to kill anyone who engages in blasphemy, especially French President Macron. In that context, it can be read as hate speech against Muslims in India- and potentially French Muslims as well. India is on a verge of a [Genocide](#) against its minorities and Macron’s measures against Muslims are being widely decried as violative of human rights. This is important because harmful stereotypes about Muslims do travel across platforms and countries, as hate speech against Rohingya has done.

Alternatively, if the content was not posted with the intent of spreading negative stereotypes, though it should still stay down, it’s hard to imagine how it could possibly fall under Facebook’s “Incitement to Violence” policy as currently written. The policy is meant to apply where there is a “genuine risk of physical harm or direct threats to

public safety.” Again, important details are missing, but as the content is described it could be seen as encouraging extremist thinking. However, the closest thing to a threat is “*drawing a sword from its scabbard in response to ‘infidels’ criticizing the prophet.*” This could be deemed as Tier 1 Hate Speech, which includes “Violent speech or support in written or visual form,” but it would be a mistake to apply the Incitement policy to such content without a clearer explanation as to how it constitutes a genuine threat. We note that incitement to violence on Facebook is a huge problem, and we believe Facebook needs to do a much better job of addressing such content, but we don’t think improperly applying the current standard is the way forward.

Finally, It’s important that this content be classified properly, as Facebook still has a secret system whereby it determines when to completely shut down accounts due to repeated violations of Community Standards. We would hope that incitement to violence is given greater weight than hate speech in shutting down accounts, but we also want Facebook to better understand what actually constitutes incitement to violence. Finally, if this content is improperly classified, it could impact political speech on Facebook in the future, simply because it mentions a specific figure or current event (even if that current event is horrific).

For further information, see:

- Global Project Against Hate and Extremism, *Major Human Rights and Internet Watchdog Organizations Sign On to Demands for #AuditFBIndia*, 9 Sep 2020, <https://www.globalextrmism.org/post/facebookindia>
- Equality Labs, *Facebook India - Towards a Tipping Point of Violence*, 2019: <https://www.equalitylabs.org/facebookindiareport>
- Muslim Advocates and Global Project Against Hate and Extremism, *Complicit: the human cost of Facebook’s disregard for Muslim life*, 21 Oct. 2020, available at <https://muslimadvocates.org/wp-content/uploads/2020/10/Complicit-Report.pdf>

Link to Attachment

[Attachment PC-00145](#)



Public Comment Appendix for  
**2020-007-FB-FBR**  
Case number

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End of public comments