

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
CONSTITUTIONAL AND HUMAN RIGHTS DIVISION
CONSTITUTIONAL PETITION NO. _____ 2022

IN THE MATTER OF THE ALLEGED CONTRAVENTION OF ARTICLES 2, 10, 19, 20,
21, 22, 23, 24, 25, 26, 27, 28, 29, 31, 33, 46, 47, 48, 50, 159, 165, 258 AND 260 OF
THE CONSTITUTION OF KENYA, 2010

AND

IN THE MATTER OF CONSTITUTION OF KENYA (PROTECTION OF RIGHTS AND
FUNDAMENTAL FREEDOMS) PRACTICE AND PROCEDURE RULES 2013

AND

IN THE MATTER OF THE ALLEGED CONTRAVENTION OF ARTICLES 6, 19 AND 20 OF
THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS

AND

IN THE MATTER OF THE ALLEGED CONTRAVENTION OF SECTIONS 3 AND 13 OF THE
NATIONAL COHESION AND INTEGRATION ACT NO. 12 OF 2008

AND

IN THE MATTER OF THE ALLEGED CONTRAVENTION OF SECTIONS 3 AND 4 OF THE
FAIR ADMINISTRATIVE ACTION ACT NO. 4 OF 2015

AND

IN THE MATTER OF ALLEGED CONTRAVENTION OF GUIDING PRINCIPLES 11, 12, 13,
14, 15, 17, 18, 19, 21, 22, 23, 29 AND 31 OF THE GUIDING PRINCIPLES ON BUSINESS
AND HUMAN RIGHTS IMPLEMENTING THE UNITED NATIONS 'PROTECT, RESPECT AND
REMEDY' FRAMEWORK

AND

IN THE MATTER OF THE ALLEGED CONTRAVENTION OF THE INTERNATIONAL
CONVENTION ON THE ELIMINATION OF ALL FORMS OF RACIAL DISCRIMINATION

BETWEEN

1. ABRHAM MEAREG.....1ST PETITIONER
2. FISSEHA TEKLE.....2ND PETITIONER
3. KATIBA INSTITUTE.....3RD PETITIONER

VERSUS

META PLATFORMS, INC..... RESPONDENT

AND

1. AMNESTY INTERNATIONAL.....1ST INTERESTED PARTY
2. GLOBAL WITNESS.....2ND INTERESTED PARTY
3. KENYA HUMAN RIGHTS COMMISSION.....3RD INTERESTED PARTY
4. NATIONAL COHESION AND
INTEGRATION COMMISSION.....4TH INTERESTED PARTY
5. ARTICLE 19 EASTERN AFRICA.....5TH INTERESTED PARTY
6. KENYA NATIONAL
COMMISSION ON HUMAN RIGHTS.....6TH INTERESTED PARTY
7. LAW SOCIETY OF KENYA.....7TH INTERESTED PARTY

PETITION

TO: THE HIGH COURT OF KENYA

The humble Petition of **ABRHAM MEAREG** of Minnesota, USA, **FISSEHA TEKLE** P.O Box 1527-00606 NAIROBI and **KATIBA INSTITUTE** of P.O. Box 26586 – 00100 NAIROBI, is as follows—

Social media platforms have revolutionized human interactions. They have become an essential public good and now influence much of our civic and political discourse and are often enablers of social, economic and cultural rights. Underlying the impressive platforms are companies keen to increase their bottom line at every turn. At what cost? This Petition seeks to hold Meta Platforms Inc. (formerly known as Facebook Inc.) accountable for blatant human rights violations and human suffering

caused by its business decisions. It also seeks key changes to the Facebook algorithm and to the Respondent's content moderation practices to stop promoting inciteful, hateful and dangerous content.

I. DESCRIPTION OF PARTIES

1. The 1st Petitioner is an Ethiopian citizen currently residing in Minnesota in the United States, having fled there in 2022 after the murder of his father. He has made an application for asylum in the US.
2. The 2nd Petitioner is an Ethiopian citizen currently working for gain and residing in Kenya. He works as a Legal Advisor at Amnesty International in Nairobi.
3. The 1st and 2nd Petitioners' address for service for the purpose of this Petition shall be—

NZILI & SUMBI ADVOCATES
AIC NGONG ROAD MINISTRY CENTER, 4TH FLOOR
NDEMI ROAD, OFF-NGONG ROAD
P.O. BOX 2580-00202
NAIROBI
mercy@nzilisumbi.com
[0708633650](tel:0708633650)

4. The 3rd Petitioner is a constitutional, litigation and research institute which enforces the Constitution of Kenya 2010. The 3rd Petition brings this Petition in public interest. Its address for service for purposes of this Petition shall be—

C/O OCHIEL J DUDLEY ADVOCATES
KATIBA INSTITUTE, HOUSE NO. 5
THE CRESCENT, OFF PARKLANDS ROAD
P. O. BOX 26586-00100
NAIROBI
ochieljd@katibainstitute.org

5. The 1st and 2nd Petitioners bring this Petition on their own behalf, in the public interest and in defence of the Kenyan Constitution.
6. Additionally, the 1st, 2nd and 3rd Petitioners jointly represent the following class—
 - a. All those Facebook users within Facebook’s content moderation ambit of Kenya whose rights have been violated in a manner similar to the 1st Petitioner i.e. they have suffered human rights violations as a result of the Respondent failing to take down Facebook posts that violated the bill of rights even after making reports to the Respondent;
 - b. All those Facebook users within Kenya whose rights have been violated in a manner similar to the 1st or the 2nd Petitioner i.e. the algorithm served them with inciteful, hateful and dangerous content while they were in Kenya, or they reported inciteful, hateful and dangerous content which was not taken down and led to further violation of their rights; and
 - c. All those Facebook users who use Facebook while in Kenya.
7. The Respondent is a multinational company whose products; Facebook, WhatsApp, Instagram *et al* are available globally and widely used in Kenya and Ethiopia. The Respondent reported revenue for the year 2021 was \$117.929 Billion.
8. The 1st Interested Party is an international, independent non-governmental human rights organisation and movement of over 10 million members in more than 150 countries and territories including Kenya. It engages in research, campaigning and strategic litigation to secure accountability for human rights abuses arising from the harmful business practices of big tech firms.
9. The 2nd Interested Party is an international non-governmental organization seeking to protect human rights.

10. The 3rd Interested Party is a non-government organisation which campaigns to create a culture in Kenya where human rights and democratic are entrenched.
11. The 4th Interested Party is a statutory body whose goal is to promote national unity, equity and the elimination of all forms of ethnic discrimination.
12. The 5th Interested Party is an international human rights organization that works to defend and promote freedom of expression and freedom of information worldwide.
13. The 6th Interested Party is an independent constitutional institution whose function is to promote and protect human rights.
14. The 7th Interested Party is Kenya's premier bar association whose function, among others, is to uphold the Constitution of Kenya and advance the rule of law.

II. THE SUBJECT OF THE PETITION

15. This Petition seeks redress for the harm caused by the Respondent to the 1st and 2nd Petitioners, and to the class they represent–
 - a. Using an algorithm that prioritizes and recommends inciteful, hateful and dangerous content to Facebook users;
 - b. Allowing and maintaining inciteful, hateful and dangerous content on the Facebook platform;
 - c. Failing to take down inciteful, hateful and dangerous content when reasonably requested by users;
 - d. Approving and promoting ads that amount to incitement to violence and hate speech;
 - e. Tying ads and other marketing promotional materials to inciteful, hateful, and dangerous content;

- f. Generally failing to adhere to Constitutional standards obligating Facebook to ensure its content and business practices protect consumers;
 - g. Treating Facebook users in Kenya and African countries differently from Facebook users in other countries;
 - h. Continuing to treat Facebook users in Kenya and African countries differently from Facebook users in other countries in times of conflict with catastrophic consequences for said African countries.
- 16. While what is pled in this Petition is true of many African countries, this Petition will focus on Kenya and Ethiopia as the facts pled concern matters within Petitioners' knowledge of Facebook activities in the two countries.
- 17. In this Petition, inciteful, hateful and dangerous speech refers to the categories of speech the right to freedom of expression does not extend to as espoused in Article 33(2) of the Constitution, to wit–
 - a. propaganda for war;
 - b. incitement to violence;
 - c. hate speech;
 - d. advocacy of hatred that constitutes ethnic incitement;
 - e. advocacy of hatred that constitutes vilification of others;
 - f. advocacy of hatred that constitutes incitement to cause harm; and
 - g. advocacy of hatred based on discrimination.
- 18. This Petition also concerns the services and/or the business activities of the Respondent that do not accord with the protection demanded by Article 46 of the Constitution.

III. INTRODUCTION

About Facebook

19. Facebook is a social media content-sharing platform and social networking service.
20. When a user first signs up to join the Facebook platform either via a mobile phone application or via its website www.facebook.com, they are asked to fill in basic information to create their profile. This includes their name, a photograph of themselves, their location, their likes and dislikes and their interests.

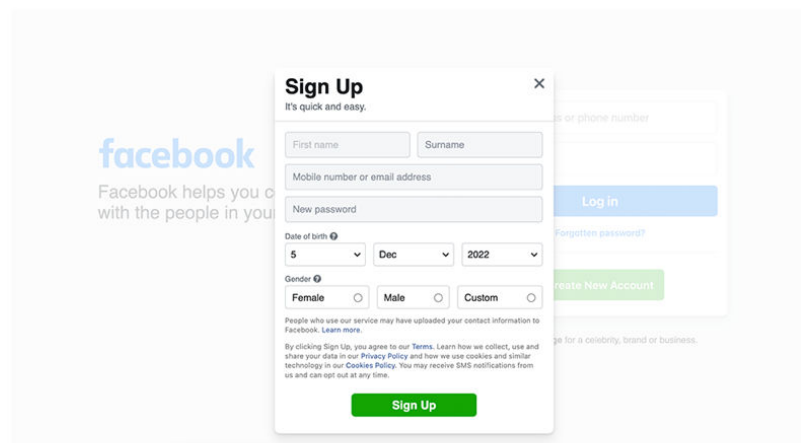
The image shows a screenshot of the Facebook sign-up interface. A modal window titled "Sign Up" with the subtitle "It's quick and easy." is centered on the screen. The form contains fields for "First name", "Surname", "Mobile number or email address", and "New password". Below these is a "Date of birth" section with dropdown menus for day (5), month (Dec), and year (2022). The "Gender" section has radio buttons for "Female", "Male", and "Custom". At the bottom of the modal is a green "Sign Up" button. In the background, the Facebook logo and a "Log in" button are visible on the main sign-up page.

Illustration 1: Illustration of the Facebook sign up page

21. Once they have created a profile, they are able to post any kind of content on their Facebook account. Their posts do not go through an approval process prior to being published on the platform. It is also not a requirement to use one's real name or to give accurate details in a Facebook profile.

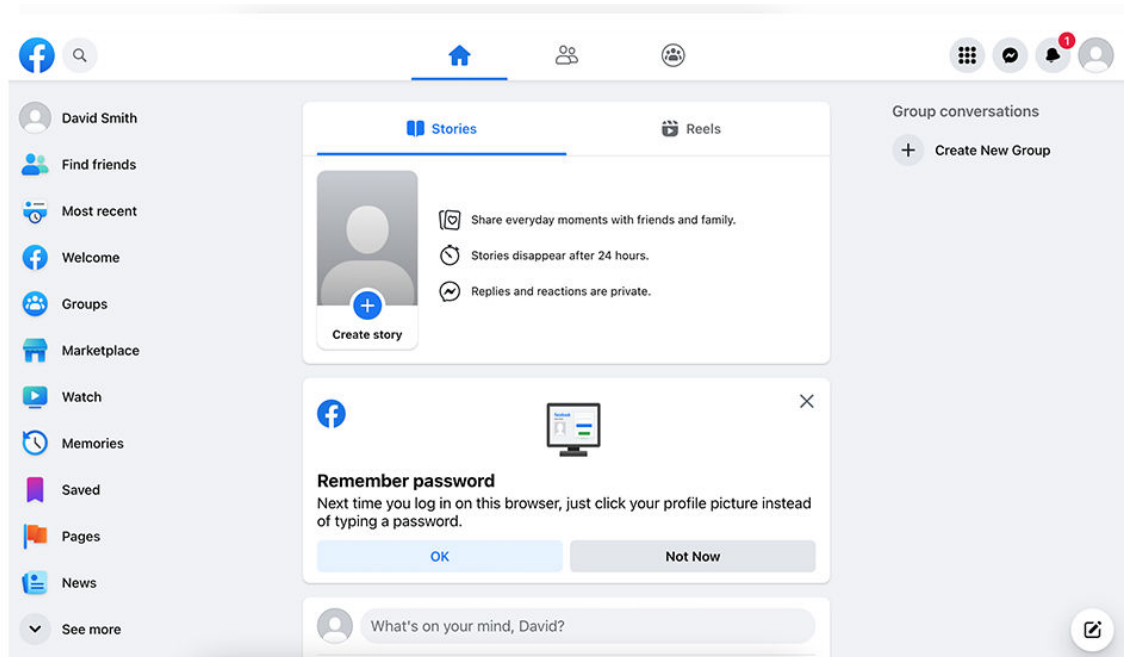


Illustration 2: Illustration of a Facebook profile

22. The Respondent monitors and tracks users' online behaviour whether or not they are logged in to the platform to understand their interests better.
23. Based on the information the Respondent has collected, the user is given suggestions of friends to add to their networking circle and pages to follow. Other Facebook users can also join the user's circle.
24. The Facebook user determines whether to set up their Facebook profile to public or private. For a public profile, everything the Facebook user publishes is visible to all other Facebook users.
25. To facilitate further social networking, Facebook users are encouraged to join Facebook groups that may interest them. These groups may be private groups which means only members of the group can see the content posted. For public groups, all the posts and comments can be viewed by any Facebook user.
26. Facebook users are able to tag other users in posts using the '@' sign. Tagging creates a link to the tagged user's account which one can follow to view the tagged user's profile.

27. Users can also turn words and phrases into clickable links by using the '#' sign (hashtag). Clicking on the hyperlinked word or phrase leads to a depository of other posts that contain the same words and phrases.
28. A Facebook user can also create a Facebook "Page" for a given interest or topic, such as a sports team, a brand or business, a political party, or a university.

About the Respondent's Business Model

29. The Respondent derives the vast majority of its income from selling advertising space on Facebook, Instagram and Messenger to third parties. To do this, they collect as much information on Facebook users as possible to better understand them. This way, they state they are able to show users adverts they assess the user is likely to be interested in or click on.
30. The main interface that users interact with when they log in to their Facebook account is the Feed. It is where a user sees posts and updates by their friends, people they follow, pages the Respondent recommends to them, adverts, posts containing news items and sponsored posts. Here users will also be shown what content their friends are interacting with. The Feed will recommend some posts to users even when the original 'poster' is not the user's Facebook Friend. Through the Feed, a single post has the potential to reach many thousands of users to whom the Respondent will carry the post.
31. The Feed updates itself regularly. This way, more posts from various users are presented to the Facebook user in an attempt to engage the user for as long as possible.

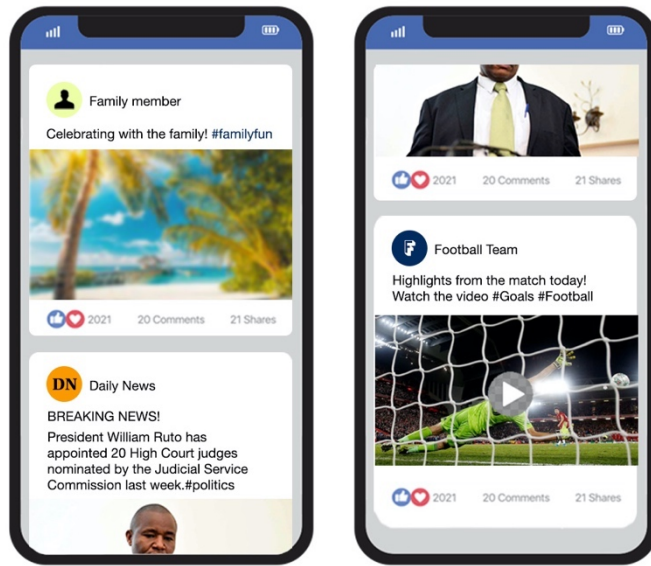


Illustration 3: Illustration of the Facebook Feed as viewed from a mobile phone



Illustration 4: Illustration of the Facebook Feed as viewed from a desktop view

32. Facebook users try to post relevant posts so they can make it to other users' Feeds and increase the engagement on their posts.
33. The Feed is also where adverts are displayed. It is therefore prime estate for the third parties who buy advertising space from the Respondent.

34. Facebook posts can also be promoted as ads. To achieve this, the user submits a particular post to the Respondent for alleged scrutiny to make sure the proposed ad does not violate the Facebook Community Standards. Once approved by the Respondent, the ad is shared on Facebook bearing the mark 'sponsored'.
35. Sponsored posts are boosted by the algorithm to reach an even larger audience.
36. The Respondent draws more revenue when third parties and sponsors pay for adverts to be shown over a prolonged period of time as advertising space is charged per click or per impression - i.e. the more people who see the advert the more the third party pays for advertising.

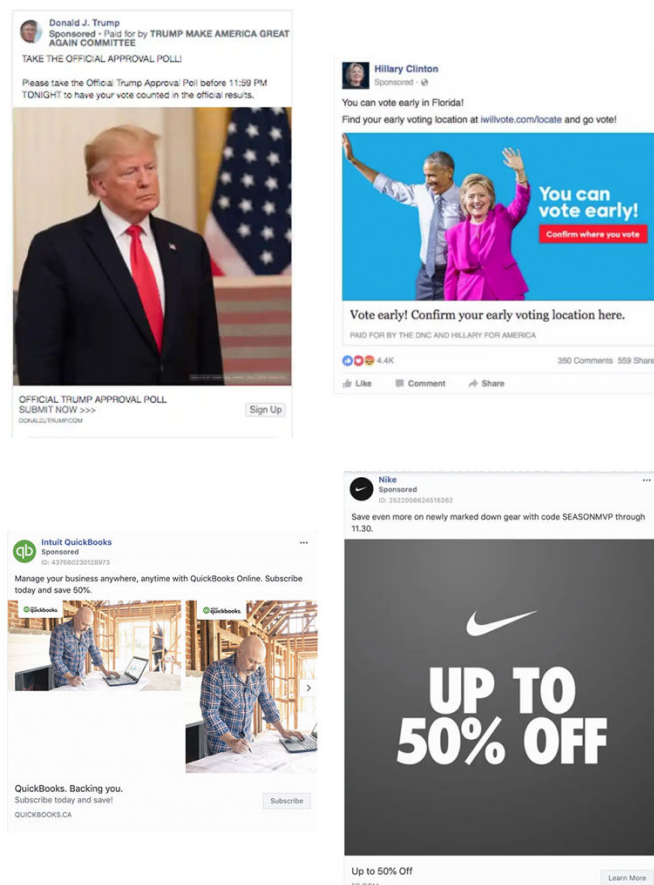


Illustration 4: Illustration of Facebook ads and Sponsored posts

37. To earn more revenue, Facebook is designed to keep users engaged on the platform for as long as possible. It is very important that the content appearing

on a user's Feed be the most intriguing and entertaining content in order to capture the Facebook user's attention for extended periods of time.

38. The relationship between the Feed and advertisements can be demonstrated as follows–

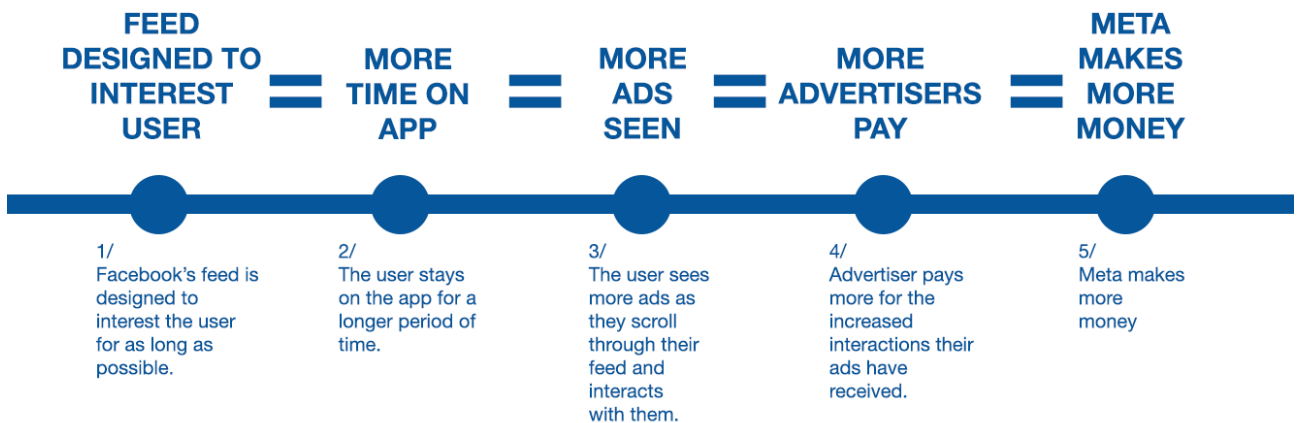


Illustration 5: Relationship between the Feed and the Respondent's revenue

The Facebook Algorithm

39. The Feed is structured, organized and curated by the Respondent.
40. The Respondent has opted for a ranking system where it chooses what users should view in order of priority. This ranking is done by the Facebook Algorithm.
41. The Facebook Algorithm is a set of rules by the Respondent that decide what users will see on their Feed.
42. A user's experience on the Facebook platform is dictated by the Facebook Algorithm. It is the Algorithm which decides what the user is going to see and which posts they will interact with.
43. Facebook's Algorithm is a recommender algorithm which means it brings content to the user's Feed, based on its analysis of the user's behavioural patterns and the information the Respondent has collected on the user. Content that is "recommended" by the algorithm is ranked higher and thus presented to the user chronologically higher in the Feed.

44. What the Respondent 'recommends' is broadly what will engage the user the most. Usually, this is content which elicits strong emotions.
45. One of the metrics that influences the Facebook algorithm is the '*Meaningful Social Interactions*' metric (MSI). It prioritises content that is predicted to get reactions; such as comments, reshares, 'likes' or other reactions from friends.
46. The Respondent promotes MSI as being a beneficial tool for deepening interactions and relationships. In reality however, prioritizing MSI such as shares and replies to comments furthers inciteful, hateful and dangerous content.

About content moderation

47. Not only does the Facebook algorithm decide what content it will show to users, it also decides what it will not show and what content it will not carry on the platform.
48. The Respondent has developed Facebook Community Standards which spell out what content is allowed on the platform.
49. Facebook content moderation is done by a mixture of Artificial Intelligence (AI) and human content moderators.
50. Content that goes against the Community Standards is detected using Artificial intelligence (AI) technology and removed from the platform. The AI also sends questionable content to human content moderators for review.
51. Other Facebook users have the option to report a post they consider to be violating the Community Standards. In such cases, the post is queued to human content moderators to decide whether that particular post ought to stay on the platform or whether it should be removed.
52. The Respondent has content moderation centres all over the world including Kenya.

53. Content moderation of Facebook content posted by users in most Sub-Saharan countries is moderated by the Respondent in Kenya. It is the hub for content moderation for most of Eastern and Southern Africa – making Nairobi the epicenter of content moderation for nations totaling over 500 million people.
54. As well, content posted by users anywhere in the world in the following languages is principally moderated by the Respondent in Nairobi–
- | | |
|---------------------------------------|--------------|
| a. English as spoken in South Sahara; | f. Zulu |
| b. Swahili | g. Tswana |
| c. Amharic | h. Afrikaans |
| d. Tigray | i. Somali |
| e. Oromo | j. Hausa |
55. Decisions made by human content moderators in Kenya are therefore made within the jurisdiction of this Honourable Court.
56. The moderators work under appalling, inhumane working conditions that make it impossible for them to adequately carry out their key role effectively. For instance–
- The Respondent has not hired enough content moderators, making the workload for those who are hired impossible to bear;
 - The Respondent gives the content moderators impossible targets in terms of the volume of content to be reviewed per day;
 - Content moderators are required to decide whether content violates the Facebook Community Standards within a very limited time (a matter of seconds) which compounds the pressure they face;

- d. The Respondent has given content moderators stringent performance metrics which are difficult to meet within the limited time they are allowed to review a post. Making the wrong decision leads to penalization of the moderator;
- e. Despite the dangerous and traumatic nature of their job, and repeated exposure to harmful content, content moderators are not offered adequate psychosocial support; and
- f. Content moderators are paid considerably less compared to content moderators based in other countries despite doing comparable jobs.

57. Given this background, the Petition will address–

- i) how the Respondent prioritizes inciteful, hateful and dangerous content and benefits from it;
- ii) the Respondent's failure to take down inciteful, hateful and dangerous content on Facebook;
- iii) the Respondent's discriminatory treatment of African Facebook users;
- iv) how the Respondent's actions and inactions have contributed to and facilitated gross violations of fundamental rights and freedoms; and
- v) The remedies due from the Respondent for violation of human rights and fundamental freedoms.

IV. FACTS RELIED UPON

A. THE RESPONDENT PRIORITIZES INCITEFUL, HATEFUL, AND DANGEROUS CONTENT AND BENEFITS FROM IT

58. In 2018, the Respondent changed the focus of the Facebook algorithm to promote what they referred to as 'meaningful social interactions' (MSI).

59. It was expected that MSI would prioritize–
- a. posts that spark conversations;
 - b. posts that inspire back-and-forth discussion in the comments section;
 - c. posts that make people want to share or react to the post; and
 - d. posts that constituted news starting conversations on important issues.
60. Inciteful, hateful, and dangerous posts hit all the marks of the posts MSI seeks to prioritize; they spark conversation, attract reactions and shares as well as motivate back-and-forth discussion in the comments section. In the context of countries in war, inciteful content can be camouflaged as news.
61. The very design of MSI therefore benefits inciteful, hateful and dangerous posts which means such posts will always be prioritized on the Feed and pushed to larger audiences.
62. Facebook users having noted that inciteful, hateful and dangerous content gets them more visibility are incentivised to post more of the same. The darker the content, the higher the likelihood it will be prioritized.
63. The Respondent is aware that MSI promotes inciting, hate speech, divisive and harmful content and hate speech and nonetheless decides to continue using the MSI metric.
64. There are adjustments that could be made to MSI to de-prioritize inciteful, hateful, and dangerous speech. The Respondent, having known what these adjustments are, has declined to make them as they would result in a decline in revenue.
65. The Respondent has therefore chosen to take no action to de-prioritize inciteful, hateful and dangerous content in order to protect its business interests. Put otherwise, the Respondent benefits from the prioritization of hateful, inciteful and dangerous content on its platform.

66. Worse still, the Respondent approves inciteful, hateful and dangerous posts as 'sponsored' posts. Sponsored posts are boosted aggressively and carried to new and larger audiences that are inaccessible to organic posts.
67. This further enriches the Respondent as they not only benefit from the increased engagement the post brings but also from direct revenue paid to the Respondent by the Facebook user to boost that post.
68. It is not accidental that Facebook users are in an ecosystem rife with inciteful, hateful and dangerous content. This ecosystem has been created by design.
- B. THE RESPONDENT HAS CONTRIBUTED TO THE LOSS OF LIVES, DISPLACEMENT OF FAMILIES, VILIFICATION OF INDIVIDUALS AND DESTRUCTION OF COMMUNITIES**

Murder and Displacement of Families

69. The 1st Petitioner is the son of Professor Meareg Amare Abrha who was an extremely well-respected university professor at Bahir Dar University in Ethiopia. He was not actively involved in politics nor in the conflict that has plagued Ethiopia.
70. On 9th October 2021, a Facebook page named 'BDU Staff', with 35,000 likes and 50,000 followers, posted a picture of Professor Meareg. Accompanying this picture was a caption stating–
- 'His name is Professor Meareg Amare Abreha. He is Tigrayan. We will tell you about how he was hiding at Bahir Dar University and carried out abuses and went to America while moving his family to Addis. For we did not know this, consider us dead, not alive (sic).'*
71. The post quickly garnered a post engagement of 11 shares, 135 likes and 40 comments.
72. Immediately, people published additionally inciteful and hateful comments to the post such as–

- a. What are you waiting for? You sleepy! How embarrassing you are! Why haven't you sucked his blood?
 - b. You sit idly by and talk while eating khat. If you are a true man, get organized and clean them. Do not forget that blabbering on Facebook only awakens them.
 - c. We have to find out the Junta's accomplice who helped him escape. What assurances do we have that his collaborators at the chemistry department are not still paying his salary after helping him escape?
 - d. You still have a lot of snakes under your arms. They say a snake bites a fool twice, once before seeing it, and once when they show others how they were bitten. Bahir Dar is the second Mekelle.
 - e. How many Juntas there are at BDU.
 - f. Amharas, beware of the Woyanes. (colloquial word for TPLF)
 - g. You found him only after he sold you out.
 - h. Nobody knew until now? We should have detained all staff.
73. The post and comments were inciteful in nature and called for people to cause harm to Professor Meareg.
74. They were posted at a time when the war between the government and the Tigray's People Liberation Front (TPLF) was ongoing and there was increased targeting of Tigrayan people.
75. Identifying him as a Tigrayan, and falsely associating him with TPLF, put Professor Meareg's life at imminent risk.
76. These posts and comments also amounted to doxing as they shared details on his place of work making it possible for people to track him down and cause him harm.
77. In Ethiopia, Facebook dominates Internet use and online posts are considered credible.

78. On seeing this post on 14th October 2021, the 1st Petitioner immediately reported the post to Facebook using the in-built 'Report this post' tool through this Facebook account Abrham Meareg (ጉዳ. ካሳ). He reported the posts multiple times. There is no doubt therefore that this post was brought to the attention of a human content moderator sitting in Nairobi.
79. The Respondent did not respond to the 1st Petitioner's report until 11th November 2021. Through his Facebook account, the Respondent informed the 1st Petitioner that the post violated the Facebook Community Standards and had been removed.
80. On checking, the 1st Petitioner realized that the post was still online and had not been removed despite what the Respondent had informed him.
81. As of 2nd December 2022 the time of preparing this Petition, the post remains online on Facebook, available for all to see.
82. Unfortunately, on 10th October 2021, the same Facebook account, BDU Staff, published another post. It showed Prof. Meareg's photo alongside the following accusations—
- a. He excavated a trench for Woyane;
 - b. He had hidden in Bahir Dar university in the name of an intellectual while practically supporting Woyane and helping massacre people;
 - c. He had accumulated many properties through participating in different unethical deeds;
 - d. He owned heavy vehicles and gave his heavy machinery called an excavator to the Woyane to dig trenches before the terrorist TPLF's invasion of various parts of Amhara;
 - e. He had embezzled and stolen huge sums of money, including how he "had a contract signed with METEC and received 50,000,000 [Fifty Million Birr] only to fill the room with useless and trashy objects that are

not even worth more than 10 million, made a shelf for chemicals and stole the rest of the money;

- f. That with this money, he built a house in Kebele 13. (This was particularly harmful as it pinpointed would-be attackers to the precise small neighbourhood in which the 1st Petitioner's family home was);
- g. That he showed ethnic preference in his working life, and gave big instruments in the laboratory to the Tigrayan-born and left idle other intellectuals born from other ethnicities;
- h. That he was in America and was attacking Ethiopia on social media. (At the time, Professor was in Addis Ababa and he never had a social media account).

- 83. The second post was liked over 40 times and shared multiple times.
- 84. Similarly, the 1st Petitioner reported this post to the Respondent severally using the in-built 'Report this post' tool.
- 85. The second post was taken down. But it was too late. The inciteful posts had already been acted upon. By the time the posts were taken down, the Professor was dead.
- 86. Professor Meareg, who was in Addis Ababa at the time, returned to Bahir Dar on 10th October 2021. As he had been informed about the alarming posts on Facebook, on 11th October 2021 he went to the Bahir Dar Special Zone Police and Security Office and the Amhara Regional State Police where he inquired whether any complaints had been made against him and whether he was being sought after by law enforcement officers or the government given what was being posted about him on Facebook.
- 87. Law enforcement officers assured him that he was not being sought after, which gave him the confidence to go back to his regular life.
- 88. The 1st Petitioner feared that the community would turn against Professor Meareg based on those posts. Tragically, he was right.

89. On 3rd November 2021, Professor Meareg was followed home from the University by a group of men on motor bikes. As he was packing his car outside his family home and on trying to open the gate, he was attacked. A large group of men wearing Amhara Special Forces uniforms and Amhara Special Forces boots approached him. The lead perpetrator had covered his face with a traditional cloth known as *shirit*. They fired their guns into the sky, and then at the fence and gate of the family home.
90. One of the men approached the Professor and shot him twice; once in the right shoulder and once in the leg. His car was later driven off by some of the attackers.
91. The remaining men circled Professor Meareg, who was lying bleeding on the ground and chanted the same insulting slander from the inciteful Facebook post – ‘Junta’. The men forbade any of the Professor’s neighbours and witnesses from helping him even though the hospital was hardly 300 meters away from where he lay. For seven hours, he lay there dying slowly in unimaginable suffering.
92. The 1st Petitioner’s mother came home to find her husband’s lifeless body. She begged for them to kill her too. They responded by calling her a ‘junta’ and told her to keep crying because they did not want to waste a bullet on her. Thereafter, she fled to Addis Ababa wearing the same clothes still soaked in his blood. Since then she remains severely traumatized to the point of screaming every night in her sleep.
93. Professor Meareg’s body was eventually taken to the hospital. He was buried in an unmarked grave and without so much as a coffin. He was not given his last rites as per his culture and religion. There was no funeral.
94. Professor Meareg’s family home has since been seized and occupied by Amharic fighters. None of his family members are allowed access into their family home.
95. Around the time Professor Meareg was murdered, there were countless inciteful, hateful, inciteful dangerous posts circulating on Facebook.. For example–

- a. On 30th October 2021 the account 'Gashaw Mersha' posted that 'from now on our stick will rest on the informant as much as it is on the invader...! No need to beg. It will be implemented from tomorrow onwards;
- b. On 30th October 2021 the account 'Yalelet Wondye' stated that in Bahir Dar (where the 1st Petitioner's family lived) there were 46,000 families and relatives of the Tigrayan terrorists. It called the families 'spotters' and 'spies' and made reference to the community being destroyed;
- c. On 31st October 2021, the account 'Leaked News አፈትላኪ ዜናዎች' posted the picture of two Tigrayans, an older woman and a younger man alleging that they were conspiring in a terrorist plan';
- d. Two days before the murder of Professor Meareg, the account the account 'ኢሳት ምን አለ', which translates to 'ESAT What's New' – from the ESAT (Ethiopian Satellite Television) posted '*Why do we tolerate the renegade Tigrayans among us while we are dying? Raise your machete, axe, or gun and ignite the campaign against renegade Tigrayans in the respective areas. Ignite the massacre to a point no Tigrayan survives.*'
- e. On 2nd November 2021 the account of 'ጥሩ ጎበዜ' ('Too good') posted '*Do not capture Junta, do not shelter a snake under your arms and feed it! Remove them!!!*'

These posts were shared from influential accounts and went viral. The posts remain on the Facebook platform to date.

96. Facebook is saturated with messages of this kind. As there was a targeted campaign against Tigrayans at the time, the Respondent had a duty of care to protect Professor Meareg from harm by disallowing the 9th and 10th October 2021 posts which ultimately led to the loss of his life.

97. Professor Meareg was hunted and killed following the inciteful Facebook posts shared on the BDU Staff Facebook page. The assailants knew his location as the posts had also doxed him by stating accurately where he worked and lived.
98. The 9th October 2021 post remains on Facebook **more than a year later**, despite the Respondent's acknowledgment that it violates their Community Standards. The 1st Petitioner has made all efforts to ask the Respondents to pull it down.
99. On 26th March 2022, the 1st Petitioner reported the BDU Staff page asking for it to be taken down altogether.
100. Two hours later, the Respondent sent a response to the 1st Petitioner that–
 - a. They would not be taking down the BDU Staff Facebook account;
 - b. The BDU Staff account did not go against any of the Facebook Community Standards;
 - c. If the 1st Petitioner had a problem with any of the posts in the BDU Staff page, he should report the specific post. He had, of course, already done this with no success;
 - d. The 1st Petitioner should unfollow or block the BDU Staff page if he did not want to see the posts on the page that offend him.
101. The Respondent failed to protect Professor Meareg and his family in the following ways–
 - a. The algorithm did not detect at the first instance that the post and the comments shared on 9th and 10th October 2021 were not only inflammatory but also amounted to incitement to violence, hate speech and advocacy of hatred on ethnic grounds which are all forbidden as per the Facebook Community Standards;
 - b. There was an unreasonable delay in reviewing the impugned posts and comments even after they were repeatedly brought to the attention of Facebook content moderators based in Nairobi. The report was made

on 14th October 2021 yet the Respondent responded on 11th November 2021, eight days after Professor Meareg had been murdered;

- c. Even after ruling the 9th October 2021 post violated the Facebook Community Standards, the Respondent failed to pull it down and has failed to do so, as of the date of the drafting of this petition; and
- d. The Respondent failed to deactivate the BDU Staff account which in itself encourages accounts similar to post more inciteful, hateful and dangerous content.

102. The Respondent's actions and inactions led to the following–

- a. The murder of Professor Meareg;
- b. The displacement of the 1st Petitioner's family as they can no longer return home; and
- c. The disintegration of the community where the 1st Petitioner and his family resided.

103. Posts like the one shared on the BDU Staff account on 9th and 10th October 2021 are not rare on Facebook. The 1st Petitioner, having seen the potential dangers such posts created for families and communities in Ethiopia, had been reporting them to the Respondent in the hope that inciteful, hateful and dangerous posts on Facebook would decrease the saturation of toxic content on Facebook involving Ethiopia.

104. For instance, the 1st Petitioner reported the following posts–

- a. a post by the account name 'Raya Press' on 11th July 2021 as it showed dead bodies accompanied with the caption 'Some of the TPLF militants who came from the side of the border and were destroyed by the Amhara special forces'. In response, the Respondent sent a message to the 1st Petitioner on 11th November 2021. The message was blank. The post remains online at the time of preparing this Petition.

- b. a post from the account 'Mehden Alemu' on 26th July 2021 which had posted 'if we don't like your eye colour we load [i.e., our weapons]'. The Respondent responded on 2nd August 2021 that the post did not violate the Facebook Community Standards.
- c. a post from the account 'Abiy Ahmed Ali' which stated 'We work to get the weeds up. But when we pull out the weeds, we take all possible care not to damage the wheat. In our country, weeding is done with a hammer. The children of Ethiopia are also doing it'. The Respondent rejected the 1st Petitioner's report leaving the post online to date.

105. The Respondent's inaction was not accidental or unique in the case of Professor Meareg; it is typical of the Respondent's culture of disregard for human rights – particularly the rights of those outside the English-speaking United States.

Vilification of individuals and destruction of communities

- 106. The 2nd Petitioner was born in Ethiopia and lived in Addis Ababa until 2015. He is a lawyer and academic, who held various positions in Ethiopia before moving to Kenya in 2015 to work as a Regional Human Rights Researcher at Amnesty International (the 1st Interested Party) covering Ethiopia and Eritrea. He is now a Legal Advisor at Amnesty International.
- 107. The 2nd Petitioner's employer is a non-governmental organization which fights against human rights abuses worldwide. The 2nd Petitioner carries out this work within the Horn of Africa and mostly Ethiopia. His role involves documenting and reporting on human rights violations in Ethiopia. The reports he prepares as part of his work are publicly accessible as they are the 1st Interested Party's tools for advocacy. He has become the public face of the 1st Interested Party in Ethiopia as a result of the work he has done for the organisation.
- 108. The 1st Interested Party has published several reports on Ethiopia–

- a. A report published in May 2020 titled 'Beyond Law Enforcement'. It set out how security forces in Oromia had carried out extrajudicial executions, arbitrary arrests, detentions, sexual violence, torture, forced evictions, destruction of property et al. The report called on the Ethiopian government to conduct investigations into these human rights violations and prosecute those responsible.
- b. A report published on 26th February 2021 documenting the Axum massacre that took place between 19th and 29th November 2020 and 28th to 29th November 2020; and
- c. A report published on 6th April 2022 documenting the atrocities that had taken place in Ethiopia's Western Tigray Zone titled 'We Will Erase you from This Land'.

- 109. The findings in these reports is damning of the Ethiopian government's actions.
- 110. Following the publication of these reports, the 2nd Petitioner and the 1st Interested Party have faced threats and attacks from the Ethiopian government and from Ethiopians in the country and outside as well.
- 111. As the 2nd Petitioner is known in Ethiopia to be working for the 1st Interested Party, he has been singled out as a target for inciteful and hateful vitriol on Facebook. He believes it is, in part, retaliation for his work exposing human rights abuses and breaches of international humanitarian and human rights law in Ethiopia. He has also faced doxing attacks and been the victim of misinformation and disinformation attacks in an attempt to discredit his work.
- 112. The 2nd Petitioner has a Facebook account under the handle Fisseha M Tekle (ፍሰሃ ጥክፍ). He created it in 2007. For the first few years, he used it to keep in touch with friends and family. In the recent years, he uses the account less and less and only publishes posts concerning the nature of his work as he no longer feels safe enough to post any personal information.

113. Since 2015, he has been using his Facebook account while in Kenya. The Facebook algorithm recommends and brings for him content to see while he is in Kenya. No matter where the content is posted from, it reaches him while in Kenya.
114. Due to the nature of his work, the 2nd Petitioner has been subjected to messages advocating for hatred that constitute incitement to violence, hostility and discrimination. Between 30th May 2020 and 27th February 2021, there have been more than thirty hateful posts directed towards him. Generally, the posts allege–
- a. The 2nd Petitioner is a Tigrayan from Adwa hired by the 1st Interested Party;
 - b. The 2nd Petitioner and his wife were born in Adwa;
 - c. The 2nd Petitioner sucks Amhara blood;
 - d. The 2nd Petitioner is biased and compromised the 'Beyond Law Enforcement' report as he is from Adwa and by reason of that could not properly state the abuse and injustice against the Amhara;
 - e. The 2nd Petitioner looks like a hyena, a rat and a crocodile;
 - f. The 2nd Petitioner was sent abroad by the Tigray's People Liberation Front (TPLF) to work undercover at the 1st Interested Party to spy for TPLF;
 - g. The 2nd Petitioner is Sebhat Nega's son-in-law (TPLF founder and long-serving politician);
 - h. The reports published by the 1st Interested Party were paid for by TPLF;
 - i. The reports published by the 1st Interested Party are biased;
 - j. The 2nd Petitioner is a baby junta;
 - k. The 2nd Petitioner is destroying the credibility of the 1st Interested Party;
 - l. The Ethiopian government and Ethiopians should take action against the 2nd Petitioner.

m. The 2nd Petitioner is TPLF's servant;

n. The reports by the 1st Interested Party are a work of fiction by the 2nd Petitioner;

115. At the time these posts were published, there was an ongoing armed conflict in Tigray between the government and TPLF. Many Tigrayans were ethnically profiled and accused of associating with TPLF. Some were tortured and lost their lives. The accusations that the 2nd Petitioner was from Tigray and that he was in support of TPLF were tantamount to hate speech, incitement to violence and advocacy to hatred on ethnic grounds.

116. Indeed those who read the posts left similarly hateful and inciteful comments thereunder furthering the incitement to violence and discrimination. Some of these comments include–

a. The reports published by the 2nd Petitioner are to further TPLF's political agenda and amount to propaganda;

b. The 2nd Petitioner should be removed from his position;

c. The only reason the 2nd Petitioner cited in his report that ethnic cleansing was being committed against Tigrayan-born Ethiopians is because he himself is Tigrayan-born;

d. The 2nd Petitioner is a killer of nations;

e. The 2nd Petitioner is a mercenary;

f. The 2nd Petitioner is a son of a prostitute and a descendant of beggars and renegades;

g. The 2nd Petitioner has an ancestry of traitors and is Ethiopia's enemy;

h. The 2nd Petitioner's life should be short;

i. Tigrayans are traitors by their very nature; and

j. Tigrayans will vanish like thin air.

117. All the posts referred to above were public posts visible to the 2nd Petitioner while in Kenya. Many of the posts mentioned the 2nd Petitioner by name which means whenever he searches for his name even from the Google search engine, the posts are brought up.
118. At the time of filing this petition, the majority of the posts and comments remain published on the Facebook platform.
119. It is apparent from the posts and comments that the hate speech spewed against the 2nd Petitioner is ethnically based. Considering the posts and comments were made at a time when there were credible allegations of ethnic profiling against Tigrayans, and further considering several Tigrayans had lost their lives after similar online attacks, the 2nd Petitioner took these posts to mean that there were people who intended to harm him.
120. As a result of the hate speech targeting him, the 2nd Petitioner was not able to return to Ethiopia to visit his family who still reside in Ethiopia. He lives in constant fear that harm may come to him even in Nairobi, as it is impossible to know which individuals wish him harm and where they are based.
121. The 2nd Petitioner's fear is not unfounded; beyond the 1st Petitioner's tragic case, there have been many instances where online threats have materialized to harm people like him.
122. Since the conflict began in Ethiopia, Facebook posts have contributed to or caused violence multiple times. For instance—
 - a. The mass murder and burial of Gebremichael Tewelmedhi and eleven others, following a series of posts calling for the cleansing of Amhara territories;

- b. The arbitrary arrest and murder of Hadush Gebrekirstos who was heard speaking Tigrayan at a time when there were numerous posts calling for the ethnic cleansing of Tigrayans;
- c. The murder of Hachalu Hundessa following the publishing of incitement to violence as a reaction to a video where he offered his opinion on the 19th Century Ethiopian emperor;
- d. The killing of over 100 people in Bikuji Kebele in the Metekel zone of the Benishangul-Gumuz region of Ethiopia following the publishing of a post by Gashaw Mersha calling for 'self-defence'; and
- e. The butchering of more than a dozen Qimant in Aykel following the publishing of a post by Tewodros Kebede Ayo accusing the Qimant community of supporting opposition forces and calling for their 'clean-up'.

123. To date, there are innumerable Facebook posts calling for, amongst others–

- a. intercommunal violence;
- b. general incitement to conflict;
- c. rape as a weapon of war;
- d. murder and abuse of corpses;
- e. weaponized starvation;
- f. immediate killing to save costs;
- g. use of concentration camps;
- h. branding of human beings; and
- i. burying human beings.

These posts aggravate an already dire situation – because they often catalyze actual violence.

124. These posts are constantly reported to the Respondent using the in-built 'Report this post' tool on Facebook. The posts are reviewed by content moderators in Nairobi who often rule that they do not violate Facebook Community Standards and refuse to pull down the offensive posts.
125. The Facebook Community Standards forbid the posting of inciteful, hateful and dangerous content.

Spill Over Effect to Kenya

126. Marsabit County is rife with ethnic conflict. This is usually in the form of cattle rustling, clan and ethnic violence and the displacement of people. The ease of access to light weapons has been accelerated by the Ethiopian crisis which has enabled a steady flow of guns and other armaments.
127. There is a noted spill over effect of the conflict in Ethiopia in Marsabit County. Violence in Ethiopia's Oromia region coincided with increasing clan attacks between Gabra and Borana people in Marsabit County have led to the declaration of a curfew and deployment of armed forces to the region.
128. The instability in Ethiopia without a doubt threatens Kenya's national security.
129. The Respondent's business choices and inaction has far-reaching consequences not only for individuals but for whole regions. They create a ripple effect of harm across communities and in this case across countries.

Hateful, Inciteful and Dangerous Content by Terrorist Groups

130. The East Africa region has seen its share of terrorist attacks. Kenya for example, has suffered several attacks in the last decade.
131. The Facebook Community Standards state that organisations or individuals that proclaim a violent mission or engaged in violence are not allowed to have a presence on Facebook. This Standard is far from accurate as the reality is that there are East African militant groups with an online presence in East Africa.

132. For instance, from 15th to 16th January 2019, the DusitD2 complex was attacked by terrorists leaving at least 21 people dead. Investigations into the attack have shown that the attackers opened a Facebook account and used it to plan the attack until the last day of the raid.
133. As well, Facebook has become one of the channels through which terrorist propaganda is shared. Profiles and pages share terrorist content openly in Swahili, Somali and Arabic languages.
134. The key themes in Facebook posts by extremist pages are calls for violence, ex-communication from religion and support for violent acts by extremist groups.
135. Prior to Kenya's 2022 elections, there were also calls for boycott of Kenya's elections and for violence during Kenya's electioneering period.
136. The presence of such users on the platform, in and of itself shows that extremist content benefits from the Respondent's failure to moderate hateful, inciteful and dangerous content.

C. DISCRIMINATORY TREATMENT OF FACEBOOK USERS WITHIN THE CONTENT MODERATION AMBIT OF KENYA

137. The Respondent is technologically able to adjust and restrict Facebook's viral algorithm. They have used this ability to protect Facebook users in the US, but fail to invoke it to protect communities elsewhere.
138. On 6th January 2021 there was an attack on the U.S. Capitol that disrupted a joint session of the U.S. Congress in the process of affirming the U.S. presidential election results. Within a few hours of the attack, the Respondent deployed the 'Break the Glass' (BTG) procedure.
139. The Respondent describes BTG as a long series of specific algorithmic changes deployed in times of crisis situations whereby inciteful, hateful and dangerous content is quickly removed, muted and prevented from further distribution.

140. The Respondent has also shown that the algorithm can be tweaked for a specific audience by doing so in India. They adopted a hybrid-MSI approach there to solve a commercial problem.
141. In Myanmar, after horrific violence that went unanswered by the Respondent for many months, the Respondent also tweaked the algorithm to reduce the distribution of highly-viral content during a time of conflict.
142. These measures have not all been adopted with regard to Kenya and Ethiopia, despite Ethiopia facing far more conflict than was witnessed in US on 6th January 2021.
143. This amounts to discriminatory treatment of Facebook users within the content moderation ambit of Kenya.
144. The Respondent has categorized countries where it draws revenue as follows–
- a. United States and Canada
 - b. Europe
 - c. Asia-Pacific
 - d. Rest of World
145. Rest of World includes **all** countries in Africa, Latin America and Middle East.
146. The Respondent prioritizes the United States and Canada category over all other categories.
147. For instance, 87% of the Respondent’s misinformation budget is spent on the US while a mere 13% is left to be shared between all 53 African countries, Latin America and Middle East. The result is that some communities are left to ruin while others are proactively protected. This amounts to discrimination.
148. One of the areas this differential treatment is best exemplified is the way the Respondent has entrenched language disparity on its platform. For example–

- a. While Facebook is available worldwide, it has not been made fully accessible to non-English speaking communities. Key features on the platform such as the Help Centre and the Community Standards Enforcement Centre have not been fully translated to local languages.
- b. The algorithm is unable to detect inciteful, hateful and dangerous content when shared in local languages. MSI, in fact, will boost such content and recommend it to larger audiences as it will have all the qualities of a post the MSI is looking to promote.
- c. The Respondent fails to hire remotely enough content moderators who speak local languages. For example, while there are 85 languages in Ethiopia, only 3 of those languages are covered by the content moderators who currently work for Facebook . For most African communities, this means a lot of inciteful, hateful, and dangerous content will pass undetected as there is no one to understand what has been posted.

- 149. Language disparity can only be resolved by the Respondent investing more resources towards language equity.
- 150. This discriminatory treatment is responsible for the loss of lives, displacement of families, vilification of individuals and destruction of communities, as detailed above.
- 151. For the 1st Petitioner, had the Respondent invested adequately in content moderation in Amharic, the Petitioner's father would likely still be alive. The impugned posts would not have been allowed to stay on the platform – a better-trained algorithm would have detected them at the earliest opportunity and taken them down. Additionally, having sufficient numbers of well-trained and supported human content moderators would have meant the posts were seen far sooner and taken down – reducing the likelihood of people acting on the incitement.

152. For the 2nd Petitioner, the algorithm would not have allowed the sea of inciteful and hateful posts to be published, as it would have detected such posts and either automatically pulled them down or presented them to moderators for moderation. Further, the algorithm would not have carried the torrent of hateful content being shared.
153. The danger of the Facebook platform spreading inciteful content, and Facebook's staffing failures leaving such incitement up for months or years, cannot be overstated.
154. All these can be prevented by the Respondent taking its duty of care seriously and upholding its responsibility to respect human rights.

V. JURISDICTION

155. The jurisdiction of this Honourable Court is invoked by the following–
- (i) *Recommending inciteful, hateful and dangerous content to Facebook users in Kenya*
156. Millions of people use Facebook in Kenya. What they view in their Feeds is that which the Respondent's algorithm has recommended to them.
157. The 2nd Petitioner was in Kenya when the Respondent's algorithm brought hateful, inciteful and dangerous content to his Feed for him to view and interact with.
158. The Respondent's algorithm does the same to millions of people who use Facebook while in Kenya as all the posts cited in this Petition are available and viewable in Kenya.
159. The algorithm recommending content to people in Kenya amounts to the Respondent's activity in Kenya.
160. This Honourable Court has jurisdiction to hear a petition impugning the constitutionality of a multinational company's activity in Kenya, hence jurisdiction over this Petition.

(ii) Content Moderation Taking Place in Kenya

161. The Facebook posts underlying this Petition were posts shared in Sub-Saharan English, Swahili, Amharic, Tigrinya, Oromo and Somali. When posts in these languages are queued to human moderators, they are moderated at Facebook's hub in Kenya.
162. The decision to take down Facebook posts or to let them remain on Facebook is yet another activity of the Respondent taking place in Kenya. This gives this Honourable Court the jurisdiction to examine the Respondent's conduct and make a determination on its constitutionality.

(iii) Selling advertising space and payment of tax in Kenya

163. As explained above, the Respondent draws its revenue from selling advertisement space on its platforms, Facebook, Instagram and Messenger.
164. Third parties, both Kenyan and non-Kenyan, can and do advertise their products to Facebook users in Kenya as they can choose what audience they would like their adverts to be shown to.
165. To this end, the Respondent pays tax to the Government of Kenya. This Honourable Court has jurisdiction over the Respondent as it is an entity trading in Kenya.

(iv) Preserving the dignity of individuals and communities

166. At the foundation of this Petition is the way the Respondent's algorithm, and content moderation decisions taken in Kenya, cause harm to communities both within and outside Kenya. The regions affected by the decisions made – or not made – in this moderation hub for in Eastern and Southern Africa include some 500 million people. The Respondent may protest that not all of those 500 million Africans use Facebook, but neither did the First Petitioner's father – and yet, because of slander and incitement on Facebook, he is dead.

167. The purpose of recognising and protecting human rights and fundamental freedoms is given under Article 19(2) of the Constitution as–

‘to preserve the dignity of individuals and communities...’

168. In a case such as this where the dignity of individuals has been harmed and communities have been ruined, this Honourable Court has a duty to step in to stop any further ruin.

VI. GROUNDS OF THE PETITION

169. As per Article 20(1) of the Constitution, the Bill of Rights binds all persons. While undertaking its activities in Kenya, the Respondent has a duty to respect the Constitution and protect the fundamental rights and freedoms in the Bill of Rights. The Respondent has shown blatant disregard to the human rights and caused irreparable harm to the 1st and 2nd Petitioners, those whom they represent and to communities at large.

170. This Petition is brought on the following grounds–

- a. The Respondent has allowed and continues to allow inciteful, hateful and dangerous posts on Facebook thereby violating the spirit of Article 33(2) of the Constitution of Kenya. Further, the Respondent benefits from the prioritization of such posts which is an affront to the Constitution of Kenya.
- b. The Respondent has allowed posts that amount to doxing to be published on Facebook and availed such posts to users in Kenya thereby violating Article 31(c) of the Constitution;
- c. The Respondent’s algorithm recommends content that amounts to propaganda for war, hate speech, incitement to violence and advocacy of hatred to Facebook users in Kenya thereby violating their right to dignity under Article 28 of the Constitution and their

right not to be subjected to any form of violence or subjected to psychological torture under Article 29 of the Constitution;

- d. Failure by the Respondent to take down content that amounts to propaganda for war, hate speech, incitement to violence and advocacy of hatred has led to the loss of lives thereby violating the right to life as guaranteed under Article 26 of the Constitution;
- e. Failure by the Respondent to take down content that violates the Facebook Community Standards amounts to unfair administrative action and is a violation of Article 47 of the Constitution;
- f. The Respondent's preferential treatment of users in some countries as opposed to its treatment of Facebook users in Africa amounts to discrimination on grounds of race, and ethnic and social origin which is a violation of Article 27 of the Constitution;
- g. The Respondent has failed to protect the health and safety of their users by allowing content that amounts to propaganda for war, hate speech, incitement to violence and advocacy for hatred to be published on Facebook thereby violating Article 46 of the Constitution; and
- h. The Respondent's action has led to the vilification of individuals and destruction of communities thereby violating the core purpose of the Constitution as espoused under Article 19(2) of the Constitution.

VII. PARTICULAR HUMAN RIGHTS VIOLATIONS

VIOLATION 1: VIOLATION OF ARTICLE 33 (2) OF THE CONSTITUTION (RIGHT TO FREEDOM OF EXPRESSION)

171. Article 33 of the Constitution guarantees the right to freedom of expression. Article 33(2) however expressly provides that freedom of expression does not extend to propaganda for war, incitement to violence, hate speech, advocacy of hatred that constitutes ethnic incitement, vilification of others, incitement to cause harm or based on discrimination.
172. Hate speech can be defined as in the National Cohesion and Integration Act as read with Article 20 of the ICCPR as speech that constitutes incitement to discrimination, hostility or violence.
173. The Facebook posts highlighted in this Petition amount to hate speech. Some of the posts also amount to incitement to violence and advocacy of hatred on ethnic grounds.
174. The Respondent carrying this type of speech on its platform and promoting it violates Article 33 (2) of the Constitution.

**VIOLATION 2: VIOLATION OF ARTICLE 31 (C) OF THE
CONSTITUTION (RIGHT TO PRIVACY)**

175. The Facebook posts identifying the 1st and 2nd Petitioner's residence and place of work amount to doxing as they revealed private information concerning them.
176. Specifically, the post by the page BDU staff disclosed the 1st Petitioner's father's image and likeness, linked his image to his name, revealed his ethnicity and his place of work. It also disclosed his physical movements.
177. The majority of the posts concerning the 2nd Petitioner were also doxes as they revealed his image and likeness, linked it to his name, revealed his place of work and his job description, his ethnicity, the name and likeness of his wife including which ethnicity she is from and which country the 2nd Petitioner and his wife reside in.
178. As per Article 31(c) of the Constitution, information relating to one's family or private affairs ought not to be unnecessarily required or revealed. As these posts

were shared out of malice, their information was shared unnecessarily hence a violation of their right to privacy.

179. As for the 1st Petitioner, this right was violated in Kenya when the Respondent failed to take down the doxing posts.

180. For the 2nd Petitioner, the Respondent violated his right while he was in Kenya when they allowed the posts to be published and carried the same to him.

**VIOLATION 3: VIOLATION OF ARTICLES 28 (RIGHT TO DIGNITY) AND
29 OF THE CONSTITUTION (FREEDOM AND SECURITY
OF THE PERSON)**

181. Content that amounts to propaganda for war, hate speech, incitement to violence and advocacy for hatred is extremely traumatizing. The Respondent not only allows the publishing of such content but also carries it to the users' Feed where they then see it. This is an assault on a user's mental and physical state.

182. For the 2nd Petitioner, he was forced to view content where he was repeatedly accused of the worst kind of crimes.

183. When the Respondent failed to take down the posts concerning the 1st Petitioner's father, they condemned him to being continuously assaulted by seeing the impugned posts which remain on the Facebook platform to date. Having to relive the fateful ordeal of his father amounts to cruel, inhuman and degrading treatment.

184. Article 28 provides that all persons have inherent dignity and the right to have that dignity respected and protected.

185. The Respondent failed to respect and protect the dignity of the Petitioners, their families, their communities and all Facebook users who saw the impugned posts.

186. Article 29(f) guarantees every person's right not to be treated in a cruel, inhuman or degrading manner. Inciteful content is degrading to not only the subject of the

post but also the Facebook user who is served with such content. Where inciteful, hateful and dangerous content has led to further violation of rights, the victims are additionally treated in a degrading manner.

VIOLATION 4: VIOLATION OF ARTICLE 26 (RIGHT TO LIFE)

187. As detailed above, many people have lost their lives as a direct result of Facebook posts that incite violence. This includes the 1st Petitioner's father.
188. Had the Respondent exercised a reasonable standard of care with regards to its algorithm and trained its algorithm to pick up inciting, hateful and dangerous content that is shared in non-English languages, the algorithm would have flagged the offending posts before the posts reached a considerable audience.
189. The Respondent also had a duty of care to adequately staff the content moderators and particularly to ensure that content moderators accurately represent the languages of Facebook users. Further, the Respondent had a duty of care to ensure that the working conditions for the content moderators allowed for a conducive environment for them to carry out their functions effectively.
190. The Respondent had a duty to pull down the posts once the same was brought to their attention.
191. Failure to discharge this duty of care led to the loss of lives. The Respondent ought to be held responsible for those deaths.

VIOLATION 5: VIOLATION OF ARTICLE 47 (FAIR ADMINISTRATIVE ACTION)

192. The Respondent's Community Standards provide that content that constitutes violence and incitement, hate speech, content on dangerous individuals and organizations, content that coordinates harm and promotes crime, violent and graphic content, misinformation, inauthentic behaviour, bullying and harassment goes against the Standards and will be pulled down.

193. It is inexcusable that after the 1st Petitioner reported the impugned posts, the Respondent failed to take timely action by removing the posts for violating the Facebook Community Standards where both the posts and the comments were both false, and called for the murder of his father.
194. This is not an isolated incident – but a pattern observed by those who report content that is moderated in Nairobi.
195. Article 47 of the Constitution provides that administrative action ought to be reasonable and procedurally fair.
196. The Respondent's refusal to take down content that is apparent doxing or incitement to violence (from its natural construction), and which clearly violates the Facebook Community Standards, is not only unreasonable but also unfair.
197. That the Respondent would have arrived at a different decision were Kenya and Ethiopia a preferentially treated country compounds the unfairness and illegality in the Respondent's decisions.

VIOLATION 7: VIOLATION OF ARTICLE 27 (EQUALITY AND FREEDOM FROM DISCRIMINATION)

198. Facebook users all over the world are not charged to onboard onto the platform.
199. The Respondent therefore has a duty to treat all users the same as they signed up for a similar product.
200. On this basis alone, treating users from certain parts of the world preferentially amounts to discrimination.
201. The Respondent has categorized countries according to the amount of revenue earned in the backend through advertising. The countries that bring the most revenue receive the most preferential treatment. This approach dehumanizes Facebook users and even puts them at risk.

202. The problems addressed in this Petition are inherent to the Facebook design itself. To preferentially invest in product improvement for some countries and not others is to say that some communities deserve to be treated in a cruel, inhuman and degrading manner by the algorithm while others do not. This approach is rooted in ethnic and racial discrimination which violates Article 27 of the Constitution of Kenya.
203. The discrimination practised by the Respondent is inhumane.

VIOLATION 8: VIOLATION OF ARTICLE 46 (CONSUMER RIGHTS)

204. Facebook is a product offered by the Respondent.
205. Under Article 46 of the Constitution, the Respondent owe Facebook users a legal duty to ensure that the product is of reasonable quality. Further, the Respondent have a duty to protect the health and safety of Facebook users.
206. A product that allows propaganda for war, hate speech, incitement to violence and advocacy of hatred to be shared cannot be said to be of reasonable quality.
207. This is especially so considering that the Respondent has the ability to build and deploy technological solutions to improve the quality of the product by minimizing the publishing and sharing of extreme content – but refuses to prioritise this, to avoid cutting down the Respondent’s profits.

VIII. PRAYERS

208. Your Petitioners therefore pray for the following for themselves and for the class they represent–
- a. A declaration that the Respondent violated the Petitioners rights and the rights of those in the represented class as guaranteed under Articles 19(2), 26, 27, 28, 29, 31, 33, 46, 47, 48 and 50 of the Constitution of Kenya 2010.

- b. A declaration that the Respondent's algorithmic and content moderation decisions continue to threaten the rights of the Petitioners and those in the represented class as guaranteed under Articles 19(2), 26, 27, 28, 29, 31, 33, 46, 47, 48 and 50 of the Constitution.
- c. A declaration that the Respondent's failure to adequately staff and appropriately support such content moderators has led to the violation of and threatens further violation of the Petitioners rights and those in the represented class as guaranteed under Articles 19(2), 26, 27, 28, 29, 31, 33, 46, 47, 48 and 50 of the Constitution.
- d. An order that the Respondent is liable to pay damages to the 1st and 2nd Petitioners and to any member of the class they represent for the violation of their rights as stated in prayers (a) and (c) above.
- e. Upon the finding of liability as in prayer (d) above, this Honourable Court be pleased to grant the Petitioners and any member of the class they represent a hearing on the quantum of damages payable.

OR ALTERNATIVE TO (e) ABOVE:

- i. Upon the finding of liability as prayed in (d) above, this Honourable Court be pleased to issue an order establishing the Facebook Victims Fund in Kenya to be administered by this Honourable Court or its nominee and to which the Respondent shall be required to deposit Kshs 250 Billion for the benefit of the 1st and 2nd Petitioners and of the victims of the Respondent's violation of the rights

listed in (a) and (c) above who belong to the represented class. The Respondent is to deposit the said amount within 14 days of judgment. The quantum of damages payable to each victim shall be determined by this Honourable Court on a case-to-case basis. On exhaustion of the Fund, this Honourable Court reserves the right to review this order to make provision for any other members of the represented class.

ii. Upon the finding of liability as prayed in (d) above, an order establishing the Facebook Advertisements Victims Fund in Kenya to be administered by this Honourable Court or its nominee and to which the Respondent shall be required to deposit Kshs 50 Billion for the benefit of any Facebook User in Kenya who has been shown a boosted/sponsored post containing content that constitutes inciteful, hateful and dangerous speech. The Respondent is to deposit the said amount within 14 days of judgement. The quantum of damages payable to each victim shall be determined by this Honourable Court on a case-to-case basis. On exhaustion of the Fund, this Honourable Court reserves the right to review this order to make provision for any other members of the represented class.

f. An order to the Respondent to issue an apology on its website, blog, its CEO's Facebook account and all other of its official channels with international reach for failing to immediately take down the posts published on the BDU Staff account on 9th and 10th October 2021 concerning Prof. Meareg and thereby causing

his death. The apology is to be issued withing 14 days of judgement.

- g. An order to the Respondent to issue an apology on its website, blog, its CEO's Facebook account and all other of its official channels with international reach for allowing inciteful, hateful and dangerous content to be shared concerning the 1st Petitioner's father and the 2nd Petitioner. The apology is to be issued withing 14 days of judgement.
- h. An order compelling the Respondent to within 14 days alter its algorithm in the following manner–
 - i. That the Facebook algorithm will no longer recommend to Facebook users inciteful, hateful and dangerous content;
 - ii. Inciteful, hateful and dangerous content shall be demoted whenever it appears; and
 - iii. Crisis response interventions to be developed and made readily available in Kenya and to any of the countries within the content moderation ambit of Nairobi.

Proof that these changes to the algorithm have been made must be presented by the Respondent to this Honourable Court via affidavit within 14 days of judgment.

- i. An order compelling the Respondent to ensure linguistic equity between Facebook users located within the content moderation ambit of Kenya and Facebook users in other countries including but not limited to–
 - i. Train its algorithm to be able to capture inciteful, hateful and dangerous speech in all the local languages spoken in those countries within 60 days of judgement;

- ii. Translate the Community Standards in every local language spoken in those countries within 60 days of the judgement
- iii. Translate all the instructions in the Help Centre and the Community Standards Enforcement Centre in every local language spoken in those countries within 60 days of the judgment; and
- iv. Provide proof of engagement of an adequate number of content moderators working in a fair working environment who speak the local languages of the countries within the content moderation ambit of Kenya within 30 days of judgment.

Proof that these changes have been made must be presented by the Respondent to this Honourable Court via affidavit within 90 days of judgment.

- j. An order awarding the costs of this Petition together with interests to the Petitioner.
- k. Any such other or further orders as it may deem just and expedient in the circumstances in enforcing violation of human rights and fundamental freedoms.

DATED at NAIROBI this 13TH day of DECEMBER 2022



NZILI & SUMBI
ADVOCATES FOR THE 1ST AND 2ND
PETITIONERS

Admission No. P.105/12013/16
 Practice No. LSK/LSK/2022/00920



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REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
CONSTITUTIONAL AND HUMAN RIGHTS DIVISION
CONSTITUTIONAL PETITION NO. _____ 2022

IN THE MATTER OF THE ALLEGED CONTRAVENTION OF ARTICLES 2, 10, 19, 20,
21, 22, 23, 24, 25, 26, 27, 28, 29, 31, 33, 46, 47, 48, 50, 159, 165, 258 AND 260 OF
THE CONSTITUTION OF KENYA, 2010

AND

IN THE MATTER OF CONSTITUTION OF KENYA (PROTECTION OF RIGHTS AND
FUNDAMENTAL FREEDOMS) PRACTICE AND PROCEDURE RULES 2013

AND

IN THE MATTER OF THE ALLEGED CONTRAVENTION OF ARTICLES 6, 19 AND 20 OF
THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS

AND

IN THE MATTER OF THE ALLEGED CONTRAVENTION OF SECTIONS 3 AND 13 OF THE
NATIONAL COHESION AND INTEGRATION ACT NO. 12 OF 2008

AND

IN THE MATTER OF THE ALLEGED CONTRAVENTION OF SECTIONS 3 AND 4 OF THE
FAIR ADMINISTRATIVE ACTION ACT NO. 4 OF 2015

AND

IN THE MATTER OF ALLEGED CONTRAVENTION OF GUIDING PRINCIPLES 11, 12, 13, 14,
15, 17, 18, 19, 21, 22, 23, 29 AND 31 OF THE GUIDING PRINCIPLES ON BUSINESS AND
HUMAN RIGHTS IMPLEMENTING THE UNITED NATIONS 'PROTECT, RESPECT AND
REMEDY' FRAMEWORK

AND

IN THE MATTER OF THE ALLEGED CONTRAVENTION OF THE INTERNATIONAL
CONVENTION ON THE ELIMINATION OF ALL FORMS OF RACIAL DISCRIMINATION

BETWEEN

1. ABRHAM MEAREG.....1ST PETITIONER
2. FISSEHA TEKLE.....2ND PETITIONER
3. KATIBA INSTITUTE.....3RD PETITIONER

VERSUS

META PLATFORMS, INC..... RESPONDENT

AND

1. AMNESTY INTERNATIONAL.....1ST INTERESTED PARTY
2. GLOBAL WITNESS.....2ND INTERESTED PARTY
3. KENYA HUMAN RIGHTS COMMISSION.....3RD INTERESTED PARTY
4. NATIONAL COHESION AND
INTEGRATION COMMISSION.....4TH INTERESTED PARTY
5. ARTICLE 19 EASTERN AFRICA.....5TH INTERESTED PARTY
6. KENYA NATIONAL
COMMISSION ON HUMAN RIGHTS.....6TH INTERESTED PARTY
7. LAW SOCIETY OF KENYA.....7TH INTERESTED PARTY

DEFINITION OF TERMS

In this Petition, the following words and phrases shall have the meaning assigned in the table below–

Words and Phrases	Meaning
1. Algorithm	A set of rules operated by a computer, such as the set of interconnecting software rules that determine which content will be shown on the Facebook Feed.
2. Artificial Intelligence (AI)	A set of software processes that try to discern patterns from large quantities of data.

3. Average Handling Time (AHT)	One of the key performance metrics used to assess a content moderator's performance. AHT is the average time it takes a moderator to decide on a given piece of content in her queue.
4. Big Tech	Companies that are also known as the Tech Giants and are a grouping of the most dominant companies in the information technology industry. These consist of companies like Google, Amazon, Apple, Meta, and Microsoft.
5. Break the glass measures	A set of measures that Facebook implements to restrict content on its platforms if civil unrest and violence erupt.
6. Cloud	Computer data storage where digital data is stored in logical pools in servers that are accessed over the Internet.
7. Community Standards	Facebook's rules that, in theory, determine what content is allowed and disallowed on the platform. These are inconsistently and ineffectively enforced.
8. Content	This is information uploaded to Facebook (or other social media) by a user or advertiser. This may include text, images, videos, or news articles. The core purpose of Facebook and other social media sites is to enable and facilitate the sharing of 'content'.
9. Content Moderation	The process by which social media platforms decide how content is reviewed for violation of the platform

	guidelines. Where content goes against the guidelines, it is supposed to be taken down from the platform.
10. Disinformation	When false and inaccurate information is deliberately spread to deceive people and influence public opinion.
11. Downstream Meaningful Social Interactions (MSI)	A machine learning algorithm that Facebook uses to predict whether a piece of content will receive a lot of engagement. Posts with high predicted Downstream MSI will tend to be promoted in the Facebook Feed.
12. Doxing	The act of publicly providing personally identifiable information about an individual online, such as their real name, home address, workplace, phone, financial, or other personal information. This information is then circulated to the public without the victim's consent.
13. Facebook Content Moderator	A person whose job is to review Facebook users' content for violating Facebook standards. This content comes to a content moderator's computer in queues or tickets. Content moderators must assess each piece of content flagged to them and use policies from Facebook to decide whether it is allowed to remain on the platform.
14. Facebook Feed	The central part of Facebook's interface that shows a Facebook user pictures, text, videos, and advertisements posted, or uploaded, to Facebook by other users or advertisers.
15. Hashtag	A metadata tag that is prefaced by the hash sign (#) used on social media

	platforms as a form of user-generated tagging that enables cross-referencing of content by topic or theme.
16. Intranet	An internal website for sharing company information and messages. Facebook operates one called Workplace, which looks and operates much like Facebook, on which employees and outsourced moderators communicate.
17. Like	An engagement with a given Facebook post – a user may click ‘like’ on a post to indicate approval or agreement.
18. Meaningful Social Interactions (MSI)	A Facebook metric which influences the algorithm by measuring and ranking people’s engagement with a Facebook post and how close the people interacting with a post are with the creator of the post. The higher the MSI score, the more viral the post gets.
19. Misinformation	Incorrect or misleading information.
20. NDA	Non-Disclosure Agreement
21. No Handling Time (NHT)	A productivity metric for content moderators, indicating that the content moderator is logged into work – ‘in production’ – content has been sent to them but they have not yet reached a decision about it.
22. Post Engagement	The level of interaction between Facebook users and a particular post (i.e., liking a post, commenting on a post, or sharing the post with other users.
23. Recommender Algorithm	A subclass of information filtering systems that provides suggestions for items that are most pertinent to a particular user

	based on previous content they have engaged with.
24. Shareability	This is social media content capable of being shared.
25. Rest of World	This means all Facebook users in Africa, Latin America, and the Middle East.
26. Software	These are computer programs, such as Facebook or WhatsApp. As distinct from 'hardware' – the physical infrastructure of computing.
27. Toxic Content	A piece of social media content, such as graphic violence or child abuse imagery, that poses a serious risk to the mental health of the viewer, such as a social media content moderator.
28. UX Research (User Experience Research)	Research that examines user behaviors, needs, and motivations to help inform the product design process.
29. Verified Facebook Account	An account that undergoes Facebook's process of confirming the authentic presence of the public figure or global brand that it represents. Such accounts have a "verified badge" (in the form of a tick), which is a tool to help people find public figures and brands' real Facebook Pages and profiles. Posts, stories, and other content from verified Pages and profiles are not verified by Facebook. A verified Page or profile cannot transfer ownership or modify its purpose. Edits such as name, category, and bio updates are reviewed before they are posted.

30. Viral	A piece of content that has been liked, shared, or reshared a very large number of times, potentially causing millions of people to see it.
31. Website	A collection of related web pages under a single domain name.

DATED at NAIROBI this 13TH day of DECEMBER 2022



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