

## FEM submission on challenges to freedom of opinion and expression in times of conflicts and disturbances

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Free Expression Myanmar (FEM) is a national human rights organisation based in Myanmar. FEM's vision is a Myanmar where decision-makers, particularly the State, are influenced and accountable to the people most affected by their decisions.

FEM is an independent, non-partisan, non-profit civil society organisation (CSO). FEM is a registered human rights organisation in the country, although since the coup the status of all civil society registrations has been cloaked in secrecy.

FEM's submission to the UN Special Rapporteur's call encapsulates experiences in the country over the past five years, including under the military's coup which started in February 2021.

The Myanmar public has suffered from a long history of substantial efforts to use disinformation, misinformation, propaganda, and media and internet restrictions (DMPMIR) to instigate, aggravate, and sustain hatred, violence, and conflict, in violation of multiple human rights including the right to freedom of expression and information.

### Actors and their objectives

In the post-colonial era, the Myanmar military has been the predominant source of DMPMIR in the country. The military has used DMPMIR to create and support a public narrative that justifies and legitimises the military's excessive power and control over the country. DMPMIR has been a particularly essential strategic priority before, during, and after the military's repeated coup d'état, the first in 1962, and the most recent on 1 February 2021. The military has also used DMPMIR between coups to maintain their power. Fundamentally, the military's strategy has been to use disinformation, misinformation, and propaganda to instigate, aggravate, and sustain conflict while restricting access to counter-narratives from independent media outlets, civil society organisations, and political opposition, both offline and online. The military has then directly benefited from real and perceived increases in the conflict, justifying their disproportionate power over the country in the name of national security and unity.

Other actors, such as leaders of the political party, the National League for Democracy (NLD), have also used DMPMIR. After winning the country's first democratic elections in 2015, the NLD administration surprisingly chose not to dismantle the military's propaganda infrastructure but instead used it for their own benefit. However, the NLD administration's use of DMPMIR from 2016 onwards was fundamentally different from the military. The NLD administration did tolerate and in some cases tacitly support the military's use of DMPMIR to promote conflict (see Rohingya example below), but itself mainly used DMPMIR to control the political narrative in its favour, censoring and countering political criticism, including from those targeted by the military's DMPMIR.

## Disinformation capacity

Using DMPMIR to instigate, aggravate, and sustain conflict is generally resource-intensive and requires capacity development. The military has developed significant internal and external capacity to use DMPMIR over the past 60 years. The military has its own internal capacity, including a psychological warfare department, clandestine military agencies with a role in so-called “information ops” or “psywar”, and a number of printed, broadcast, and digital media outlets. These include channels run under the brand, Myawaddy Media. The military also has access to thousands of soldiers who have been ordered to conduct individual “information ops” too. The military has tested a variety of different restrictions on media and internet access, including threats and shutdowns, building up experience on process and impact.

The military has created a quasi-civilian State infrastructure with DMPMIR capacity, including via the Ministry of Information (MOI) which owns many television, radio, print, and digital media outlets, and regulates the rest, denying licences to any independent media outlets. The military also created the Ministry of Transport and Communications (MOTC) with its dependent telecommunications regulator that restricts internet service providers and online content.

In addition to the military’s capacity for open and direct use of DMPMIR, there has been a long history of credible evidence that the military has also sponsored indirect and clandestine DMPMIR from proxies, including secretive agencies, religious extremists, ultra-nationalists, militias, and criminals.

## Enabling legal framework

DMPMIR has been enabled by Myanmar’s legal framework. The Ministry of Information (MOI) is able to produce and disseminate disinformation and propaganda through its ownership of a large proportion of the media, including television and radio stations, printed newspapers, and digital media outlets. The News Media Law, Printing and Publishing Law, and Broadcasting Law also provide the MOI with regulatory authority over independent media outlets and journalists, including criminal sanctions for those that do not abide by the MOI’s decrees. The MOI also oversees the Myanmar Press Council which sets journalistic standards and acts as a dispute resolution mechanism. The Broadcasting Law, which would have established a broadcast regulator, has not been implemented. Therefore, the MOI retains total and direct control over all radio and television channels and has never given out broadcasting licences to independent outlets. The MOI has consistently used the legal framework and its institutional mechanisms to control the media and punish critical voices.

The Ministry of Transport and Communications (MOTC) has similar direct control over the telecommunications sector, with regulatory power granted to it by the Telecommunications Law and Electronic Transactions Law, including powers to shut down internet access, block websites and platforms, and includes a variety of criminal sanctions that can be used against service providers and dissenting content makers.

Myanmar’s legal framework gives the MOI and MOTC control over a significant proportion of Myanmar’s information ecosystem. Through them, the military holds significant authority and resources to set strategies and standards, disseminate disinformation and propaganda, and provide tools to restrict information and punish those who counter the authorities. Although social media platforms currently sit outside Myanmar’s jurisdiction, the

military has proposed a new draft Cyber Security Law that would both extend the jurisdiction to cover them, while requiring them to move data assets into the country.

### **Unused criminal sanctions**

Myanmar's legal framework has multiple provisions on paper that could have been used to curtail DMPMIR that instigates, aggravates, or sustains hatred, violence, and conflict, but in practice were only used to censor legitimate expression. Article 364 of the Myanmar Constitution - which the National Unity Government has repealed since the 2021 coup - prohibits the politicisation of religion and says that “any act which is intended or is likely to promote feelings of hatred, enmity or discord between racial or religious communities or sects is contrary to this Constitution”. Similarly, the constitutional provisions on freedom of expression and other fundamental freedoms are limited provided that the exercise of those rights does not “prejudice to the relations between one national race and another or among national races and to other faiths”.

Myanmar also has several laws that could curtail DMPMIR too. The Penal Code contains several relevant general provisions criminalising: incitement to war with any other group; promotion of feelings of enmity or hatred between groups; insult that constitutes incitement to commit an offence; incitement to public fear or alarm, including fear or alarm within a section of the public; and incitement to commit an offence against any other group.

Some special laws also contain relevant provisions, including:

- Broadcasting Law: The (as yet unwritten) Code of Conduct shall govern the treatment of religion, ethnic minorities, women and men, minors and disadvantaged groups, with the threat of various sanctions relating to the broadcast licence
- Electronic Transactions Law: Criminalises the use of electronic technology in a manner detrimental to community peace and tranquillity, or receiving, sending, or distributing detrimental information
- News Media Law: Places a responsibility upon journalists to avoid inflaming conflicts regarding nationality, religion and race, with an obligation (under unspecified laws) to sanction them
- Peaceful Assembly and Procession Law: Criminalises protesters who say things or behave in a manner that could affect the country or ethnic and religious minorities
- Printing and Publishing Law: Places a responsibility upon publishers not to publish anything that promotes violence between ethnic and cultural groups, with the threat of losing any publishing licence
- Telecommunications Law: Criminalises extorting, defaming, disturbing or threatening any person, or communicating ‘false’ information using a telecommunications network.

The NLD government repeatedly circulated drafts of a proposed anti-hate speech law but never adopted it following criticism that the draft would unduly restrict freedom of expression. Since the 2021 coup started, the military has established a committee responsible for amending the draft to include so-called “political” hate speech, and the process remains concealed.

Although Myanmar's legal framework includes a variety of applicable criminal provisions, none of them has ever been used in practice.

## Policy measures

The military, which crafted the enabling legal framework and is the main actor promoting conflict using DMPMIR, has not drafted or implemented any policy measures to address the negative impact of its actions. Before the start of the coup, the military used its old tactics of denial, redirection, and justification to counter any allegations.

The NLD administration also did little to substantively address DMPMIR. The NLD did communicate a general sense of concern about the promotion of intolerance and conflict, but this was largely superficial. The NLD administration did not commit to reforming laws, or to design and implement substantive programmes that would address DMPMIR. Indeed, the NLD removed its relevant 2015 general election manifesto commitments from its 2020 manifesto. A digital and media literacy programme for schools was in its initial stages, driven by international agencies. Under the NLD, the parliament and judiciary similarly failed to commit to or implement any substantive policy measures.

## Tropes

The military's strategy of using DMPMIR has consistently used and reused several tropes, or narratives, in an attempt to instigate, aggravate, and sustain hatred, violence, and conflict. The first trope has been that minority groups are taking over Myanmar. Such minorities have included Muslims, Christians, ethnic minority groups including the Rohingya, women, and LGBTIQ+. According to the trope, these minorities are taking over, for example by buying up land and resources, marrying women, ignoring religious practices, and subverting the military which is only trying to protect the nation-state. They and their actions are protected by opposition politicians and civil society.

The second trope has been that each minority group is inferior, demonised as being different from the “normal” Myanmar public and Myanmar values as defined as ethnically-Bamar Buddhist heteronormative older men. Such inferior minorities are both controlling and also controlled by hostile external forces.

The third trope has been that the minority groups are themselves fomenting conflict. Women are creating domestic conflict, ethnic minorities are trying to divide the unified country, and the political opposition is creating illegitimate terrorist militaries.

A fourth trope is that only the military can defend the Buddhist nation against minorities and ensure the country remains strong and unified.

The military has used disinformation and propaganda to repeat and reinforce each trope while using media and internet restrictions to prevent and punish any countering of those tropes.

## Disinformation examples

### The 2021 coup d'état

DMPMIR has been fundamental to the military's coup strategy. In the months before it launched its latest coup, the military used DMPMIR in response to the landslide election loss of the military's civilian proxy, the Union Solidarity and Development Party (USDP). The military and its proxies sowed disinformation online and offline about election

fraud, fabricating villains and concocting conspiracy theories, repeating the military's traditional tropes. The transparent aim was to promote conflict to legitimise the military intervening to “save” the country. Although they lacked credibility, the allegations of election fraud were covered by the independent media and rumours circulated on social media, instigating small protests from military supporters and generally aggravating tension.

The military began its coup on 1 February 2021, maximising the use of DMPMIR. In the early hours of the morning, the military shut down internet access and most television and radio stations, with the exception of the military's own Myawaddy TV. Over the following days and weeks, the military utilised the State's control over the internet and the media to dramatically increase disinformation and propaganda and restrict access to oppositional voices. The independent media was forced into exile, civil society organisations were driven underground, and the political opposition was imprisoned. The internet, particularly social media platforms including Facebook, Tik Tok, and Telegram, were flooded with blatant attempts by the military and its allies to sow disinformation and intimidate. Doxxing oppositional voices was rampant, with women targeted with sexual doxxing.

The military's DMPMIR repeated established tropes. All those opposing the coup were acting on behalf of manipulative forces and were a threat to national security. Anything those opposing the coup did or said was criminal, regardless of whether it harmed anyone in the slightest way. Any action, including violence and extra-judicial measures, taken against those criminals, by anyone, was not only legitimate but also desirable.

## **The Rohingya**

The military used DMPMIR as a key component of atrocity crimes against the Rohingya, including from the most senior military leaders. Both the military's proxy president, Thein Sein, and the military commander-in-chief, Min Aung Hlaing, openly used disinformation to instigate conflict. The quasi-civilian State led by the NLD administration at the very least tolerated if not tacitly supported the use of DMPMIR too. The NLD's own State media outlet published content that blatantly incited hatred against the Rohingya.

The United Nations Fact-Finding Mission found that the use of DMPMIR against the Rohingya had been common since at least 2012 and had intensified over the ensuing years. It repeated all of the traditional tropes to portray the Rohingya as expansionist, inferior, and a threat to peace. What began as organised DMPMIR led by the military and their proxies in the ultra-nationalist Buddhist community, faced no substantive policy countermeasures from the NLD administration and therefore spread organically over the years and was normalised into the public narrative. Well-regarded media outlets, religious figureheads, and civil society leaders also used disinformation and propaganda against the Rohingya.

DMPMIR was first used to instigate conflict and was then used again to censor information about the conflict. The NLD administration, at the request of the military, shut down internet access to over 1.4 million people in the affected area for over 18 months, in order to prevent information about the atrocities from being shared. The NLD and military also restricted media freedom using laws, policies, website blocks, and outright threats of violence. In response to global outrage of atrocity crimes, DMPMIR was then used to establish a new narrative that the international media and international institutions were “biased” and “anti-Myanmar”. Traditional military proxies were joined by new allies in promoting the narrative. DMPMIR was reinforced by additional restrictions on the right to freedom of assembly and association.

## Social media platforms

Over the past decade, propaganda and disinformation promoting conflict have spread from Myanmar's State-controlled media to the digital space, particularly to social media platforms. The digital space has been hugely beneficial for Myanmar's public, enabling users to access diverse information and express themselves often for the first time. Social media enabled users to reach out and learn from one another, without the military or the State being involved to curate or censor. For many Myanmar users, social media was a space for freedom, a space unavailable to them offline in the country.

However, the military had already spent decades developing "information ops" and "psywar" and had the capacity to utilise these strategies and tactics to use social media to promote conflict. The monopoly dominance of Facebook gave the military potential access to the screens of almost all internet users in the country. The lack of content regulation, particularly in the Myanmar language, enabled propaganda, disinformation, threats, and harassment. The opportunity to create content anonymously ensured that the military could evade accountability for the worst of the content.

### Facebook

In 2018, following international concern about growing atrocity crimes, Facebook began investing in regulating Myanmar content. A new regional team, approximately 100 Myanmar-language content reviewers, new regulatory policies, and more technician time for developing algorithms were brought in. Military leaders were banned from Facebook, and then many military pages were removed after the 2021 coup. Facebook press releases highlighted successes in tackling "coordinated inauthentic behaviour" or users intentionally posting disinformation and propaganda on the platform.

In 2022, although some of the worst examples of DMPMIR are now found on other platforms, such as Telegram, there are still serious issues on Facebook which remains the home of most Myanmar internet users. As the whistleblower, Frances Haugen established, Facebook's algorithms still amplify disinformation and propaganda that promote conflict, and the business still fails to properly invest in content moderation outside of Western markets. Automated algorithmic responses are still not smart enough to tackle complex human expression. Many users, including media outlets, report legitimate content being deleted by Facebook. The platform is still full of pro-military propaganda and disinformation, some of which promotes offline harm and glorifies human rights violations.

Although Facebook has established its Oversight Board, serious questions remain. There is little to no transparency on the details or scale of the actions Facebook is taking in the country. For Myanmar-specific users, we are not aware of how many complaints are made, how much content is being removed, or under what Community Standard it is being removed. Aside from Facebook, other platforms such as TikTok are similarly opaque, and others, such as Telegram, do not engage with civil society whatsoever.

## Impact on human rights

The result of decades of DMPMIR has been a Myanmar public, devoid of any sources of reliable information, and with low levels of information literacy, that is vulnerable to manipulated information in an unstable information ecosystem. Until the 2021 coup, the Myanmar public often did not know which sources of information to trust and

as a result portions of the public trusted those sources intent on aggravating conflict. The intentional spread of disinformation and propaganda by a few actors also led further to a proliferation of organic misinformation in public too.

The military has used DMPMIR to incite their own troops and allies to conflict, as a smokescreen to hide their human rights violations from the public, and to isolate critical voices opposed to the military and its actions. DMPMIR promoting conflict has undoubtedly incited hatred, discrimination, and violence. It has been propaganda for war. It has led to a wide variety of gross, widespread, and systematic human rights violations, including directly to atrocity crimes against the Rohingya for decades, and atrocity crimes against parts of the general public since the 2021 coup.

## Recommendations

FEM encourages the UN Special Rapporteur to consider the following recommendations for UN Member States:

- To hold accountable those responsible for using disinformation, propaganda, and media and internet restrictions to instigate, aggravate, and sustain hatred, violence, and conflict.
- To hold accountable those responsible for protecting or concealing others using DMPMIR to promote conflict.
- To reinvigorate international support for strengthening public service media and developing associated international human rights standards.
- To encourage transitional UN Member States to close State media and prioritise development of truly independent and sustainable public service media.
- To increase donor funding of independent national and sub-national media outlets with a focus on inclusion, sustainability, and quality.
- To increase public financing of independent international media publishing in languages accessible to marginalised communities.
- To support the continuing development of international human rights standards relevant to telecoms and social media businesses, including the UN Guiding Principles, in particular encouraging greater transparency and accountability.
- To encourage social media platforms to increase their transparency, including by providing country-specific and standard-specific data on content removals.
- To hold social media platforms accountable for their role in human rights violations, including by ensuring they safely store data of evidential value.
- To increase donor funding to international and national civil society organisations aiming to hold social media platforms accountable to international human rights standards.

## Further information

For further information on any of the research or analysis presented here, please contact FEM at [coordinator@freexpressionmyanmar.org](mailto:coordinator@freexpressionmyanmar.org)

## Annex

- 1a) Please describe specific situations where disinformation, misinformation or propaganda have been used or restrictions have been placed on the media or access to the Internet to instigate, aggravate or sustain hatred, violence or conflict. What means and methods are used to manipulate information in such situations?
- b) What role have States, armed groups or social media platforms played to instigate or mitigate such manipulation of information?
- c) What has been the impact on human rights and the lives of people? Which groups of people have been particularly affected and in what ways?
- d) What has been the impact of such propaganda, disinformation or misinformation on the work of human rights defenders, journalists, civil society, humanitarian and development organisations?
- 2.a) What are the legal, policy and practical challenges faced by States, companies, media and civil society organisations in upholding freedom of opinion and expression while countering hate speech, disinformation or other forms of information manipulation in situations of conflict and disturbances?
- b) Where do you see major legal and policy gaps or inconsistencies on these issues? Please share your thoughts on how they could be best addressed.
- e) Do you have any suggestions on how these measures can be improved to uphold human rights while countering war propaganda, disinformation, misinformation and incitement?
4. a) How do internet intermediaries address: Propaganda for war; Incitement to violence, discrimination or hatred; Disinformation and misinformation that instigates or aggravates violence, instability or conflicts
- b) In your view are the companies' policies and measures in line with international human rights and humanitarian law standards, and are they being implemented effectively?
- c) What improvements would you suggest?
- d) What good practices have been developed by companies?
5. What role has legacy media played in addressing disinformation, misinformation and propaganda in situations of conflict, violence and disturbances? What challenges do legacy media faced in combating such information manipulation?
6. Please provide examples of good practices, including at the community level, to fight disinformation and hate speech during conflicts and disturbances.
7. Please share any suggestions or recommendations you may have for the Special Rapporteur on how to protect and promote freedom of opinion and expression while countering the manipulation of information in times of conflict, disturbances or tensions.
8. What other issues in relation to freedom of opinion and expression in the context of conflict do you feel should be given attention by the Special Rapporteur and why?