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DIGITAL RIGHTS FOUNDATION PUBLIC COMMENT ON OVERSIGHT BOARD CASE 2023-004-FB-MR (ARMENIAN PRISONER OF WAR VIDEO)

Submission Author: Noor Waheed

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In 2021, according to Human Rights Watch, there were numerous accounts of Azerbaijani forces allegedly abusing Armenian POWs in captivity.¹ Human Rights Watch acknowledged that it was able to verify these accounts partly through videos uploaded on social media and partly through interviews. In light of this, the public interest benefits of being able to upload graphic and disturbing content especially in the context of war and armed conflict are evident especially in terms of raising awareness of and documenting gross human rights violations. That being said, Article 13 (2) of the third Geneva Convention emphasizes that POWs must be protected at all times particularly from acts of violence, intimidation, and against “insults and public curiosity.”

In order to maintain a balance between reporting, evidence collection and awareness, Meta should ensure that any content depicting POWs is blurred or pixelated to protect the identities of the POWs and the preservation of their dignity. Using the Geneva Convention as a reference point for the application of international humanitarian law, the closest approximation to “newsworthiness” can be “public curiosity”, which is not deemed as sufficient grounds to keep content depicting POWs on its platforms. On the other hand, the Geneva Conventions predated social media-based communication platforms and the “newsworthiness” exception covers more narrow, public interest aspects than the wider “public curiosity” criteria in the Conventions. Nevertheless, even instances where uploading content serves a compelling public interest, for example, bringing to public attention gross human rights violations, the content should not disclose the identities of the POWs. The ICRC in its commentary on the third Geneva Convention² takes into consideration the existence of social media and makes a special concession in exceptional cases where revealing the identity of the POW is a matter of significant public interest such as for their seniority or if doing so is beneficial to the wellbeing of the POW (i.e. if they are missing). In the absence of this criteria, there are no grounds to leave the face of a POW visible such as in the case of this video.

¹ “Azerbaijan: Armenian Prisoners of War Badly Mistreated” (*Human Rights Watch*, December 16, 2020) <https://www.hrw.org/news/2020/12/02/azerbaijan-armenian-prisoners-war-badly-mistreated>

² “Convention (III) Relative to the Treatment of Prisoners of War. Geneva, 12 August 1949. Commentary of 2020 on Article 13” (*ICRC International Humanitarian Law Databases*) <https://ihl-databases.icrc.org/en/ihl-treaties/gciii-1949/article-13/commentary/2020?activeTab=undefined>

Additionally, Meta should be cognizant of the fact that sharing propaganda videos, even with added or repurposed context has potential for abuse. Any video depicting POWs especially if in the context of propaganda material repurposed for raising awareness should be assessed in terms of its potential to escalate conflict, ability to cause direct or indirect harm to the POW, and impede the dignity of the POWs depicted. It is hence of utmost importance that every possible measure should be taken to conceal the identities of the POWs shown in posts on Meta's platforms. Identities of POWs being revealed poses the threat of inadvertent negative repercussions for POWs once returned to their home countries depending on the culture and military traditions around honor and valor. Being captured and publicly subjected to torture or inhumane treatment may bear subsequent consequences for the POWs and their families.

It should be noted that the need to report and share content related to war crimes is not limited to that featuring POWs - other kinds of war crimes could surpass Meta's established community standards for violent, disturbing and graphic content. For such cases, Meta should keep a cache/database of "violating content" that may be newsworthy or serve the greater public interest. This content may be better off not circulating on its platforms but nonetheless should be at Meta's disposal and should be accessible in case the need arises to cite the content as evidence of war crimes in an international tribunal or for historical archiving.

*To read the Oversight Board's full decision on this case:
<https://www.oversightboard.com/decision/FB-YLRV35WD>

**To see all submitted Public Comments:
<https://oversightboard.com/attachment/634529611879438/>