

Use and Abuse of Social Media in Myanmar between 2010 and 2022

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Myanmar, or Burma as it was previously known, has been under almost most continuous military rule since 1962 except for a brief period from 2016 until 1 February 2021. The military started the transfer of power to a civilian government in 2010 until the military staged a coup on 1 February 2021. The country has essentially been in a state of various civil wars since its independence in 1948. The period from 2010 saw the opening up of the telecommunications sector and a rapid uptake in social media. The spread of smartphones has opened up communication to the masses and provided them with access to information; the Myanmar Military has also used it to spread disinformation. These campaigns are used to uphold the state, people and religion. To the military, this essentially means the Burman (Bamar) majority, the Buddhist religion and the unitary state (with the military as its guardian). In many of these endeavours, they have been supported by non-state actors such as militant Buddhist monks. Since the military takeover in 2021, the resistance has also used social media, particularly young people and the many ethnic armed groups.

Keywords: Social-media, disinformation, human rights, military rule, cyber security legislation

Introduction

Myanmar, or Burma as it was formerly called, has had a troubled history, particularly since its independence from Britain in 1948.¹ There were four elections between 1947 and 1960, followed by a military coup in 1962.² Then followed the institutionalisation of military rule from 1962 to 1989, although, in 1972, it morphed into a civilian one-party state under a draft Constitution.³ Myanmar consists of more than 130 different ethnic groups.⁴ The majority are the Buddhist

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¹Kipgen (2022).

²Ibid, at 34-36.

³Ibid, at 38-39.

⁴BBC News (2022).

Bamars, who also make up most of the elite, and “experts say the army sees itself as the elite of this elite”.⁵

There was a pro-democracy uprising in 1988, and multi-party elections were held in 1990, which the National League for Democracy (NLD) won with an overwhelming majority.⁶ The outcome was not that desired by the State Law and Order Restoration Council (SLORC), so democracy was stifled again.

In 2008 a new Constitution was approved by referendum, and a multi-party election was held in 2010. However, Aung San Suu Kyi boycotted the election won by the military aligned Union Solidarity and Development Party (USDP).⁷

"The pace and breadth of reforms that were initiated between 2011 and 2013 were among the most ambitious in a generation [. . .] [b]y 2013, most of the earlier scepticism in the international community had diminished, though some viewed continuing ethnic and communal violence as an indicator of whether the new administration would be able to sustain these reforms."⁸

By the time of the 2015 General Election, the NLD fully participated. It won most seats even though 25% were reserved for the military.⁹ Aung San Suu Kyi was denied the post of President under the Constitution of 2008 but was made State Counsellor, making her de facto leader, and took on the roles of foreign minister, education minister, energy minister and minister of the President's office.¹⁰

In the middle of the COVID-19 pandemic, a general election was held in November 2020.¹¹ The NLD was once again the landslide victor.¹² On 1 February 2021, the military detained leaders, declared a state of emergency and handed over power to the commander-in-chief.¹³ They claimed that the reason for the takeover was election fraud, and their response was in accordance with the provisions of the Constitution.¹⁴ Civil disobedience commenced immediately¹⁵ and continues to this day.¹⁶ “Ousted NLD lawmakers, protest leaders, and activists from several minority groups established a parallel government known as the National Unity Government (NUG)”¹⁷

Kipgen observes that political activism by students has occurred in different capacities throughout the history of Myanmar:

⁵Ibid.

⁶Aung-Thwin & Aung-Thwin (2013) at 276-279.

⁷Kipgen (2022) at 123.

⁸Aung-Thwin & Aung-Thwin (2013) at 291-292.

⁹Kipgen (2022) at 151,

¹⁰Ibid.

¹¹Ibid, at 164.

¹²Ibid, at 165.

¹³Ibid, at 166.

¹⁴Ibid.

¹⁵BBC News (2021).

¹⁶May 2022.

¹⁷Maizland (2022).

"Student unions have played an important role as civil society actors at different points of time. Generally, students have a tendency to believe that there is a historical legacy that they will have to fulfil in the larger interest of the country. The freedom from family responsibilities and the general preference of parents for their children to engage in student activism rather than getting involved in active politics encouraged students to play the role of civil society actors".¹⁸

The period from 2010 saw the opening up of the telecommunications sector and a rapid uptake in social media.¹⁹ Regulation was under the Telecommunications Law (2013), which provided imprisonment for "extorting, coercing, restraining wrongfully, defaming, disturbing, causing undue influence or threatening any person using a telecommunications network".²⁰ The Act has been used and misused. The military released an even more draconian Act for comment in early 2022.²¹ The spread of smartphones has opened up communication to the masses and provided them with access to information. It has also been used over several years by the Myanmar Military (the Tatmadaw) to spread disinformation.²² These campaigns are used to uphold the state, people and religion.

As social media has become ubiquitous in Myanmar, it has become a significant source of information for many.²³ "Many stories start as social media reports and then subsequently reported in the print media," meaning that "hatred "is stirred up online reported in the print media".²⁴

Since the military takeover, social media has also been used by the resistance, particularly young people²⁵ and the many ethnic armed groups, officially called "ethnic armed organisations" (EAOs) by the government of Myanmar, to coordinate activities.²⁶ Unfortunately, many of the young activities appear not to be aware of the surveillance of social media by the Tatmadaw or the perils of posting even from the Thai side of the Myanmar border.²⁷ The proposed replacement Cybersecurity Law is draconian, and for Myanmar citizens, it has extraterritorial application.²⁸ Its definitions are so broad that any activity that criticises the Tatmadaw, the political situation, and even the people's current social deprivation can be considered a criminal offence,²⁹ as is having a Virtual Private Network (VPN) on your mobile device.³⁰

¹⁸Kipgen (2022).

¹⁹KrASIA Writers. (2021).

²⁰Telecommunications Law 2013 s 66(d).

²¹Cyber Security Law Draft.

²²See, for instance, Gleicher (2018) and Gleicher (2020).

²³Ibrahim (2018) at 83.

²⁴Ibid.

²⁵Deejay & Wella (2021, 20 April 2022).

²⁶Tønnesson, Min Zaw Oo & Ne Lynn Aung (2021).

²⁷Fishbein & Nu Nu Lusan. (2021)..

²⁸Cyber Security Law Draft (anonymous unofficial translation received by Free Expression Myanmar) (2022) s. 2; Telecommunications Law 2013 s 1.

²⁹Cyber Security Law Draft (anonymous unofficial translation received by Free Expression Myanmar) (2022) Sec. 91-92.

³⁰Ibid, at S. 90.

The paper will also provide a detailed analysis of the Telecommunication Law and its proposed replacement, the Cybersecurity Law, identify deficiencies and how they violate human rights norms. It will also provide verified examples of misuse of social media by state and non-state actors and the response by social media platforms such as Facebook.

Methodology

This research is based on the documentary research concept. It analyses the current and proposed legislation governing social media. Finally, it analyses the available contemporary reputable sources to provide details of the use and abuse of social media over the period 2010 to 2022.

Legal Analysis

In October 2013, Myanmar enacted the Telecommunications Law.³¹ The Law opened the telecommunications sector:

"to bring out Telecommunications Services that will be able to provide high quality and worthy services to the users by allowing fair and transparent competitions from domestic and abroad in the telecommunications sector which is developing;"³²

As a result, the government created four new telecommunications licences.³³ Finally, in June 2013, Telenor (Norway) and Ooredoo (Qatar) were awarded licences.³⁴ In July/August, when SIM cards became available, activists from the 969 Buddhist organisation asked people not to buy SIM cards from a Muslim country.³⁵ The bidding process was considered to be well conducted and transparent resulting in mobile coverage across most of the country "at an affordable rate, in competition with the existing government-run network".³⁶

At the same time, the Law introduced some somewhat draconian provisions that impact the users of the telecommunication services. The most controversial clauses are:

"66. Whoever commits any of the following acts shall, on conviction, be liable to imprisonment for a term not exceeding three years or to a fine or to both:"³⁷

³¹Telecommunications Law 2013.

³²Ibid, at art. 4(d).

³³Lall (2016) at 140.

³⁴Ibid.

³⁵Ibid.

³⁶Cockett (2015) at 234.

³⁷Telecommunications Law 2013, art. 66

(a) Accessing and disturbing a Telecommunications Network, altering or destroying the determination of technical standards or the original form without the permission of the owner administrative right.

(b) [...]

(c) [...].

(d) Extorting, coercing, restraining wrongfully, defaming, disturbing, causing undue influence or threatening to any person by using any Telecommunications Network.

[...]

68. Whoever commits any of the following acts shall, on conviction, be liable to imprisonment for a term not exceeding one year or to a fine or both.

(a) communications, reception, transmission, distribution or conveyance of incorrect information with dishonesty or participation;"³⁸

In March 2017, *Article 19* undertook a legal analysis of the Law to ascertain its “compliance with international standards on the right to freedom of expression”.³⁹ They were critical of the offence of criminal defamation⁴⁰ because they are vulnerable to exploitation “where left to government authorities to enforce”.⁴¹ The provisions of Article 66(d) and Article 68(a) were considered to be too broad and do “not meet the requirements of legal certainty”.⁴² They argue that Article 40 gives sweeping investigatory powers and, as drafted, to conduct a search and seize any information, data, paper and documents provided it is from a place where telecommunication services are provided.⁴³ Similarly, Article 76 has similar national defence provisions, national security, and public interest.⁴⁴ Finally, they argue that Article 77 allows the Ministry “to suspend services, intercept communications, and to temporarily control services” during an emergency should be stricken, and service restrictions should be narrowly defined, require prior judicial approval and only occur in exceptional circumstances.⁴⁵

In the light of the *Article 19* analysis and an independent review of the Law by the authors, it is concluded that the law has broad provisions, which are often poorly defined or even undefined, offences are broad, and search and seizure can occur without cause. The only condition is that it be in a facility where telecommunications are provided. In other words, search and seizure can take place anywhere there is a mobile device, which in these interconnected times is almost anywhere. As will be seen later in this paper, the Law was an effective tool used by the Tatmadaw following the coup d'état of February 2021. Even then, they decided to make it even more draconian. Nine days after the coup, the ruling State Administrative Council sent a draft of a revised telecommunications bill, now called a cyber security law, to telecommunications operators for comment.⁴⁶

³⁸Ibid, art 68

³⁹Article 19. (2017). *Myanmar: Telecommunications Law, 2013*.

⁴⁰Telecommunications Law 2013, art 66(d).

⁴¹Article 19. (2017) at 12.

⁴²Ibid.

⁴³Ibid, at 13.

⁴⁴Ibid, at 15.

⁴⁵Ibid.

⁴⁶Human Rights Watch (2021).

The Myanmar Centre for Responsible Business obtained a copy dated 6 February 2021. It was translated, and a legal analysis was sought.⁴⁷ The draft, if implemented, would have severe impacts on the usage of social media.⁴⁸ Section 29 states:

"When the Department informs that Online Service Provider causes any of the following events in the Cyberspace within the Union of Myanmar, they shall be prevented, removed, destroyed and terminated in line with the stipulations:

- a) Speech, texts, images, videos, audio, files, signs or other means of expression that lead to hatred and destroy unity and peace;
- b) Fake news and rumours;
- c) Sexually oriented pictures, audio files, videos, phrases, signs or any other illustrations that are not in line with the community's culture;
- d) Child pornography, pictures, phrases, signs or any other illustrations; and
- e) Written statements, speeches or descriptions that infringe any existing laws."⁴⁹

As has been found in the laws of other jurisdictions in Southeast Asia,⁵⁰ the draft law does not define terms such as "destroying unity and peace", "fake news and rumours", and the "community's culture". Moreover, it leaves the Department the power to determine what is acceptable and what is not, hence restricting freedom of speech. Further, Section 49 allows for the interception to prevent harm to the "sovereignty and territorial integrity of the State";⁵¹ performing acts "for the defence and security of the State";⁵² ensuring "the rule of law and public order";⁵³ criminal investigations;⁵⁴ investigating crimes; activities "approved under any existing laws";⁵⁵ and "safeguarding and protecting public life, property and public welfare".⁵⁶ Again, the draft includes activities that can be undertaken by the authorities that are ill-defined at best or are potentially undefined.

Online service providers may be requested "to provide written records if it is necessary for the country's protection and security purposes and public interest".⁵⁷

Offences under the draft law include:

- a. "creating misinformation and disinformation with the intent of causing public panic, loss of trust or social division on a cyberspace";⁵⁸

⁴⁷ Myanmar Centre for Responsible Business. (2021).

⁴⁸ The review of the draft, and its impacts on social media, is based on the translated sections included in the analysis published by the Centre and not on the analysis and conclusion of their legal advisor. The authors have been unable to obtain a translation of the complete draft.

⁴⁹ Myanmar Centre for Responsible Business (2021) at 5-6.

⁵⁰ See for instance: Smith & Perry (2020); Smith, & Perry (2022); Smith, Perry & Smith (2021).

⁵¹ Draft Cyber Security law., s. 49(a)

⁵² Ibid, s. 49(b).

⁵³ Ibid, s. 49(c).

⁵⁴ Ibid, s.49(d).

⁵⁵ Ibid, s. 49(e).

⁵⁶ Ibid, s. 49(f).

⁵⁷ Ibid, s. 50.

⁵⁸ Ibid, s. 64.

- b. “creating a fake account, website and web portal with the intent of **causing public panic, loss of trust or social division on a cyberspace**”;⁵⁹
- c. “Anyone - with the intention of infringing state sovereignty, security, stability, rule of law, unity among ethnic groups - prevent others not to be able to use cyber resources, make the use of cyber resources difficult, attempt to penetrate the cyber network without permission, use more than allowed, put in the malware into computer with the intention of harming someone, shall be prosecuted under the Counter-Terrorism Law.”⁶⁰

If enacted, the authorities would have absolute control over social media and would have the ability to be entirely arbitrary in applying administrative or criminal sanctions.

The 2021 draft was subsequently abandoned,⁶¹ and a new draft was released in January 2022.⁶² The terms that were not defined in the 2021 draft remain undefined in the 2022 draft.

Section 29 of the 2021 draft was replaced by Section 35 in the 2022 draft:

"35. Prevention, removal, destruction and cessation shall be made accordingly in a timely manner, following the provision of information by the department that a digital platform service provider in Myanmar causes any of the following on cyberspace;

- (a) Speech, texts, images, video, audio files, signs or other ways of expression causing hate, disrupting unity, stabilisation and peace;
- (b) Misinformation and disinformation;
- (c) Sexually explicit material that is not culturally appropriate for Myanmar society to see; Photos, Audio files, Videos, Texts, Signs, Symbols and other expressions;
- (d) Child pornography; Photo, Video, Texts, Symbols and other expressions;
- (e) Written and verbal statement breaching any existing law;
- (f) A legitimate complaint of the expression, writing, sending, distribution of speech, text, images, video, sound, symbols and other expressions that damage an individual's social standing and livelihood."

It could be argued that replacing “fake news and rumour” in the 2021 draft with “misinformation and disinformation” in the 2022 draft is a positive action. That the terms remain undefined is a significant defect.⁶³ It appears that s 35(f) implies an act of online defamation where the item is removed if its contents “damage an individual's social standing and livelihood,” regardless of whether the content is true.

Section 49 of the 2021 draft remains unchanged as s 59 of the new draft.

⁵⁹Ibid, s. 65.

⁶⁰Ibid, s. 70.

⁶¹Free Expression Myanmar (2022).

⁶²Cyber Security Law Draft (anonymous unofficial translation received by Free Expression Myanmar) (2022).

⁶³For further discussion on these terms see, for instance: Smith (2021); Smith & Perry (2021); Wardle (2017).

The use of Virtual Private Networks (VPNs) and similar tools require permission from the Ministry “to set up, access and use networks that are licensed under the Telecom Law”.⁶⁴

A new offence has been created in the 2022 draft:

"90. No one shall have access to a network using Virtual Private Network (VPN) technology or similar technology on a network licensed under the Telecommunications Law without the permission of the Ministry."⁶⁵

The illegal use of a VPN will result in a prison term of one to three years and a fine. In the current circumstances, this would effectively criminalise access to Facebook, which the military has blocked since 4 February 2021. As “most people in Myanmar use VPNs to access Facebook, [...] any individual or business that posted on Facebook could in effect be creating evidence of a crime”.⁶⁶ Even encouraging the use of VPNs could result in imprisonment of up to three years or a fine.⁶⁷

A penalty of from one to three years or a fine applies to “[a]ny person who is convicted of creating misinformation and disinformation with the intent of causing public panic, loss of trust or social division on cyberspace”.⁶⁸ In 2021 the prison term was up to three years with no minimum set.⁶⁹

At the time of writing (in May 2022), the status of the current draft was unknown.

This section has provided the legal framework in which social media operates if the current 2013 Telecommunications Law was policed and how the Tatmadaw intends to change the law to counter dissent. The following section will look at the social media landscape from the country’s opening up in 2010 to 2022, the second year of the current military rule.

Social Media Landscape in Myanmar

Facebook is the social media platform of choice for most of Myanmar’s population, “about 90 percent of whom use mobile phones to get news and other information”.⁷⁰

Country in transition – 2010 to 2014

Extremist Buddhist monks in Myanmar have coalesced around the 969 Movement and the Ma Ba Tha.⁷¹ Both organisations seek to preserve the primacy

⁶⁴S. 62 of the 2022 draft.

⁶⁵S. 90 of the new draft.

⁶⁶Free Expression Myanmar (2022).

⁶⁷S. 89(c) of the new draft.

⁶⁸S. 91 of the new draft

⁶⁹Myanmar Centre for Responsible Business (2021) at 10.

⁷⁰Radio Free Asia. (2020).

of Buddhism in Myanmar and revile Muslims. Their best-known leader is Ashin U Wirathu, a monk from Mandalay who is well known for his extremist views.⁷² A particular target of the movements is the Rohingyas, whom they claim are Bengalis and not citizens of Myanmar, although they may have lived in Myanmar for generations.⁷³

The year 2012 saw significant violence break out in Rakhine state against the Rohingya.⁷⁴ Violence appeared to be a “consequence of the deliberate actions and planning of the extremist monks and political parties such as the RNDP [Rakhine Nationals Development Party]”.⁷⁵ Social media had a significant role in stoking the violence:

"The force of the propaganda, and its unremitting circulation – not just in its leaflets and statements, but in domestic media of all stripes state-owned and private – left little mental space within the Buddhist communities of Rakhine State to consider the Rohingya as anything but menacing. That image had become a staple of the Rakhine imagination and, it soon became evident, the Buddhist population of Myanmar more broadly".⁷⁶

In March 2012, Buddhist monks led attacks on Muslims in Meiktila near Mandalay, resulting in over 14,000 people being displaced.⁷⁷ Attacks were preceded by Facebook posts describing the local Muslim population as preparing for jihad and urging the government must deal with the Islamic extremists and raid auspicious houses and mosques.⁷⁸

Government Response

Ibrahim argues that:

"the Myanmar regime remains convinced that the Rohingyas are deliberately, and successfully, manipulating international opinion, and has tried to cut off communication links between the Rohingyas and the outside world [...] [D]ue to social media and sympathetic external connections this has only been partially successful. In addition, there has been a concerted pattern of excluding aid agencies from the country [...]. The regime has come to see any critical mention of the conditions endured by the regime as an attack on the state, and will eagerly revoke access to NGOs if they speak out [...]. A number of aid agencies are prepared to comply with government restrictions in order to carry out other work in the region."⁷⁹

⁷¹Ibrahim (2018) at 67-70.

⁷²Ibid, at 67.

⁷³For a detail discussion of this issue see Ibrahim (2018) and Wade (2017).

⁷⁴Ibrahim (2018) at 79-86 and Wade (2017) at 98-122.

⁷⁵Ibrahim (2018) at 83.

⁷⁶Wade (2017) at 118.

⁷⁷Ibrahim (2018) at 86.

⁷⁸Ibid.

⁷⁹Ibid, at 86-87.

National League for Democracy (NLD) Government – 2015 to 2020

Whilst 30 million people were Facebook users, media literacy and critical consumption of information in the country remained low.⁸⁰ The depth of Facebook usage and the general naivety of the users provided optimal conditions for disinformation to thrive.⁸¹ The most extreme example was the Rohingya crisis of 2017, where disinformation on social media fanned conflicts between the Buddhists and the Rohingya, resulting in around 860,000 Rohingyas fleeing to Bangladesh.⁸² Most remain in refugee camps at the time of writing with no prospect of return in the near future.

In March 2020, Myanmar authorities ordered the mobile phone operators to block access to 221 sites under Article 77 of the Telecommunications Law.⁸³ Article 77 allows the blocking of sites in an “emergency situation”. In this case, it was claimed to be about COVID-19.⁸⁴ Whilst no list was provided, several major news outlets were blocked, as were ethnic minority-focused news sites.⁸⁵ At the same time, five journalists were facing terrorism charges for interviewing the Arakan Army ethnic armed group that the government had declared a terrorist organisation.⁸⁶ In addition, the Tatmadaw practised online manipulation whilst “the government coerced telecommunications companies to impose internet shutdowns and disruption of services in Rakhine and Chin states”.⁸⁷

In 2019, six artists who live-streamed a Facebook “political satire that mocked and criticised the military” were imprisoned for violating Section 505(a) of the Penal Code. Four later received further imprisonment for violating the ‘online defamation’ clause (Section 66(d)) of the Telecommunications Law.⁸⁸

In the middle of 2019, the government imposed an internet blackout in conflict-ridden parts of Rakhine and Chin states.⁸⁹ The blackout was announced by the service providers and not by the government. Jha notes that “[t]he move to suspend internet access, in turn limiting freedom of expression and information comes at a time when Myanmar’s citizens are already under attack for voicing their opinions”.⁹⁰ The blackout lasted for almost a year and “raised serious concerns that many citizens had been left in the dark about the global COVID-19 pandemic”.⁹¹

⁸⁰Bestle & Lehmann-Jacobsen (2021, 22 April 2022).

⁸¹Ibid.

⁸²Ibid.

⁸³Reporters Without Borders (2020).

⁸⁴Ibid.

⁸⁵Ibid.

⁸⁶Ibid.

⁸⁷Asia Centre (2021) at 5.

⁸⁸Ibid, at 5.

⁸⁹Jha (2019, 24 August 2014).

⁹⁰Ibid.

⁹¹Preece & Beny (2021).

Social Media and the Tatmadaw

A New York Times investigation in 2018 found that Myanmar military personnel used Facebook as a tool for ethnic cleansing targeting the Rohingya.⁹² They flooded Facebook with their hatred by posing as pop stars and national heroes. They claimed that Islam was a threat to Buddhism and even shared a fake story about the rape of a Buddhist woman by a Muslim man.⁹³ This story seems to be a common theme in a number of attacks on Muslims.

Military officers secretly monitored popular accounts and criticised posts unfavourable to the military.⁹⁴

In June 2018, a new company, MyTel, entered the mobile phone market.⁹⁵ It is owned by Viettel, a Vietnamese enterprise wholly owned and operated by the defence ministry with 49%.⁹⁶ A further 28% are held by a conglomerate belonging to Myanmar's military.⁹⁷ The remaining shares are held by a Myanmar consortium of 11 local companies.⁹⁸

On 28 August and 18 December 2018, Facebook removed Facebook pages, Facebook groups, Facebook accounts, and Instagram accounts for coordinated inauthentic behaviour on Facebook.⁹⁹ The sites were “seemingly independent news, entertainment, beauty and lifestyle pages”.¹⁰⁰ The pages were traced back to the Tatmadaw. Gleicher pointed out that:

“[t]his kind of behaviour is not allowed on Facebook under our misrepresentation policy because we don't want people or organisations creating networks of accounts to mislead others about who they are, or what they're doing [...] . Our decision to remove these Pages was based on the behaviour of these actors rather than on the type of content they were posting.”¹⁰¹

The *Tatmadaw True News Information Team* Facebook page was set up in June 2020 “to provide ‘accurate news’ ahead of the November election”.¹⁰² In hindsight, the Tatmadaw was setting the scene for the military “to allege voter fraud as a pretext for the coup”.¹⁰³

Social Media and Non-State Actors

Since 2009 the armed ethnic group the Arakan Army used sophisticated posts and videos on social media to promote its aim for “greater rights and autonomy for the Rakhine Buddhist community”.¹⁰⁴ It also used the platform for soliciting

⁹²Mozur (2018).

⁹³Ibid.

⁹⁴Ibid.

⁹⁵Thurein Hla Htway (2018).

⁹⁶Ibid.

⁹⁷Ibid.

⁹⁸Ibid.

⁹⁹Gleicher (2018).

¹⁰⁰Ibid.

¹⁰¹Ibid.

¹⁰²Domino (2021, 20 April 2022).

¹⁰³Ibid.

¹⁰⁴International Crisis Group. (2021).

donations and recruiting new members.¹⁰⁵ Mobile internet and social media were also used for command and control and gathering intelligence. Facebook has had limited success in removing the sites as the Arakan Army obviously has highly skilled social media operatives.

Reuters searched the internet and “found more than 1,000 examples of posts, comments and pornographic images attacking the Rohingya and other Muslims on Facebook”.¹⁰⁶ Almost all of the posts were in Burmese. Some of the material had been “on Facebook for as long as six years”.¹⁰⁷

In 2019 a copy of Radio Free Asia called Radio Free Myanmar (RFM) appeared.¹⁰⁸ Its role was to spread disinformation, usually about the NLD and the Rohingya Muslims. Frontier Myanmar also found that RFM operated “a network of linked Facebook accounts and pages that are being used to spread RFM misinformation through the social media platform”.¹⁰⁹ It appeared that RFM was being operated by supporters of the Union Solidarity and Development Party, which was military-aligned.

Independent International Fact-Finding Mission on Myanmar

In September 2018, the United Nations Human Rights Council issued its *Independent International Fact-finding Mission report on Myanmar*.¹¹⁰

“In accordance with its mandate, the mission focused on the situation in Kachin, Rakhine and Shan States since 2011. It also examined the infringement of fundamental freedoms, including the rights to freedom of expression, assembly and peaceful association, and the question of hate speech.”¹¹¹

Despite written requests, the Government did not cooperate with the mission.¹¹² There was limited informal contact with government representatives, but there were no written responses to any of its requests for information or to access in-country access.¹¹³ The report was shared with the Government before release, but again there was no response.¹¹⁴ The findings and recommendations of the committee to the Government concerning its governance of social media were:¹¹⁵

- a. unequivocally condemn and end intolerant, divisive and discriminatory rhetoric based on ethnic, racial or religious grounds, both from State actors and non-State actors [...];¹¹⁶

¹⁰⁵Ibid.

¹⁰⁶Stecklow (2018).

¹⁰⁷Ibid.

¹⁰⁸Banyan Kyaw, Phone Htet Naung, Beatson & Nachemson (2020).

¹⁰⁹Ibid.

¹¹⁰United Nations Human Rights Council (2018).

¹¹¹Ibid, at 1.

¹¹²Ibid, para 2.

¹¹³Ibid.

¹¹⁴Ibid..

¹¹⁵United Nations Human Rights Council. (2019a).

¹¹⁶Ibid, para 11.

- b. enact the domestic legislation necessary to punish the crimes of genocide, conspiracy to commit genocide, direct and public [...];¹¹⁷
- c. act swiftly to end all intolerant, divisive or discriminatory public commentary that reinforces hate speech and false narratives [...];¹¹⁸
- d. dismiss and otherwise hold accountable public officials, whether serving in the Government or military, found to be spreading hate speech or false narratives [...];¹¹⁹
- e. repeal or amend provisions in laws unduly restricting the interrelated rights to freedom of opinion and expression, association, and peaceful assembly, including sections 143-147, 499-502 and 505(b) of the Penal Code, the Official Secrets Act, sections 66(d) and 77 of the Telecommunications Act, and section 17(1) of the Unlawful Associations Act;¹²⁰
- f. pending legislative amendments to end criminal defamation, stop government officials from making criminal defamation complaints, including under section 66(d) of the Telecommunications Act.¹²¹

To Facebook and other social media, its findings and recommendations included:

- a. all social media platforms [...] should apply international human rights law as basis for content moderation on their platforms. In doing so, they should respect the rights of their users to freedom of expression and to privacy;¹²²
- b. support the existing research of the United Nations Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression on online content moderation;¹²³
- c. allow for independent and thorough examination of the use of their platform to spread messages inciting to violence and discrimination in Myanmar;¹²⁴
- d. open themselves up to public accountability and transparency. They should actively track the use of their platform in Myanmar for the spread and promotion of threats and the incitement to violence, hostility and discrimination. They should be transparent about their policies and practices to identify and remove objectionable content;¹²⁵
- e. enhance their capacity to combat the use of their platforms for the spread and promotion of threats and the incitement to violence, hostility and discrimination. This includes hiring sufficient content moderators who are familiar with the context, background and nuances of Myanmar language

¹¹⁷Ibid, para 24.

¹¹⁸Ibid, para 30(a).

¹¹⁹Ibid, para 30(c).

¹²⁰Ibid, para 32(a).

¹²¹Ibid, para 32(b).

¹²²Ibid, para 137.

¹²³Ibid, para 138.

¹²⁴Ibid, para 139.

¹²⁵Ibid, para 140.

- and the issue of hate speech in the country, and providing them with training on human rights standards;¹²⁶
- f. retain indefinitely copies of material removed for use by judicial bodies and other credible accountability mechanisms addressing serious human rights violations committed in Myanmar in line with international human rights norms and standards, including where such violations amounted to crimes under international law;¹²⁷
 - g. establish early warning systems for emergency escalation, involving all relevant stakeholders;¹²⁸
 - h. actively assist efforts to promote tolerance, peace and the human rights of all the Myanmar people;¹²⁹
 - i. before entering any new market, particularly those with volatile ethnic, religious or other social tensions, Facebook and other social media platforms, including messenger systems, should conduct in-depth human rights impact assessments for their products, policies and operations, based on the national context and take mitigating measures to reduce risks as much as possible.¹³⁰

COVID-19 Pandemic

At the outset of the pandemic, misinformation and fake news proliferated on Facebook.¹³¹ Despite official pleas to check information, the general public and businesspeople continued to upload photographs and post misleading information and advice concerning COVID-19.¹³²

Also, in 2020, journalists were charged for spreading fake news on social media.¹³³ The authorities disputed their report of the number of COVID-19 patients and deaths.

Military Rule 2021-2022

Demonstrations followed the coup d'état of 1 February 2021.¹³⁴ In order to stop people from mobilising for protests, the military rulers blocked access to Facebook, Twitter and Instagram.¹³⁵

¹²⁶Ibid, para 141.

¹²⁷Ibid, para 142.

¹²⁸Ibid, para 143.

¹²⁹Ibid, para 144.

¹³⁰Ibid, para 145.

¹³¹Radio Free Asia. (2020).

¹³²Ibid.

¹³³Asia Centre (2021) at 5.

¹³⁴BBC News (2021).

¹³⁵Ibid.

Technology companies are developing tools to provide better protection to users from reprisals.¹³⁶ However, using these tools requires a level of knowledge and security awareness.

"Although digital security habits have improved significantly since 1 February, including through the uptake of VPNs and encrypted messaging applications such as Signal, it is largely younger and better educated users who have tightened up their practices. There is still a significant knowledge deficit in some demographics, which is particularly concerning given the array of tools the Tatmadaw has to target users."¹³⁷

As western businesses withdrew from Myanmar following the coup, Norwegian telecommunications operator Telenor sold its Myanmar business to a Lebanese investment company which, in turn, was allowed to sell a stake to a company with close links to the military.¹³⁸ The sale raised concerns that the personal data of its 18 million users in Myanmar would become available to the Tatmadaw.¹³⁹ The reason for concern was that in 2021, Telenor was pressured to install eavesdropping equipment for monitoring communications on its network.¹⁴⁰ Apparently, Telenor had complied with data requests from the beginning of the coup, and by February 2022, the Ministry of Transport and Communications had made at least 200 requests for sensitive information.¹⁴¹

Social Media and the Tatmadaw

Soon after the coup, Facebook banned the Tatmadaw's official Facebook page, the *Tatmadaw True News Information Team* and that of its military spokesman.¹⁴²

Reuters reviewed thousands of social media posts in 2021 and "found that about 200 military personnel, using their personal accounts on platforms including Facebook, YouTube, TikTok, Twitter and Telegram, regularly posted messages or videos alleging fraud at the election and denouncing anti-coup protesters as traitors".¹⁴³

In December 2021, Facebook banned all Myanmar-military controlled businesses from its platforms.¹⁴⁴ The action was based on "extensive documentation by the international community and civil society of these businesses' direct role in funding the Tatmadaw".¹⁴⁵ Around the same time, Rohingya refugees commenced proceedings in a California court against Facebook for \$150bn "over claims the social network is failing to stem hate speech on its platform, exacerbating violence against the vulnerable Myanmar minority".¹⁴⁶ Their complaint argued that

¹³⁶International Crisis Group (2021).

¹³⁷Ibid.

¹³⁸The Irrawaddy (2022).

¹³⁹Ibid.

¹⁴⁰Ibid.

¹⁴¹Access Now (2022).

¹⁴²Domino (2021, 20 April 2022).

¹⁴³Potkin & Lone (2021).

¹⁴⁴Al Jazeera (2021a).

¹⁴⁵Ibid.

¹⁴⁶Al Jazeera (2021b).

Facebook's algorithms "promote disinformation and extreme thought that translates into real-world violence".¹⁴⁷

Covid-19 Pandemic Pandemic and Issues

Prohibitions on access to the use of the internet and social media impacted access to critical information and guidance on COVID-19 prevention measures.¹⁴⁸ It was also likely to "further exacerbate gender-based violence risks for women and their access to life-saving services".

Prior to the third COVID-19 wave in mid-2021, "there was strong stigma against COVID-19 vaccinations as people swore on Facebook to refuse vaccines until Aung San Suu Kyi was freed and democracy restored".¹⁴⁹

Discussion

As discussed above, after nearly fifty years of military rule and isolationism, the Constitution of 2008 signalled the country's opening up to the outside world.¹⁵⁰ The period from 2010 to 2015 showed promise as the power was transferred from the military to a civilian government. This period resulted in the internationalisation of the telecommunications sector and the rapid take-up of social media, essentially Facebook. There was continuity under the government of Aung San Suu Kyi until the coup of 2021 when the military returned to run the country and imposed a brutal regime. During this period, there was one constant – the various administrations did little to limit hate speech, particularly when it related to Muslims, particularly the Rohingya. At the same time, they persecuted and prosecuted those who were critical of the regime. The reasons for this lack of respect for human dignity and human rights are complex.

During the period of the National League for Democracy government:

"the generals have made no major concessions to the NLD. All they have done—all they have had to do—has been to stick to their constitutionally guaranteed rights and privileges. The Tatmadaw remains Burma's strongest political institution. The generals have given up nothing that matters to them.

[. . .]

The hard realities of Burmese politics are these: There has been no significant transfer of political power from the generals to elected civilians, and there will be no such transfer unless and until the Tatmadaw wants it to happen. In all respects that truly matter, the generals are still in charge. If they are to cede any influence or control, it will have to be voluntary. The only authority that can limit the military's power is the military itself. At present, it is hard to see any compelling reason why the generals would want to reduce their own political clout."¹⁵¹

¹⁴⁷Ibid.

¹⁴⁸Sharma, Phyu Phyu Oo, Hollaender & Scott (2021).

¹⁴⁹Naw Theresa (pseudonym) (2022).

¹⁵⁰See for instance, Maizland (2022).

¹⁵¹Barany (2018) at 6.

The violence against the Rohingya was, and remains, a major humanitarian crisis, with violence fuelled by fake news on social media. In her role as State Counsellor, Aung San Suu Kyi who is de facto leader of Myanmar, showed little interest in resolving the issue. Fake news and hate speech continued to be posted on social media, as was reported by the United Nations Human Rights Council.¹⁵² One of the reasons for this could be a feeling of ethnic superiority. Many of the Buddhist Bamar majority view the Muslim Rohingya as outsiders who do not deserve to live in the country.¹⁵³ It is even argued that during the NLD government, press freedom regressed and seemed more restrictive than that during the transition period of the Thein Sein government.¹⁵⁴

As Facebook was the primary source of information during the NLD government and remains so to those who still have access via a VPN, it deserves the scathing criticism for not addressing the proliferation of fake news and hate speech that fuelled the ethnic violence against the Rohingya in particular and Muslims in general. International action is required to provide oversight of social media platforms to ensure that the platforms adequately monitor posts to minimise the spreading of fake news and hate speech. If the platforms cannot self-monitor their platforms, consideration should be given to remove current safe harbour protections and legislate to have them declared publishers of their online content. Such legislation would expose them to the same sanctions that apply to print or online mainstream media companies.

Another issue that has arisen and is challenging to overcome is that of social media becoming an echo chamber. This has been a pressing issue in Myanmar, especially where Facebook became the major source of news and communication because of its early introduction.¹⁵⁵ There needs to be education at all levels to cross-check information sources. There is also an urgent need for social media users to be aware of privacy issues associated with open social media platforms.

¹⁵²United Nations Human Rights Council. (2019b).

¹⁵³Kurlantzick. (2017a). This was apparent when the first author was undertaking a development project in Myanmar in 2015. One of his female staff was a Buddhist engineer from Rakhine State. Her demeanour was quiet and friendly. If the name “Rohingya” was mentioned she would become quite agitated and make clear her opinion that they did not belong in Myanmar.

¹⁵⁴Kurlantzick (2017b, 2 March 2019).

¹⁵⁵The first author has personal experience of this. A colleague, her sister and 11-year-old niece had to be smuggled out of Myanmar to Mae Sot in Thailand because of their support for the demonstrators during the early days of the coup. She continued to use social media even during her exile in Thailand until she closed it down following several entreaties from her colleagues. She was openly reposting material from various sources to her friends and contacts. In fact, she was putting her freedom at risk because she was just acting as an echo chamber to her circle. Her actions were even more serious as the posts would have violated Thailand’s cybercrime legislation. She seemed to be oblivious to the fact that authorities in both Myanmar and Thailand would be monitoring social media posts, particularly from refugees at the Thai border. It has not been unheard of the Myanmar military crossing the border or the Thai authorities pushing refugees back across the border into the hands of the Myanmar authorities.

Conclusion

Myanmar is an extreme example of the use and abuse of social media. It shows what can happen if there are no strong governance structures. If there are not, the rule of law can break down, and widespread abuses of human rights can occur and, at times, encouraged. Governments need to regulate state and non-state actors in this regard. At the same time the use of social media to oppose the government is a relatively new and powerful phenomenon. It is not only used locally but also sells its message to the world.

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