

## Cubalex Public Comment

**Case:** *Assessing Meta's Plans to Expand Community Notes*

**Date:** December 3, 2025

### 1. Presentation of the organization and purpose of the comment

Cubalex is a non-profit organization dedicated to the defense and promotion of human rights in Cuba. Founded in Havana in 2010 as an independent legal aid center, it was forced into exile in 2017 and currently operates from the United States. From abroad, it provides free legal assistance, documents human rights violations, and represents cases before the Inter-American Commission on Human Rights (IACHR), UN mechanisms, and national courts. Its work has been internationally recognized through reports submitted to the Committee on the Elimination of All Forms of Discrimination against Women (CEDAW), the Committee against Torture (CAT), the Committee on the Rights of the Child (CRC), and in the Universal Periodic Reviews of 2013, 2018, and 2023.<sup>1</sup>

This commentary responds to the Oversight Board's request to assess the global expansion of Community Notes. It explains how Meta's product decisions can affect access to information and justice in countries with limited civic space. It identifies two main risks. The first is the impact of geographic restrictions. The second is the impact of sanctions on compliance practices. Both of these harm users living in high-risk contexts. They also affect independent organizations that use Meta's platforms to inform the public, document abuses, and create safe channels for public participation. The document proposes human rights safeguards to prevent patterns of exclusion already observed in other Meta products. It uses the WhatsApp Business restriction in Cuba as a concrete example. It shows how poorly calibrated global decisions can harm vulnerable societies and should be taken into account by the Oversight Board.

### 2. The Cuban context: why it is a high-risk country for products like Community Notes

Meta has requested guidance from the Oversight Board on the factors to consider when deciding whether to implement Community Notes in a given country. These factors include limited freedom of expression, the absence of an independent press, government restrictions on internet access, low digital literacy, contexts of state surveillance, and difficulties in generating authentic dissent within the consensus algorithm. Cuba brings together all these elements simultaneously and seriously, making it an emblematic case of high risk for the expansion of this type of tool based on citizen participation.

The Cuban press system is not free. Independent media and critical voices face criminal and administrative persecution, constant surveillance, police summonses, and smear campaigns. This repression makes it impossible for a pluralistic media ecosystem to exist where alternative narratives or independent fact-checking can circulate. At the same time, internet access is strictly controlled by

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<sup>1</sup>For more information on Cubalex's work and reports, visit <https://cubalex.org> or consult the report repository at [Airtable](#).

the state through a telecommunications monopoly. It is expensive, unreliable, and subject to selective platform blockages during protests or other sensitive events, severely limiting the population's ability to stay informed and communicate.

These structural information barriers are compounded by low digital literacy and a heavy reliance on a few apps (mainly WhatsApp, Facebook, and Instagram) that serve as the primary source of information for most citizens. The lack of knowledge regarding verification, digital security, and traceability increases their vulnerability to product changes or restrictive policies implemented by Meta.

Finally, the climate of fear and widespread surveillance creates significant risks of participatory tools being captured by state or paramilitary actors. In an environment where public dissent leads to real reprisals, participation in open systems like Community Notes can be distorted, favoring official narratives and limiting the diversity of opinions. Taken together, these conditions make Cuba an extreme case of how structural factors can profoundly affect the functioning of digital products based on social consensus and voluntary participation.

### **3. The WhatsApp Business case: an example of overcompliance and structural damage**

As part of its remote legal assistance work, Cubalex attempted to integrate the WhatsApp Business API to professionalize services for victims and their families in Cuba, improve response times, and ensure more efficient and secure information management. Upon initiating the technical process, the organization encountered an explicit Meta restriction that prevents individuals with Cuban phone numbers (+53) from receiving messages from WhatsApp Business accounts. This limitation applies even when the sending organization (in this case, Cubalex) is located outside of Cuba, does not conduct business in Cuba, and uses the tool exclusively for humanitarian purposes. Between January 14 and 17, 2024, Cubalex engaged in extensive communication with the WhatsApp Business support team, providing technical evidence and explaining in detail the humanitarian impact of the measure; however, Meta confirmed that Cuba was included in its geographical restrictions, meaning it was banned from receiving messages on the platform.

The legal analysis conducted by Cubalex regarding U.S. export control regulations (eCFR – 15 CFR Parts 730 and 746) demonstrates that the embargo against Cuba primarily restricts the export of goods, financial services, and dual-use technologies, but does not prohibit free communication services such as messaging, email, or social media. These tools are, in fact, often covered by general licenses and information exceptions. Therefore, there is no legal provision that compels Meta to prevent Cuban users from receiving messages from the WhatsApp Business API. The restriction appears to stem more from a corporate policy of overcompliance, aimed at minimizing regulatory risks through indiscriminate blocking, even when this affects humanitarian activities and fundamental rights.

The consequences of this decision are profound. The measure disrupts the primary communication channel used by victims and their families, prevents the automation of essential processes for handling urgent cases, and forces them to resort to less secure channels that are more vulnerable to state surveillance, thereby increasing personal risks and reducing the ability to document violations promptly. It also frustrates Cubalex's organizational development efforts, as the organization had invested resources in adopting a key tool to improve its efficiency and data protection. This case

demonstrates how product decisions made under a maximalist legal-compliance logic can cause structural damage to access to justice and to the protection of vulnerable populations in authoritarian contexts.

#### **4. Relevance of the case for the expansion of Community Notes**

The Oversight Board has requested input on the risks and opportunities of moderation models based on community-generated content, the adaptation of consensus algorithms to different political contexts, Meta's human rights responsibilities in expanding or withdrawing products, and the challenges of assessing country risks. In this context, Cuba's experience with the blocking of the WhatsApp Business API offers particularly relevant lessons for the advisory opinion on Community Notes.

The first lesson relates to the risk of preemptively excluding countries without conducting a differentiated impact analysis. The factors Meta identified as risk signals for Community Notes expansion. These scenarios fully reflect the Cuban situation. If Meta applies the same logic used for WhatsApp Business, Cuba could be automatically excluded from the program without a specific assessment of the consequences for the population. It's also possible that the product will be formally implemented but prove inoperative due to easy capture by state actors. In both scenarios, the dynamic of excessive enforcement would be repeated, restricting rights without providing additional protection and leaving those already living in an environment of censorship and repression without avenues for participation.

The second lesson points to the opposite risk: deploying Community Notes in repressive countries without adequate safeguards. In Cuba, where visible dissent carries significant personal risks, users who contribute critical notes can be identified and face reprisals. At the same time, self-censorship and coordinated action by pro-government accounts can distort the consensus patterns that feed the algorithm, creating “contexts” that legitimize official narratives and silence independent documentation of abuses. Under these conditions, a tool designed to mitigate disinformation could become a mechanism that reinforces state propaganda.

Finally, how Meta and the Oversight Board address the relationship between country risk, human rights obligations, and algorithmic design will have implications that extend far beyond Community Notes. Decisions made in this process will influence policies on geographic restrictions, access to advanced tools for independent organizations, and the development of humanitarian exception mechanisms. Therefore, it is essential that the advisory opinion explicitly address the problem of corporate overcompliance and its impact on civil society in sanctioned countries.

#### **5. Recommendations to the Oversight Board**

In light of the risks identified in the Cuban case, the Oversight Board's advisory opinion must include recommendations to address the structural gaps Meta presents when evaluating high-risk countries. The company must avoid automatic exclusion approaches based solely on sanctions status or general indicators of freedom of expression, as these categories do not reflect the true complexity of authoritarian contexts or their effects on civil society. Before excluding or limiting a country's access to Community Notes, Meta should be required to conduct a rigorous Human Rights Impact Assessment (HRIA) capable of identifying the foreseeable effects on human rights defenders,

journalists, victims, and independent organizations, as well as the existence—or absence—of alternative safe channels. Only based on an individualized analysis can disproportionate decisions be avoided that, under the guise of regulatory caution, generate greater information isolation.

In parallel, Meta must develop formal humanitarian or civil society exception pathways for restricted products in sanctioned contexts. Such exception pathways must include transparent and accessible mechanisms for organizations like Cubalex, which operate from outside the country, do not maintain commercial relations with Cuba, and rely on digital tools to provide legal assistance and document human rights violations. The absence of such mechanisms is precisely what has allowed the restriction on the WhatsApp Business API to cause such severe and unjustifiable harm.

Similarly, in countries where dissent carries personal risks, Meta cannot assume the existence of genuine and spontaneous “consensus.” Consensus must be understood as a hypothesis requiring empirical verification, especially when self-censorship, state surveillance, and coordinated action by pro-government actors can distort both contributions and the very dynamics of Community Notes. Therefore, strengthened safeguards are needed, including robust anonymization systems, protection mechanisms for those making critical contributions, and independent audits capable of detecting algorithmic manipulation or biases induced by repression. Without these safeguards, the tool risks amplifying state narratives rather than balancing them.

Another essential aspect is consistency across product decisions. Meta's approach to Community Notes should also be reflected in its approach to other tools, such as the WhatsApp Business API. A consistent policy requires reviewing geographic restrictions that disproportionately affect humanitarian and human rights organizations. Furthermore, the company should maintain an ongoing dialogue with civil society organizations in high-risk countries to identify unforeseen effects, design reasonable exceptions, and monitor long-term impacts.

The Oversight Board has already underscored the need for such an approach in previous decisions. In the case of "Call for Women's Protest in Cuba," the Board reversed the removal of a protest video and strongly criticized Meta for failing to adequately consider the country's political and repressive context when applying its policies. The Board emphasized that freedom of political expression in Cuba requires greater protection, given state persecution of dissent and severe limitations on internet access. It also concluded that Meta over-applied its policies by classifying as hate speech expressions that were, in fact, part of a legitimate call to protest, highlighting the need for trained personnel with regional knowledge and more robust contextual analysis mechanisms.

These conclusions fully align with Cubalex's observations regarding Meta's WhatsApp Business restrictions, in which Meta adopted preventative measures without proportionate analysis, directly impacting victims and human rights defenders. Therefore, based on lessons learned from that case, we propose that the advisory opinion recommend the creation of a Civil Society Context Advisory Panel composed of independent organizations with experience documenting human rights in high-risk contexts. This panel would allow Meta to receive non-sensitive contextual information that would improve its understanding of repressive patterns, assist in identifying risks of over-enforcement, support the development of humanitarian exceptions, and ensure that product decisions comply with both human rights standards and current U.S. regulations. The existence of this mechanism would help implement the Board's repeated recommendations, strengthen contextual analysis, prevent unintended harm resulting from over-compliance, and ensure that Meta's products do not

inadvertently become tools that exacerbate information isolation and the vulnerability of civil society in authoritarian countries.

## 6. Conclusion

The case of Cuba demonstrates that product decisions made by Meta (when designed with a maximum regulatory risk approach, lacking sufficient contextual analysis or exception mechanisms) can leave entire communities without access to essential communication, documentation, and advocacy tools. By operating in this way, the company not only unintentionally limits civil society's ability to protect rights and denounce abuses but also effectively reinforces the objectives of authoritarian regimes that benefit from information isolation and the absence of secure channels for citizen participation.

The expansion of Community Notes presents an opportunity to reverse this trajectory and establish stronger protection standards in high-risk contexts. Suppose the Oversight Board incorporates in its advisory opinion an explicit critique of overcompliance, a requirement for human rights impact assessments, and an obligation for Meta to create precise exception mechanisms for humanitarian and civil society actors. In that case, it will not only help make Community Notes a fairer, safer, and more effective tool but also ensure they are used in a fair, safe, and effective way. Still, it will also send a powerful normative message that will influence Meta's entire product ecosystem. Robust guidance from the Board could transform how the company assesses country risks, designs algorithms, and responds to repressive environments.

Cubalex remains available to the Oversight Board to provide further information and additional evidence, and to participate in future technical consultations related to the human rights situation and the specific characteristics of the Cuban digital ecosystem. We are committed to collaborating in any process that helps ensure that Meta's product decisions are made responsibly, with contextual sensitivity, and in accordance with international human rights standards.