

**ARTICLE 19 Submission**  
**Case 2023-004-FB-MR (Armenian prisoner of war video)**

## Summary

In this public comment to the Oversight Board, ARTICLE 19 addresses Q1 to 5. In armed conflicts, Meta has an obligation to respect international humanitarian law (IHL), including when moderating content. It should also respect international human rights law (IHRL) as applicable during armed conflicts. When moderating content depicting prisoners of war (POWs), Meta should follow International Committee of the Red Cross (ICRC) guidance and conduct a case-by-case assessment that accounts for the content's public interest nature, prevents misuse for propaganda purposes and protects the POW in question. To that end, Meta should explore with the ICRC the possibility to create and fund a standing mechanism to jointly determine appropriate actions.

## Public comment

Overall, ARTICLE 19 observes that the present case raises several complex and underexplored questions, including how freedom of expression applies during armed conflicts and the relationship between social media companies and IHL. It is not feasible to address these questions in their entirety in this submission. Some of our observations should be viewed as preliminary. We are exploring these matters as part of an upcoming policy recommendation on freedom of expression in armed conflicts and are ready to continue engaging with Meta on these issues. We urge Meta to obtain legal advice on its obligations under IHL and to engage with humanitarian actors, including the ICRC, and civil society in States experiencing armed conflicts.

**Q3.** Although States are the primary duty-bearers under IHL, Meta also has an obligation to respect IHL, including when moderating content. In its 2006 guide on [Business and international humanitarian law](#), the ICRC states that “Despite the sometimes complex overlap with [IHRL], [IHL] retains various distinct characteristics. Perhaps the most fundamental one [...] is that [IHRL] is traditionally understood as only binding on States – although this position is challenged by some human rights advocates – while [IHL] binds both State and non-State actors. [...] A business enterprise carrying out activities that are closely linked to an armed conflict must also respect [IHL]”. Which IHL rules apply to a given piece of content will depend on whether the armed conflict is international or non-international (see our [submission](#) to the UN Special Rapporteur on Freedom of Expression and relevant [ICRC resources](#)). For example, “prisoner of war” is a special status afforded by the Third Geneva Convention (GC III) only to combatants in international armed conflicts.

Meta further has to consider that IHRL – including freedom of expression – continues to apply during armed conflicts and that it should respect IHRL as stated by the UN Guiding Principles on Business and Human Rights. If there is a conflict between an IHRL and an IHL norm, priority should be given to the (*lex specialis*) norm that is more specific. What this means for content that contains disinformation or “hate speech” is underexplored. When it comes to the depiction of POWs, existing guidance is more detailed.

**Q1, Q2, Q4, Q5.** The ICRC [explains](#) that allowing content depicting POWs on social media could expose the former to harm and endanger their humane treatment, protected by Article 13 of GC III. More specifically, Article 13(2) of GC III provides that “[POWs] must at all times be protected, particularly [...] against insults and public curiosity.” The ICRC [Commentary](#) states that “[i]n modern conflicts, the prohibition also covers [...] the disclosure of photographic and video images [...].”

If a POW is identifiable in the content – as in the present case – it could expose them to abuse. Even upon their release, having fallen into enemy hands can cause violence against them. The distribution of such images for propaganda purposes can also negatively affect the manner in which hostilities are conducted and undermine the possibility of reaching a peaceful settlement. These risks are multiplied when content is posted on social media and may become viral.

However, the prohibition in Article 13(2) of GC III is not absolute. Documenting the manner in which hostilities are conducted should not be unduly restricted as it can raise public awareness of abuses and assist accountability efforts.

Meta must take these issues into account when dealing with content which “appears to be concerned with alleged war crimes” as in the present case. The ICRC [promotes](#) a balanced case-by-case assessment that takes account of the public interest nature of content while respecting a POW’s dignity. Whilst ARTICLE 19 is fully aware of the complexity of such a balancing exercise, we submit that these considerations should guide Meta’s content moderation policies and enforcement. This should apply irrespective of the user who posted the content in question. While a user sharing depictions of POWs may not necessarily be violating IHL themselves – for instance in the present case we do not know the extent of the users’ obligations under IHL – it does not change the fact that the content may put POWs at risk and should thus be moderated accordingly.

As for mitigating risks in this regard, the ICRC calls on social media companies to employ the same professional practices as traditional media outlets. If there is a compelling reason to publish content depicting POWs, they may [for instance](#) “blur images, alter voices, and use other methods of concealing identities to protect their dignity and ensure their safety”. More broadly, ARTICLE 19 suggests that – to the extent feasible – it may be necessary to contextualise posts depicting POWs to counter any misuse for propaganda purposes. In reality, however, it will be difficult for Meta to determine whether a specific piece of content is shared for propaganda purposes or to raise public awareness about the conduct of hostilities. It [may also not be feasible](#) for Meta to assess the intent behind the publication. Plus, any negative effects may happen irrespective of the intent of the user sharing the content.

Therefore, we submit that Meta should explore with the ICRC the possibility to create and fund a standing mechanism between Meta and the ICRC to jointly assess the context and nature of specific posts and determine appropriate actions.

If content depicting POWs is removed, Meta should ensure that this does not stand in the way of protecting POWs or broader accountability efforts. It should closely cooperate with the ICRC to assess how information on identifiable POWs should best be handled. Finally, it should take [appropriate measures](#) to preserve evidence of international crimes and cooperate with relevant accountability mechanisms.