

5. Unpacking Fiji internet law narratives

Online safety or online regulation?

Commentary: It took approximately six seconds, with 27 votes against 14 on the 16 May 2018 at 5:03pm for the Fiji Parliament to pass the *Online Safety Bill* (Fijian Parliament, 2018b). Thereafter, the Bill came into force as the *Online Safety Act, 2018* (Fijian Government, 2018), despite concerns about its impact on free speech. This commentary examines how the public was conditioned by certain prominent actors, such as the Attorney-General and Media Industry Development Authority (MIDA) chair, with support from government-aligned media. The *Online Safety Bill* had been touted as legislation designed to protect Fijians from harmful online activities (Doviverata, 2018; Nacei, 2018). However, the Bill's implementation was preceded by a set of supportive media-facilitated narratives that seems almost too convenient. This commentary scrutinises the series of media facilitated narratives that justified the *Online Safety Act*. The discussion briefly examines the connection between the media, blogs and social media in Fiji. It then explores the media facilitated narratives to provide a brief critique of the Act as a so-called 'Trojan Horse' for safety while risking responsible political free speech. Finally, it seeks to answer whether it is about online 'Safety' alone, or 'Regulation' of online media.

Keywords: Fiji, free speech, internet politics, media, media regulation, media freedom, social media

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Media transition from blogs to Facebook

FIIJIS media landscape has been considerably restricted since the 5 December 2006 coup (Robie, 2016; Singh, 2010a, 2017). The restrictions ranged with outright censorship by military officials placed in newsrooms to the use of intimidation and threats against journalists before the promulgation of the *Media Industry Development Decree (Act)* in 2010, which enabled a culture of self-censorship (Pareti, 2009; Morris, 2017; Robie, 2009a, 2009b, 2016; Singh, 2010a). However, alongside the media constraints, online interactive websites have blossomed as alternative avenues for the exchange of information and

discussions (Tarai, 2015; Foster, 2007; Singh, 2010b; Walsh, 2010). While alternative spaces online were the consequence of the variety of restrictions on free speech, this did not exempt some of the content being vitriolic and inaccurate (Singh, 2010b; Walsh, 2010). These online interactive sites began with blogs, followed by social networking sites such as Facebook. This transition and expansion of discussions from blogs to social networking sites was evident in the lead up to and during the 2014 National Elections (Tarai, Kant, Finau, & Titifanue, 2015b; Finau, Kant, Logan, Prasad, Tarai & Cox, 2014).

Social networking sites in Fiji such as Facebook, had begun to take off shortly after 2010, through Facebook Groups such as *Letters to the Editor Uncensored*, which had gained traction in 2011 (Administrator, 2013). This Facebook group was set up to publish letters that were censored from the national dailies at the time (Administrator, 2013). However, most of these Facebook groups were small, totalling around 10,000–15,000 active accounts, and did not grow beyond their limited likeminded active membership. This dynamic shift began in the lead up to the 2014 elections as Fiji's Facebook user population began to substantially increase. In January 2014, the estimated total Facebook users in Fiji stood at 260,000; by August it had increased by 20,000 to 280,000 users; but in less than a month in the lead up to the polling day of the September 17, it escalated to 298,000 users (Tarai, Kant, Finau & Titifanue, 2015c). This indicated the increasing number of new Facebook accounts that were created as the polling day drew near at the time.

Fijian Facebook

Facebook discussions and debate in Fiji at the time began to garner more national attention compared to blogs because of the technological shift that created greater ease of access, increasing use and social media political campaigning. More and more locally based Fijians were creating accounts and actively following discussions even if they did not post comments. This marked a difference from blogs where a number of administrators were based overseas. In addition to this, the variety of technological access had shifted from desktops which were mainly used for access to blogs (typically at home, internet cafes or at work) to hand held devices such as smart phones for social media (Tarai et al., 2015c; Walsh, 2010). This meant that there was greater ease of access for Facebook, in part because of the technological shift from desktop computers that were used to access blog sites, to more affordable data plans and smart hand held devices for social media. Political campaigning inevitably incorporated social media because of its growing use in the Fijian population. More and more political parties and actors began to campaign online via social media, and this meant that Fijian citizens and voters were able to directly engage with these parties and candidates (Tarai et al., 2015c).

As more and more accounts engaged in discussions, similar to the wave of blogs in Fiji, there was a tendency to have vitriolic and mediocre debates in some unmoderated discussion forums. However, in spite of the aforementioned, it is noteworthy and often unacknowledged that a variety of social media discussions have proven crucial to driving and pressuring accountability from decision makers at large. A notable example was in 2013 when the Bainimarama government announced plans to change Fiji's national flag as a means of removing its colonial symbols (Tarai, Kant, Finau, & Titifanue, 2015a). The public were invited to send in new designs as a competition but the social media discussions began to indicate the general public's dissatisfaction with the proposition. Ultimately, the public's dissatisfaction was amplified through social media and the proposed flag change was shelved (Tarai et al., 2015a). Another example includes the online discussions and campaign against the scholarship termination of a University of the South Pacific (USP) student for working as a volunteer for an independent political candidate in 2014 (Pacific Media Centre, 2014). The online and subsequent offline critiques led to the reinstatement of the student's scholarship (Tokalau, 2014). Regionally, social media has proven effective in amplifying collective concerns about West Papua, climate change and responses to natural disasters such as Cyclone Pam and Cyclone Winston (Finau, Cox, Tarai, Kant, Varea & Titifanue, 2018; Finau, Prasad, Kant, Tarai, Logan & Cox, 2014; Titifanue, Tarai, Kant & Finau, 2016; Titifanue, Kant, Finau & Tarai, 2017).

These incidents exemplify greater social accountability being motivated from the *bottom-up*, proving great potential for enhancing wider citizen participation and empowerment through social media. These cases also highlight the utility in the responsible use of social media in Fiji and the wider Pacific region.

The 'Regulation' narrative

Unfortunately, the potential to harness social media use for greater citizen participation and empowerment has often been overlooked. Instead, what prevailed was a largely one-sided, sensationalised obsession on the dangers of vitriolic and mediocre online discussions. This has been perpetuated by statutory bodies such as the Media Industry Development Authority (MIDA) and the more government-inclined media outlets, namely the Fiji Broadcasting Corporation (FBC) and the *Fiji Sun* (Tarai, 2015, 2018a; Raj, 2014).

In essence these news and information institutions, being powerfully financed and backed, have selectively focused on saturated discourses only on the irresponsible use of social media, rather than on the benefits. This is despite the fact that some media commentators have called for a balanced approach but have unfortunately been ignored (Singh, 2017). An SSGM paper titled *State of the Media Review in Four Melanesian Countries—Fiji, Papua New Guinea, Solomon Islands and Vanuatu*—in 2015 had predicted that 'with clear evidence

that the social media movement was gaining momentum, the prospect of stronger media laws remains a grim reality' (Singh, 2017). This was as the paper went on to state that due to the rising levels of government criticism and the government challenge to address these criticisms, without out rightly undermining free speech (Singh, 2017).

One person who played an instrumental role in the eventual adoption of the *Online Safety Bill* was the MIDA Chairman and Fiji's Human Rights Commissioner Ashwin Raj, who was consistently vocal about the issue and received considerable air time on FBC and newspaper space in the *Fiji Sun*. Among the first strong calls for controlling or regulating social media was made in 2014 on FBC's radio *Aaina Programme*, where the host asked Raj if '...social media could be unplugged?'¹ (Tarai, 2015; Raj, 2014). The MIDA chairman responded by highlighting the risks of international condemnation if social media usage was contained by legislation. This was the juncture where on record, FBC and MIDA had the earliest discussions about regulating social media in Fiji. The 'regulation' narrative was born on the suggestion of 'unplugging' social media, solely predicated on its 'irresponsible' use, with its responsible and constructive potential overlooked and denied.

By 2015, the narrative of 'regulation' took on a more specific tone. MIDA Chairman Raj specified, at a *National Security Symposium* at the University of the South Pacific, that vitriolic and divisive discussions on social media were being perpetuated by the youth of Fiji (Tarai, 2015; Vuibau, 2015). Without any quantifiable evidence, or technical basis, Raj claimed that young people in Fiji were behind the irresponsible use of social media and proposed what he called an 'epistemological' approach to address the problem (Tarai, 2015). What an 'epistemological' approach involved was not clarified by Raj and did not eventuate beyond its mere words.

This marked a lost opportunity on the part of Raj, notwithstanding the evident conflict of interest, as the Chairman of MIDA and also as the Director of Human Rights and Anti-Discrimination Commission in Fiji. There was an opportunity at that point for Raj as the holder of these two crucial positions with access to statutory resources to roll out a thorough, contextual, national awareness and educational programme encouraging the responsible use of social media, targeting high schools, telecommunication companies and the public in general. Instead of encouraging and implementing education as an approach, the 'regulation' narrative was groomed and emphasised.

By 2016, social media in Fiji had earned a full blown negative reputation as far as the government inclined media outlets were concerned. In early 2016, the *Fiji Sun* began to amplify social media as 'the dark side' and ended the year calling it, the year of 'fake news' (Delaibatiki, 2016; Ross, 2016). Fiji's first ever Facebook defamation case emerged in August, over allegations made online

by Emosi Radrodro against Ellen Whippy Knight (Gounder, 2016). By early 2017, the Civil High Court ordered Radrodro to pay Knight damages amounting to FJ\$10,000 (Pratibha, 2017a). This case was expected to set a precedent for defamatory remarks on social media. It indicated that the existing laws and systems in place were adequate to address online remarks that were found to be defamatory.

In early 2017, Raj, in his capacity as the Director of the Human Rights and Anti-Discrimination Commission, was quoted by FBC, calling for the regulation of social media comments (FBC, 2017). He went further and called on the state to move from looking at mainstream media to social media (FBC, 2017; RNZ, 2017). Raj along with government inclined media organisations had accumulated momentum in lamenting ‘Hate Speech’ as an adequate justification for regulation (Delaibatiki, 2017; FBC, 2017). However, it was apparent that Raj as MIDA Chairman and Director of the Human Rights and Anti-Discrimination Commission and the government inclined media outlets, were the only actors pushing for the regulation of social media without acknowledging the potential of responsible social media use at that point. Ironically, even the Head of Government, Prime Minister Voreqe Bainimarama, had admitted the usefulness in responsible use of social media, specifically highlighting Facebook and Twitter as social networking sites, while urging USP students against its misuse (Bainimarama, 2016).

By the end of 2017, at the Attorney-General’s annual conference, Raj’s long-held crusade for social media regulation was finally vindicated with the endorsement of the Attorney-General, Aiyaz Sayed-Khaiyum (Pratibha, 2017b). However, it is interesting to note that at the same event the Police Commissioner, Brigadier General Sitiveni Qiliho, had called for the regulation of cyberspace, specifically referencing cybercrimes committed online, which is by law handled by the Cyber Crimes Unit, empowered under the *Crimes Act 2009* (Tarai, 2018a; Chaudhary, 2017). The Police Commissioner was echoing Prime Minister Bainimarama’s sentiments at the opening of the conference around controls being put in against cybercrimes, which had totalled 158 cases since 2008 (Chaudhary, 2017).

In this regard, the MIDA Chairman and Director of Human Rights and Anti-Discrimination Commission and the Attorney-General were more specific about controlling social media comments and debates compared to the Police Commissioner and the Prime Minister. The regulation narrative proved problematic for cybercrime because it was already regulated by the *Crimes Act 2009*. In addition to this, there was an already established Cyber Crime Unit that investigated cases. Therefore, the regulation narrative at this point attempted to conflate social media discussions and cybercrime issues into one package. By the end of 2017, social media regulation appeared to be inevitable, while cybercrime regulation seemed repetitive and unnecessary. The conflated and somewhat convoluted dynamic of regulation between social media discussions and cybercrimes did

not provide a convincing ‘regulation’ narrative. It created a bland, vindictive narrative against Fijian citizens, especially for those online. This paved the way for the ‘Safety’ narrative.

The ‘Safety’ narrative

The ‘Safety’ narrative had been cultivated through a series of highlighted cases prominently featuring revenge porn on social media in late 2017. The *Fiji Sun* covered a series of articles on the story of an online Dropbox that contained images of nude young Fijian women (K. F. S. Chanel, 2017). The Dropbox was being accessed by a number of men, and the ex-boyfriends of the women, who were disgruntled and had sought to humiliate these women (K. F. S. Chanel, 2017; S. Chanel, 2017). Some of the young women were subjected to emotional and psychological abuse and manipulation from men who exploited the situation (S. Chanel, 2017). This was then followed by another case in early 2018, of an intimate video of a couple being leaked on social media but being quickly deleted by the online user (S. Chanel, 2018). Other notable cases have included cyberbullying and harassment. These cases emphasised the vulnerability of women and children in the excesses and abuse of digital technologies and social media.

These cases appeared and escalated quickly around late 2017, early 2018 largely being covered or pushed by state-inclined media outlets, such as the *Fiji Sun*. Cases of ‘revenge porn’ have been largely well known in Fiji, as far back as the early 2000s. Most notable among these was the case of Mereia Tuiloma, who eventually came out in public about overcoming her emotional torment and situation in 2013 (Valentine, 2013).

The Bill, now an Act

At the height of the ‘Safety’ narrative in early 2018, the Attorney-General, Aiyaz Sayed-Khaiyum introduced the *Online Safety Bill* in the Fijian Parliament on 15 March and called for its immediate passing in the May parliamentary sessions (Fijian Parliament, 2018a). The Attorney-General capitalised on the ‘Safety’ narrative and referenced specific elements of the aforementioned publicised cases of ‘revenge porn’ and cyber harassment (Fijian Parliament, 2018a). The claimed overarching intent of the Bill in the debate was about protecting Fijian citizens by ensuring their online safety. Interestingly, the issue of cybercrimes, as was often mentioned by the Police Commissioner in late 2017, had not been discussed in the introduction of the Bill on 15 March. It was evident at that point that the ‘Safety’ narrative created a moralistic predisposition for the Bill and that to argue against it was to argue against the safety of Fijians.

However, there are a number of revealing observations that pose questions about the intent in the process of the *Online Safety Bill* becoming the *Online*

Safety Act. These observations include the duration of consultation and the lack of clarification in some sections of the act.

The Bill emerged as a detailed draft by early March 2018, shortly after the Attorney-General's 2017 conference. The opposition chambers were not properly informed about the draft bill in the lead up to the March 2018 parliamentary sitting (Fijian Parliament, 2018a; Personal Communication, 2018; Prasad, 2018). In addition to this, the government only allowed two months for public submissions on the Bill to be made to the Standing Committee on Justice, Law and Human Rights. This restricted the depth and scope of consultation about the Bill, considering the fact that it was going to affect the estimated more than 500,000 active online users in Fiji (Audience Insights, 2018; Tarai, 2018b).

The lack of clarity was a pervasive feature in the act. For instance, the 'Online Safety Commission' and its role appears to mimic the Fiji Police Force-based Cyber Crime Unit's functions, in terms of investigating complaints. This lack of a distinction between the Cyber Crime Unit and Commission risks duplication of functions and wastage of taxpayer funds. Perhaps the most evident lack of clarity, is the fact that the act does not have a clause or section that outright protects responsible online free speech, discussions and debate. This is despite the fact that a considerable number of the public submissions had alluded to the implications the Bill would have for free speech (Fijian Parliament, 2018c).

Part 4, in the *Online Safety Bill No. 7, 2018* lists offences such as 'Causing harm by posting electronic communication and posting an intimate visual recording' (Fijian Government, 2018). However, the broad interpretation of 'harm' has been highlighted as a concern and possible threat to free speech (FWCC, 2018). For instance unethical politicians covered in the print media as a matter of public interest would be legal but can be argued as causing 'harm' once it is covered online (FWCC, 2018). In addition to this the stipulated Online Safety Commission in Section 6 of the Bill is given broad powers, which has raised concerns on its possible threat to free speech. This is especially so, when the bill asserts that to perform the Commission's functions part of its guaranteed power is to 'do *all things necessary* for the performance of its functions' (Fijian Government, 2018).

These aspects put into question the scope of the Act and whether it is leaving the door open to impinge on cases of responsible free speech online, especially since 2018 is an election year for Fiji.

Conclusion

The claimed intent behind the *Online Safety Act* is certainly a noble one and long overdue in so far as protecting women, children and victims of irresponsible online behavior is concerned. However, the 'danger' narrative creatively cultivated by Fijian state officials ignored the strengths of social media. This has been successfully done with the help of a series of media facilitated narratives

focused on the vitriolic content of social media, and calling for regulation. These media-facilitated narratives disregarded the need to protect responsible online free speech, discussion and debate. The fact that there is no outright acknowledgement and protection of responsible online free speech, the rushed process of the Bill and the vague areas in the legislation, raises questions about the timing of the Bill becoming an Act. In a way the two media-facilitated narratives reveal the conflated nature of the Act. The Act on the surface professes online ‘Safety’, while its vagueness on responsible free speech leaves the act open to being a Trojan horse for online ‘Regulation’ and censorship of dissenting voices.

The Fijian government has maintained a tight grip on Fiji’s traditional media landscape through the *Media Industry Development Act* (formerly *Media Industry Development Decree*) and this has led to a culture of self-censorship (Morris, 2016; Robie, 2016; Singh, 2017). The online landscape is now the new frontier that it seeks to have some control over and the *Online Safety Act* could very well provide that control. Perhaps the greatest evidence lies in the fact that both the *Media Industry Development Act* and the *Online Safety Act* are placed under the responsibility of the same minister, whose demeanor and approach has consistently been about greater controls of the Fijian government. However, at least for the moment, the *Online Safety Act* professes to be more about ‘Safety’ than it is about ‘Regulation’.

Note

1. Aiana Ep 144-www.youtube.com/watch?v=1ZrY_br2E-8—the question was asked at the 26:17 minute of the 45:46 minute interview.

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