

ARTICLE 19'S SUBMISSION

Summary

In its public comment, ARTICLE 19 makes the following submissions:

1. Facebook should clarify the “indefinite” nature of the account suspension. While suspension may be justified whilst a significant risk of violence/imminent lawless action persists, users should have the possibility to have their account reinstated when those conditions are no longer met;
2. In enforcing its community standards, Facebook should assess any risk of violence by reference to the immediate and wider context (e.g. ‘off-Facebook’ context);
3. Since political speech is afforded a particularly high level of protection, strong reasons must be given for restrictions to be justified. The relative position and influence of a politician are relevant to the potential reach of their speech in this context;
4. Consistency in enforcement requires investment in local knowledge and understanding and putting human rights ahead of commercial decisions when they come into conflict.

Public comment:

Q1. In deciding whether its community standards have been violated, Facebook should notify the person whose content has been removed/account suspended of the reasons and policy rationale for its decision by reference to some facts. Facebook should also have a clear policy on the sanctions it may apply. Generally, it should apply the most proportionate and least restrictive sanction to a violation of its policies. This could start with the disabling of certain features, through to content removal and account suspension. However, in exceptional circumstances, such as those of 6 January, it should not be necessary for Facebook to start with less drastic steps. The sanction should be meted out with the seriousness of the policy violation.

Facebook should also elaborate on the “indefinite” nature of the ban. In Trump-type cases, suspension is likely to be proportionate as long as there is risk of imminent violence/imminent lawless action. When such risk is lifted, Facebook may want to consider whether reinstatement is appropriate at the request of the ‘offender’. Whether or not the account should be reinstated should depend on the circumstances at the material time. That does not mean that permanent suspension should never be possible or justified but the possibility of reinstatement at least once should be considered. Finally, the proportionality of account suspension should also be considered in the wider context of speaker’s access to other means of communications. From this perspective, being in a position of power and influence in and of itself gives a ‘platform’, i.e. access to TV studios, radio stations and media coverage.

Q2,3. Under international and regional human rights law, the right to freedom of expression affords a very high-level of protection to political speech (see e.g. Human Rights Committee, [General Comment no 34](#); European Court of Human Rights (EctHR) [research report on expression and advertising of political positions through the media, including Internet platforms, in the context of](#)

[elections/referendums](#)). This is especially true in the context of elections, where the unhindered exercise of freedom of speech by candidates has particular significance (e.g. EctHR, [Kudeshkina v. Russia](#)). The scope for restrictions under Article 19(3) ICCPR and Article 10(2) ECHR is therefore limited.

However, political expression may be subject to narrow exceptions. International human rights law requires States to prohibit advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence. The UN Rabat Plan of Action sets out the criteria for assessing this level of severity, namely the context at the time of speech; the status and intent of the speaker; content and form of the speech, extent or reach of the speech; and likelihood and imminence of harm. Regional human rights courts take a similar approach and look at the context and nature of the speech, position of the speaker or whether the speech could be seen as a direct or indirect call for violence. (see e.g. EctHR, [Gündüz v. Turkey](#) or Inter-American Court of Human Rights, [Perozo v Venezuela](#))

The “[newsworthiness](#)” exemption in Facebook’s policies seems to broadly reflect these important principles. However, there are important differences. Instead of focusing on the speaker as the sole justification for protection of political expression, international human rights law focuses on the speech itself, its broader context and the public interest in the speech. By contrast, Facebook’s policy and its application appears to give disproportionate weight to the nature of the speaker (i.e. politician) and their power. Conversely, when it comes to deciding on content removals, Facebook does not appear to give due weight to the likelihood of violence occurring due to the position of the speaker, nor the extent of its reach on the platform and their wide access to other communication channels. Nor does it appear to take into account offline context (e.g. speakers repeatedly engaging in inflammatory speeches or rallies offline). Further, Facebook’s presentation of its policy in this area is confusing: policy statements are in its ‘Newsroom’ but are not necessarily reflected in the community standards themselves. It also uses broad terms such as ‘risk of harm’ or ‘violating events’, without clearly defining them. Several policies (e.g. Dangerous Organisations and Individuals, Violence and Incitement and Coordinating Harm) overlap. It is ultimately unclear what provisions Facebook is relying on and what criteria it uses to resolve any potential conflicts between them.

Q5. While the lack of clarity of Facebook’s policies may go some way towards explaining their inconsistent application, it also appears to reflect the company’s political and commercial priorities. In particular, the inconsistent application of its community standards across the world (e.g. Myanmar, India) suggests that it is both highly deferential to the governing parties in lucrative markets and that it fails to allocate sufficient content moderation resources in less lucrative ones. Global enforcement against politicians requires first and foremost adequate resources to understand the local context in which Facebook operates. It also requires Facebook to apply its community standards in light of international human rights law to political leaders, particularly when there is a real and immediate risk of violence and/or human rights abuses. In other words, it may require putting human rights ahead of commercial considerations when the two might come into conflict. Labelling politicians’ posts in partnership with fact-checkers and providing greater context to politician’s content more generally should not be controversial. Adequately resourced internal appeals mechanisms could also help identify inconsistencies in the application of community standards.