

- **Public Comment to the Oversight Board - Case 2021-013-IG-UA**

In this public comment, we focus on the Brazilian context to show how the country has come to terms with ayahuasca given its use in religious ceremonies. We then proceed to argue that Facebook should take Brazil's socio-political context into account. Finally, we offer some remarks about the relevance of consistency in Facebook's content moderation practices in this case, including automated decision-making, and ask the Board to consider an existing religious exemption in the company's policies.

Anthropological studies highlight the multiplicity of views and interpretations regarding the use of ayahuasca, disputing its cultural and religious meaning. Thus, the beverage can be better understood if one considers the social groups and symbolic systems in which it is inserted. In Brazil, ayahuasca has an eminently sacred nature for the so-called "ayahuasca religions", similar to the use of peyote in North America. Furthermore, in 1986, a report from the National Antidrug Council (CONAD) - previously known as the Federal Council on Narcotics (CONFEN) - concluded that its ingestion followed rigid ethical standards and occurred solely during the religious ceremony.

The report - which was drafted by a multidisciplinary body of physicians, psychologists, social scientists, philosophers, and lawyers - paved the way to the removal of ayahuasca, and the plants involved in its brewing process, from the Ministry of Health's list of banned substances, effectively authorizing its religious use within the national territory. However, it is important to note that this by no means settled the debate around the use of ayahuasca in Brazil. The National Congress is still discussing a bill to entrench the religious exemption made by CONAD, granting the "ayahuasca religions" constitutional status. Furthermore, there is still a vivid conversation about the recreational use of ayahuasca.

Emphasizing the Brazilian context is important because Facebook and Instagram users are influenced by their local values when they use the platform. Consequently, content moderation should take these socio-legal aspects into account. In this case, the Instagram user is a member of a "spiritual school based in Brazil", according to the Board's own description. Therefore, one can reasonably conclude that the use of ayahuasca for religious purposes is relevant for analysing this specific post. The picture with the accompanying text in Portuguese suggests that the beverage has a religious character, to the extent that the Oversight Board should be aware of the cultural context of the publication when deciding whether the user violated Facebook's community standards.

In case decision 2021-008-FB-FBR, the Board underscored that "Facebook should take into consideration local context and consider the current situation in Brazil when assessing the risk of imminent physical harm" regarding COVID-19 misinformation. It is our understanding that that *ratio* should also inform the case at hand for two reasons. First, as noted by the Board, the Instagram Community Guidelines has a specific reminder to "follow the law" regarding the sale or purchase of regulated products. Thus, the Board should consider the fact that the religious use of ayahuasca is not prohibited by CONAD in Brazil when deciding whether the user "followed the law" and violated the community guidelines.

Second, Facebook's Community Standard on Regulated Goods forbids any user from speaking positively about, encouraging, or promoting the use of non-medical drugs. One can

reasonably infer that the rationale behind the standard is to prevent any imminent harm associated with the use of such products. In case decision 2020-006-FB-FBR, the Board learned that a combination of antimalarial and antibiotic medicines was not available in France without a prescription and, alongside other contextual factors, concluded that debating its approval by French authorities on the platform does not rise to the level of imminent harm. In the case at hand, the Board should consider that precedent when deciding whether discussing the religious use of ayahuasca rises to the level of imminent harm and to what extent it is different from debating the use of medical drugs to treat diseases they were not previously approved for.

In case decision 2020-004-IG-UA, dismissing Facebook's argument that the decision to restore the content makes the case moot, the Oversight Board reminded the company that "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." Therefore, aside from looking at the Brazilian context to determine if the post violated the community standards, we respectfully ask this Board to consider the importance of consistency in Facebook's content moderation decision in this case.

In this case, the user stated that "they have posted the same content previously on their account and that post remains online". Thus, the Board should ponder in its policy recommendations what are the elements that may justify the potential difference in treatment alleged by the user. Moreover, it would be useful to know if both publications were reviewed by humans - who reached competing conclusions - or if the posts were reviewed by Facebook's automated decision-making algorithm. On a similar note, the Board should also consider whether "ayahuasca" is being used by the company as a keyword that triggers automated content moderation by its algorithm.

After the Board's recommendations in case decision 2020-004-IG-UA, Facebook said that it would "continue to evaluate which kind of reviews or appeals should be done by people and which can be safely handled by automated systems" and that "it would test the board's recommendation to tell people when their content is removed by automation". We believe that this may be a timely opportunity for the Board to assess whether Facebook is complying with its previous commitments. For instance, the Board could consider if the use of a non-medical drug in a religious setting is the type of content that "can be safely handled by automated systems" upon appeal and if the Instagram user was informed of a potential automated decision made by Facebook's algorithm.

Finally, we would like to point out to the Board that Facebook's Community Standard on Regulated Goods already provides for an exemption of content posted in the context of "selling an animal for a religious offering". Such an exception could be logically extended to the other sections of the same policy, including content that promotes or speaks positively about non-medical drugs. Therefore, this Board could consider this question and decide, based on the information above and on other public comments, if that exemption should also encompass other sections of the policy, particularly when the content is posted in the context of promoting or speaking positively about non-medical drugs for religious purposes.