

EXAMINING THE ROLE OF SOCIAL MEDIA IN FOSTERING ETHNIC VIOLENCE IN LIGHT OF FACEBOOK'S COMPLICITY IN THE ROHINGYA CRISIS



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Abstract: The widespread use of social media in recent years has left a positive effect on our lives. However, this extensive use had led to the proliferation of harmful content, due to the algorithms utilized by these companies. this technology has posed a serious risk to the security of societies and countries. The Rohingya Crisis provides a tangible example of the negative impact of hate speech on social media platforms.

Various pieces of evidence demonstrate Facebook's role in inciting violence against the Rohingya minority. Despite receiving several warnings from different sources about the impact of its platform, Facebook did not react sufficiently, which caused the escalated ethnic cleansing. The Rohingya crisis raised concerns about Facebook's complicity in Myanmar and debate about the obstacles hindering the prosecution of Facebook and its executives for potential criminal complicity.

Key Words: Social Media; Facebook; Hate Speech; Ethnic Violence; The Rohingya Crisis.

دراسة دور مواقع التواصل الاجتماعي في تأجيج العنف العرقي على ضوء مساهمة منصة فيسبوك في أزمة الروهينجا

ملخص: يعرف العالم الرقمي انتشارا واسعا لاستخدام منصات التواصل الاجتماعي، ورغم مالها من ايجابيات، إلا أن استعمالها الواسع صاحبه انتشار للمحتوى الضار بسبب الخوارزميات التي تستعملها هذه المنصات، هذا الاستعمال كانت له مخاطر جدية وحقيقية على أمن الدول والمجتمعات . تمثل أزمة الروهينجا مثالا حقيقيا للعواقب الوخيمة لانتشار خطاب الكراهية على منصات التواصل الاجتماعي. كشفت العديد من الأدلة عن دور منصة فيسبوك في التحريض على العنف ضد اقلية الروهينجا، ورغم تلقي شركة فيسبوك العديد من التحذيرات حول دور منصتها في العنف الحاصل على ارض الواقع إلا أنها تجاهلت هذه التحذيرات، مما الى حدوث جرائم إبادة جماعية. تشير العديد من الأدلة عن تواطؤ شركة فيسبوك في أزمة الروهينجا، مما يثير تساؤلات حول عدم مساءلة الشركة ومسؤوليها عن دورهم في انتهاكات

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حقوق الانسان. وهذا راجع الى مجموعة من العقوبات القانونية التي تعرقل المتابعة القضائية لشركات التواصل الاجتماعي، مما يحتم على الدول العمل على ايجاد آليات قانونية للحد من الآثار السلبية لمنصات التواصل الاجتماعي على امن الدول والمجتمعات.

الكلمات المفتاحية: منصات التواصل الاجتماعي، فيسبوك، خطاب الكراهية، العنف العرقي، أزمة الروهينجا

Examen Du Rôle Des Médias Sociaux Dans L'incitation À La Violence Ethnique À La Lumière De La Complicité De Facebook Dans La Crise Des Rohingyas

Résumé: L'utilisation intensive des réseaux sociaux, malgré ces avantages, avait conduit à la prolifération des contenus haineux, avec l'assistance des algorithmes utilisés par ces réseaux. cette technologie a fait peser un risque sérieux sur la sécurité des pays. La crise des Rohingyas a fourni un exemple tangible de l'impact négatif de discours de haine proliféré sur les plateformes des réseaux sociaux.

Divers éléments de preuve démontrent le rôle de Facebook dans l'incitation à la violence contre Rohingya. Malgré plusieurs avertissements concernant l'impact de ces algorithmes reçus par Facebook, ce dernier n'a pas suffisamment réagi, ce qui a provoqué l'escalade d'une épuration ethnique. La crise des Rohingyas a suscité des inquiétudes sur la complicité de Facebook au Myanmar, des débats sur les obstacles entravant les poursuites contre Facebook et ses dirigeants pour complicité criminelle potentielle.

Mots Clés : Réseaux Sociaux; Facebook; Discours de Haine; Violence Ethnique; La Crise des Rohingyas



Introduction:

Introduction In recent years, the widespread use of the internet and social media has revolutionized the way people connect and share information with each other. However, alongside these advancements, new challenges have emerged, particularly concerning the safe use of these platforms. Facebook, with its vast user base and a range technical feature offered to the users, has faced allegations regarding the negative impact of its platforms and concerns about potential contribution to the dissemination of hate speech fueling conflicts in various regions of the world. The Rohingya crisis stands as a tangible example of the potential consequences of disseminating hate speech on social media platforms and how it can be escalated into horrific crimes.

This paper delves into the Rohingya crisis complexities, exploring how Facebook's platform was weaponized by the perpetrators, enabling them to spread hate speech and incitement, causing escalated violence, against the Rohingya population.

Many Reports, particularly, the United Nations independent Fact-Finding Mission in Myanmar, have shed light on human rights abuses in Myanmar, further concerns and criticisms grew regarding Facebook's role in the crisis. Facebook has entirely failed to take radical measures to prevent the use of its platform as a tool for promoting violence against vulnerable minorities.

Based on the above, we ask the following central question: To what extent did Facebook's complicity in spreading harmful content feed the Rohingya mass atrocity, And what are the challenges hurdling the prosecution of Meta and its managers for their potential criminal complicity during the Rohingya Crisis?

This research paper aims to both respond the above questions and bring attention to the Facebook's role in the Rohingya crisis, while exploring the possibility of prosecuting both, the company itself and its executives for their criminal complicity in the atrocity crimes. It also responds the question of why Facebook or its executives was not prosecuted for their suspected role in Myanmar despite several provided proofs. Examining the legal and political challenges hurdling the enforcement of justice for Rohingya Victims.

For the aim of answering the above queries, we followed a mixed methodology approach. using the descriptive and analytical Method, seeking to explore the role of Facebook Platform in the Rohingya Crisis and the legal obstacles hindering the prosecution of social media companies and their executives for potential involvement



in human rights abuses. Arriving at the recommendations required to address the issue of social media's negative impact on the security of countries, societies, and individuals.

The First Topic: Factors Influencing The Spread Of Harmful Content On Social Media

Examining research papers focused on how social media platforms contribute to the spread of harmful content, particularly Facebook platform, we can identify several factors. Mainly related to social media features, as well as others related to the Rohingya crisis itself. This topic scrutinizes the multiple factors influencing the spread of harmful content on social media platforms, with a particular focus on Facebook and its alleged involvement in the Rohingya atrocity crimes.

First Requirement: Social Media-Related Factors

Facebook platform¹ have amassed a user base exceeding 3 billion worldwide,² this score reached due to the below technical features:

First Section: Algorithmic Amplification

Algorithmic amplification refers to the process used by social media platforms to promote certain content based on different factors, like “engagement” or “preferences”, as well as the popularity of the content, and user’s past behavior. These Factors will be analyzed by the platform’s algorithms to determine what content should be shown in user newsfeeds and recommended to others. The main aim of algorithmic amplification is to keep users engaged on the platform by displaying content that aligns with his personal preferences. This will increase the time spent by users on the platform and earn advertising revenue for the platform.

The Algorithmic amplification of Facebook’s platform had negatively affected the Rohingya minority, through the “Echo Chambers”, where individuals tend to interact mainly with like-minded individuals and content that aligns with their existing beliefs³.

¹ - Previously, Facebook was the name of both, the social media corporation, and the name of its platform. Now “Meta” is the name of the corporation and Facebook is the name of one of its platforms. Meta owns and operate several platforms: like WhatsApp, Instagram, and Thread, among other service and product for more information in this context. See : Wikipedia. “Meta Platforms.” Wikipedia, 4 Nov. 2021, en.wikipedia.org/wiki/Meta_Platforms. Consulted on 23.05.23.

² - Kemp, Simon. “The Latest Facebook Stats: Everything You Need to Know.” DataReportal – Global Digital Insights, 11 May 2023, consulted on 12.06.23 at 23:36, link: datareportal.com/essential-facebook-stats#:~:text=Here.

³ - Amnesty International, The Social Atrocity: Meta and the Right to Remedy for the Rohingya, September 29, 2022 Index Number: ASA 16/5933/2022.



International Reports have repeatedly accused Facebook of utilizing algorithms that promote hatred and violence against the Rohingya, Facebook's failure was not an accident, they are part of business model.¹

Second Section: Content Moderation Difficulties

I. Lack of Effective Content Moderation

Content moderation refers to social media platforms' oversight and enforcement of platform rules in relation to permissible and prohibited forms of expression. It can include actions such as the detection, demotion and removal of content which violates platform rules²

Social media platforms have faced criticism for their content moderation policies and lack of investment in the same task ,resulting in the spread of hate speech.³ In the context of the Rohingya crisis, the company come under criticism for not doing enough effort to moderate the Burmese content. As stated by Amnesty, In mid-2014, Meta staff admitted that they only had one single Burmese-speaking content moderator devoted to Myanmar at the time, based in their Dublin office. Meta has never disclosed the precise number of Burmese-language content moderators it employed during the 2017 atrocities, but the company claimed to have hired 'dozens' more in mid-2018.⁴

II. Pseudonymous Accounts

While Facebook's policy requires users to use their real name, some choose to create a fake profile using a pseudonym or altered name, which can give them the confidence to engage in spreading harmful content without being easily traced. During the Rohingya crisis, Facebook's platform witnessed an increasing number of anonymous accounts used to spread hate speech and incite violence against the Rohingya people in Myanmar.

According to an Amnesty International report published on september22,2022, Facebook failed to invest in moderators and fact checkers or take action against specific posts that instigated violence against the Rohingya population. The report

¹ - Lauer, David. "Facebook's ethical failures are not accidental; they are part of the business model." AI and ethics vol. 1,4 (2021): 395-403.

² - Amnesty International, Id, p 5.

³ - Faiza Patel, Laura Hecht-Felella, "Facebook's Content Moderation Rules Are a Mess", brennan center for justice, February 22, 2021, consulted on 14.06.23. Link: <https://www.brennancenter.org/our-work/analysis-opinion/facebooks-content-moderation-rules-are-mess>

⁴ - Amnesty International, Id, p 7



further reveals that Facebook did not shut down fake accounts or delete groups and pages that were fueling violence.¹

III. Hate Speech Definition

As of today, there is no universally accepted definition of hate speech, which speech could be considered harmful content, and must be removed, and which one is not. Different countries and organizations have their own definitions and laws regarding hate speech. For instance, Blasphemy is considered harmful content, criminalized under some countries' legislation, like Pakistan² and UAE.³ On the other hand, blasphemy is not criminalized under Western Countries' legal systems, like Belgium. Further Challenge in the context of Blasphemy law. the United States, while there is no federal law that forbid "religious vilification" or "religious insult" or "hate speech," some states still have blasphemy statutes on the books⁴. This divergence in points of view make the task of regulating hate speech by social media platforms a very challenging duty, as they must navigate the different legal frameworks and cultural norms of the countries in which they operate.

IV. Auto-Detection Difficulties

The definition of hate speech becomes more challenging when talking about the auto-detection system used by social media companies. Due to the immense number of users, human moderation is practically unattainable. The application of auto-detection also faces a lot of obstacles. Mainly related to the limitations of keyword-based approaches. To illustrate, words can be camouflaged in many ways, both in an intentional attempt to avoid automatic content moderation, or because of the use of social media for communication (consider, for example, the tendency in some posts to replace letters with similar looking numbers, e.g., "E"s with 3s, or "l"s with 1s, and so on).⁵ Furthermore, there are many expressions that are not inherently offensive, but they can be so in the right context,⁶ the offense can also vary based on different

¹ - Amnesty International. "Myanmar: Facebook's Systems Promoted Violence against Rohingya; Meta Owes Reparations – New Report." Amnesty International, 29 Sept. 2022.

² - "Blasphemy in Pakistan." Wikipedia, 20 Oct. 2022, en.wikipedia.org/wiki/Blasphemy_in_Pakistan. Consulted on 9 Aug. 2023.

³ - "Blasphemy Law in the United Arab Emirates." Wikipedia, 6 Jan. 2023, en.wikipedia.org/wiki/Blasphemy_law_in_the_United_Arab_Emirates. Consulted on 9 Aug. 2023.

⁴ - "Blasphemy Law in the United States." Wikipedia, 15 Apr. 2023, en.wikipedia.org/wiki/Blasphemy_law_in_the_United_States. Consulted on 13 Aug. 2023.

⁵ - Kovács, G., Alonso, P. & Saini, R. Challenges of Hate Speech Detection in Social Media. SN COMPUT. SCI. 2, 95 (2021), p 2-3.

⁶ - Ullmann, S., Tomalin, M. Quarantining online hate speech: technical and ethical perspectives. Ethics Inf Technol, Vol 22, (2020), p 71.



time, as well as different uses of the same word, different users, and different audience members.¹

These are a few examples of the challenges facing the auto-detection system, utilized by social media to identify harmful content, a task that is not always successful, and can lead to serious concerns.

Second Requirement: Rohingya Crisis-Related Factors

First Section: A History Overview of The Rohingya Community

The Rohingya crisis spans several decades, dating back to the 18th century. In 1785, Arakan Rakhine kingdom experienced a takeover by the Bamar, the dominant ethnic group in Burma, resulting in an oppressive Burmese occupation. Many Rakhine men were executed, and others were deported to central Burma. As a result of the persecution conducted by the Bamar, around 35,000 people forcibly immigrated to British Bengal in 1799 (Bangladesh).² During this period, the term "Rohingya" was mentioned in British literature by Dr. Francis Buchanan-Hamilton, designating an indigenous Muslim minority in Arakan distinct from the majority Rakhine Buddhist population.³

Second Section: Burmese Authoritarian Policy

In 1971, during the Bangladeshi Liberation War, Bengalis sought refuge in Arakan, leading to protests from the local Buddhist population.⁴ The Burmese government forcibly expelled over 200,000 Muslims, including Rohingya, back to Bangladesh.⁵ In the late 1970s and early 1980s, military operations targeted Rohingya communities,⁶ causing a mass exodus of refugees to Bangladesh in 1978. The government's discriminatory policies strengthened in the early 1980s, denying basic rights and citizenship to the Rohingya,⁷ and setting a ground for deeper tragedy in later years, including the 2017 military cleansing, and the exodus of Rohingya refugees.

The Burmese Autocrats have implemented a policy of apartheid system by confining The Rohingya people in their village, imposing limitations on their

¹ - Popa-Wyatt, M., Wyatt, J.L. Slurs, roles and power. *Philos Stud* 175, 2879–2906 (2018), P 2883.

² -Martin Smith, "Arakan (Rakhine State) A Land in Conflict on Myanmar's Western Frontier", Transnational Institute (TNI), Amsterdam, December 2019, p 12, retrieved from: https://www.tni.org/files/publication-downloads/tni-2020_arakan_web.pdf, consulted on 16.05.23.

³ - Nemoto, Kei. "The Rohingya Issue in Myanmar." *Asia Peacebuilding Initiatives*, 10 Oct. 2015, consulted on 11.06.23 at 10:48am, available at : www.spf.org/apbi/news_en/m_151010.html.

⁴ - Martin Smith, Id, p 39-40.

⁵ - Id, p 43.

⁶ - Id, p 44.

⁷ - Morada, Noel M. "Hate Speech and Incitement in Myanmar before and after the February 2021 Coup." *Global Responsibility to Protect* 15.2-3 (2023), p 110.



movement,¹ and limiting their access to social rights (education, healthcare, job opportunities...etc).

The Military Officers and Buddhist extremist groups in Burma have encouraged the proliferation of hate speech and incitement to violence against the Rohingya, benefiting from the “free access” to Facebook platform offered by the company, which has led to intensified hostility and violence against this community. State-controlled media channels have also played a role in disseminating misinformation and promoting the demonization of the Rohingya people.²

In the same context, an independent investigation conducted by “Reuters”, found more than 1,000 examples of posts, comments, and pornographic images attacking the Rohingya and other Muslims on Facebook.³

The Second Topic: Examining Facebook’s Involvement In The Rohingya Crisis

Facebook’s involvement in the Rohingya crisis has been met with scathing criticism from various quarters. Below sub-part explores the different evidence proving Facebook’s criminal complicity in the tragedy.

First requirement: Proving Facebook's Complicity in the Rohingya Crisis

Facebook's involvement in the Rohingya crisis has been proven in various ways, the United Nations’ report, Amnesty reports, further to Frances Haugen's testimony, and CSO correspondences.

First Section: International Independent Reports

I. The UN Independent International Fact-Finding Mission on Myanmar

The UN Independent International Fact-Finding Mission on Myanmar (IIFMM) is an investigative body established by the United Nations Human Rights Council in 2017,⁴ to examine allegations of human rights violations and abuses in Myanmar.⁵

¹ - Martin Smith, Id, p 64.

² - Morada, Noel M, Id, p 116.

³ Stecklow, Steve. “Why Facebook is Losing the War on Hate Speech in Myanmar.” Reuters, 15 Aug. 2018, www.reuters.com/investigates/special-report/myanmar-facebook-hate. consulted on 11.06.23.

⁴ - Independent International Fact-Finding Mission on Myanmar | IIMM. iimm.un.org/ffm/. Consulted on 11 Jun. 2023.

⁵ - Morada, Noel M. "Hate Speech and Incitement in Myanmar before and after the February 2021 Coup". *Global Responsibility to Protect* 15.2-3 (2023): p 128.



The IFFMM carried out a thorough investigation, gathered evidence, and interviewed witnesses from the Rohingya Community, victims, and perpetrators to assess the situation on the ground. Its mandate was to identify perpetrators, document human rights violations, and consolidate a comprehensive report to shed light on the nature of the atrocities committed during the crisis.

In September 2018, the IFFMM published its landmark report, which unveiled a range of human rights violations perpetrated by the Myanmar military, known as the “Tatmadaw”, and extremist groups. The report accused the military of committing genocide¹, war crimes, and crimes against humanity,² against the Rohingya population. The IFFMM's report was extensively cited by the International Court of Justice (ICJ) in its decision to order the Burma Authority to prevent genocide against the Rohingya.

The report also highlighted the “significant” role of social media,³ particularly Facebook, in disseminating hate speech, incitement to violence, and misinformation that fueled the conflict and contributed to the mass atrocity crimes against the Rohingya community. It underlined how Facebook became a powerful tool used by perpetrators to spread hate speech and propaganda, amplifying tensions, and fueling violence on the ground.⁴

II. Amnesty Report : Facebook’s Reckless Actions in Myanmar

a. Report Overview

The Amnesty International report published on September 29th, 2022. has accused Meta, the owner of Facebook, of its significant contribution in the atrocities committed by the Myanmar military forces in 2017. The report, titled "**The Social Atrocity: Meta and the Right to Remedy for the Rohingya**" brought attention on how Facebook's algorithms played a “dangerous role” in spreading hate speech. Through the so-called “Anti-Rohingya campaign”, Facebook, have been used as tools by military officers and Buddhist extremists’ group to spread harmful contents, targeting the Rohingya minority in Myanmar. Despite being aware of the said campaign, Meta failed to take swift action to prevent its dissemination.

Facebook’s algorithms appear to have actively promoted content that incited discrimination, violence, and hatred against the Rohingya.⁵ The company’s policies

¹ - The UN IFFMM Report, Id, p 16.

² - Id, P 16,17

³ - Id, P, p 14.

⁴ -Id, p 14.

⁵ - Amnesty International. “Myanmar: Military Top Brass Must Face Justice for Crimes Against Humanity Targeting Rohingya.” Amnesty International, 27 June 2022, p 7.



and algorithms, which prioritize 'engagement'¹ by recommending and amplifying content that is deemed 'relevant' or 'interesting' to users,² have meant that posts which were likely to provoke the most extreme and violent responses were often promoted to those most susceptible to acting on them.³

b. Facebook's Non-Cooperation Stance

Amnesty International has raised concerns regarding Meta's lack of cooperation and transparency,⁴ in dealing with Rohingya Crisis. When Amnesty contacted Meta to inquire about the steps taken to prevent their platform from amplifying hate speech against the Rohingya prior to 2017, Meta's response was considered inadequate. While acknowledging investments made in Myanmar after the events of 2017, Meta declined to provide information about the period leading up to 2017, due to legal proceedings related to these matters.⁵

Amnesty International has called for Meta to be held accountable and provide remedies for those impacted by their negligence. The report also highlights the urgency of addressing the social media platform's role in fueling human rights abuses. Draws attention to a commitment towards ensuring justice, and right to remedy for Rohingya victims.⁶

Second Section: Legal Testimonies and Official Correspondences

I. Facebook Papers : Frances Haugen's Testimony

Frances Haugen, a former Facebook employee, has unveiled internal documents,⁷ and testified before the United States Senate, regarding Facebook's practices and their impact on society.⁸ She asserted that Facebook was aware of the negative effects of its platform, such as the dissemination of misinformation, hate

¹ -Amnesty International, Id, p 8.

² -Amnesty International, Id, p 42.

³ -Amnesty International, Id, p 7.

⁴ -Amnesty International, Id, P 47.

⁵ Amnesty International, "Failing to Protect the Rohingya: How Facebook's Decisions Contributed to Violence in Myanmar." Amnesty International, 5 November 2018, <https://www.amnesty.org/en/latest/news/2018/11/failing-to-protect-the-rohingya-how-facebooks-decisions-impacted-on-human-rights-in-myanmar/>. Consulted on 12.06.23.

⁶ - Mozur, Paul. Id.

⁷ Facebook Papers" refers to a collection of leaked internal documents from Facebook, Inc. These documents were made public by whistleblower Frances Haugen, official website of Facebook papers : <https://facebookpapers.com/> , Visited on 13.06.23.

⁸ - Senate Commerce Committee. Facebook Whistleblower Frances Haugen testifies before Senate Commerce Committee [Video]. YouTube. (2021, October 5), consulted on 22.07.23, Retrieved from : <https://youtube.com/watch?v=GOnpVQnv5Cw>.



speech and negative effects on health. However, the company prioritized profit rather than user's safety.

During her testimony before the US Senate, Haugen expressed concerns about the influence of Facebook's algorithms and content moderation policies. She emphasized how these factors contributed to the proliferation of content, including misinformation and the amplification of hatred, targeting marginalized communities like the Rohingya.

Haugen's testimony shed light on Facebook's decision-making processes. Raised allegations that the company was aware of potential harm caused by its platform. Her whistleblowing and testimonies raised discussions and investigations about Facebook's practices and responsibilities, and sparked debates about platforms societal roles, highlighting the need for increased regulation to address the harm they can cause.

Furthermore, Frances Haugen has repeatedly reported that Meta (formerly known as Facebook) is repeating its mistakes in countries like Myanmar, as similar patterns emerge in places like Ethiopia, India, and Sri Lanka. In these instances, there have been connections made between Meta's content shaping algorithms and an increase in Muslim hatred and violence.¹

II. Facebook's admission of failure

During a hearing session before the U.S. Senate in 2018,² Mark Zuckerberg acknowledged that Facebook's response to these issues in Myanmar had been inadequate regarding combating misinformation and hate speech on their platform. He recognized the company's Deficiencies.³ Expressed regrets for not acting swiftly to address these problems.

In response to a letter from civil society organizations (CSOs) in Myanmar, Zuckerberg reassured them that Facebook would enhance its intelligence capabilities to better identify and flag hate speech moving forward. This commitment aimed at improving the platform's ability to detect content and prevent its dissemination.

¹ - Hao, Karen. "The Facebook Whistleblower Says Its Algorithms Are Dangerous. Here's Why." MIT Technology Review, 5 Oct. 2021, consulted on 28.06.23, link: www.technologyreview.com/2021/10/05/1036519/facebook-whistleblower-frances-haugen-algorithms/.

² - U.S. Senate hearing of Mark Zuckerberg, CEO of Facebook (10 April 2018). consulted on 28.05.23, Source : <https://www.commerce.senate.gov/2018/4/facebook-social-media-privacy-and-the-use-and-abuse-of-data>.

³ - Transcript of Mark Zuckerberg's Senate Hearing, WASH. POST (Apr. 10, 2018), consulted on 13.07.23, link: <https://www.washingtonpost.com/news/the-switch/wp/2018/04/10/transcript-of-mark-zuckerbergs-senate-hearing/>



Another notable report from Reuters in August 2018,¹ found that Facebook failed to promptly heed numerous warnings from organizations in Myanmar about social media posts fueling attacks on minority groups such as the Rohingya.²

III. Civil Society Organization's correspondence

Civil society organizations in Myanmar provided compelling evidence that Facebook's executives were aware of the spread of hate speech and incitement to violence on their platform. They sent several warnings to the company, proving that Facebook knew of potential crimes occurring with the assistance of its platform. As early as 2012, these organizations directly informed Facebook about the misuse of their platform. However, Facebook ignored these alerts.

In 2013, the Australian documentary filmmaker Aela Callan raised the same concerns with Facebook's Vice President of Communications and Public Policy, Elliott Schrage, about the spread of hate speech and fake user pages prevalent in Myanmar. A year later, Callan returned with other Burmese civil society organizations to report the same issues. Facebook executives responded that they were addressing the matter and even hired a Burmese speaker for their Dublin office. Additionally, tech entrepreneur David Madden claimed that he alerted Facebook officials in 2015 during a presentation at their headquarters about the platform's exploitation in Myanmar.

In July 2014, Facebook's Asia Director, Mia Garlick, met with technology organizations in Myanmar, as part of a panel discussion between technology companies, civil society organizations, and the Myanmar government, and committed to accelerate the translation of User Guidelines and Facebook's Code of Conduct by September 2015.³ A few years after, there was no confirmation about how many Burmese speakers were evaluating content that had been flagged as possibly violating its standards.⁴

¹ - Paresh Dave, "Facebook Says Human Rights Report Shows It Should Do More in Myanmar." Reuters, 6 Nov. 2018, consulted 9 Aug. 2023, link: www.reuters.com/article/us-facebook-myanmar/facebook-says-human-rights-report-shows-it-should-do-more-in-myanmar-idUSKCN1NB06Z.

² - Stecklow, Steve. "Why Facebook Is Losing the War on Hate Speech in Myanmar." Reuters, Aug. 15, 2018, consulted on 23.05.23. Source: www.reuters.com/investigates/special-report/myanmar-facebook-hate.

³ - Timothy McLaughlin, How Facebook's Rise Fueled Chaos and Confusion in Myanmar, WIRED (July 6, 2018, 7:00 AM), <https://www.wired.com/story/how-facebooks-rise-fueled-chaos-and-confusion-in-myanmar/>, consulted on 27.07.23.

⁴ - Yue, Neriah. "The Weaponization of Facebook in Myanmar: A Case for Corporate Criminal Liability" (2020)." Hastings Law Journal, Vol 71, P 835.



In 2017, Facebook Rohingya Muslim activists reported several content inciting violence against them, instead of considering their alerts, Facebook busily banned their accounts.¹ Such decisions shed light on Facebook's criminal complicity in the ethnic cleansing targeted the community, and opened a broad discussion about Facebook's criminal responsibility, questioning why the company and its executives aren't prosecuted so far.

Second Requirement: Obstacles Hindering the Prosecution of Meta Company

Upon reviewing the evidence provided in the preceding subtitle, we legitimately raise a question concerning the absence of any verdict, whether on an international or national scale, that condemns Meta Corporation for its alleged criminal complicity in the Rohingya crisis. Below sub-part scrutinizes the obstacles holding the prosecution of social media companies and their executives.

First Section: Jurisdictional Hurdles in the International Context

I. Obstacles Under the UN Genocide Convention Contexte

The facts revealed through previous reports, can be criminalized in accordance with Article 3 of the UN Genocide Convention, either as a crime of direct and public incitement to commit genocide or as complicity in genocide.²

To establish guilty mind for incitement to commit genocide, four elements must be met: (1) the intent of the incitement (*mens rea*); (2) its public nature; (3) its directness; and (4) the defendant's specific intent to cause genocide.³

Regarding the public and direct nature of incitement, social media being a technological means of widespread communication renders proving incitement as public less challenging.⁴ It is akin to historical instances like *Streicher's* newspaper⁵

¹ - Langvardt, Kyle, Regulating Online Content Moderation (August 1, 2017). Georgetown Law Journal, Vol. 106, Issue 5, p 1356.

² - Article III of the UN Convention on the Prevention and Punishment of the Crime of Genocide states that the following acts shall be punishable: (a) Genocide; (b) Conspiracy to commit genocide; (c) Direct and public incitement to commit genocide; (d) Attempt to commit genocide; (e) Complicity in genocide, Source: United Nations. Convention on the Prevention and Punishment of the Crime of Genocide. United Nations, 9 Dec. 1948, consulted on 13.06.23, Retrieved from : https://www.un.org/en/genocideprevention/documents/atrocities-crimes/Doc.1_Convention%20on%20the%20Prevention%20and%20Punishment%20of%20the%20Crime%20of%20Genocide.pdf ,.

³ - Hakim, Neema. "How social media companies could be complicit in incitement to genocide." Chi. J. Int'l L. 21 (2020): 83. P 107.

⁴ - Klamburg, Mark, ed. Commentary on the law of the International Criminal Court. Vol. 29. Torkel Opsahl Academic EPublisher, 2017. P 271.

⁵ - Der Stürmer was a weekly German tabloid-format newspaper published from 1923 to the end of World War II by Julius Streicher, the Gauleiter of Franconia. It was a significant part of Nazi



or *Nahimana's* radio broadcast,¹ as they all involve disseminating information to external audiences. However, certain distinctions exist, such as private messaging on social media, which may not be considered public. Also, tailored privacy settings on social media might limit the public nature of incitement.²

From a legal perspective, the required elements constituting the crime of “Direct and Public Incitement to Commit Genocide” are unified. However, the Genocide Convention primarily centers on the crimes committed by state members or individuals, based on the request of the state member of the treaty. Thus, making the prosecution of social media companies out of its jurisdiction.³

II. Obstacles Under The International Criminal Court

From Legal Perspective, Meta executives, as individuals can be prosecuted by the ICC, for the crime of Aiding and Abetting to commit genocide, in accordance with the article 25(3)(c) of Rome Statute. This article states that “a person shall be criminally responsible and liable for punishment for a crime within the jurisdiction of the Court if that person aids, abets or otherwise assists in its commission or its attempted commission, including providing the means for its commission.”⁴

The concept of “aiding and abetting to commit genocide” corresponds to the established facts regarding Facebook’s complicity in Myanmar. That means Facebook executives could potentially be held liable for the previous offence. Nevertheless, in fact, the International Criminal Court (ICC) does not currently have jurisdiction to prosecute, neither Meta corporation, nor Meta’s Executives, due to two legal reasons: Firstly, the ICC does not have jurisdiction to prosecute corporations.⁵ Secondly, both the United States and Myanmar are not members of the Rome Statute

propaganda and was virulently anti-Semitic, “Der Stürmer.” *Wikipedia*, Wikimedia Foundation, https://en.wikipedia.org/wiki/Der_St%C3%BCrmer. Consulted on 22.07.23.

¹ - Ferdinand Nahimana was the co-founder of the radio station Radio Télévision Libre des Mille Collines (RTLM), which played a significant role in the Rwandan genocide by broadcasting information and propaganda that helped coordinate the killings and fuel the hatred against Tutsi and moderate Hutu victims, for more detail, revert to : “Ferdinand Nahimana.” *Wikipedia*, Wikimedia Foundation, Retrieved From: https://en.wikipedia.org/wiki/Ferdinand_Nahimana. Consulted on 22.07.23.

² - Hakim, Neema, Id, p 108

³ - *Id.*

⁴ - International Criminal Court. Rome Statute of the International Criminal Court. 17 July 1998. Consulted on 01.07.23, Retrieved from: <https://www.icc-cpi.int/sites/default/files/RS-Eng.pdf>.

⁵ - Kyriakakis, Joanna, Corporations, and the International Criminal Court: The Complementarity Objection Stripped Bare (June 1, 2007). *Criminal Law Forum*, 2008, Vol 19, Issue 1, pp 118,.



treaty¹. Making the prosecution of Meta Corporation, further to its executives, falls beyond its jurisdiction.

Second Section: Obstacles in the context of national Legislations

I. The US Immunity Under Section 230

Social media companies are considered "mere internet intermediaries" and enjoy legal immunity under Section 230 of the Communications Decency Act (CDA) in the United States.² The purpose of the said law is to protect freedom of expression while maintaining general content regulation guidelines. The law provides immunity from liability for internet service providers (ISP) and users of an interactive computer service who publish information provided by third-party users.³

The law is subject of ongoing debate about the limitations of this immunity, and whether it should be reformed or revoked.⁴ Some Scholars have argued in favor of Section 230's amendment. Some argued that immunity should either be removed for bad actors or conditioned on the exercise of a reasonable standard of care.⁵ Others argued that social media companies have violated the limitations of Section 230. They argue that: "Social media companies protected by Section 230 would be stripped of their immunity if they "knowingly or intentionally," allowed third parties to post illegal content."⁶ Therefore, in the context of the Rohingya crisis, Meta Corporation must be prosecuted, as it has effectively lost its immunity based on established facts.

On the other hand, many scholars advocate the law, arguing that the regulation of social media could compel platforms to engage in excessive censorship to

¹ - International Criminal Court. "The States Parties to the Rome Statute | International Criminal Court." Asp.icc-cpi.int, 2023, consulted on 04.06.23, link: asp.icc-cpi.int/states-parties.
<https://asp.icc-cpi.int/states-parties>

² - Legal Information Institute. "47 U.S. Code § 230 - Protection for Private Blocking and Screening of Offensive Material." LII / Legal Information Institute, Cornell Law School, 2018, www.law.cornell.edu/uscode/text/47/230. Consulted on 19.07.23.

³ - O'Donnell, Nicholas. "Have we no decency? section 230 and the liability of social media companies for deepfake videos." U. Ill. L. Rev. (2021), p 727.

⁴ - David Morar, Chris Riley, A Guide for Conceptualizing the Debate over Section 230." Brookings, April 9, 2021, consulted 10.08.23 at 18:22, link: www.brookings.edu/articles/a-guide-for-conceptualizing-the-debate-over-section-230/.

⁵ - Citron, Danielle Keats, and Benjamin Wittes. "The internet will not break: Denying bad samaritans sec. 230 immunity." Fordham L. Rev. 86 (2017), p 419.

⁶ - Citron, Danielle, and Quinta Jurecic. "Platform Justice: Content Moderation at an Inflection Point." Aegis Series. Stanford: Hoover Institution (2018).



safeguard themselves from being prosecuted, this could compromise the user's right to freedom of expression.¹

Despite the surrounding debate about social media immunity under section 230. There have been no initiatives to prosecute Meta before the US courts for its alleged criminal complicity in the Rohingya crisis.

II. The US SCA Act Restriction

The Stored Communications Act (SCA) is a law that addresses voluntary and compelled disclosure of "stored wire and electronic communications and transactional records" held by third-party Internet service providers (ISPs). Due to the Act's requirement, ISP's and social media companies are prohibited from disclosing the content of communications stored in their databases, except if requested by official authorities.

In case of any probable prosecution against social media companies, the task of collecting the evidence will not be possible without the cooperation of these companies. they will refuse to provide any user data, hiding behind the SCA restrictions. The case of *Gambian vs Facebook* stands as an example, when Facebook declined to provide the ICJ with the de-platformed Burmese content.²

III. Challenges Hindering the Enforcement of ATS Act

The Alien Tort Statute (ATS),³ also known as the Alien Tort Claims Act (ATCA), is a section in the United States Code that gives federal courts jurisdiction over lawsuits filed by foreign nationals for torts committed in violation of international law.⁴ This means that foreign victims, may be able to pursue legal action under the ATS if their case fulfills certain criteria.

The ATS act provide a legal pathway for civil litigation to ask remedies from social media companies before the US justice. However, The scope of the ATS statute has been subject to ongoing controversy and debate. Some of the key issues

¹ - Aaron Minc, What is Section 230 of the Communications Decency Act – Minc Law. 23 Sept. 2020, consulted on 20.07.23, link: www.minclaw.com/legal-resource-center/what-is-section-230-of-the-communication-decency-act-cda.

² - Becker, Michael A, The Gambia v Facebook: Obtaining Evidence for Use at the International Court of Justice (October 5, 2021).

³ - Congressional Research Service, "The Alien Tort Statute (ATS): A Primer - CRS Reports", June 1, 2018, consulted on 31.05.23, link: retrieved from: <https://crsreports.congress.gov/product/pdf/R/R44947/4>, consulted on 31.05.23.

⁴ - "Alien Tort Statute." LII / Legal Information Institute, Cornell Law School, available at: www.law.cornell.edu/wex/alien_tort_statute., consulted on 20.06.23.



include what constitutes a “violation of the law of nations,”¹ and whether corporations can be held liable under the statute.²

The US courts have split about whether corporations may be held liable under the ATS, some courts accepted cases filed against corporations and others not.³

IV. Comparative Legislations Allowing the Prosecution of Social Media Companies

One of the notable comparative laws that imposes a severe procedure on social media companies is the German NetzDG act. According to this Act, social media companies with over 2 million users are obligated to remove “clearly illegal” content within 24 hours and all illegal content within 7 days of it being posted or face a fine arising up to 50 million Euros . Deleted content must be stored for at least 10 weeks afterwards, and platforms must submit transparency reports on dealing with illegal content every six months.⁴

The Indian Government has also adopted a new Act that requires social media companies to appoint a chief compliance officer in the Indian Territory, and the removal of content within 36 hours when requested by authorities. The new act was met with opposition from several social media companies, while Facebook expressed its intent to comply.⁵

The Australian legislator, has passed the Sharing of Abhorrent Violent Material Act in 2019, introducing criminal penalties for social media companies and jail sentences for its executives in certain circumstances.⁶ A possible jail penalty up to three years if the platforms fail to remove abhorrent violent material expeditiously.⁷

The above examples from comparative legal systems provide a legal pathway from which social media companies can be prosecuted for their illicit activities.

¹ - Ghosh, Dipayan. “Are We Entering a New Era of Social Media Regulation?” Harvard Business Review, 14 Jan. 2021, consulted on 03.06.23, link: hbr.org/2021/01/are-we-entering-a-new-era-of-social-media-regulation.

² - Wittenberg, Chloe, and Adam J. Berinsky. “Misinformation and Its Correction.” Social Media and Democracy: The State of the Field, Prospects for Reform, edited by Nathaniel Persily and Joshua A. Tucker, Cambridge University Press, Cambridge, 2020, pp. 163–198.

³ - Cornell Law School. Id

⁴ - Echikson, William and Knodt, Olivia, Germany’s NetzDG: A Key Test for Combatting Online Hate, CEPS Policy Insight, (November 22, 2018), p 15.

⁵ - “India Tightens Grip on Social Media – DW – 10/29/2022.” Dw.com, consulted on 21.07.23, link: www.dw.com/en/india-tightens-grip-on-social-media-with-new-tech-rules/a-63592973.

⁶ - Douek, Evelyn, Australia's 'Abhorrent Violent Material' Law: Shouting 'Nerd Harder' and Drowning Out Speech, Australian Law Journal, (August 26, 2019). vol 94. P 8

⁷ - Reality Check team. “Social Media: How Can Governments Regulate It?” BBC News, 12 Feb. 2020, visited on 21.07.23, retrieved from: www.bbc.com/news/technology-47135058,



Meaning to say, the victims can pursue their case in foreign countries that possess a legal framework governing social media companies. However, such legal procedures require a political will to pursue a case affecting foreign victims using domestic taxpayer funds. Besides other practical obstacles that remain barriers, like those faced in cross-jurisdictional individual prosecutions.¹

In December 2021, a human rights activists from the Rohingya community in UK and USA pursued Facebook, accusing the company of failing to prevent the incitement to genocide, and asking for remedy of £150 billion.²

Conclusion

At the end of this research, we conclude that the extensive use of social media platforms has led to the spread of hate speech and incitement to violence, like what we have seen in Myanmar.

International reports indicated Facebook's involvement in incitement to hatred and violence, which led to ethnic cleansing against the Rohingya minority. However, a set of legal obstacles shields Facebook and its executives from being prosecuted, and these obstacles are mainly related to the ICC jurisdiction and non-membership of the U.S.A. in court. beside legal obstacles in the US legal system.

This situation highlighted the need to adopt a legal framework at the international and national levels, for the purpose of regulating social media' activities, as well as expanding the ICC's jurisdiction to include legal entities, in addition to imposing more control over their activities, and forcing them to respect human rights in the country where they operate.

At the national level, local legislation should be enacted, similar to the German NetzDG, which aims to compel social media companies to comply with the national criminal laws, especially with regard to human rights' compliance, and obligating them to cooperate judicially with local authorities in terms of disclosing requested data that could help tracing defendants.

the Local law must oblige social media companies to be more transparent by publishing yearly basis reports about the company's efforts in terms of human rights assessment and content moderation, to prevent their negative impact on the country's security.

¹ - Hamilton, Rebecca J. "Platform-Enabled Crimes: Pluralizing Accountability When Social Media Companies Enable Perpetrators to Commit Atrocities." BCL Rev. 63 (22 Nov 2022), p 1410,

² - Milmo, Dan. "Rohingya Sue Facebook for £150bn over Myanmar Genocide." The Guardian, 6 Dec. 2021, consulted on 02.07.23, link: www.theguardian.com/technology/2021/dec/06/rohingya-sue-facebook-myanmar-genocide-us-uk-legal-action-social-media-violence.



In conclusion, the negative effects of social media platforms must be faced with more rigorous and serious measures in order to find effective mechanisms that could protect users and keep these websites out of any dangers.

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