



## ARTICLE 19's submission

### Response to the consultations of the UN Special Rapporteur on Freedom of Expression on her report on disinformation

#### Introduction

ARTICLE 19 welcomes the opportunity to respond to the public consultations organised by the UN Special Rapporteur on Freedom of Expression and Opinion (Special Rapporteur) on her forthcoming report to the Human Rights Council focused on disinformation.

Although problems posed by disinformation, misinformation and various forms of propaganda are not new, ARTICLE 19 is fully aware that in recent years and months, the issue has emerged to permeate an increasingly digital society, triggering further debates over politics, journalism, social media, audiences and the exercise of the right to freedom of expression and information. There is no denying that disinformation in various shapes and forms exists and is available in abundance, especially on social media; it can cause serious harm to individuals, society, economy and democracy. The concerns over disinformation came into the spotlight particularly in the context of the COVID-19 pandemic and debates about effectiveness of measures to suppress it. These include claims and myths about alleged remedies, conspiracy theories, exaggerated or underreported infection figures or inaccurate descriptions of government policies. It has been reported that disinformation about COVID-19 has circulated much more widely than information from authoritative sources.<sup>1</sup> However, the furore and heated debates that disinformation and similar concepts generate in public and policy debate often distract from the threat posed to freedom of expression by the prospect of state-controlled information, or an opaque selective sorting of media content by dominant digital platforms.

ARTICLE 19 therefore welcomes the decision of the Special Rapporteur to examine this issue and offer recommendations on how to address disinformation, misinformation and propaganda in a way that complies with international standards on freedom of expression and information. More than ever, in the context of COVID-19 pandemic, we believe it is crucial to maintain an enabling environment for freedom of expression and information, which includes promoting, protecting and supporting diverse media and sources of information, and ensuring that any restrictions on freedom of expression fully comply with international human rights standards.

ARTICLE 19 has significant experience working on this issue both globally and on regional and national levels, including through analysis of existing and draft legislation, support to individuals targeted by restrictive legislation on disinformation and through regional and global advocacy. This submission builds on our existing work and focuses on the following:

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<sup>1</sup> J. Gregory, [The coronavirus 'infodemic' is real. We rated the websites responsible for it](#), 28 February 2020.

- We start with providing overall comments on the concept of disinformation as a basis for restricting freedom of expression and on the context of regulatory attempts in this area;
- Further, we outline the results of our monitoring of state legal and policy measures to address disinformation and comment on key challenges for freedom of expression raised by them;
- Finally, we comment on policies, procedures and measures adopted by digital companies to address the problem of disinformation on their platforms and the challenges posed by these measures for freedom of expression of their users.

In each section, we provide recommendations for the Special Rapporteur on how to protect and promote the right to freedom of opinion and expression while addressing disinformation.

## I. Overall comments

### *Concept of disinformation*

At the outset ARTICLE 19 notes that the terms used in this context - ‘disinformation,’ ‘misinformation,’ propaganda or ‘false information’ – do not have an agreed definition in international or regional human rights law. In general, we observe that attempts to define these concepts in national laws and regional standards<sup>2</sup> focus on prohibitions on “false” or “misleading” information that may cause certain “harm” or detriment (e.g. to public health, social cohesion, economic gain or rights of individuals). We are cognisant of the fact that these concepts have been used and abused by power-holders as a means to discredit information they do not like. e.g. labelling certain media outlets or individuals as ‘fake news (see more on these problems in the subsequent section).<sup>3</sup>

These concepts often also encompass various forms of “state propaganda;” that is false or misleading information or manipulation of certain true information by official channels of States or channels controlled by them (e.g. state-controlled media). State propaganda can also involve various campaigns and efforts by States or powerful actors to target or discredit their political opponents and critical voices in the society (e.g. through smear campaigns). It might also involve manipulative historical narratives or controversies; some even talk about military and “information wars’ for geopolitical gains and agendas.

ARTICLE 19 further observes that although the calls to address disinformation have intensified in recent years and months (in particular in the context of the COVID-19 pandemic), the issue has been already extensively addressed in different legal fields. These range from laws on defamation (restrictions on false statement of facts that causes substantial harm to a person’s reputation), election fraud, misleading advertising or sales of certain products (i.e. the field of medicine), hate

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<sup>2</sup> See e.g. The Council of Europe, [Information Disorder: Toward an interdisciplinary framework for research and policy making](#), Council of Europe report DGI(2017)09, 27 September 2017; which advocates for a distinction between ‘misinformation’ (when false information is shared, but no harm is meant), ‘disinformation’ (when false information is knowingly shared to cause harm) and ‘mal-information’ (when genuine information is shared to cause harm, often by moving information designed to stay private into the public sphere.)

<sup>3</sup> *Ibid.* The report noted that “in this way, it’s becoming a mechanism by which the powerful can clamp down upon, restrict, undermine and circumvent the free press. It’s also worth noting that the term and its visual derivatives (e.g., the red ‘FAKE’ stamp) have been even more widely appropriated by websites, organisations and political figures identified as untrustworthy by fact-checkers to undermine opposing reporting and news organizations;” p.16.

speech to rules on political campaigning. Some aspects of disinformation have been addressed in ethical codes of related industries (e.g. journalistic codes focusing on accuracy in media reporting).

ARTICLE 19 highlights that it is also important to keep in mind the societal and economic context in which disinformation easily proliferates:

- First, **digital technologies** allow for the creation and dissemination of disinformation by individuals who previously had no or limited opportunities to do so on scale. In some instances, falsity of certain information in itself would not pose a significant problem if communicated to a small audience, or groups of friends; but it becomes an issue of concern when it goes ‘viral’, that is when it is distributed to a large audience that is unable to check veracity of such information.
- Second, disinformation must be seen in the context of **reduced pluralism and the diversity** of information accessible online. Access to a plurality and diversity of voices is a fundamental pillar of our democracies, and a necessary premise for an open and informed public discourse that allows individuals to form their opinions and to engage in civic space. However, the business model of digital companies, in particular social media platforms, is not neutral or conducive to diversity. It is based on advertising and monetising users’ attention. Due to this business model and system the companies use to promote, demote, organise or curate content, each social media user is only exposed to a subset of the vast number of sources and viewpoints available online. These companies have no incentives to expose users to all content potentially available on the platforms, but only to the tiny portion of it that will keep them more engaged. Studies demonstrate that the most engaging content is the one that is more sensationalist and provocative, and stories and information that appeal to baser instincts and trigger outrage and fear.<sup>4</sup> Disinformation is among such content. The artificial reduction of pluralism and diversity and propensity of the business model to augment ‘viral’ content, including disinformation are underlying problems that must be addressed by legislators and enforcers to protect democracy and social cohesion and reduce disinformation.
- Third, the problem of disinformation also needs to be seen in the context of an unfinished **evolution of the media landscapes**. There is no doubt that the times are not easy for legacy media businesses as they face the challenges of digital transformation and the competition of online platforms in the online advertising market. To some degree, the craft of journalism is also transformed by technological evolutions.<sup>5</sup> The general public is also expected to be able to navigate the digital world and develop new skills to seek and impart information in the online environment.
- Last but not least, the problems and challenges posed by disinformation cannot be attributed solely to technology enabling mass creation and distribution of content. The attention must be paid to **underlying social causes**, in particular economic deprivation of large groups of people, market downturns and resulting vast increases of social inequality. These are then exploited by populist politicians who use the frustration of segments of population to manipulate the vision of reality and exploit it for political gain. Prevailing narratives too often stress out that disinformation creates hyperpolarised society and social and political disorder;

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<sup>4</sup> See e.g. S. Vosoughi, D. Roy & S. Aral, [The spread of true and false news online](#). Science Vol. 359, Issue 6380, pp. 1146-1151, 2018; or Z. Tufekci, [The Rial Bias Built in at Facebook](#), New York Times, 2016.

<sup>5</sup> See E. Bell & T. Owen, [The Platform Press: How Silicon Valley is Reengineering Journalism](#), Tow Centre for Digital Journalism, 2017.

but fail to acknowledge that it might be economic and social deprivation and inequality that lead to the collapse of social trust and polarisation. Disinformation is thus a result/symptom of societal crisis rather than its cause.<sup>6</sup> As inequalities are likely to increase around the world in the aftermath of the COVID-19 pandemic, it is important that States tackle the underlying social and economic problems that disinformation is symptomatic of, in particular undertake comprehensive economic reforms and prevent and hardship and disaffection in the population.

### *Restricting disinformation*

As restrictions on disinformation engage limitations on freedom of expression, any legal and policy response to these problems must be based on international freedom of expression standards. In particular, they must meet the tripartite test set by the Human Rights Committee under Article 19(3) of the International Covenant on Civil and Political rights (ICCPR) and by regional human rights bodies. ARTICLE 19 makes the following observations in this respect:

First, ARTICLE 19 questions whether it is possible to define the concept of ‘disinformation’ with a sufficient precision that would meet **the requirements of legal certainty**. We recall that under the first leg of the three-part test, any restrictions on freedom of expression must be “provided for by law.” This means that they must be formulated with ‘sufficient precision’ so individuals can generally foresee the consequences of their actions. We are concerned that any attempts to define disinformation or capture the complexities of this concept in one catch-all definition will be inherently ambiguous and vague and will risk overbroad and subjective interpretations.

Second, we note that restrictions of freedom of expression on the basis of a mere falsity or a misleading nature of certain information will not **meet the requirements of legitimate interest** under the tripartite test. The falsity of information is not a legitimate basis for restricting freedom of expression under international and regional human rights law and is inherently problematic. In particular, ARTICLE 19 highlights that:

- Disinformation is a complex problem, not least because more often than not, the line between fact and opinion is hard to draw. For this reason, banning and other legal restrictions on the sharing of false information are open to abuse and can have a devastating impact on political discourse. Enacting a legal duty of “truth” would then create a powerful instrument to control the flows of information and ideas. Allowing public officials to decide what counts as ‘truth’ will always be tantamount to accepting that the forces in power have a right to silence views they do not agree with, or beliefs they do not hold.
- In a democratic society, intentionally creating or sharing ‘false information’ may be in the public interest. For example, artists may engage in satire and parody, knowingly using imitation and fabrication to convey their opinions and ideas, or a blogger on social media may re-post a politician’s “false” statement in the context of sharing to their audience the fact that they were made.
- Falsity or inaccuracy of information might only become apparent in time, with advanced research and evaluation. This has been also the issue with some information and efforts to fight the COVID-19 pandemic. For instance in the early stages of the pandemic, the usage of

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<sup>6</sup> C.f. e.g. The EU Parliament, [Mapping Fake News and Disinformation in the Western Balkans and Identifying Ways to Effectively Counter Them](#), December 2020.

face masks to spread virus in non-clinical setting was not recommended; but several months later became a norm<sup>7</sup>. Hence, creating a legal duty of truth would prevent the discussion of ideas which challenge the existing norms, would limit scientific and journalistic activities and public debate and could restrict criticism of societal attitudes or of those in power. It would risk that scientists, journalists or human rights defenders would be sent to prison on accusations of disseminating untrue statements that might be proven accurate only in time.

Hence, ARTICLE 19 urges the Special Rapporteur to conclude that international human rights law already provides sufficient scope for restricting disinformation when connected to a particular legitimate aim – that is if disinformation is connected to one of explicitly listed legitimate aims under Article 19(3) of the ICCPR or Article 20 of the ICCPR. These interests capture all instances in which the harms of disinformation are currently discussed – both in terms of protecting individuals (e.g. invasion to individuals’ privacy or reputation) or society at large (e.g. public health, incitement to violence, hostility or discrimination, protection of minorities or free and fair elections and legislative processes<sup>8</sup>). Any restrictions on disinformation must be explicitly linked to protection of these specifically enumerated legitimate interests.

Third, ARTICLE 19 also highlights that any restrictions of disinformation must be **necessary in a democratic society and respond to a specific pressing social need** (e.g. creation of a risk to public order, or incitement to violence), and likelihood that harm will occur as a direct consequence of disinformation. The absence of a pressing need for restrictions is underscored by the availability of a variety of non-coercive means to promote the public’s right to know and increase the possibility of false information/disinformation being countered with accurate information. These include efforts to support media pluralism and independence, to educate the public in media and digital literacy, and to enact policies to ensure government officials disseminate reliable and trustworthy information.<sup>9</sup>

In respect to **online disinformation** specifically, ARTICLE 19 also believes that it is necessary to encourage further comprehensive research to assess the seriousness of the impact of online disinformation. The need for public intervention must be robustly established and supported by empirical evidence. We observe that numerous studies and reports outline the risks and harms of disinformation, however, the picture that is being painted by these studies remains incomplete and calls for additional research efforts.<sup>10</sup> Beyond the measurement of the reach of a particular information or piece, it still remains to be seen to what extent has disinformation in question influenced its audience; that is, to what extent it has lead viewers and readers to change their minds about a particular topic and act and react accordingly. It has been humorously said that the

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<sup>7</sup> See e.g. H. J. Schünemann et al, Use of facemasks during the COVID-19 pandemic, *The Lancet*, Volume 8, Issue 10, P954-955, 1 October 2020.

<sup>8</sup> While Article 21 of the Universal Declaration of Human Rights (UDHR) is the source most often cited for this point, numerous international instruments recognise electoral rights.

<sup>9</sup> 2017 Joint Declaration, *op. cit.*

<sup>10</sup> See, e.g. C. Silverman, [This Analysis Shows How Viral Fake Election News Stories Outperformed Real News On Facebook](#), BuzzFeed, 2016; Z. Tufecki, [It's the \(Democracy-Poisoning\) Golden Age of Free Speech](#), Wired, 2018; S. Vosoughi, D. Roy, S. Aral, The spread of true and false news online, *Science*, 09 Mar 2018, Vol. 359, Issue 6380, pp. 1146-1151; P. Dizikes, [On Twitter, false news travels faster than true stories](#), MIT News, 8 March 2018; R. Fletcher, A. Cornia, L. Graves and R. Kleis Nielsen, [Measuring the reach of "fake news" and online disinformation in Europe](#), Factsheet, February 2018, Reuters Institute for the Study of Journalism; B. Nyhan., A. Guess, J. Reifler, [Selective Exposure to Misinformation: Evidence from the consumption of fake news during the 2016 U.S. presidential campaign](#), 9 Jan. 2018; B. Carey, ['Fake News': Wide Reach but Little Impact. Study Suggests](#), New York Times, 2 January 2018. See also SCAR, [Survey of Public Attitudes to Coronavirus Disinformation and Fake News in France, Germany, Italy, Spain and the UK](#), 2020.

current state of knowledge in studies of media effects could be summarised as “certain types of communications, on certain types of subjects, transmitted towards certain types of persons, in certain types of circumstances, have certain types of effects.”<sup>11</sup> Public debates on the regulation of online content should go beyond the seductive trendiness of a successful buzzword to consider what is actually known so far. That is not to say that all the agitation is entirely in vain, but it should be recognised that before we can develop a genuine response to online disinformation, we need to understand what impact it is having. Crucially, assessing the reach of disinformation requires to consider that offline and online worlds - including mobile consumption of news and increasingly partisan media - are each complex systems where various sources of news can be consulted through various channels and devices.

Overall, the aim of determining whether there is a pressing social need to develop new legislative responses to disinformation should be to show that the problem has a significant impact on the audiences and public debates that require public authorities to urgently deploy a new legislative arsenal.

ARTICLE 19 also recalls that for restrictions on disinformation to be compatible with international standards on freedom of expression, they should be constantly applied in a **proportionate manner**. We warn that criminal offences, and in particular custodial sentences, will often be disproportionate when applied to speech, including disinformation. For example, in cases of defamation, where an individual experiences unfair attacks on their reputation through statement of false facts, causing them substantial harm, the appropriate course of redress should be through civil defamation laws that comply with international human rights law.<sup>12</sup> Such laws should provide, for example, defences of truth and reasonable publication on matters of public concern.<sup>13</sup> The illustrations imply that if defamation cases are tried as criminal disinformation matters, this would clearly violate international human rights law. ARTICLE 19 urges that such harms are instead dealt with through the relevant civil laws.

### Recommendations

In conclusion, taking into consideration the inherent risks in empowering a public authority or private actors with deciding on what the ‘truth’ is, ARTICLE 19 would not recommend to any legislator to make use of the concept of disinformation for the purposes of adopting a new legislation. We urge the Special Rapporteur to reiterate that there are other options to deal with the harmful consequences of disinformation than new legislation prohibiting disinformation. In particular:

- Existing laws on defamation, incitement to violence, privacy, public health, election regulation or public order that allow control of possible consequences of disinformation already provide a degree of protection from negative impacts of disinformation. Moreover, under the guidance of the Rabat test, it is possible to assess whether disinformation targeting groups in risk of discrimination in some instances amounts to incitement to violence, discrimination and hostility. All of these laws, of course, must respect the requirements of international standards on freedom of expression (i.e. they need to be written with clarity to allow individuals to foresee the consequences of their actions, and they must be proportionate to the ill that they seek to counter).

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<sup>11</sup> B. Berelson quoted in R. Rieffel, *Sociologie des médias*, 2005, p. 20.

<sup>12</sup> ARTICLE 19, [Defining defamation: Principles of freedom of expression and protection of reputation](#), 2017.

<sup>13</sup> *Ibid.*, Principle 10 and 12.



- Initiatives that seek to control content or the distribution of online disinformation should preferably be organised under the umbrella of a self-regulatory mechanism in order to be adapted and adaptable to the ever-changing context of online communication. Such regularity bodies need to be independent, transparent, accountable to the public and open to the participation of all relevant stakeholders. The media actors should adhere to the highest standards of professional ethics and take part in self-regulatory mechanisms that promote and protect these standards.
- States should focus on their positive obligations to promote a free, independent and diverse communications environment, including media diversity, which is a key means of addressing disinformation. Disinformation is bound to fail where media actors are able to play their role in democratic societies. This role is to seek and impart the broadest possible diversity of information and ideas, in particular on questions of public interest, in order to enable individuals to act as informed citizens, to play their part in political life, to control of public authorities, and to contribute to, and benefit from, the economic and cultural dimensions of societal life.
- States should take measures to promote media and digital literacy, including by covering these topics as part of the regular school curriculum and by engaging with civil society and other stakeholders to raise awareness about these issues. ARTICLE 19 suggests that any initiative of media and digital literacy should include at least a basic introduction to relevant international standards on freedom of expression and other human rights, in a language adapted to the targeted audiences.<sup>14</sup>

### *Disinformation and propaganda organised and sponsored by States*

ARTICLE 19 observes that state-led disinformation campaigns and propaganda also have a long history – from foreign attempts to influence elections or domestic political processes in other countries, foreign interventions, health-related conspiracy theories to recent politicising of the COVID-19 pandemic. Historically, state disinformation and propaganda campaigns have originated from both from state institutions/institutions tied to authorities and from their various proxies. Digital technologies have also transformed the ways in which these operate: not only expanding the scale and speed of these efforts but also include various state sponsored troll farms, bots, impersonation of media outlets, deep fakes and other digital tools.

While certain States feature prominently in reports about geopolitical implications of such propaganda – such as Russia, China, Iran, Turkey or the Philippines – state disinformation is often produced and disseminated by domestic actors for domestic purposes.

In the context of the COVID-19 pandemic, some States have also spread COVID-19 related disinformation and propaganda themselves. For instance, the governments of both the United States and China have been accused of misleading characterisations of the spread of COVID-19 and their own policy responses.<sup>15</sup> Others have been accused of covering up the spread of the virus<sup>16</sup>

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<sup>14</sup> As a source of information, see for instance [First Draft's Field Guide on Fake News and Other Information Disorders](#).

<sup>15</sup> See, e.g. J. Dalton, [Mike Pompeo refuses to deny conspiracy theory that coronavirus is 'hoax created to damage Trump](#), Independent, 1 March 2020; or J. Palmer, [Beijing Knows Who to Blame for the Virus: America](#), FT, 2 March 2020.

<sup>16</sup> ARTICLE 19, Iran: Coronavirus crisis, *op.cit.*

or promoting falsehoods for political gain. This shows that during a public health crisis, government programs and policies are closely scrutinised, and States often have an incentive to control narratives and shape perceptions of the performance of public authorities.

ARTICLE 19 recognises that state-led and organised disinformation and propaganda campaigns are especially dangerous and have even more serious consequences than those stemming from other sources. They pose serious threats to state sovereignty, democratic processes, rule of law, respect for human rights and geopolitical stability. In the context of present pandemic, they have contributed to the erosion of trust in state authorities and promoted misguided responses by the public and health officials to the pandemic.

However, we question whether international human rights standards in general and freedom of expression standards in particular are appropriate to limit or stop such State activities. We believe that these issues require different types of analysis and responses, in particular bolstering the quality of democracy and governance globally and domestically. We therefore recommend that the Special Rapporteur analyses these problems in a separate report.

## II. State legislative, administrative, policy and regulatory responses to disinformation

### *Restrictive legislation on disinformation*

In our work, ARTICLE 19 has documented numerous legislative, administrative and policy measures adopted by States to counter disinformation. We observe that a general trend is marked by a tendency toward a repressive approach of adopting restrictive laws that infringe on freedom of expression with very harsh sanctions (often criminal) rather than positive policy measures. These laws typically fail the three-part test of being prescribed by law, in pursuit of a legitimate aim, and necessary and proportionate. The trend towards the adoption of restrictive legislation has intensified over the last year in the context of measures adopted to tackle the COVID-19 pandemic. We wish to highlight the following examples (Please note that an overview of challenges posed by legal and policy measures in the Central American region are provided in the Appendix to this submission in Spanish):

- **MENA:** In Tunisia, at the beginning of the COVID-19 pandemic outbreak, 11 members of the Tunisian Parliament proposed to amend two provisions of the Penal Code to penalise dissemination of disinformation with imprisonment from two to four years.<sup>17</sup> In Morocco, in March 2020, the Government approved the draft law on social media which, *inter alia*, sanctions “deliberate use” of digital technologies for “publishing or promoting electronic content containing false information” with an imprisonment of three months to two years and a fine of 1,000 to 5,000 dirhams.”<sup>18</sup> In April 2020, Jordan also issued a decree prohibiting “sharing news that would cause panic” about the pandemic in the media with a possible penalty of up to three years of imprisonment.<sup>19</sup>

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<sup>17</sup> See e.g. ARTICLE 19, [Tunisia: 46 human rights organisations call for withdrawal of draft law that would endanger free expression](#), 31 March 2020.

<sup>18</sup> See e.g. [Joint Statement of ARTICLE 19 and other organisations on Morocco](#), 30 April 2020 (in French).

<sup>19</sup> See e.g. Human Rights Watch, [Jordan: Free Speech Threats Under Covid-19 Response](#), 5 May 2020.



- **West Africa:** Prohibitions of disinformation can be found in provisions of penal codes, press codes, or cybersecurity laws. ARTICLE 19 in partnership with organisations in the region analysed laws of 15 sub-Saharan countries and presented the results in a disinformation tracker.<sup>20</sup> For example, we found that although Côte d'Ivoire does not have a dedicated law on disinformation, individuals can be prosecuted for spreading disinformation under the provisions of the Penal Code, the Cybercrime Law and the Press Law.<sup>21</sup> Similarly, the Niger Cybercrime Law criminalises the dissemination of “false news” (“the information which is likely to disturb public order or infringe upon human dignity”) by a fine between 1,000,000 CFA to 5,000,000 CFA, and imprisonment between six months to three years.<sup>22</sup> Similar laws have been adopted in Benin, Burkina Faso, Mali and Sierra Leone.
- **Southeast Asia:** In Thailand, early on in the COVID-19 pandemic, the Government announced emergency measures which included a ban on communications that are ‘false’ or ‘misleading.’<sup>23</sup> These included a prohibition against sharing ‘any kind of news or information related to COVID-19 that is false and might instigate fear amongst the public or that is intentionally distorted to mislead the public.’ Public officials are empowered to censor these types of communications or initiate criminal proceedings under the Computer Crime Act or the Emergency Declaration.<sup>24</sup> The Computer Crimes Act — a repressive law in its own right — provides for up to five years’ imprisonment for uploading ‘false information’ and violations of orders made under the Emergency Declaration are punishable by up to two years’ imprisonment.<sup>25</sup>

In Myanmar, the Government has proposed amendments to the Prevention and Control of Communicable Diseases Bill empowers the Ministry of Health to delegate authority to local officials to prohibit speaking, writing, receiving or publishing news on contagious and communicable diseases that could ‘cause panic.’ First-time offenders would face a fine of between 50,000 and 100,000 kyats, and repeat offenders would face imprisonment of up to six months and a fine of between 300,000 and 500,000 kyats. This piece of legislation – proposed under the guise of preventing panic and misinformation about COVID-19 – could be used by the government to prevent legitimate political speech.<sup>26</sup>

In Cambodia, a new state of emergency law was also hastily drafted and passed in April 2020. The Law on the Management of the Nation in a State of Emergency contains several broad and vague provisions, raising concerns that the government could use the law to violate fundamental human rights. These provisions include unlimited surveillance of telecommunications, control of media and social media, as well as a concerning catch-all provision - ‘putting in place other measures that are deemed appropriate or necessary to respond to the state of emergency.’<sup>27</sup> This unfettered — and overbroad — authority, passed

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<sup>20</sup> For more information, see <https://www.disinformationtracker.org/>.

<sup>21</sup> These are the Penal Code, Law n°2013-451 relating to the fight against cybercrime, and Law n°2017-867 of December 2017 on the press legal regime.

<sup>22</sup> See Article 31 of Law n°2019-330 of 03 July 2019 on the repression of cybercrime.

<sup>23</sup> ARTICLE 19, [Thailand: Emergency measures threaten human rights](#), 25 March 2020.

<sup>24</sup> *Ibid.*

<sup>25</sup> ARTICLE 19, [Thailand: Computer Crime Act](#), January 2017.

<sup>26</sup> ARTICLE 19, [Myanmar: Restriction on expression in communicable diseases bill would undermine COVID-19 response](#), 12 May 2020.

<sup>27</sup> See e.g. S. Narin, [Cambodia’s Controversial State of Emergency Draft Signed into Law](#), Voice of America, 30 April 2020; Human Rights Watch, [Cambodia: Emergency Bill Recipe for Dictatorship](#), 2 April 2020; UN Office of the High Commissioner for Human Rights, [Cambodia’s state of emergency endangers human rights, warns UN expert](#), 17 April 2020.

ostensibly to combat disinformation about COVID-19, allows the Cambodian government to crack down on political dissent.

Although the Malaysian government repealed the Anti-Fake News Act in 2019 (controversial overbroad law with the high likelihood of misuse by government authorities<sup>28</sup>), in November 2020, Malaysia's parliament discussed a proposal to revive the Act.<sup>29</sup>

In February 2020, Vietnam issued decree establishing penalties for posting “fake news” or “other information that distorts, slanders, or damages the prestige, honor, or dignity of organisations or individuals, and storing or delivering information against the national interest, among other offences.”<sup>30</sup> The decree furthermore requires social media platforms to provide the authorities with user data and establishes a penalty of up to VND 70 million (approximately USD 3,000) for platforms that fail to block or remove offending content. In January 2021, the Ministry of Information and Communications launched the Vietnam Anti-Fake News Center, raising further concerns for online freedom.<sup>31</sup>

- **Europe and Central Asia:** In March 2020, the Russian Parliament amended the Criminal Code that penalises “deliberate spread of false information” about serious matters of public safety such as COVID-19 with fines of up to €23,000 and up to five years of imprisonment.<sup>32</sup> In Tajikistan, in June 2020, the Parliament adopted amendments to the Code of Administrative Offences which proscribes dissemination of false information under the penalty of administrative arrest of up to 15 days.<sup>33</sup>

### *Implementation of restrictive legislation and misuse of disinformation laws*

ARTICLE 19's experience shows that disinformation specific laws and other legislation on disinformation are often used and abused against independent media, dissent or critical voices in the society. For instance:

- In the **MENA** region, several journalists and bloggers were prosecuted for publishing ‘false information.’ For example, in Tunisia, a journalist and one of her relatives, were arrested in the city of Kef for publishing a video on Facebook in which she claimed an existing corruption connected to the distribution of “semolina.”<sup>34</sup> A blogger was also sued in the same way when he published a post about the distribution of financial aid in a village of Tebourba during the quarantine period.<sup>35</sup> In Iraq, the license of the Reuters news agency was suspended for three months with a fine of US \$21,000 for violating media broadcasting rules following the publication of a story indicating that the actual number of cases infected with COVID-19 is

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<sup>28</sup> C.f. ARTICLE 19, [Malaysia: Repeal of Anti-Fake News Act must be followed by broader legislative reform efforts](#), 16 August 2018.

<sup>29</sup> See e.g. The Straits Times, [Malaysia to discuss the revival of Anti-Fake News Act in Parliament](#), 16 November 2020.

<sup>30</sup> Decree No. 15/2020/ND-CP, taking effect in April 2020.

<sup>31</sup> Society, [Vietnam launches fake news response center](#), 12 January 2020.

<sup>32</sup> See e.g. IPI, [New ‘fake news’ law stifles independent reporting in Russia on COVID-19](#), 8 May 2020.

<sup>33</sup> See e.g. ARTICLE 19, [Tajikistan: ‘False information’ legislation incompatible with freedom of expression standards](#), 7 December 2020.

<sup>34</sup> See e.g. Amnesty International, [Tunisia: Criminal prosecutions of online speech. Outdated and flawed laws used to restrict speech in Tunisia](#), 9 November 2020.

<sup>35</sup> *Ibid.*

much higher than the official number announced by the Iraq authorities.<sup>36</sup> Finally, in Egypt, the journalist Ruth Michaelson was obliged to leave the country after publishing a story on COVID-19 which was judged by the authorities as wrong.<sup>37</sup>

- **West African** States have been also using broad anti-disinformation laws against those who expressed their views on public matters even if their communications were accurate. For instance, in Niger, Samira Sabou, an activist and a blogger was charged with "defamation by electronic means" in June under the provisions of the Cybercrime Law after she reported on corruption by the son of the president of Niger and the ministry of defence. She was detained for more than a month before she was released on 28 July 2020 by the Niamey High Court on the grounds of "unfounded offences."<sup>38</sup> In Senegal, journalist Cheikh Yérim Seck was arrested in June 2020 following an interview on TV in which he questioned the gendarmerie about the amount of money they said they had seized during a raid on the premises of a company suspected of corrupt practices. He was detained overnight at the Gendarmerie.<sup>39</sup>
- In **Southeast Asia**, States have also targeted journalists reporting on the COVID-19 pandemic on the grounds that they were allegedly spreading disinformation about the pandemic. For example, in Myanmar, in May 2020, a Hpa-An court sentenced Zaw Min Oo, chief editor of the Hpa-An-based Dae Pyaw news agency, to two years' imprisonment. Zaw Min Oo had reported via a Facebook post that a COVID-19 death had occurred on the Thai-Myanmar border, but the information on which the report was based was later retracted.<sup>40</sup> Further, on 1 July 2020, the Criminal Investigation Department filed a complaint against Eleven Myanmar journalist Aung Ko Ko under the Telecommunications Law for criticising the government's underreporting and lack of transparency regarding the COVID-19 pandemic in a Facebook post. Aung Ko Ko criticised underreporting and delayed news releases by the Ministry of Health and Sports in relation to COVID-19. Myanmar authorities alleged that Aung Ko Ko was spreading misinformation with the intent to harm the state.<sup>41</sup>

In addition to prosecutions against those who allegedly spread false information regarding the COVID-19 pandemic, Myanmar authorities also imposed restrictions on websites accused of spreading disinformation. In March 2020, the state authorities ordered to block access to 2,147 websites, allegedly due to 'fake news' about COVID-19. Several of the websites that were banned were ethnic media outlets such as Development Media Group, Narinjara, and Karen News as well as several Rohingya news sites. At the time of blocking, these media outlets had not reported much on the COVID-19 pandemic. They had, however, reported extensively on the conduct of the Myanmar military, armed conflict, and human rights concerns.<sup>42</sup>

The Cambodian government has likewise used the COVID-19 pandemic to crackdown on freedom of expression. On 3 March 2020, Prime Minister Hun Sen issued a statement warning that spreading 'fake news' about the outbreak would be considered an act of terrorism and

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<sup>36</sup> See e.g. Reuters, [Iraq suspends Reuters for three months over report on coronavirus cases](#), 14 April 2020.

<sup>37</sup> See e.g. The Guardian, [Egypt forces Guardian journalist to leave after coronavirus story](#), 26 March 2020.

<sup>38</sup> See e.g. The Global Initiative Against Transnational Organized Crime, [Arrest of journalist Samira Sabou 'illegal'](#), 18 June 2020.

<sup>39</sup> See e.g. The Chartered Institute of Journalists, [Journalist Cheikh Yerim Seck has been placed under judicial supervision in Senegal for questioning amounts of missing cocaine and money by the police](#), 19 June 2020.

<sup>40</sup> T. W. Aung, [Editor in Kayin State sentenced to jail over COVID-19 story](#), Myanmar Times, 21 May 2020.

<sup>41</sup> N. Yaing, [EMG reporter from Nay Pyi Taw sued for Facebook comment about Covid-19](#), Eleven Myanmar, 2 July 2020.

<sup>42</sup> ARTICLE 19, [Myanmar: Immediately lift ban on ethnic news websites](#), 1 April 2020.

that the public should be active in combating the spread of this ‘fake news.’<sup>43</sup> For instance, in March 2020, the UN Human Rights Office in Cambodia and Human Rights Watch had already documented the arrests of 30 people who had expressed their views on COVID-19. Most of those arrested were accused of spreading ‘fake news’ about COVID-19 on social media.<sup>44</sup> The trend continued in the following months while many of those arrested had either asserted on social media that family members had contracted the disease, or they had criticised the government, suggesting that Cambodia may not have disclosed accurate infection figures.<sup>45</sup> There is also evidence that the Cambodian authorities have used the COVID-19 pandemic as cover to arrest members of the political opposition. At the time of writing, 12 of the 30 people arrested for COVID-19 disinformation-related offenses were members of the dissolved Cambodia National Rescue Party (CNRP) — the former opposition party — sparking fears that the Cambodian government are using allegations of ‘fake news’ to arrest opposition activists.<sup>46</sup> Despite accusations, many of those arrested did not appear to have even posted anything on social media regarding the government’s COVID-19 response. The Cambodian government itself has spread disinformation over Facebook to suppress political dissent. A Buddhist Monk, Luon Sovath, was accused on Facebook of having broken his vow of celibacy. He was defrocked by a government-controlled religious council and fled Cambodia. Sovath was an outspoken critic of the Cambodian government, and an investigation revealed that government employees were involved in spreading the misinformation about him on Facebook.<sup>47</sup>

In Malaysia, since early 2020, the authorities have acted against many individuals for allegedly spreading misinformation about COVID-19 or for criticising public figures. In January 2020, four individuals were arrested for spreading ‘fake news’ about the coronavirus under Section 233 of the Communication and Multimedia Act.<sup>48</sup> In May 2020, the Home Minister Hamzah Zainudin stated that the authorities would not hesitate to use all existing legal provisions, including the Sedition Act, against those spreading ‘fake news that was seditious in nature’.<sup>49</sup> On 21 July 2020, Zainudin emphasised that the Sedition Act is still relevant due to the rise of fake news and the ethnically and religiously diverse makeup of the country.<sup>50</sup> As of 18 January 2021, according to Senior Minister Datuk Seri Ismail Sabri Yaakob, a total of 278 investigations have been opened regarding ‘fake news’ related to COVID-19. Of those cases, 141 cases are still under investigation, 35 charges have been brought, and 21 individuals have been found guilty.<sup>51</sup>

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<sup>43</sup> See e.g. K. Narim, [People spreading fake COVID-19 news are terrorists, says Prime Minister Hun Sen](#), Khmer Times, 3 March 2020.

<sup>44</sup> See Human Rights Watch, [List of arrests and persons in detention for COVID-19 related offenses](#), 23 March 2020; and OHCHR, [Asia: Bachelet alarmed by clampdown on freedom of expression during COVID-19](#), 3 June 2020.

<sup>45</sup> See e.g. M. Sochua, [Coronavirus “Fake News” Arrests are Quieting Critics](#), Foreign Policy, 22 May 2020. For example, on 21 March 2020, Mao Sokha was arrested for spreading ‘fake news’ after he posted a Facebook comment criticising the Kampong Chhnang hospital’s inability to treat COVID-19 patients. The authorities released him on 22 March but only after he signed a pledge to refrain from spreading ‘fake news’ about the virus. In another case, authorities arrested a 14-year-old girl who alleged over social media that students had tested positive for COVID-19 at her school and several people had died from it in her province.

<sup>46</sup> *Ibid.*

<sup>47</sup> See e.g. H. Beech & S. Narin, [Threatened by Facebook Disinformation, a Monk Flees Cambodia](#), New York Times, 23 August 2020.

<sup>48</sup> See e.g. Free Malaysia Today, [Four arrested for spreading fake news on coronavirus](#), 29 January 2020.

<sup>49</sup> See e.g. Malay Mail, [Home Ministry issues warning, won’t hesitate to act against sedition, “fake news,”](#) 14 May 2020.

<sup>50</sup> See e.g. Malaysiakini, [PN looking to “improve” Sosma, Sedition Act](#), 21 July 2020; Parlimen Keempat Belas, [Mesyuarat Kedua, Penggal Ketiga](#), 23 July 2020; M. Kaur, [Sedition Act still relevant, says home minister](#), Free Malaysia Today, 27 July 2020.

<sup>51</sup> See e.g. M. Keselamatan Negara, [Siaran Langsung](#), Facebook, 19 January 2020.

## *Blocking of disinformation online*

The efforts to address disinformation are not limited to legislation but concern various measures to block content online. For instance:

- In **the USA**, the federal authorities have worked with US technology companies including Google and Twitter to seize over 90 domain names in an effort to thwart a “global disinformation campaign” by Iran’s IRGC. The seizure was carried on the basis of the Foreign Agents Registration Act.<sup>52</sup> This effort, which exemplifies the use of domain takedowns as a method of combating disinformation, demonstrates the outsized power of the US to make determinations about what information stays available on the web. As most domain registrars are US companies, the US Government has significant jurisdictional control over management of domains for the global Internet. It is not clear how consistently the US is applying this law to other online disinformation efforts that are not a high priority for US foreign policy or national security interests. Overall, this issue indicates a potential vector for undermining freedom of expression and association. Taking down a domain name is, by definition, a blunt, overbroad response: it does not allow for nuance in determining which content, specifically, constitutes misinformation/disinformation on a website, as all content on the website is equally suppressed from all internet users.
- In **Southeast Asia**, in August 2020, Myanmar telecommunications operators received a directive to block a website on the basis that the website spread ‘fake news’ and ‘rumours’.<sup>53</sup> The order required them to block the website of Justice for Myanmar, a human rights campaign that has published stories exposing corruption within, and the economic interests of, the Myanmar military.<sup>54</sup> In February 2021, following the 1 February coup by the Myanmar military, the Ministry of Transportation and Communication issued several orders targeting telecommunication operators to limit or throttle internet services and blocked Facebook and Twitter. The reasons given were largely to stop the spread of disinformation.<sup>55</sup>

In August 2019, Thailand announced a plan to set up a center under the auspices of the Digital Economy and Society Ministry (DES) that designed to combat false information on social media platforms. The anti-‘Fake News’ center works to verify and remove any information found to be false, and teaches the public about media literacy.<sup>56</sup> Critics of the government, however, have alleged that the DES can be used to suppress political dissent. In the first year of the center’s operation, the DES received more than 17 million reports of misinformation. In September 2020, the DES announced that it was examining 6,411 posts of suspected misinformation, mostly relating to the pandemic.<sup>57</sup> However, the DES has also targeted political activists accused of royal defamation, threatening pro-democracy protesters with long prison sentences.

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<sup>52</sup> The US Department of Justice, [United States Seizes 27 Additional Domain Names Used by Iran’s Islamic Revolutionary Guard Corps to Further a Global, Covert Influence Campaign](#), 4 November 2020.

<sup>53</sup> See e.g. Telenor, [Directive to block website and 3 IP addresses](#), 29 August 2020.

<sup>54</sup> See the website of the [Justice for Myanmar](#).

<sup>55</sup> See e.g. ARTICLE 19, [Myanmar: Military’s targeting of Facebook ratchets up post-coup assault on freedom of expression](#), 4 February 2021.

<sup>56</sup> See e.g. P. Dangprasith, [Thailand to set up center to combat “fake news,”](#) AP News, 21 August 2019.

<sup>57</sup> See e.g. The Star, [Thailand: Anti-fake news centre detects sharp rise in COVID-19 misinformation: 3 imported cases on Sept 26](#), 26 September 2020.

States have been also seeking to influence the way that social media platforms moderate disinformation on their platforms – either through requirements set in laws, demands in private, or threats to deny companies’ access to markets. Some government demands, if followed, would result in human rights violations, such as unjustified requests for the personal information of users or orders to censor criticism of public officials. Some States have also adopted specific legislation on disinformation, mandating social media companies to remove ‘false information.’<sup>58</sup>

## Recommendations

ARTICLE 19 reiterates that general prohibitions on the dissemination of information based on vague and ambiguous definitions are incompatible with international freedom of expression standards and should be abolished. We recommend that the Special Rapporteur calls on States to **repeal such restrictive legislation** and ensure that any laws related to disinformation and narrowly construed to protect one of legitimate aims under Article 19(3) and Article 20(2) of the ICCPR and are proportionate to the aims sought. States should begin steps to reform existing laws applicable to ensure compliance with international standards relating to freedom of expression.

Further, we believe that the Special Rapporteur should call on public authorities to **refrain from reliance on criminal prosecution** and other coercive measures as a primary means of combating disinformation. Criminal proceedings and custodial sentences should be reserved for the most serious form of speech-related crimes. Outside cases that fall within this narrow category, authorities should drop charges against all individuals currently facing charges for disinformation, and release from prison those already imprisoned on similar grounds. States should also refrain from Internet shutdowns in responses to disinformation and ensure that any blocking measures must be provided by law and be only be permitted in respect of content which is unlawful or can otherwise be legitimately restricted under international standards on freedom of expression.

Instead, the Special Rapporteur should recommend that States adopt a series of positive measures to tackle disinformation. These should include but not be limited to:

- Adopting comprehensive **right to information laws** and comply with the principles of maximum transparency of public administration. States should use right to information legislation to facilitate access to public information, including by mandating disclosure of certain types of information and establishing a system for individuals and groups to request information from public bodies. States that currently have freedom of information laws should prioritise implementation and consider amendments to bring those laws in line with current international and regional standards and best practices. Other States should consider adopting freedom of information legislation through an inclusive, participatory process. Public education campaigns, dedicated webpages and social media messaging and commitments to transparency and disclosure should be included in all policies and action plans developed in response to disinformation of various types.
- Public authorities should ensure that they **do not spread disinformation**, and governments should abandon intentional propaganda or disinformation campaigns. They should facilitate public access to information and education campaigns to counter disinformation.

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<sup>58</sup> See e.g. ARTICLE 19, [France: Bill against manipulation of information violates international standards](#), 23 July 2018; or ARTICLE 19, [Singapore: New law on “online falsehoods” a grave threat to freedom of expression](#), 9 May 2019.



- Governments should **ensure strong protections for whistle-blowers**. Many States already have whistle-blower protections in freedom of information legislation or standalone laws. Those States should focus on consistent implementation to protect those raising concerns about government misconduct or various policy failures. Those without dedicated whistle-blower legislation should refrain from prosecutions or restrictions on those who release information in the public interest.
- Since some disinformation concerns targeting groups at risk of discrimination and intersects with hate speech, States should **adopt positive policy measures to combat ‘hate speech’** and intolerance that are consistent with international human rights standards and best practices. Human Rights Council Resolution 16/18 and the Rabat Plan of Action offer important guidance in this regard.
- States should take steps to **ensure a free, independent and diverse media environment**, in particular through clear regulatory frameworks that ensure self-governance and independence for the media and broadcasting sector. States may also consider supporting independent public service media with a clear mandate to serve the public interest. State authorities should **end the harassment of journalists** reporting on government activities and other issues of public interest.
- States should consider measures to **promote media and digital literacy**. This could include incorporating media and digital literacy lessons into school curriculum and engaging with civil society and social media platforms on similar efforts. States should also support civil society and the media in efforts to tackle disinformation.

### III. Responses of digital companies to disinformation and freedom of expression

Digital companies – in particular dominant social media platforms – are at the centre of the policy debates on online disinformation. The companies have generally also been slow to react to a number of legitimate concerns over impact of some types of disinformation on their platforms; this in turn has been a key driver in a number of regulatory proposals in this area. For instance, Facebook was accused of allowing disinformation hate speech to fester on its site, helping incite the atrocities committed against the Rohingya in Myanmar.<sup>59</sup>

In general, ARTICLE 19 observes that problems with addressing disinformation on social media platforms must be seen in the context of overall problems of their profit-driven business model (see above) and deficiencies of their content moderation and curation practices. It has been widely recognised, including by ARTICLE 19, that these practices generally lack respect for human rights standards, accountability and transparency over the decision-making, and consistency in stakeholders’ engagement.<sup>60</sup> Over time, this has considerably eroded public trust in them and raised legitimate questions about their lack of their accountability to the public.

On the other hand, social media platforms have to some degree tried to act as part of the solution and have responded to disinformation on their platforms by adopting a range of measures, which

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<sup>59</sup> See e.g. P. Mozur, [A Genocide Incited on Facebook, with Posts from Myanmar’s Military](#), New York Times, 15 October 2018.

<sup>60</sup> For more information, see e.g. ARTICLE 19, [Self-regulation and hate speech on social media platforms](#), March 2018.

have become more sophisticated over time. These include regular updates and clarification of their policies applicable to disinformation (e.g. recently anti-vaccination content),<sup>61</sup> investment in the upgrade of their systems to help them detect problematic content in a wider range of languages, expanded their fact-checking<sup>62</sup> or trusted flagger programmes to a wider range of countries in order to better understand the national specificities<sup>63</sup> and developed more sophisticated responses to deal with content that might fall into a broad category of ‘disinformation.’ They also consistently seek to innovate and regularly develop new features giving more control to users over what they see,<sup>64</sup> and have put in place appeals mechanisms against wrongful removals of content on the basis of their community standards.<sup>65</sup>

ARTICLE 19 observes that these collaborations and initiatives have so far not reached conclusive results: it is in effect an experimental process with trials and errors.<sup>66</sup> Given massive quantities of content on these platforms, it can be expected that automated decision-making processes will continue to be a part of tools these companies used to tackle disinformation on their platforms.

ARTICLE 19 believes that social media platforms should ensure that any adverse actions taken against online content or users on the basis of addressing disinformation are transparent and clearly articulated in their terms of service. Social media platforms have access to a greater range of responses to disinformation and many opportunities for flexible responses that comply with the Guiding Principles on Business and Human Rights.<sup>67</sup> Short of banning users or deleting inaccurate content, social media companies can modify algorithms to promote trustworthy content, restrict virality, affix warnings or labels to certain content, tightly enforce advertising policies, temporarily suspend accounts, or provide links to authoritative sources of information.

Partnerships between social media companies and other bodies may also offer opportunities to counter disinformation on the platforms. For instance, in the context of the COVID-19 pandemic, several social media platforms, including Facebook, Google, Tencent, Baidu, Twitter, TikTok, Weibo, Pinterest, as well as online ‘influencers’, partnered with the WHO and health ministries to promote links to authoritative content on newsfeeds and accurate information about COVID-19.<sup>68</sup> Such partnerships and initiatives have been encouraged by the UN Special Rapporteur on freedom of expression, regional rapporteurs, and others. However, partnerships that facilitate content removal or other adverse actions against online speech can also unjustifiably restrict freedom of

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<sup>61</sup> For instance, Facebook’s policy has significantly changed over time, from focusing on ‘inauthentic behaviour’, i.e. use of fake accounts, to explicitly removing or reducing the spread of ‘false news’ or ‘manipulated media’ such as deep-fakes; see e.g. ARTICLE 19, [Facebook Community Standards: Analysis against international standards on freedom of expression](#), 30 July 2018. Twitter, for its part, only removes limited misleading information in the context of elections but continues to tackle ‘platform manipulation’ and spam; see, [Twitter Rules on election integrity](#) and [Twitter Rules on platform manipulation and spam](#).

<sup>62</sup> See e.g., Google, Self-reporting on [Google News Initiative, one year in](#), 20 March 2019.

<sup>63</sup> See, e.g. EU Code of Conduct on Countering Illegal Hate Speech, [Factsheet](#), February 2019.

<sup>64</sup> The Verge, [Twitter rolls out ‘hide replies’ to let you tame toxic discussions](#), 19 September 2019

<sup>65</sup> For the shortfalls of these appeals mechanisms, see ARTICLE 19, [Sidestepping Rights: Regulating Speech by Contract](#), 2018, and [Missing Voices](#) campaign.

<sup>66</sup> See e.g. D. Funke, [It’s been a year since Facebook partnered with fact-checkers. How’s It Going?](#), Poynter, December 2017; WIRED, [YouTube Will Link Directly to Wikipedia to Fight Conspiracy Theories](#), 14 March 2018.

<sup>67</sup> [Guiding Principles on Business and Human Rights: Implementing the UN ‘Protect, Respect and Remedy’ Framework](#), developed by the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises, report of the Special Representative of the Secretary-General on the Issue of Human Rights and Transnational Corporations and Other Business Enterprises, John Ruggie, 7 April 2008, A/HRC/8/5A/HRC/17/31.

<sup>68</sup> See e.g. WHO, [Director-General’s remarks at the media briefing on 2019 novel coronavirus on 8 February 2020](#), 8 February 2020 or WHO, [About EPI-WIN](#).

expression. Social media platforms should be transparent about these relationships and ensure that such engagements advance international standards relating to freedom of expression.

ARTICLE 19 also believes that there could be a case for **independent public oversight or auditing** of the claims made by social media platforms in relation to the way in which they tackle disinformation on their platforms.<sup>69</sup> We have suggested that effective self-regulation can provide an appropriate framework for addressing current problems with content moderation by social media companies in general and in respect to disinformation in particular, providing it also meets certain conditions of independence, openness to civil society participation, accountability and effectiveness. That kind of light-touch approach is not restrictive of freedom of expression while being capable of achieving objectives of general interest. It can also allow for the adoption of adapted and adaptable remedies unhindered by the threat of heavy legal sanctions.<sup>70</sup>

ARTICLE 19 therefore urges the Special Rapporteur to recommend that social media platforms at minimum:

- Articulate **clear and easily understood policies** governing disinformation on their platforms in line with the ‘human rights by default’ approach. Many companies have refined their content moderation policies in recent years by providing more precise definitions and examples of violating content. They should continue this process, providing further clarity. Moreover, to the extent that social media companies develop policies specific to certain types of disinformation (e.g. related to health), these policies should likewise be precise and nuanced in line with the standard of legality set out in international human rights law.
- Ensure **minimum due process guarantees** when taking adverse action against disinformation on their platforms. They should notify users when taking such action, whether by removing content, restricting its reach, or blocking accounts. Demonetisation of content should be done in accordance with clear and transparent procedures, as it constitutes a form of content moderation. In all instances, users should be provided with meaningful opportunities for appeal.
- Ensure **full transparency in their engagements with governments** concerning disinformation. Such information could be incorporated into periodic transparency reports, which should be complete and comprehensive. Additionally, companies should push back against government requests that violate human rights on the basis of limiting disinformation.
- Finally, social media platforms should **leverage partnerships to combat various forms of disinformation**. However, companies should ensure that these types of engagements are carried out in line with international human rights standards.

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<sup>69</sup> See e.g. B. Wagner & L. Kuklis, [Disinformation, data verification and social media](#), 16 January 2020.

<sup>70</sup> *Ibid.*

## Appendix – information about practices in Central America

What legislative, administrative, policy, regulatory or other measures have Governments taken to counter disinformation online and offline?

- A continuación describiremos cuales han sido las reacciones que el Estado Mexicano ha tenido sobre la desinformación y cómo en lugar de hacerle frente, ha incentivado su uso promovidas y emitidas a través de instituciones y figuras públicas. Para poder ejemplificar lo anterior, compartimos los siguiente puntos:

**Conferencias matutinas:** Se encuentran origen en la conferencia matutina del presidente, pero también, como veremos más adelante, que sea la propia Oficina de la Presidencia de la República una de las instituciones que clausura el acceso al derecho a la información por otras vías y la que genera la desinformación desde sus conferencias, mismas que son replicadas por otros funcionarios y medios de comunicación.

**Ejemplo 1:** Una frase repetida en diversas ocasiones a lo largo del año por el presidente sostiene que “en México no se violan derechos humanos, en México no hay tortura, en México no hay masacres.”<sup>71</sup> En voz del presidente se niegan atrocidades cometidas por el Estado, lo cual tiene efectos concretos en el ejercicio de derechos<sup>72</sup>. La desinformación promovida desde las conferencias matutinas tiene efectos concretos en términos de ejercicio de derechos humanos pues termina menospreciando una realidad de atrocidades aún vigentes y promueve un ambiente de tolerancia a la negación y la impunidad.

**Ejemplo 2:** Un análisis realizado por SPIN Taller de Comunicación Política, al 30 de noviembre de 2020 el presidente había realizado un total de 40 mil 502 afirmaciones calificadas como falsas o engañosas desde que inició su administración, el 1º de diciembre de 2018<sup>73</sup>: un promedio de 20 mil por año. Esto implica que en promedio se realizan 79 afirmaciones de este tipo al día. Podemos decir que tiene efectos en el ejercicio del derecho a la información y libertad de expresión, sobre todo si el principal mecanismo de acceso a información oficial es la conferencia matutina.

**Ejemplo 3:** La organización Verificado identificó que, al cotejar las afirmaciones de AMLO durante 2019 con evidencia o datos duros, el 53% de ellas resultaron incorrectas o engañosas, aunque el presidente las haya socializado como “verdaderas”<sup>74</sup>. En su análisis para 2020, Verificado publicó que del “2 de diciembre de 2019 al 30 de noviembre de 2020, se identificaron 1,499 frases verificables: 264 engañosas, 262 incorrectas y 973 verdaderas. Lo anterior significa que casi cuatro de cada diez frases verificables dichas por el presidente durante su segundo año de gobierno no fueron verdad.”<sup>75</sup>

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<sup>71</sup> [Video: En México no hay masacres](#), Conferencia Matutina del 14 de julio de 2020. El primero de septiembre de 2020 realizó una afirmación similar, '[Ya no hay masacres en México](#)': AMLO; pero en siete meses de 2020 se cometieron 429.

<sup>72</sup> S. Cohen ha clasificado los tipos de negación de violencia del Estado. Esta afirmación del presidente califica como negación literal - *outright denial*. Ver Stanley Cohen, *States of denial*, Cambridge, Polity Press, 2001.

<sup>73</sup> SPIN, [Conferencia presidente](#), SPIN Taller de Comunicación Política, 30 de noviembre de 2020.

<sup>74</sup> Deyra Guerrero, [Primer año de Las Mañaneras de AMLO: 53% es falso o engañoso](#), *Verificado*, 2 de diciembre de 2019.

<sup>75</sup> S/A, [Dos años de “Mañaneras”: 4 de cada 10 frases verificables no son verdaderas](#), *Verificado*, 1 de diciembre de 2020.

**Ejemplo 4:** El Presidente emite declaraciones y afirmaciones constantemente en sus conferencias mañaneras, las cuales no tienen un sustento o evidencia documental que las respalde, por lo que no hay certeza en las afirmaciones que emite, lo cual se traduce en que es información falsa o imprecisa. Este tipo de dinámicas tienen un efecto negativo en la población que sigue las conferencias o la información que los medios replican de las mismas, creando un sesgo en la información. Se han verificado estas declaraciones y en muchos casos se concluye que la información emitida por el presidente no coincide o no existe en muchas ocasiones. Esto refleja el riesgo que representa esta práctica constante, pues más allá de servir las conferencias como mecanismos de acceso a la información, transparencia y rendición de cuentas, son espacios que generan la desinformación.

**Ejemplo 5:** En la conferencia matutina del 28 de agosto, la Coordinación de Comunicación Social de la Presidencia presentó una serie de datos disfrazados de informe, en los que supuestamente el medio digital Animal Político y organizaciones de la sociedad civil recibieron fondos extranjeros “exclusivamente para oponerse al Tren Maya”<sup>76</sup>. Los fondos en cuestión, según lo reportado por el medio, en realidad son de un proyecto que inició desde el 2017, antes que esta administración llegara al poder. En este sentido, el ejecutivo federal presenta información como verídica, sin una verificación, la cual manda un mensaje a través de sus conferencias donde descalifica y estigmatiza a medios, oposición política u organismos de sociedad civil.

- El titular del Sistema Público de Radiodifusión del Estado Mexicano, Jenaro Villamil<sup>77</sup>, generó una iniciativa para atajar la desinformación en redes sociales y medios de comunicación en el contexto de la pandemia, a través de la creación de la plataforma *infodemia.mx*.<sup>78</sup> la cual “[...] tiene como objetivo combatir la infodemia, es decir, la epidemia de noticias falsas, y ofrecer a las audiencias digitales un espacio de información verificada. Lo anterior se lleva a cabo en dos fases: 1) Identificación de las noticias falsas y 2) Alfabetización Digital.”<sup>79</sup> Jenaro Villamil señaló que “se ha desarrollado este espacio para detener las noticias falsas, difundiendo sólo información verificada, que evite la contaminación en redes.” Ello tiene implicaciones serias para el ejercicio de la libertad de expresión y el derecho a la información en tanto una institución se establece como ente regulador de la verificación de la información. Además nunca se clarificaron los criterios ni la metodología para calificar cierta información como “falsa”. Se considera sintomática de una tendencia respecto a la búsqueda de control político de los flujos de información. Medidas como éstas no pueden ser consideradas como un servicio público debido a que dependen de una institución que carece de autonomía. Así, al ser propuesta esta iniciativa por parte de una institución pública, puede estar sujeta a controles políticos y ser una herramienta de censura que ponga en riesgo el ejercicio de la libertad de expresión y el derecho a la información de manera plural y crítica, siendo que la propia institución califique discrecionalmente como “falso” aquello que resulte incómodo o inconveniente para el gobierno.
- Este modelo de “verificación” desde las estructuras del Estado también ha dado pie a la creación de [Trenificado](#). Un “espacio de verificación de noticias sobre el Tren Maya” similar al de *infodemia.mx* pero que está enfocado en señalar la información “falsa” relacionada con el mega proyectos del gobierno meicano en el sureste mexicano conocido como el “Tren

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<sup>76</sup> Proyecto del gobierno federal de México para el transporte de pasajeros y carga a través de la Península de Yucatán como parte de la expansión de la red nacional ferroviaria.

<sup>77</sup> S/A, [Infodemia, la otra pandemia: Jenaro Villamil](#), *Telediario*, 6 de mayo de 2020.

<sup>78</sup> El flujo, difusión y replicación de información falsa o noticias falsas.

<sup>79</sup> Sitio web <https://infodemia.mx/nosotros>

Maya”. Además, si bien el sitio *web* usa el dominio .org, quienes integran el “[consejo editorial](#)” son funcionarios públicos.

- A pesar en México cuenta con una Plataforma Nacional de Transparencia donde cualquier ciudadano puede solicitar información a los órganos gubernamentales a nivel federal y en las entidades federativas, en Article 19 se documentó la tendencia al uso de las autoridades obligadas a emitir respuestas a los ciudadanos en la que establecen la inexistencia de la información y la declaratoria de notoria incompetencia como uno de los mecanismos más usados para clausurar el acceso a información pública requerida por la vía de las solicitudes de acceso a información.<sup>80</sup>
- La caracterización descrita en los párrafos anteriores permite identificar los flujos de desinformación en México y en otras partes de América Latina y el Caribe. Resume el trabajo de distintas organizaciones y medios verificadores de la región<sup>81</sup> para documentar las desinformaciones que circulan en varios países. Es un guía para analizar las posibles fuentes de éstas y las diferentes narrativas que se propagan en el entorno digital, relacionadas con el COVID-19.
- En el contexto de la pandemia por la COVID-19 y antes las falencias del Estado por acercar información pertinente y oportuna en materia de salud, las organizaciones de la sociedad civil han activado mecanismos para que la información llegue a otros rincones del territorio para responder a las realidades contextuales de las regiones y las necesidades locales. Por ejemplo, las radios comunitarias han contribuido a difundir información entre las comunidades indígenas del país y organizaciones civiles han creado campañas de comunicación a través de carteles en lengua indígenas<sup>82</sup>.

Desde el área de Centroamérica y Cuba de ARTICLE 19 no hemos identificado que el gobierno de Cuba haya emprendido medidas del conocimiento público que ayuden a contrarrestar la desinformación en línea y fuera de ella, sin embargo, reconocemos la dificultad para que estas medidas pudieran ser emprendidas desde el Estado en tanto que éste es el principal promotor de desinformación hacia personajes o medios independientes.

Desde el programa de Centroamérica y Cuba existe una preocupación persistente por la manera en que el gobierno de Cuba, actualmente presidido por Miguel Díaz Canel, se ha vinculado con quienes ejercen la libertad de prensa y el derecho de reunión y manifestación pacífica.

Uno de los aspectos que potencian la desinformación en ese contexto son las campañas de desprestigio que a través de publicaciones, materiales audiovisuales y mensajes, generan percepciones que minan la imagen pública y propósitos de personajes críticos del régimen de manera particular.

En concreto, en los meses de noviembre y diciembre de 2020 y enero de 2021, desde ARTICLE 19 hemos podido registrar en 28 ocasiones la utilización de espacios dentro de la televisión y medios digitales dependientes del gobierno de Cuba para desprestigiar a periodistas y activistas. De manera específica, las campañas de desprestigio mencionadas se han concentrado en 15 personas distintas.

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<sup>80</sup> ARTICLE 19, [Disonancia. Voces en disputa](#).

<sup>81</sup> [Información chequeada sobre el coronavirus](#), LatamChequea.

<sup>82</sup> ARTICLE 19, [Informe Especial C.O.V.I.D.](#), 9 de julio de 2020, pp. 35-36.



El contexto de las campañas de desprestigio está ubicado en la visibilidad del Movimiento San Isidro, un colectivo de artistas, académicos y activistas críticos del régimen que lograron trascender los márgenes de conocimiento público local hacia lo internacional al convocar una protesta sobre la detención del músico y activista Denis Solís el 9 de noviembre de 2020 y posteriormente concentrándose en la sede de su organización para emprender una huelga de hambre a fin de presionar la liberación de Solís. Finalmente, agentes del Departamento de Seguridad del Estado allanaron la casa del colectivo y detuvieron a 14 personas.<sup>83</sup>

Durante la coyuntura iniciada el 9 de noviembre e incluso hasta el día de hoy, ha sido posible observar la reacción del oficialismo cubano hacia quienes se solidarizaron con el colectivo y quienes participaron de la protesta, a través de la difusión de mensajes en medios de comunicación dependientes del Estado, donde se vincula a las personas con planes para desestabilizar al gobierno, derrocarlo o promover una invasión estadounidense. Se señala a sujetos que han sido reconocidos socialmente por involucrarse en la exigencia del reconocimiento a sus derechos humanos o se difunden fotografías y videos descontextualizados para minar su reputación.

**Ejemplo 1:** Una muestra de este fenómeno de desinformación promovido por las autoridades de la isla es la publicación “En torno a la farsa de San Isidro” de José Llamas Camejo del 8 de diciembre de 2020 en el diario Granma, el órgano oficial del Comité Central del Partido Comunista de Cuba<sup>84</sup>. En dicho texto, se demerita el trabajo de los participantes del Movimiento San Isidro, se asegura que reciben recursos del exterior de manos de personas vinculadas a presuntos actos terroristas además de acusarlos de relacionarse y reunirse con funcionarios de la Sección de Intereses de Estados Unidos en Cuba.

**Ejemplo 2:** Otro ejemplo de los esfuerzos que se prodigan desde la institucionalidad y los medios dependientes del gobierno de Cuba para desprestigiar a quienes critican su gestión es la publicación “En vivo: Desmontan la farsa de San Isidro en la TV nacional de Cuba” de Yisell Rodríguez Milán y Yisel González Fuentes del 28 de noviembre de 2020<sup>85</sup>.

En dicha publicación se describe la transmisión de la Televisión Cubana donde se convocó a “politólogos y otros expertos” para “analizar los hilos que mueven los intereses del Movimiento San Isidro” concluyendo que se trata de una operación auspiciada por el gobierno de Estados Unidos. Además en el texto se incluye la declaración respectiva del presidente Miguel Díaz-Canel, quien señaló a Mike Pompeo, ex secretario de Estado de EEUU, Michael Kozak y Mara Tekach, personas funcionarias del Departamento de Estado de dicho país, de haber “intervenido de manera reiterada en estos días en los asuntos internos” de Cuba buscando “a toda costa un pretexto que permita escalar la situación creada por ellos mismos” con la intención de “ enrarecer y dificultar más las relación entre ambos países”.<sup>86</sup>

**Ejemplo 3:** A través de un artículo publicado en CubaDebate por Javier Gómez Sánchez el 5 de enero de 2021<sup>87</sup>, espacio dirigido por el Círculo de Periodistas Cubanos contra el Terrorismo (colectivo afin y dependiente del gobierno de Cuba), se aborda la manera en que activistas, periodistas y académicos forman parte de una iniciativa “contrarrevolucionaria” para renovar

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<sup>83</sup> <https://rialta.org/en-directo-represion-cuba-msi/>

<sup>84</sup> <http://www.granma.cu/cuba/2020-12-08/en-torno-a-la-farsa-de-san-isidro-08-12-2020-01-12-49>

<sup>85</sup> <http://www.granma.cu/cuba/2020-11-28/en-vivo-desmontan-en-la-farsa-de-san-isidro-en-la-tv-nacional-de-cuba>

<sup>86</sup> <http://www.granma.cu/mundo/2020-11-28/cuba-soberana-no-acepta-injerencias-28-11-2020-02-11-43>

<sup>87</sup> Cuba Debate, [Los ideólogos del golpe blando: Open Society en Cuba y la articulación contrarrevolucionaria](#).

presuntos esfuerzos históricos por derrocar a la dirigencia actual de país y favorecer la injerencia extranjera, específicamente de Estados Unidos.

Los ejemplos citados son una pequeña muestra de la manera anómala en que se comprende desde la institucionalidad de Cuba el ejercicio de derechos básicos, por esto, consideramos que:

- La hostilidad desde el aparato estatal hacia quienes disienten de los discursos oficiales y se movilizan o convocan a otros a hacerlo pacíficamente es uno de los aspectos que requiere transformarse dentro de la relación entre sociedad y gobierno.
- Aunque existe el reconocimiento en la Constitución de Cuba a la libertad de pensamiento, conciencia y expresión así como a la libertad de prensa, es fundamental modificar la legislación para eliminar cualquier ambigüedad y contradicción evidente, como la de los Decretos Ley 370 y 349, que versan sobre la difusión de información “contraria al interés social, moral, las buenas costumbres y la integridad de las personas” y la aprobación estatal de la obra de las y los artistas previa presentación, respectivamente.
- Otra arista que es necesario limar para evitar potenciar la desinformación se refiere a la aprobación y propiedad estatal de los medios de comunicación en Cuba y el reconocimiento a quienes ejercen el periodismo sin distinciones relacionadas con la ideología, el tipo de medio de comunicación o la persona que comunica mensajes en un proyecto informativo.
- Finalmente, consideramos necesario que existan entidades de defensoría de los derechos humanos con autonomía del Estado pero recursos y facultades suficientes para operar. En un contexto en el que cualquier integrante del aparato de gobierno puede hostigar, acosar y agredir a cualquier persona sin señalamiento o castigo alguno, es urgente establecer espacios de apoyo para las víctimas de estos abusos.

**What has been the impact of such measures on i) disinformation; ii) freedom of opinion and expression; and iii) other human rights?**

- Uno de los impactos que ha tenido la desinformación es la falta de fuentes oficiales o documentos que respalden las declaraciones emitidas por el presidente u otros funcionarios, ya que tienen un efecto negativo en el ejercicio del derecho a la información, así como en la transparencia y rendición de cuentas. Esto limita el derecho de la sociedad a acceder a información de interés público que se está colocando constantemente en la agenda pública a través de las conferencias matutinas. El principal mecanismo de comunicación social de esta administración.
- El impacto y efecto que tiene la voz del presidente es tal, que aun cuando existen datos, fuentes o evidencia que digan lo contrario, existe una negación constante de la realidad. Un ejemplo claro es la continua negación de violaciones a los derechos humanos, tortura y masacres<sup>88</sup>. A ello se agrega la negación de la situación de los derechos humanos de los migrantes. Sobre estos y otros temas el presidente afirma discursos distintos que coloca en el discurso público.

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<sup>88</sup> Video: [En México no hay masacres](#), Conferencia Matutina del 14 de julio de 2020. El primero de septiembre de 2020 realizó una afirmación similar, [‘Ya no hay masacres en Mexico’: AMLO; pero en siete meses de 2020 se cometieron 429](#).

- A través de las TIC buscamos, emitimos y difundimos información, contenidos e ideas, y son también un espacio en que debatimos, protestamos y nos organizamos, tenemos acceso a la cultura, a la ciencia y al conocimiento, así como a la información relevante. Por otra parte las TIC han facilitado la propagación de desinformación en el entorno digital debido a la fluidez con la que se compartn en las redes sociales y de esta manera se facilita en la medida en que las personas son engañadas para creer en contenidos desinformadores, los cuales serán a su vez propagados y creídos por otras personas, utilizando sus propios medios tecnológicos y lazos sociales para difundirlos<sup>89</sup>. En lo que respecta a los tiempos de pandemia, específicamente en cuanto al tema de seguridad pública, se puede mencionar la creación de sitios web falsos que afirmaban tener información sobre COVID-19 cuando, en realidad eran trampas digitales cuyo propósito era robar los datos personales o intervenir los dispositivos de las personas que visitaban dichos sitios web<sup>90</sup>.
- Es importante mencionar la responsabilidad que tienen los servidores y servidoras del Estado pues tienen la obligación mayor respecto de lo que emiten, pues la naturaleza de su cargo los dota de cierta autoridad con la población que les escucha. No obstante, es importante mencionar que es complejo verificar la información cuando no hay acceso a otras fuentes. Por lo tanto, el Estado debe enfatizar el acceso a información veraz y oportuna especialmente en las comunidades donde es más escasa. Por ello, los relatores para la libertad de expresión de la ONU y de la Comisión Interamericana de Derechos Humanos han declarado que “es esencial que los gobiernos [...] aborden la desinformación por sí mismos proporcionando información fiable [...] con respecto a otras medidas, como la reducción de contenidos y la censura, puede dar lugar a la limitación del acceso a la información importante para la salud pública y sólo debe realizarse cuando se cumplan las normas de necesidad y proporcionalidad”<sup>91</sup>. Para ejemplificar lo anterior, compartimos algunos ejemplos de funcionarios/as públicas del Estado Mexicano que han incurrido en desinformación:

### Ejemplos:

- (a) El 15 de marzo de 2020, la Comisión Nacional de Cultura Física y Deporte (Conade) publicó un mensaje en su cuenta de Twitter minimizando la coyuntura sanitaria, en el cual se lee: “COVID-19 no es una situación de emergencia”.
- (b) La estrategia de desinformar y después negar los hechos o rechazar compartir información con la prensa se ha repetido también a nivel Estatal. Varios Gobernadores como Jaime Bonilla en Baja California o Miguel Barbosa en Puebla son ejemplos de esto.
  - (i) Tras reportajes del Semanario ZETA donde informaban que había discrepancias en el número de casos COVID19 y en las camas de hospitales disponibles, el Gobernador Jaime Bonilla terminó una de sus conferencias diarias diciendo que sólo los datos presentados por el gobierno eran ciertos y que lo demás eran “MENTIRAZ CON Z”.<sup>92</sup>
  - (ii) Por su parte, el 25 de marzo de 2020, el gobernador de Puebla, Miguel Barbosa, en conferencia de prensa, afirmó que el COVID-19 ataca principalmente a gente “acomodada” y que “los pobres son inmunes”. Dijo: “Hay mucha gente de las cuarenta

<sup>89</sup> ARTICLE19, Informe Especial C.O.V.I.D., *op.cit.*

<sup>90</sup> S. Frenkel et al., [Facebook y Twitter batallan contra la desinformación en torno al coronavirus](#), The New York Times, 10 de marzo de 2020.

<sup>91</sup> Organización de Estados Americanos, OEA, [COVID-19: Los gobiernos deben promover y proteger el acceso y la libre circulación de la información durante la pandemia – Expertos internacionales](#).

<sup>92</sup> ARTICLE 19. [Gobernador de Baja California inicia el año estigmatizando periodistas](#), 13 de enero de 2021.

personas; algunos son padres de familia, sí; la mayoría son gente acomodada, ¿eh?, sí lo saben, ¿o no? Si ustedes son ricos, tienen el riesgo; si ustedes son pobres, no; los pobres estamos inmunes”. Un día después, cuando un reportero del medio El Sol de Puebla quiso cuestionarlo sobre el caso, fue ignorado por el gobernador quien le dijo: “No voy a tener opinión y menos al Sol de Puebla”.<sup>93</sup> Esto demuestra que las autoridades comienzan a repetir la estrategia presidencial y no sólo comparten información no verificada, sino que después rechazan el escrutinio público de sus afirmaciones.

- (c) En este contexto, el gobernador Barbosa, como titular del Ejecutivo estatal, tiene la responsabilidad y obligación de proveer información oficial y datos de manera oportuna y eficaz para combatir la desinformación, los rumores y el miedo. Estas prácticas han estado presentes desde mediados de marzo en el estado de Puebla, en donde el actual gobernador ha compartido información sin validez científica y contradiciendo las directrices de la Secretaría de Salud y de la OMS. El 14 de marzo señaló que un platillo de la gastronomía poblana servía para prevenir el coronavirus: “Me dijeron que la vacuna que ya se descubrió en contra del coronavirus es un plato de mole de guajolote. Vamos nosotros a echarnos un plato de vacuna contra ese virus que atenta contra el mundo”<sup>94</sup>. Declaraciones de ese tipo generan un entorno de incertidumbre, cuando lo que debe regir es la información certera y veraz ante las inquietudes de la sociedad.
- (d) Diversas actitudes del presidente López Obrador pueden ser consideradas también como una fuente de desinformación y de contradicción con la información difundida por la Secretaría de Salud en voz del subsecretario de Prevención y Promoción de la Salud, Hugo López-Gatell. Ejemplos específicos de esto son las declaraciones del presidente el 4 de marzo de 2020 en su conferencia matutina, cuando afirmó: “Miren, lo del coronavirus, eso de que no se puede uno abrazar... Hay que abrazarse, no pasa nada”. En entrevista con ARTICLE 19, Edwin Canché, reportero independiente y colaborador de El Diario de Yucatán, indicó que a resultas de estos mensajes, habitantes de su comunidad sentían confusión respecto a la información y “eso ha hecho que lo tomen a la ligera”. De igual forma, el 18 de marzo de 2020, el presidente hizo mención de que el escudo protector contra el COVID-19 era el “ ‘detente’, la honestidad, el no permitir la corrupción”<sup>95</sup> e, incluso, mostró amuletos protectores contra el virus diciendo que eran sus “guardaespaldas”.

Debido a la falta de una política contra la desinformación y considerando que el gobierno cubano cuenta con el monopolio de los medios de comunicación y promueve prácticas que potencializan la difusión de información falsa en contra de personas con perspectivas críticas hacia ellos, el impacto puede considerarse negativo. Un ejemplo de ellos son los eventos llamados “actos de repudio” donde elementos de la Policía Nacional Revolucionaria (PNR) y Departamento de la Seguridad del Estado (DSE) y grupos afines al gobierno se presentan en domicilios o sedes de colectivos como el de San Isidro para expresarse de manera hostil y bordeando la violencia física contra personas críticas del gobierno. Aunque se tiene claro que muchas personas involucradas en estos actos de repudio suelen ser presionadas para participar, también intervienen personas azuzadas por la información sesgada a la que están expuestos en los medios de comunicación autorizados por el gobierno.

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<sup>93</sup> *Ibid.*

<sup>94</sup> Alís, Krupskaia, [La ‘cura’ de un gobernador mexicano contra el COVID-19](#), CNN Latinoamérica, 27 de marzo de 2020.

<sup>95</sup> Morales, Alberto y Pedro Villa y Caña, [Detente enemigo, que el corazón de Jesús está conmigo: AMLO](#), El Universal, 19 de marzo de 2020.

## What measures have been taken to address any negative impact on human rights?

Son aquellas que han sido abordadas en la pregunta 1 inciso a y b. Sin embargo podemos agregar los siguiente puntos:

- La desinformación (ejercida desde el Estado Mexicano) adquiere nuevas dimensiones de gravedad para el ejercicio del derecho a la información cuando se trata del principal espacio informativo oficial. Así, la *concentración* de la información en las conferencias de prensa matutinas del presidente conocidas como *mañaneras* se hace evidente cuando conocemos el nivel de replicabilidad y difusión de los mensajes.
- Es importante mencionar que la conferencia matutina que tiene el Estado Mexicano es la fuente de información más vista a nivel nacional y también como la más difundida. Es importante destacar que los medios de comunicación retoman la información presentada en la conferencia de prensa, lo cual tiene impactos en términos de marcar la agenda mediática. El hecho de fijar los términos de la agenda pública y del debate público conlleva un peligro, no solo por las implicaciones en términos de desinformación, sino por la profundización de la polarización a través de discursos y narrativas que señalan a propios y extraños<sup>96</sup>.
- La *concentración* en una sola fuente de *(des)información* pública vulnera directamente el ejercicio del derecho a la información y a la libertad de expresión cuando se *clausuran* otras vías internacional y constitucionalmente reconocidas para acceder a la información de los asuntos públicos. Como veremos más adelante, la Oficina de la Presidencia de la República ha tenido prácticas sistemáticas de negación del acceso a información a través de la declaratoria de inexistencia y de no competencia a pesar de que dichas solicitudes requieren el soporte documental de dichos presentados en las conferencias matutinas. A ello se agrega que los servidores públicos también tienen el deber de garantizar los derechos fundamentales y, por tanto, sus declaraciones no pueden desconocer éstos<sup>97</sup>.
- Los Estados deben divulgar información fiable para contrarrestar la desinformación. Es decir, generar narrativas que trascienden el criterio de “falsedad” y no buscar la censura de contenidos.
- Aun cuando se implementó tardíamente, una medida que llevó a cabo el Gobierno Federal fue la traducción de contenidos relativos a salud pública en lenguas indígenas. Esto en el contexto de la pandemia.

Desde el área de Centroamérica y Cuba no se ha identificado medidas promovidas desde el gobierno de Miguel Díaz Canel para abordar el impacto negativo de la desinformación en los derechos humanos

## What policies, procedures or other measure have digital tech companies introduced to address the problem of disinformation?

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<sup>96</sup> David Marcial, [La línea dura de Andrés Manuel López Obrador](#)”, *El País*, 28 de noviembre de 2020.

<sup>97</sup> Caso *Kimel Vs. Argentina*, párr. 79; y Caso *Apitz Barbera y otros (Corte Primera de lo Contencioso Administrativo) Vs. Venezuela*, *op.cit.*, párr. 131.

Partiendo de una investigación de las acciones específicamente dirigidas a combatir la desinformación relacionada con la pandemia de parte de las principales redes sociales utilizadas en México<sup>98</sup> documentamos lo siguiente:

- Facebook<sup>99</sup> incrementó el uso de inteligencia artificial y aprendizaje automático para marcar y eliminar desinformación y contenido que califica como ofensivo, y abrió una página informativa sobre el COVID-19 con ánimo de difundir material verificado de fuentes confiables. Además, anunció que alertaría a personas usuarias involucradas en una dinámica de desinformación sobre COVID-19 (porque dieron “me gusta” a un contenido o lo compartieron, por ejemplo) antes de proceder a eliminar el contenido, conectándolas con información verificada.<sup>100</sup>
- Whatsapp<sup>101</sup>, en alianza con la OMS, el Fondo de las Naciones Unidas para la Infancia (UNICEF) y el Programa de las Naciones Unidas para el Desarrollo (PNUD), decidió proporcionar líneas directas de mensajes, a través de un bot con el que se puede entablar una conversación, para ofrecer orientaciones simples, guías de acción y recomendaciones generales para que las personas estén mejor informadas sobre la pandemia y, en consecuencia reducir la propagación de rumores.
- Google<sup>102</sup> decidió eliminar información peligrosa o engañosa sobre el COVID-19 en Youtube, Google Maps, Google Play y en todos los anuncios, mediante el uso de tecnologías. Además se asoció con el gobierno estadounidense para desarrollar un sitio web dedicado a la educación, prevención y conocimiento de recursos locales sobre la enfermedad.
- Instagram<sup>103</sup> incluyó una alerta educativa en la parte superior de los resultados de búsqueda para conectar a las personas con los recursos de la OMS y tomó medidas más severas de eliminación y moderación de contenidos relacionado con el coronavirus que no cumpla con los requisitos de verificación de datos de terceros.
- Twitter<sup>104</sup> aumentó el uso del aprendizaje automatizado para detectar contenido potencialmente abusivo y manipular, sin suspender permanentemente ninguna cuenta, únicamente con base en dichos sistemas, pero utilizando esta información para exigir a sus usuarios/as la eliminación de tuits con este tipo de contenidos. También, amplió su definición de “daño” para incluir mensajes directamente en contra de la orientación de recurrir a fuentes autorizadas de información de salud pública.

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<sup>98</sup> Según datos recientes de la Asociación de Internet.mx, Facebook, WhatsApp, YouTube, Instagram y Twitter son las principales plataformas de redes sociales que usamos las y los mexicanos; véase Asociación de Internet.mx, [14° Estudio de hábitos de los usuarios de internet en México 2018](#), 17 de mayo de 2018.

<sup>99</sup> Jin, Kang-Xing, [Keeping People Safe and Informed About the Coronavirus](#)”, Facebook, 31 de marzo de 2020.

<sup>100</sup> Romm, Tony, [Facebook will alert people who have interacted with coronavirus ‘misinformation’](#), The Washington Post, 16 de abril de 2020.

<sup>101</sup> [Cómo puede ayudarte WhatsApp a estar conectado durante la pandemia de coronavirus \(COVID-19\)](#), WhatsApp.

<sup>102</sup> Pichai, Sundar, [COVID-19: How we’re continuing to help - Company announcements](#), Google, 15 de marzo de 2020.

<sup>103</sup> Statt, Nick, [Instagram will let you browse posts with friends over video chat to promote social distancing](#), The Verge, 24 de marzo de 2020.

<sup>104</sup> Gadde, Vijaya, [An update on our continuity strategy during COVID-19](#), Twitter, 16 de marzo de 2020.



- Es necesario que las plataformas de redes sociales cuenten con mayores niveles de granularidad cuando presentan informes de transparencia sobre las acciones en materia de desinformación.
- Las plataformas de redes sociales deben permitir que investigadores tengan acceso a la información eliminada en materia de desinformación para conocer el tipo de información, patrones, relaciones.
- En un contexto en el cual algunos actores políticos o del Estado pueden usar las plataformas de redes sociales, es necesario mayores niveles de transparencia y acciones proactivas

En realidad, las medidas que el gobierno de Cuba no ha tomado forman parte de una estrategia de defensa de los intereses del Estado en detrimento de la defensa de los derechos humanos y de grupos de ciudadanas y ciudadanos críticos.

### **What procedures exist to address grievances and provide remedies for users, monitor the action of the companies, and how effective are they?**

- Lejos de implementar procedimientos administrativos sancionatorios para hacer frente a la desinformación, deben reconocerse los mecanismos existentes en la Ley Federal de Telecomunicaciones y Radiodifusión, como el derecho de réplica y la defensoría de las audiencias, cuando se presenten casos donde la información no verificada provenga directamente de los medios<sup>105</sup>.
- El INAI cuenta con atribuciones cuasi-jurisdiccionales para resolver quejas relativas al ejercicio del derecho a la información (por respuestas deficientes en procesos de acceso a información o por incumplimiento a obligaciones de transparencia). Este mecanismo es importante porque se trata de un mecanismo que permite contrastar la información oficial mencionada en conferencias matutinas.

No se identificado procedimientos dispuestos desde el gobierno de Cuba para abordar problemáticas y brindar soluciones a usuarios ni para monitorear la acción de ETECSA, la única compañía proveedora de servicios de telecomunicaciones.

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<sup>105</sup> [Ley Federal de Telecomunicaciones y Radiodifusión](#), 2014.