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## **ITS Rio's Public Comment – Oversight Board Case 2021-001-FB-FBR**

The decision to deplatform Donald J. Trump was controversial in countries outside the US and, thus, gives this Board a chance to address charges that Facebook acted 'inconsistently'. Academics and activists underscored the fact that world leaders who also use their profiles to sow division and incite violence still have unrestricted access to Facebook and Instagram. What makes Trump's case special? What lines have the former US President crossed that current Presidents and Prime Ministers in the Global South have not? Given the lack of a more detailed explanation, many were left guessing.

We believe that, as a global platform, Facebook should be attentive to how its decision to ban one world leader will be perceived by citizens in other countries that also face increasing political polarization and institutional instability. To put it differently, the company should not justify its decisions only with the American context in mind. Consequently, Facebook's referral of its internal decision to deplatform Trump created an opportunity for this Board to tackle some 'perceived inconsistencies' prompted by the company's content moderation practices.

In *Case Decision 2020-003-FB-UA*, this Board rightly noted that "Facebook's lack of transparency left its decision susceptible to the mistaken belief that it had removed the post because the user was addressing a controversial subject or expressing a viewpoint Facebook disagreed with". Relatedly, in this case, Facebook's lack of transparency left its decision to deplatform Trump susceptible to the notion that the company only acted because (1) the former US President was defeated in the November presidential election and (2) the GOP later lost control of the Senate.

Our point is that, as a company that purports to give people around the world a "voice" and treat them with "dignity", Facebook should strive to better justify a high-stakes decision in the US so that users in other countries can clearly understand why the company has not acted in their jurisdictions as well.

As it expressly noted in its rebuttal to Facebook's arguments in *Case Decision 2020-004-IG-UA*, "on top of making binding decisions on whether to restore pieces of content, the Board also offers users a full explanation for why their post was removed". In this case, however, we call this Board to consider its role in explaining to users around the world why Facebook removed Trump's assets in the US, further developing the rationale behind the deplatforming in a way that makes clear why the company refuses to act in other countries.

On the other side, following a brief analysis of the principles of digital constitutionalism, the rules and principles of human rights law, and Facebook's values of "voice" and "dignity", we argue below that this Board should also consider issuing a *policy advisory statement* asking Facebook to be more transparent when deciding to deplatform world leaders and other prominent political figures. Otherwise, users may be left under the impression that the community standards gave way to political or partisan feelings.

According to Edoardo Celeste, digital constitutionalism is "the ideology which aims to establish and ensure the existence of a normative framework for the protection of fundamental rights and the balancing of powers in the digital environment" (CELESTE, *Digital Constitutionalism: A new systematic theorisation*, 2019, p. 88). Hence, digital constitutionalism is about abstracting the principles of constitutionalism from the context of the nation-state so they

can be reimagined in the digital realm. One of the key principles of modern constitutionalism that should inform Facebook's community standards is the rule of law.

In his seminal work *The Morality of Law*, Lon Fuller identified eight 'principles of legality' that serve as cornerstones to the rule of law (FULLER, 1969). Fuller argues that, as a matter of principle, any rule-based framework should be evaluated in light of its commitment to, among other values, consistency, stability and congruence. Therefore, when the community standards are interpreted and applied in a way that can be perceived as inconsistent, the very notion that Facebook's rules are in line with the rule of law is undermined.

Furthermore, an inconsistent application of the community standards is also a potential violation of human rights law, namely the right to equality. Articles 3 and 26 of the ICCPR underscore the idea that all men and women are "equal under the law" and should have equal opportunities to exercise their civil and political rights. In the same vein, Articles 1 and 7 of the UDHR also reinforce the idea that all are "equal before the law" and, therefore, "are entitled without any discrimination to equal protection of the law". An inconsistent application of Facebook's community standards, especially in the area of civil and political rights, jeopardizes the fundamental right to equality.

Finally, we also note that these 'perceived inconsistencies' are at odds with Facebook's values of "voice" and "dignity". In a Newsroom post, Monika Bickert (Facebook's Head of Global Policy) recognizes that the company focuses "on giving people a voice, making Facebook a safe place and applying our policies consistently and fairly around the world". What is more, Facebook defines "dignity" as treating people as equals "in dignity and rights".

All in all, we respectfully ask this Board to (1) shed light on Facebook's decision to deplatform Donald J. Trump when other world leaders still use its services to sow division and promote violence and (2) consider issuing a *policy advisory statement* asking Facebook to be more transparent when making similar decisions in the future, addressing 'perceived inconsistencies' while upholding the principles of digital constitutionalism, human rights law, and the company's own values of "voice" and "dignity".