

# PROGRESS REPORT

## Human Rights and the Facebook Oversight Board

DECEMBER 2020



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## About This Report

In 2019, Facebook Inc. commissioned BSR to undertake a human rights review of the Oversight Board. The purpose of this review was to identify improvements that would help align the final charter and bylaws, as well as operations of the Oversight Board, with human rights-based approaches. This review combined human rights assessment methodology based on the UN Guiding Principles on Business and Human Rights (UNGPs) with a consideration of the various human rights principles, standards, and methodologies upon which the UNGPs were built.

In 2020, the Oversight Board commissioned BSR to undertake a gap analysis between the final charter, bylaws, and operating procedures against our original recommendations. This report is the outcome of that gap analysis and it being published for reasons of transparency. This report was funded by the Oversight Board, though BSR retained editorial control over its contents. It is important to note that while the Oversight Board has commissioned this report, the Oversight Board has not taken a position on the original BSR recommendations.

### ACKNOWLEDGEMENTS

This report was researched and written by Dunstan Allison-Hope, Michaela Lee, and Joanna Lovatt.

BSR wishes to thank the Oversight Board employees and board members who participated in this assessment.

### DISCLAIMER

The conclusions presented in this report represent BSR's best professional judgment, based upon the information available and conditions existing as of the date of the review. In performing its assignment, BSR must rely upon publicly available information, information provided by the Oversight Board, and information provided by third parties. Accordingly, the conclusions in this report are valid only to the extent that the information provided to BSR was accurate and complete. This review is not intended as legal advice, nor is it an exhaustive review of legal or regulatory compliance. BSR makes no representations or warranties, express or implied, about the business or its operations. BSR maintains a policy of not acting as a representative of its membership, nor does it endorse specific policies or standards. The views expressed in this publication are those of its authors and do not necessarily reflect those of BSR members.

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# 1. Project Overview and Methodology

## 1.1 PROJECT OVERVIEW

In 2019, Facebook Inc. commissioned BSR to undertake a human rights review of the Oversight Board. The purpose of this review was to identify improvements that would help align the final charter and bylaws, as well as operations of the Oversight Board, with human rights-based approaches. This review combined human rights assessment methodology based on the UN Guiding Principles on Business and Human Rights (UNGPs) with a consideration of the various human rights principles, standards, and methodologies upon which the UNGPs were built.

BSR's recommendations focused on both substantive issues (e.g., how content decisions can incorporate human rights-based criteria) and procedural issues (e.g., how the Oversight Board can meet expectations for operational-level grievance mechanisms and be truly accessible to vulnerable groups). The final [Human Rights Review of the Facebook Oversight Board](#) was published by Facebook in December 2019.

In 2020, the Oversight Board commissioned BSR to undertake a gap analysis between the final Charter, Bylaws, and operating procedures and our original recommendations. This report is the outcome of that gap analysis.

## 1.2 PROJECT TIMELINE AND METHODOLOGY

Facebook published the Oversight Board's Bylaws and announced the Oversight Board's first Executive Director in January 2020. From March 2020 onwards, the Oversight Board shared draft versions of its proposed operating procedures (which later became known as the "Rulebook") with BSR and requested comments based on the recommendations of our original human rights review.

In November 2020, the Oversight Board shared the final version of the Rulebook with BSR. At this point BSR finalized a gap analysis between our original recommendations and the following governing documents:

- » The Oversight Board Charter (written by Facebook)
- » The Oversight Board Bylaws (written by Facebook)
- » The Oversight Board Rulebook for Case Review and Policy Guidance (written by the Oversight Board)
- » Case Selection Committee Bylaws and Membership Committee Bylaws (written by the Oversight Board)
- » The Oversight Board website (written by the Oversight Board)

BSR's gap analysis used a desk-based methodology and did not include interviews with external stakeholders.

At the time of writing, the Oversight Board has begun to receive cases but has not yet heard them. For this reason, the report only assesses how BSR's recommendations have been addressed in publicly available documentation, supplemented by additional information from Oversight Board staff about how the Oversight Board proposes to operate in practice. It is important to note that significant new insights

will arise once the Oversight Board hears cases, and it will be important to review BSR's recommendations against real life experience later, ideally using a process involving meaningful consultation with stakeholders engaged with the Oversight Board.

### 1.3 INTERPRETING BSR'S CONCLUSIONS

BSR's gap analysis was undertaken after all the main governing documents for the Oversight Board had been finalized, but before the Oversight Board began hearing cases in practice. In this context, BSR uses the following definitions:

- » **Progress made:** The BSR recommendation is on track to be achieved, as evidenced by commitments made in the Charter, Bylaws, Rulebook, or other relevant documentation.
- » **Partial progress made:** Key elements of the BSR recommendation are on track to be achieved, as evidenced by commitments made in the Charter, Bylaws, Rulebook, or other relevant documentation. However, progress against other elements of the BSR recommendation may be absent, unclear, or not yet determined.
- » **Not yet determined:** The implementation of the BSR recommendation has not yet been determined—for example, it may be wholly dependent on how the Oversight Board operates in practice.
- » **Not yet addressed:** The BSR recommendation is not yet being addressed, as evidenced by an absence of commitments made in the Charter, Bylaws, Rulebook, or other relevant documentation.

Some of BSR's original recommendations were primarily directed toward Facebook and some were primarily directed towards the Oversight Board. Where relevant, we have noted this distinction in our analysis. It is important to note that while the Oversight Board has commissioned this report, the Oversight Board has not taken a position on the original BSR recommendations.

This report does not repeat each BSR recommendation and accompanying analysis in detail. For full context, readers are encouraged to consider this gap analysis report alongside the original [BSR human rights review of the Oversight Board](#).

## 2. Key Findings and Observations

The Oversight Board is unlike anything previously created by a company—to our knowledge, no company in any industry has ever established an oversight mechanism with binding decision-making power. Moreover, while efforts to provide access to remedy in other industries are typically designed to meet the needs of a bounded number of rightsholders, based in clearly defined geographical areas and speaking a limited number of languages, the Oversight Board is designed to meet the needs of billions of rightsholders, who could be anywhere in the world, and who may speak any language.

The original BSR human rights review of the Oversight Board addressed these twin challenges of novelty and scale by acknowledging the significant operational challenges the Oversight Board will face and the reality that lessons will be learned over time. In this spirit, we made 34 recommendations that sought to interpret human rights principles and approaches in a very specific, practical, and actionable manner.

One year after our original human rights review, this gap analysis shows that the Oversight Board has made good progress on this long-term journey. Specifically, we conclude that of BSR's original 34 recommendations, 17 are benefiting from good progress, nine are benefiting from partial progress, five are not yet determined, and three are not yet addressed. We make the following observations:

- » Taken in combination, the Oversight Board's governing documents provide an increasingly valuable framework for taking a human rights-based approach to content decisions. The documents could provide additional clarity with more direct reference to the International Bill of Human Rights and other relevant international human rights instruments.
- » The commitments to transparency in the Oversight Board's governing documents are strong, such as the pledge to communicate the Board's decisions publicly and publishing an annual report with a review of human rights impacts. These will be important channels for stakeholders to track and review progress on human rights over time once the Oversight Board begins operating.
- » Many of BSR recommendations focused on the Oversight Board being accessible, predictable, and equitable, and the true judge of this will not be this report but the perspectives of stakeholders with direct experience engaging with the Oversight Board. For this reason, once the Oversight Board has been operational for a longer period, we recommend a progress review using methods that involve meaningful engagement with affected stakeholders. We believe it will be especially important for this review to consider support users may need (such as a "user advocate") to navigate the Oversight Board process effectively and equitably.

While BSR's recommendations are specific to the Oversight Board, we continue to hope that they will provide considerable value to other companies, civil society organizations, governments, and intergovernmental organizations seeking to define human rights-based approaches to content governance, accountability, and access to remedy.

## 3. Gap Analysis

### 3.1 HARMS AND IMPACTS

BSR's original human rights review made recommendations for how the Oversight Board can address all human rights issues and prioritize the most severe cases.

Original Recommendation	Status	Comments
A wide range of relevant human rights harms (beyond just freedom of expression) that may result from content decisions should be identified by Facebook and the Oversight Board.	<p>The Charter states that “When reviewing decisions, the board will pay particular attention to the impact of removing content in light of human rights norms protecting free expression.”</p> <p>The Bylaws state that the Oversight Board’s annual report should include “an analysis of how the board’s decisions have considered or tracked the international human rights implicated by a case.”</p> <p>The Rulebook references “freedom of expression and human rights” throughout.</p> <p>The Policy Guidance section of the Rulebook states that relevant international human rights standards will be referenced.</p>	<p><b>Status: Progress made.</b></p> <p>Taken together, the Oversight Board governing documents require a consideration of all relevant human rights harms.</p> <p>Over time there is an opportunity for greater consistency in how international human rights instruments and standards are referenced.</p> <p>In addition, the International Bill of Human Rights (consisting of the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, and the International Covenant on Economic, Social, and Cultural Rights) could be referenced as an authoritative list of core internationally recognized human rights, along with other relevant international human rights instruments.</p>
The relevant human rights impacted by a content decision should be referenced by the Oversight Board in every case.	The Bylaws state that the Oversight Board’s annual report should include “an analysis of how the board’s decisions have considered or tracked the international human rights implicated by a case.”	<p><b>Status: Partial progress made.</b></p> <p>The Oversight Board will report on the human rights impacts of cases annually, but no reference is made in the governing documents to referencing relevant human rights in the public communication of each case decision.</p>
Over time, the Oversight Board should ensure that the mix of cases it reviews encompasses a	The Case Selection Committee Bylaws require the Oversight Board to set criteria to govern case selection, and state that	<p><b>Status: Progress made.</b></p> <p>The overarching criteria for the Oversight Board’s first year</p>

<p>wide range of potential human rights harms.</p>	<p>“these criteria will be guided by overarching principles (e.g., importance and precedential impact).”</p> <p>The Case Selection Committee Bylaws offer specific potential criteria for use by the Committee, “such as region affected, language, content policies implicated, or other discrete criteria.”</p> <p>The overarching criteria for case selection will be set by the Board annually, while the specific criteria are set by the Case Selection Committee for the duration of that Committee.</p> <p>The existing overarching criteria are as follows: “The Oversight Board will select cases for review that raise important issues pertaining to respect for freedom of expression and other human rights and/or the implementation of Facebook’s Community Standards and Values. These cases will be of critical importance to public discourse, directly or indirectly affect a substantial number of individuals, and/or raise questions about Facebook’s policies. These cases will reflect the user base of Facebook and ensure regional and linguistic diversity.”</p>	<p>make clear reference to human rights and a diverse range of cases—i.e., cases that reflect the user base of Facebook.</p> <p>The ultimate achievement of this recommendation will be determined by (1) the case selection criteria chosen by the Oversight Board annually and the Case Selection Committees for the duration of their terms, and (2) the actual cases selected.</p> <p>The Case Selection Committee Bylaws would benefit from more clearly stating that the mix of cases considered over time should encompass a wide range of potential human rights harms.</p>
<p>The Oversight Board should prioritize cases that present the most severe human rights harms, using the UNGPs’ scope, scale, and remediability criteria.</p>	<p>The Case Selection Committee Bylaws offer “important and precedential impact” as potential case selection criteria.</p> <p>The Rulebook states that “Co-Chairs may decide by majority vote to expedite the process for Policy Guidance where</p>	<p><b>Status: Partial progress made.</b></p> <p>The achievement of this recommendation will be determined by case selection criteria chosen by the Case Selection Committee in practice—though it is already</p>



	<p>necessary to prevent or mitigate human rights harms.”</p> <p>Facebook has established its own criteria, described in the Bylaws, for referring cases to the Oversight Board: “significance” (severity, scale, public discourse) and “difficulty” (disputed, uncertain, competing). These are similar to (but not identical to) the UNGPs’ criteria.</p>	<p>partially achieved by Facebook’s own prioritization criteria.</p> <p>The Case Selection Committee Bylaws would benefit from more clearly referencing UNGPs prioritization criteria, given the likelihood that the Oversight Board will only be able to review a small portion of the cases submitted.</p>
Cases that involve sexual harassment and gender-based violence should be prioritized by the Oversight Board as severe human rights impacts.	There is no content on this topic in the governing documents.	<p><b>Status: Not yet determined.</b></p> <p>The Oversight Board and Case Selection Committee can choose to make this determination in their case selection criteria.</p>
Facebook and the Oversight Board can use strategic foresight (or “futures”) methodologies to help identify cases that may become more common in the future.	There is no content on this topic in the governing documents.	<p><b>Status: Not yet determined.</b></p> <p>It is unlikely to be appropriate for the use of strategic foresight methodologies to be specifically referenced in governing documents. However, Oversight Board staff have shown interest in how to apply this approach.</p>
The Oversight Board’s scope should expand over time.	The Oversight Board Bylaws reference content types (such as advertising) and decision types (such as fact checking) where the Oversight Board’s mandate may expand over time.	<p><b>Status: Partial progress made.</b></p> <p>The Oversight Board Bylaws already anticipate an increase in scope.</p> <p>In addition, BSR’s original review referenced the visibility of content (e.g., promotion / de-prioritization in the news feed), additional products, non-users, and the cumulative impact of multiple posts as areas worthy of increased scope.</p> <p>BSR notes that Facebook, not the Oversight Board, has the power to expand scope.</p>

### 3.2 VULNERABLE GROUPS

BSR's original human rights review made recommendations for how the Oversight Board can address the rights and needs of individuals from groups or populations at heightened risk of becoming vulnerable or marginalized.

Original Recommendation	Status	Comments
The Oversight Board should be diverse across multiple dimensions of diversity.	<p>The Governance Charter, Bylaws, and Membership Committee Bylaws reference diversity as a central objective for Oversight Board composition.</p> <p>The Rulebook states that "following case selection, the CMT [Case Management Tool] will constitute a panel with five Board Members, including at least one Member from the region the content primarily affects and ensuring gender diversity."</p>	<p><b>Status: Progress made.</b></p> <p>Diversity features prominently in the governing documents, and the Rulebook eliminates the potential for all-male panels and all-male Policy Guidance Drafting Committees.</p> <p>A similar requirement could be stated for Case Selection Committees.</p>
The Oversight Board should establish and maintain the diversity of its Administration staff.	The Bylaws state that "The administration will be composed of a diverse set of staff members that should have expertise in a range of fields such as technology, media, law, ethics, human computer interaction, human rights, digital rights, tech policy, and journalism."	<p><b>Status: Progress made.</b></p> <p>BSR recommends that a review of progress against staff diversity objectives is included in the Oversight Board's annual report.</p>
Facebook should undertake a structured identification of different vulnerable user "personas," identities, and categories.	There is no content on this topic in the governing documents.	<p><b>Status: Not yet determined.</b></p> <p>It is unlikely to be appropriate for this methodology to be specifically referenced in governing documents; however, BSR recommends that the Oversight Board take this approach in practice.</p>
The mix of cases reviewed by the Oversight Board should encompass a wide range of impacted vulnerable groups.	The Case Selection Committee Bylaws require the Oversight Board to set criteria to govern case selection, and state that "these criteria will be guided by	<p><b>Status: Partial progress made.</b></p> <p>The overarching criteria for the Oversight Board's first year make clear reference to</p>

	<p>overarching principles (e.g., importance and precedential impact)."</p> <p>The Case Selection Committee Bylaws offer specific potential criteria for use by the Committee, "such as region affected, language, content policies implicated, or other discrete criteria."</p> <p>The overarching criteria for case selection will be set by the Board annually, while the specific criteria are set by the Case Selection Committee for the duration of that Committee.</p> <p>The existing overarching criteria are as follows: "The Oversight Board will select cases for review that raise important issues pertaining to respect for freedom of expression and other human rights and/or the implementation of Facebook's Community Standards and Values. These cases will be of critical importance to public discourse, directly or indirectly affect a substantial number of individuals, and/or raise questions about Facebook's policies. These cases will reflect the user base of Facebook and ensure regional and linguistic diversity."</p>	<p>selecting a range of cases that reflect the user base of Facebook, but do not reference the concept of vulnerability.</p> <p>The ultimate achievement of this recommendation will be determined by (1) the case selection criteria chosen by the Oversight Board annually and the Case Selection Committees for the duration of their terms, and (2) the actual cases selected.</p> <p>The Case Selection Committee Bylaws would benefit from more clearly stating that the mix of cases considered over time should encompass a wide range of impacted vulnerable groups.</p>
<p>Facebook should establish measures to ensure the Oversight Board is accessible to vulnerable groups, including while cases are under consideration.</p>	<p>The Rulebook states that the "the board's website, and the appeals submission portal, will be available in eighteen (18) languages. Those who are submitting an appeal to the board can complete their submission in any language".</p> <p>In addition, the Rulebook states that "the Board may request</p>	<p><b>Status: Partial progress made.</b></p> <p>BSR notes that ensuring accessibility of the Oversight Board to vulnerable groups is a shared responsibility between Facebook and the Oversight Board.</p> <p>In this spirit, BSR recommends that Facebook and the</p>

	<p>public comment briefs. Calls for public comment briefs will be posted on the Board's website with requirements for form and substance, and a deadline for submission. Submissions will be shared with the panel."</p>	<p>Oversight Board periodically consult about any risks, fears, or barriers users have associated with using the appeals function and Oversight Board.</p> <p>This consultation should inform the design of the Oversight Board's process so that it respects cultural norms and other social dynamics.</p>
<p>Facebook should undertake a marketing and communications campaign to increase the awareness of appeal mechanisms (including the Oversight Board) among vulnerable and marginalized groups.</p>	<p>There is no content on this topic in the governing documents.</p> <p>However, the Oversight Board has begun a public education campaign through social media, engagement with civil society networks, and public meetings held alongside the public comment process.</p> <p>The Oversight Board has made efforts to ensure regional diversity in this outreach, and has plans to continue and expand this engagement.</p>	<p><b>Status: Progress made.</b></p> <p>BSR encourages the Oversight Board to continue being deliberate in its communication efforts to reach vulnerable and marginalized groups.</p> <p>BSR notes that the public comment period offers a good opportunity to increase awareness of the appeals mechanism.</p> <p>BSR also notes that undertaking marketing and communications campaigns to increase the awareness of appeal mechanisms (including the Oversight Board) is a shared responsibility between Facebook and the Oversight Board.</p>
<p>The Oversight Board should take measures to ensure the needs and challenges of vulnerable users and marginalized groups are addressed while cases are under consideration.</p>	<p>The Bylaws reference the ability of those submitting cases to specify their preferred language, and that "Any notice will be provided in the person's preferred language and be guided by relevant human rights principles". The latter reference to human rights principles seems to be an invitation for the Oversight Board staff to apply the effectiveness criteria for operational grievance</p>	<p><b>Status: Progress made.</b></p> <p>The governing documents reference many elements of the original BSR recommendation, such as commissioning independent research and maintaining a network of experts to call upon.</p> <p>Potential additional mechanisms include having potentially affected stakeholders (or reasonable alternatives) present</p>

	<p>mechanisms contained in Principle 31 of the UNGPs.</p> <p>The Bylaws also state that “at their discretion and prior to deliberation, board panels may request and receive information from a global pool of outside subject-matter experts, including academics, linguists, and researchers on a specific issue (e.g., region, cultural norm, or phrase).”</p> <p>The Rulebook states that “the Board may request public comment briefs” and that “the Administration will provide, at the panel’s direction, research on case context (e.g., cultural, linguistic, political), relevant international standards on freedom of expression and human rights, and Facebook content policies and values.”</p>	during the consideration of a case.
The Oversight Board should provide a “user advocate” to support users making their case to the Oversight Board.	There is no content on this topic in the governing documents, other than a reference to a “case manager” in the Bylaws.	<p><b>Status: Not yet addressed.</b></p> <p>It is BSR’s view that this is the most significant gap between our original recommendations and the Oversight Board in practice.</p> <p>While there are several initiatives to help inform Board deliberations (such as public comment and commissioning research), there is little support structure for the user making an appeal.</p> <p>BSR is concerned by the power and informational asymmetry that will exist between Facebook and the individual user; this will be especially true for users from vulnerable groups and marginalized populations.</p>



Facebook should provide resources to allow the Oversight Board to hear cases in multiple languages.	The Bylaws state that “Those who are submitting an appeal to the board can complete their submission in any language, and their statement will be translated into English for the board’s review. The initial submission will also be visible to the board to ensure that the full context is available, regardless of translation”.	<b>Status: Progress made.</b>  The multiple languages spoken by Facebook users clearly present a scale challenge in case submission and review.  BSR encourages the Oversight Board to increase the number of languages used in communications material over time, prioritizing languages associated with the largest number of severe cases.
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### 3.3 REMEDY

BSR’s original human rights review made recommendations for how the Oversight Board can provide pathways to effective remedy. Remedy seeks to restore the victim to the same or equivalent position before the harm, and may include satisfaction, restitution, rehabilitation, compensation, or guarantees of non-repetition.

Original Recommendation	Status	Comments
Facebook should implement Oversight Board decisions by providing remedy to users in the form of satisfaction (i.e., apology and explanation) and restitution.	<p>The Bylaws state that “After concluding deliberations, a board panel will draft a written decision, which will include: a determination on the content; the rationale for reaching that decision; and, if desired, a policy advisory statement.”</p> <p>Further, the Bylaws state that “Facebook will implement board decisions to allow or remove the content properly brought to it for review within seven days of the release of the board’s decision.”</p>	<b>Status: Progress made.</b>  If a case is decided in their favor, the user will receive an apology, an explanation, and restored or removed content.
Where warranted, the Oversight Board should have the power to require Facebook to provide remedy in the form of rehabilitation and financial compensation.	There is no content on this topic in the governing documents.	<b>Status: Not yet addressed.</b>  In BSR’s original recommendation we state that these two pathways to effective remedy should be used in rare cases where impacts such as severe psychological harm, physical security, and bodily integrity have been

		<p>demonstrated, and where it is clear that Facebook has caused or contributed to the harm.</p> <p>We note that at present the Oversight Board will not have the mandate or the resources to investigate these two elements to make a determination.</p>
<p>Facebook's review of an Oversight Board decision should consider appropriate measures to minimize the risk of the same adverse impact reoccurring in the future.</p>	<p>The Bylaws state that "Facebook will undertake a review to determine if there is identical content with parallel context associated with the board's decision that remains on Facebook. If Facebook determines that it has the technical and operational capacity to take action on that content as well, it will do so promptly."</p> <p>The Oversight Board Charter states that "when a decision includes policy guidance or a policy advisory opinion, Facebook will take further action by analyzing the operational procedures required to implement the guidance, considering it in the formal policy development process of Facebook, and transparently communicating about actions taken as a result".</p>	<p><b>Status: Progress made.</b></p> <p>The extent to which Facebook achieves this goal will be revealed over time as the Oversight Board begins to hear cases.</p>
<p>Non-Facebook/non-Instagram users should have a channel to access the Oversight Board for use if content directly or indirectly impacts them.</p>	<p>The Bylaws state that "In order to request a review by the Board, a person must have an active Facebook or Instagram account."</p>	<p><b>Status: Not yet addressed.</b></p> <p>BSR notes that Facebook, not the Oversight Board, has the power to expand scope in this way.</p>
<p>The Oversight Board process should be clear, transparent, and predictable.</p>	<p>The Oversight Board website and other documents have been written with this goal in mind, including availability in 18 languages.</p>	<p><b>Status: Progress made.</b></p> <p>Full achievement of this goal will become known once the Oversight Board begins hearing</p>

	<p>According to the Bylaws, “once a case has been selected by the board, the submitting person (and/or posting person, if different) will receive notice. If the board has not selected that case for review, notice will also be provided.”</p> <p>Further, “once the board reaches a final decision, both Facebook and the person who submitted the case will be notified at the same time. In addition, the individual who submitted the case will see the status of their case on their appeals dashboard, accessible from the board’s website.”</p>	<p>cases and receives feedback from users.</p> <p>BSR encourages the Oversight Board to review progress against this recommendation by consulting with users upon completion of their case.</p>
Facebook should review its own appeals process (i.e., the process prior to a case reaching the Oversight Board) against the effectiveness criteria for operational-level grievance mechanisms contained in Principle 31 of the UNGPs.	There is no content on this topic in the governing documents.	<p><b>Status: Not yet determined.</b></p> <p>This is a recommendation to Facebook rather than the Oversight Board, and BSR did not review progress in this gap analysis.</p>

### 3.4 DECISION MAKING

BSR’s original human rights review made recommendations for how the Oversight Board can make “rights-based decisions” and ensure that decisions made by the Oversight Board are effectively integrated into Facebook.

Original Recommendation	Status	Comments
Facebook should incorporate a firm commitment to international human rights standards into the Oversight Board’s governance charter and bylaws.	<p>There are multiple references to international human rights standards in the Oversight Board Charter, Bylaws, and Rulebook.</p> <p>The Rulebook makes specific reference to the UN Guiding Principles on Business and Human Rights.</p>	<p><b>Status: Partial progress made.</b></p> <p>The references to human rights provide a good basis for a human rights-based approach. However, these references do not meet the level of specificity proposed by BSR in our original recommendations.</p> <p>We believe Facebook and the Oversight Board can more clearly reference the</p>

		International Bill of Human Rights and relevant other international human rights standards and instruments in policy and governing documents.
Facebook should explain the link between human rights and Facebook's values.	There are multiple references to international human rights standards in the Oversight Board Charter, Bylaws, and Rulebook, alongside references to Facebook values.	<p><b>Status: Partial progress made.</b></p> <p>Over time there is potential to describe the relationship more clearly between Facebook's values and human rights.</p> <p>While this is a recommendation for Facebook rather than the Oversight Board, the Oversight Board could consider this element in its policy advisory statements to Facebook.</p>
The Oversight Board should provide or procure training for all Oversight Board members and Administration staff in human rights, including best practice for operational-level grievance mechanisms.	<p>The Bylaws state that Board members are required to participate in "training on Facebook's policies, values, enforcement practices, and international human rights standards."</p> <p>Oversight Board members and staff have received a range of training from external experts already, including on international human rights law and technological aspects of content moderation. Additional training has been scheduled for 2021.</p>	<p><b>Status: Progress made.</b></p> <p>This recommendation is being implemented.</p> <p>Given rapid evolution in the social media and human rights agenda (such as the B-Tech Project of UN Human Rights), BSR encourages all Oversight Board members to remain up-to-date on latest trends and developments in the field.</p>
Facebook should include the Oversight Board in consultations about potential changes to the Community Standards.	The Bylaws don't commit Facebook to doing this in every case, but do state that "Separate from the review of an individual case, Facebook may request a policy advisory statement from the board. The board may accept or reject these requests, and it will hear such requests using the same procedures as other cases."	<p><b>Status: Progress made.</b></p> <p>The extent of the Oversight Board's actual input into Facebook policy will become clear over time.</p>

	The Rulebook describes the process for the Oversight Board to provide policy guidance to Facebook.	
Facebook should respond formally to any changes to the Community Standards recommended by the Oversight Board.	The Bylaws state that “once the board has provided an opinion, both Facebook’s request and the board response will be made public”, and Facebook will “provide a public response regarding any policy recommendations and follow-on actions within thirty (30) days of that recommendation being received.”	<b>Status: Progress made.</b>  The nature and detail of Facebook’s formal responses will become clear over time.

### 3.5 INFORMED CONSENT

BSR’s original human rights review made recommendations for ensuring that relevant users provide consent for each case and be able to understand both risks and rights when consenting.

Original Recommendation	Status	Comments
Facebook should ensure that all participants in Oversight Board processes, especially vulnerable users and rightsholders, provide informed consent for participation in a case.	<p>While no reference to vulnerable groups is made, the Bylaws make clear that consent is required for participation in a case. For example, “Facebook will only provide data to the board in compliance with applicable laws and regulations. In some situations, this may require the express consent from one or more persons before a review may proceed”, and “When a person submits a request for review, they will also be able to choose whether to consent to the inclusion of identifying details in the board’s final decision.”</p> <p>The Rulebook also establishes expectations for informed consent, for example stating that “The user’s consent is required for identifying information to be included in any decision. A case</p>	<p><b>Status: Partial progress made.</b></p> <p>Significant elements of informed consent are defined in the Bylaws and Rulebook.</p> <p>However, informed consent is defined by both participation (i.e., the ability to participate in decisions) and empowerment (i.e., the ability to understand both risks and rights when consenting), and it will be important to review over time whether this standard of consent has been achieved in practice.</p> <p>For example, achieving informed consent in practice may require providing additional accommodations and coaching to users/rightsholders, in the form of language, literacy, and process-related support, to ensure that they fully</p>



	may proceed without a user statement, though a decision will not include information that could be used to identify a user absent their consent.”	understand the appeals process.
Facebook should ensure that the users/rightsholders who have cases reviewed by the Oversight Board are privy to all the information and evidence used in the Board’s decision, aside from that withheld for privacy, security, and other legitimate reasons.		<b>Status: Not yet determined.</b>  Progress will become better known once the Oversight Board is operational and the Case Management Tool is used in practice.

### 3.6 SAFETY AND INTEGRITY

BSR’s original human rights review made recommendations for how to address new human rights risks arising from the existence of the Oversight Board.

Original Recommendation	Status	Comments
Facebook and the Oversight Board should apply the Global Network Initiative (GNI) Principles and record any efforts by governments to interfere with the work of the Oversight Board.	There is no reference to the GNI in the governing documents.  However, the Rulebook does state that the Oversight Board will “complete an impact assessment to identify potential harms resulting from an Oversight Board’s case decision and possible mitigation actions. This will be updated throughout the process and reviewed post-decision for evaluation and learning.”	<b>Status: Partial progress made.</b>  The Oversight Board impact assessment has the potential to record, consider, and address efforts by governments to interfere with the work of the Oversight Board.  Facebook applies the GNI Principles when responding to government requests and reports publicly every six months.
There should be a comprehensive safety and security plan for Oversight Board members and Administration staff.	The Rulebook states that the Oversight Board will “complete an impact assessment to identify potential harms resulting from an Oversight Board’s case decision and possible mitigation actions. This will be updated throughout the process and reviewed post-decision for evaluation and learning.”	<b>Status: Progress made.</b>  BSR has reviewed the impact assessment template (which is not being made public) and safety and security of Oversight Board members and staff are included.

	In addition, the Bylaws include several elements (e.g., not naming Panel members) with safety and security in mind.	
Facebook should anticipate and mitigate the risk of retaliation (or other security risks) for users / rightsholders associated with individual cases.	The Rulebook states that the Oversight Board will “complete an impact assessment to identify potential harms resulting from an Oversight Board’s case decision and possible mitigation actions. This will be updated throughout the process and reviewed post-decision for evaluation and learning.”	<b>Status: Progress made</b>  BSR has reviewed the impact assessment template (which is not being made public) and the risk of retaliation and other security risks for users and rightsholders associated with individual cases is included.

### 3.7 TRANSPARENCY

BSR’s original human rights review made recommendations for how the Oversight Board should account for human rights impacts through external communications.

Original Recommendation	Status	Comments
The Oversight Board should publish an annual report.	<p>The Bylaws require an annual report approved by the Oversight Board.</p> <p>The Bylaws require that the annual report include many of the elements recommended by BSR, such as the number and type of cases, a breakdown of case submissions by region and source, a summary of board decisions and policy advisory statements, an analysis of how the board’s decisions have considered or tracked the international human rights implicated by a case.</p>	<p><b>Status: Progress made.</b></p> <p>In addition to the content specified in the Bylaws, BSR encourages the Oversight Board to include the following in the annual report: an analysis of the Oversight Board’s work in the context of the “state of play” on freedom of expression internationally; data or content restriction requests received from governments; and gender disaggregated data.</p>
The Oversight Board should compile a public repository of cases and decisions made by the Oversight Board.	<p>The Bylaws require the publication of final decisions on the Board’s website.</p> <p>The Rulebook states that “the Administration will publish the decision on the Board’s website in all the languages supported by the Board.”</p>	<p><b>Status: Progress made.</b></p> <p>In addition to publishing the final decision, BSR encourages the Oversight Board to publish accompanying rationale and / or any policy advisory statements made by the Oversight Board to accompany the decision.</p>

## 4. Summary of Gap Analysis

Recommendation	Status
A wide range of relevant human rights harms (beyond just freedom of expression) that may result from content decisions should be identified by Facebook and the Oversight Board.	Progress made
The relevant human rights impacted by a content decision should be referenced by the Oversight Board in every case.	Partial progress made
Over time, the Oversight Board should ensure that the mix of cases it reviews encompasses a wide range of potential human rights harms.	Progress made
The Oversight Board should prioritize cases that present the most severe human rights harms, using the UNGPs' scope, scale, and remediability criteria.	Partial progress made
Cases that involve sexual harassment and gender-based violence should be prioritized by the Oversight Board as severe human rights impacts.	Not yet determined
Facebook and the Oversight Board can use strategic foresight (or "futures") methodologies to help identify cases that may become more common in the future.	Not yet determined
The Oversight Board's scope should expand over time.	Partial progress made
The Oversight Board should be diverse across multiple dimensions of diversity.	Progress made
The Oversight Board should establish and maintain the diversity of its Administration staff.	Progress made
Facebook should undertake a structured identification of different vulnerable user "personas," identities, and categories.	Not yet determined
The mix of cases reviewed by the Oversight Board should encompass a wide range of impacted vulnerable groups.	Partial progress made

Facebook should establish measures to ensure the Oversight Board is accessible to vulnerable groups, including while cases are under consideration.	Partial progress made
Facebook should undertake a marketing and communications campaign to increase the awareness of appeal mechanisms (including the Oversight Board) among vulnerable and marginalized groups.	Progress made
The Oversight Board should take measures to ensure the needs and challenges of vulnerable users and marginalized groups are addressed while cases are under consideration.	Progress made
The Oversight Board should provide a “user advocate” to support users making their case to the Oversight Board.	Not yet addressed
Facebook should provide resources to allow the Oversight Board to hear cases in multiple languages.	Progress made
Facebook should implement Oversight Board decisions by providing remedy to users in the form of satisfaction (i.e., apology and explanation) and restitution.	Progress made
Where warranted, the Oversight Board should have the power to require Facebook to provide remedy in the form of rehabilitation and financial compensation.	Not yet addressed
Facebook’s review of an Oversight Board decision should consider appropriate measures to minimize the risk of the same adverse impact reoccurring in the future.	Progress made
Non-Facebook/non-Instagram users should have a channel to access the Oversight Board for use if content directly or indirectly impacts them.	Not yet addressed
The Oversight Board process should be clear, transparent, and predictable.	Progress made
Facebook should review its own appeals process (i.e., the process prior to a case reaching the Oversight Board) against the effectiveness criteria for operational-level grievance mechanisms contained in Principle 31 of the UNGPs.	Not yet determined
Facebook should incorporate a firm commitment to international human rights standards into the Oversight Board’s governance charter and bylaws.	Partial progress made

Facebook should explain the link between human rights and Facebook's values.	Partial progress made
The Oversight Board should provide or procure training for all Oversight Board members and Administration staff in human rights, including best practice for operational-level grievance mechanisms.	Progress made
Facebook should include the Oversight Board in consultations about potential changes to the Community Standards.	Progress made
Facebook should respond formally to any changes to the Community Standards recommended by the Oversight Board.	Progress made
Facebook should ensure that all participants in Oversight Board processes, especially vulnerable users and rightsholders, provide informed consent for participation in a case.	Partial progress made
Facebook should ensure that the users/rightsholders who have cases reviewed by the Oversight Board are privy to all the information and evidence used in the Board's decision, aside from that withheld for privacy, security, and other legitimate reasons.	Not yet determined
Facebook and the Oversight Board should apply the Global Network Initiative (GNI) Principles and record any efforts by governments to interfere with the work of the Oversight Board.	Partial progress made
There should be a comprehensive safety and security plan for Oversight Board members and Administration staff.	Progress made
Facebook should anticipate and mitigate the risk of retaliation (or other security risks) for users / rightsholders associated with individual cases.	Progress made
The Oversight Board should publish an annual report.	Progress made
The Oversight Board should compile a public repository of cases and decisions made by the Oversight Board.	Progress made



## About BSR

BSR is a global nonprofit organization that works with its network of more than 250 member companies and other partners to build a just and sustainable world. From its offices in Asia, Europe, and North America, BSR develops sustainable business strategies and solutions through consulting, research, and cross-sector collaboration. Visit [www.bsr.org](http://www.bsr.org) for more information about BSR's 25 years of leadership in sustainability.