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## An 'Infodemic' in the Pandemic: Human Rights and Covid-19 Misinformation

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### I. Introduction

The UN Secretary-General and the World Health Organisation have described the level of misinformation and disinformation surrounding the Covid-19 pandemic as an 'infodemic'.<sup>2</sup> Misinformation and disinformation are often referred to as 'fake news'.<sup>3</sup> While both involve the spread of false or misleading information, misinformation is typically spread by people who do not realise that the information is false. By contrast, with disinformation, the person sharing the information knows it is false and usually shares it with the intent to cause harm.<sup>4</sup> Since the beginning of the Covid-19 pandemic, two major patterns of misinformation and disinformation online have emerged. First, racist, xenophobic and hateful messages and memes have been shared online, blaming and scapegoating particular groups for the origin and spread of Covid-19.<sup>5</sup> Second, misinformation has spread on the causes, symptoms and possible treatment of the virus. In this paper, we focus on the effects of the spread of misinformation which, if followed, could result in significant harm to health and, in extreme situations, life.<sup>6</sup>

This paper explores the responses that states and social media companies have taken to address misinformation on the causes, symptoms, and possible treatment of Covid-19 and assesses their compliance with existing obligations under international human rights standards and norms, including the UN Guiding Principles on Business and Human Rights. Addressing misinformation typically requires a plurality of measures, such as media literacy programmes, promotion of good journalism, increased transparency on advertising, in some circumstances, content moderation, and supervision by courts and regulators.<sup>7</sup> For reasons of space, this chapter focuses on the three main approaches

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<sup>1</sup> The Human Rights, Big Data and Technology Project is funded by the Economic and Social Research Council [grant number ES/M010236/1]. The authors are listed in alphabetical order to reflect equal contributions.

<sup>2</sup> 'UN Tackles 'infodemic' of misinformation and cybercrime in COVID-19 crisis', UN Department of Global Communication, <https://www.un.org/en/un-coronavirus-communications-team/un-tackling-%E2%80%98infodemic%E2%80%99-misinformation-and-cybercrime-covid-19>; World Health Organisation, Coronavirus diseases 2019 (COVID-19) – Situation Report-85, 15 April 2020, [https://www.who.int/docs/default-source/coronaviruse/situation-reports/20200415-sitrep-86-covid-19.pdf?sfvrsn=c615ea20\\_4\\_2](https://www.who.int/docs/default-source/coronaviruse/situation-reports/20200415-sitrep-86-covid-19.pdf?sfvrsn=c615ea20_4_2).

<sup>3</sup> Claire Wardle and Hossein Derakhshan, 'Information Disorder. Toward an interdisciplinary framework for research and policymaking', Council of Europe Report DGI 09-2017, 27 September 2017, 15-17.

<sup>4</sup> Ibid, 20-22.

<sup>5</sup> 'COVID-19 fears should not be exploited to attack and exclude minorities – UN expert said', OHCHR, 30 March 2020, <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25757&LangID=E>.

<sup>6</sup> Julie Posetti and Kalina Bontcheva, 'Disinfordemic: Deciphering COVID-19 disinformation', UNESCO Policy Brief 1, April 2020.

<sup>7</sup> Elena Abrusci, Sam Dubberley and Lorna McGregor, 'Disinformation and Human Rights', HRBDT Report, forthcoming 2020. See also European Commission, A multi-dimensional approach to disinformation.

taken by states and businesses to address Covid-19 misinformation. These are, at one end of the spectrum, the actions taken by states and social media platforms to meet their obligations under the right to the highest attainable standard of health (right to health) through ‘information accessibility’.<sup>8</sup> At the other end of the spectrum, the companies’ content removal policies and their compatibility with the UN Guiding Principles on Business and Human Rights and the states’ application of criminal laws to address misinformation and the associated risks to human rights.

## II. Information Accessibility

In recent years, there has been a surge in online misinformation, including in the field of public health. The Covid-19 pandemic, however, has taken public health misinformation to a new level. Incomplete and continuously evolving scientific understanding of this novel virus and how it can be effectively treated, as well as the lack of a vaccine, have created the conditions for misinformation to flourish. This includes misinformation on possible treatments or cures for Covid-19, such as recommendations to eat garlic, drink bleach, consume high volumes of alcohol, and use ultraviolet lights.<sup>9</sup> Following some of this misinformation could have serious health repercussions and at the most extreme, result in death. For instance, journalists reported that in Iran, viral online misinformation surfaced about the beneficial effects of ingesting methanol and alcohol-based sanitisers to protect against the virus. This reportedly led to hundreds of people ingesting large quantities of the two substances, causing the death of over 300 people and serious illness.<sup>10</sup>

The right to the highest attainable standard of health (right to health) includes ‘information accessibility’, defined by the UN Committee on Economic, Social and Cultural Rights as ‘the right to seek, receive and impart information and ideas concerning health issues’.<sup>11</sup> Education and public awareness campaigns are widely recognised as a baseline measure to address misinformation, although on their own cannot provide a full solution to misinformation.<sup>12</sup> This is both because of the increasing sophistication of misinformation, which makes it more difficult to detect, and because these measures place a too heavy burden on the individual, without addressing the root causes of misinformation. However, when combined with other approaches, media literacy programmes constitute an important and necessary measure for providing individuals with the tools to self-assess the reliability of some pieces of information. In the Covid-19 context, meeting this dimension to the right

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Report of the independent High level Group on fake news online disinformation, March 2018, available at [https://ec.europa.eu/newsroom/dae/document.cfm?doc\\_id=50271](https://ec.europa.eu/newsroom/dae/document.cfm?doc_id=50271).

<sup>8</sup> CESCR, ‘General Comment No. 14: The Right to the Highest Attainable Standards of Health (Art. 12)’, UN Doc. E/C.12/2000/4, 11 August 2000 (hereinafter CESCR General Comment No.14).

<sup>9</sup> For a detailed list of country-specific coronavirus misinformation see Poynter dedicated web page, <https://www.poynter.org/ifcn-covid-19-misinformation/>.

<sup>10</sup> Christine Roger, ‘Social Media Misinformation that Led to 300 Deaths in Iran Claimed that Drinking Methanol was a Cure for COVID-19’, Tech Times, 29 March 2020, <https://www.techtimes.com/articles/248428/20200329/social-media-misinformation-that-led-to-300-deaths-in-iran-claimed-drinking-methanol-was-a-cure-for-covid-19.htm>.

<sup>11</sup> CESCR, General Comment No. 14 (n. 7).

<sup>12</sup> See, among others, European Commission, ‘A multi-dimensional approach to disinformation. Report of the independent High level Group on fake news online disinformation’, March 2018 and Digital, Culture, Media and Sport Committee, ‘Disinformation and “fake news”: Final Report’ House of Commons, 14 February 2019.

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to health is particularly important given the virality of misinformation on Covid-19 on social media platforms.<sup>13</sup>

### ***a) State Action on Information Accessibility***

Some states have introduced educational and public awareness campaigns to counter misinformation on Covid-19.<sup>14</sup> For instance, several countries, such as the UK, have partnered with the WHO on the '#Stop the spread' campaign, where they commit to using public broadcast channels to counter misinformation and promote public health advice.<sup>15</sup> The UK has also established a 'rapid response unit' with health experts, designed to 'stem the spread of falsehoods and rumours which could cost lives'.<sup>16</sup> The Indian Government has launched a WhatsApp chatbot to counter Covid-19 related misinformation.<sup>17</sup>

The nature and extent of actions that states are required to take to ensure 'information accessibility' is not well developed under international human rights law. However, the Covid-19 'infodemic' raises a number of interesting questions on the scope of the obligation. First, the question arises whether general public awareness campaigns that address key myths concerning Covid-19 are sufficient, or whether states are under an obligation to tailor their messages to the specific types of misinformation in circulation, given that some misinformation on possible treatments is country-specific. Misinformation may also relate to particular groups, which, if left unaddressed in public health messaging, could raise issues of discrimination.

Second, the question arises whether 'information accessibility' entails an expectation of timeliness, given that time may be of the essence when health misinformation has gone viral. Finally, the means by which states adopt public health awareness campaigns on Covid-19 may also be critical as misinformation that spreads online, often then spreads offline, including through families and friends. In light of the ongoing digital divide, it is likely to be insufficient for states to focus public health awareness campaigns exclusively on digital media; other actions may also be required, such as public messaging by post, public broadcasting and billboards. It is unclear the extent to which states have taken these types of questions into account when developing campaigns to counter misinformation in their country.

A particularly serious dimension to misinformation on Covid-19 has been the role of political leaders, including heads of state or government, in amplifying misinformation. For example, videos and tweets by Brazil's President Bolsonaro have circulated widely in which he claimed that Covid-19 is not more dangerous than a normal flu for people with a healthy lifestyle.<sup>18</sup> President Trump has been at the centre of several claims that drinking or injecting bleach and hitting 'the body with tremendous ultraviolet or powerful light' would

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<sup>13</sup> Scott Brecken and others, 'Types, sources, and claims of COVID-19 misinformation', Oxford Reuters Institute, Oxford Internet Institute, Factsheet, April 2020.

<sup>14</sup> See, for instance the '#Stop the spread' campaign, coordinated by WHO with national governments worldwide, <https://www.who.int/news-room/feature-stories/detail/countering-misinformation-about-covid-19>.

<sup>15</sup> Ibid.

<sup>16</sup> 'Government cracks down on spread of false coronavirus information online', GOV.UK, 30 March 2020, <https://www.gov.uk/government/news/government-cracks-down-on-spread-of-false-coronavirus-information-online>.

<sup>17</sup> As reported by Julie Posetti and Kalina Bontcheva, 'Disinfordemic: Deciphering COVID-19 disinformation', (n. 5) 10.

<sup>18</sup> Ibid, 4.

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contribute to defeating the virus, against medical advice.<sup>19</sup> The involvement of political leaders in the spread of misinformation both amplifies it, securing wider reach, and may have the effect of validating the misinformation, potentially giving the impression that it is 'official' advice. General Comment 14 of the UN Committee on Economic, Social and Cultural Rights includes as part of states' obligations to protect the right to health, a prohibition of 'intentionally misrepresenting health-related information'.<sup>20</sup> The question therefore arises whether in such contexts, the amplification of misinformation by state officials, particularly if repeated once contested by health authorities, violates the right to health.

### ***b) Tech Companies' Action on Information Accessibility***

Tech companies and social media platforms have been particularly active in addressing Covid-19 mis/disinformation, signaling a distinct approach to how they address other forms of mis and disinformation on their platforms. This has included the issuance of a joint statement by Facebook, Google, LinkedIn, Microsoft, Reddit, Twitter and YouTube in which, for the first time, they publicly committed to joining forces to address misinformation.<sup>21</sup>

In the past few years, tech and social media companies have been developing different responses to mis- and disinformation.<sup>22</sup> They have generally taken a cautious approach and have not yet introduced measures to address some of the fundamental enablers of these phenomena, such as the business model behind digital advertising; the challenge of assessing what constitutes mis- or disinformation; and the extensive protection given to freedom of political expression by the US constitution.<sup>23</sup> By contrast, in relation to Covid-19, major tech companies have taken a proactive approach to counter health misinformation, partnering with international organisations and national health institutions, addressing the issues of monetisation of content and digital ads and introducing new definitions of what constitute misinformation for Covid-related content.

A common response by tech companies has been to 'elevate' content from the WHO and other national health bodies to users searching for information on Covid-19, in order to counter misinformation with trusted information from recognised health authorities. This has been also supported by the 'Verified' initiative launched by the UN to provide a platform with trusted and accurate content about Covid-19.<sup>24</sup> Google has launched an SOS Alert system which makes WHO coronavirus resources more easily accessible when users

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<sup>19</sup> William J. Broad and Dan Levin, 'Trump Muses About Light as Remedy, but Also Disinfectant, Which Is Dangerous', *The New York Times*, 24 April 2020.

<sup>20</sup> CESCR, 'General Comment No. 14' (n. 7).

<sup>21</sup> See the statement as reported by Catherine Shu, 'Facebook, Reddit, Google, LinkedIn, Microsoft, Twitter and YouTube issue joint statement on misinformation', *TechCrunch*, 17 March 2020, <https://techcrunch.com/2020/03/16/facebook-reddit-google-linkedin-microsoft-twitter-and-youtube-issue-joint-statement-on-misinformation/>.

<sup>22</sup> David Kaye, *Speech Police. The Global Struggle to Govern the Internet* (New York: Columbia Global Reports, 2019), 84-98.

<sup>23</sup> For a detailed discussion of content governance challenges see Access Now, '26 recommendations on content governance', Policy Paper, March 2020.

<sup>24</sup> UN, 'UN launches new initiative to fight COVID-19 misinformation through 'digital first responders'', 21 May 2020, <https://news.un.org/en/story/2020/05/1064622>.

enter the search terms, “Covid-19” or “coronavirus”.<sup>25</sup> YouTube has also added a banner redirecting users to the WHO web portal on all videos that reference Covid-19.<sup>26</sup> Similarly, the search function on Facebook has been altered so that any user searching for topics related to Covid-19 on Facebook is shown results encouraging them to look at the website of the WHO or national health authorities for the latest information.<sup>27</sup> The order of the newsfeed has also been changed to prioritise these websites in users' newsfeeds. Likewise, WhatsApp has worked with the WHO to create a Health Alert system that is designed to answer questions from the public about Covid-19 and provides prompt, reliable and official information 24 hours a day and worldwide and in several languages.<sup>28</sup>

As a general matter, the prioritisation of content can be seen as a less invasive approach than content removal.<sup>29</sup> However, in some circumstances, where deprioritised content is placed so low on a feed that it may never be seen by a social media user, it may have the same effect as content removal.<sup>30</sup> Content prioritisation can therefore raise questions around freedom of expression, particularly if the prioritisation process results in the exclusion of particular voices or perspectives from the social media space.<sup>31</sup> These wider concerns about content prioritisation may be distinguishable from a narrow and temporary context of a public health pandemic, where information from national public health authorities and the WHO designated as trusted partners is elevated over other content. This may be seen as a necessary, legitimate and proportionate restriction over other health messages, in order to ensure that social media users see the most up to date health information on Covid-19 and to combat misinformation.

Social media companies have also taken the decision to restrict advertising and demonetise certain content as a means of deterring users from uploading particularly shocking or attractive content on the virus only for getting higher revenues. The business model of digital advertising is based on users' views and, therefore, videos with higher numbers of views are more lucrative and ads featured on these videos will generate more revenue for the platform. This has been considered as one of the obstacles to effectively addressing online misinformation and its human rights impacts.<sup>32</sup> YouTube decided to demonetise all Covid-19 related videos and does not allow ads on them.<sup>33</sup> However, after pressure from a news agency complaining about significant loss due to these restrictions, YouTube has already made some exceptions, such as allowing monetisation on videos coming from ‘respectable’ news agencies.<sup>34</sup>

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<sup>25</sup> Sundar Pichai, ‘Coronavirus: How we’re helping’, Google-The Keyword, 6 March 2020, <https://www.blog.google/inside-google/company-announcements/coronavirus-covid19-response/>.

<sup>26</sup> Ibid.

<sup>27</sup> Mark Zuckerberg, ‘update on the steps we're taking to respond to the coronavirus’, Facebook, 4 March 2020, <https://www.facebook.com/zuck/posts/10111615249124441>.

<sup>28</sup> WhatsApp, ‘The World Health Organization launches WHO Health Alert on WhatsApp’, <https://www.whatsapp.com/coronavirus/who>.

<sup>29</sup> Article 19, ‘Side-stepping rights: Regulating speech by contract’, Policy Brief 2018, <https://www.article19.org/wp-content/uploads/2018/06/Regulating-speech-by-contract-WEB-v2.pdf>, 28-29.

<sup>30</sup> Access Now, ‘26 recommendations on content governance’ (n. 22).

<sup>31</sup> UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, ‘Annual Report to the General Assembly’, UN Doc. A/73/348, 29 August 2018, 25.

<sup>32</sup> Nathalie Marechal, Ellery Roberts Biddle, ‘It’s Not Just the Content, It’s the Business Model: Democracy’s Online Speech Challenge’, Ranking Digital Rights Report, March 2020.

<sup>33</sup> Pichai, ‘Coronavirus: How we’re helping’ (n. 24).

<sup>34</sup> YouTube Help, ‘Coronavirus diseases 2019 (COVID-19) updates’, 20 May 2020, <https://support.google.com/youtube/answer/9777243?hl=en>.



Following a similar approach, Facebook has banned ads and listings of any alleged alternative cure for the virus (not supported by health authorities), thus reducing its potential revenue. At the same time, the social media platform has also granted the WHO unlimited free ad space and some free space to national health organisations.<sup>35</sup> A similar initiative has been also implemented by Twitter, which, despite its standard policy of not allowing political ads, decided to let governmental health authorities advertise links to trustworthy information.<sup>36</sup>

### III. Content Removal

In addition to elevating content from the WHO and national public health authorities, social media platforms have modified their content moderation policies to more effectively fact-check and/or remove Covid misinformation, with an increased reliance on automated systems.<sup>37</sup> As a general matter, the main structural problem platforms face with moderating misinformation is the difficulty, and sometimes impossibility, of assessing with objectivity and certainty the veracity of information without actually making or being seen to be making value, moral or political judgments on particular forms of speech or risking censorship and unduly restricting freedom of expression.<sup>38</sup> However, social media platforms appear to have taken a different approach to health misinformation on Covid-19.<sup>39</sup>

For instance, Facebook has decided to remove any ‘false claim and conspiracy theory that have been flagged by leading global health organisations’ and that causes immediate harm to users.<sup>40</sup> This is distinct from misinformation that does not ‘directly result in physical harm’ which is referred to the fact-checkers and, if rated false, is explicitly labelled as such and demoted on users’ news feeds.<sup>41</sup>

Twitter has taken a similar approach and has also changed its definition of harm and what constitutes harmful content. Prior to the pandemic, a post was considered harmful only if a user reported it. Once reported, the platform would assess it and take action where it deemed necessary. Twitter has now decided to take a more proactive approach to content removal. As explained in its blog by Twitter’s Customers and Legal, Policy and Trust & Safety leads, any content that ‘goes directly against guidance from authoritative sources of global and local public information’ will be assessed and, if needed, removed,<sup>42</sup> without the need for the users to report it.

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<sup>35</sup> Zuckerberg, ‘update on the steps’ (n. 26).

<sup>36</sup> Twitter, ‘Coronavirus: Staying safe and informed on Twitter’, 3 April 2020, [https://blog.twitter.com/en\\_us/topics/company/2020/covid-19.html#definition](https://blog.twitter.com/en_us/topics/company/2020/covid-19.html#definition).

<sup>37</sup> Google, ‘Actions to reduce the need for people to come into our offices’, 16 March 2020, <https://blog.google/inside-google/company-announcements/update-extended-workforce-covid-19>; Vijaya Gadde and Matt Derella, ‘An update on our continuity strategy during COVID-19’, Twitter Blog, 16 March 2020 (updated 1 April 2020), [https://blog.twitter.com/en\\_us/topics/company/2020/An-update-on-our-continuity-strategy-during-COVID-19.html](https://blog.twitter.com/en_us/topics/company/2020/An-update-on-our-continuity-strategy-during-COVID-19.html).

<sup>38</sup> David Kaye, *Speech Police. The Global Struggle to Govern the Internet*, 84-98.

<sup>39</sup> Sam Gregory, Dia Kayyali and Corin Faife, ‘COVID-19 Misinformation and Disinformation Responses: Sorting the Good from the Bad’, WITNESS, May 2020, <https://blog.witness.org/2020/05/covid-19-misinformation-response-assessment/>.

<sup>40</sup> Zuckerberg, ‘update on the steps’ (n. 26).

<sup>41</sup> Ibid.

<sup>42</sup> Vijaya Gadde and Matt Derella, ‘An update on our continuity strategy during COVID-19’, Twitter Blog, 16 March 2020 (updated at 1 April 2020), [https://blog.twitter.com/en\\_us/topics/company/2020/An-update-on-our-continuity-strategy-during-COVID-19.html](https://blog.twitter.com/en_us/topics/company/2020/An-update-on-our-continuity-strategy-during-COVID-19.html).

While these new approaches to dealing with Covid-19 misinformation apply to general users, they are limited in application if the person spreading the misinformation is a public figure. For example, according to Facebook's policy on fact-checking, political ads and political content is exempt from this check to preserve full freedom of political expression, fundamental in a democratic society.<sup>43</sup> In line with this, Facebook decided not to remove any of Trump's posts, even those going against WHO recommendations.<sup>44</sup> Twitter has adopted a different stance by stating that it would add labels correcting misinformation 'to anyone sharing misleading information that meets the requirement of our policy, including world leaders'.<sup>45</sup> For instance, on non-Covid-19 related posts, Twitter has recently fact-checked and hidden two posts by Trump that were deemed, respectively, to be false and glorifying violence.<sup>46</sup>

While, on their face, the policies appear to be straightforward, there is very little public information on the types of content that social media platforms have deemed to fall under these policies. This is particularly important to understand given that the removal of content depends on the interpretation of whether a piece of content 'directly results in physical harm', which is likely to involve a complex and subjective assessment. This is likely to be accentuated further considering that the determination is now made mostly through automation, due to many of the human content moderators being furloughed or relocated to other tasks.<sup>47</sup> Without transparency and greater information on how these decisions are being made, it is difficult to assess the scale and breadth of their application and their compatibility with freedom of expression in practice.<sup>48</sup>

Internal grievance mechanisms constitute a key safeguard against overly broad content removal. Again, however, it is unclear how quickly these processes are able to deal with appeals and very little data are available on the nature and outcomes of such appeals, thus limiting our understanding of how they protect freedom of expression and the right to a remedy under the UN Guiding Principles on Business and Human Rights.<sup>49</sup>

#### IV. The Application of Criminal Law

Finally, some states have applied their criminal law, either by using existing anti-disinformation laws (many of which cover misinformation of the type discussed in this chapter) or by adopting new ones. For instance, Singapore is reported to have used its existing anti-disinformation law to address the spread of misinformation on Covid-19,

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<sup>43</sup> Nick Legg, 'Facebook, Elections and Political Speech', Facebook Newsroom, 24 September 2019, <https://about.fb.com/news/2019/09/elections-and-political-speech/>.

<sup>44</sup> Sheera Frenkel and Davey Alba, 'Trump's Disinfectant Talk Trips Up Sites' Vows Against Misinformation', The New York Times, 30 April 2020.

<sup>45</sup> 'Coronavirus: Twitter will label Covid-19 fake news', BBC News, 12 May 2020.

<sup>46</sup> Kate Conger and Mike Isaac, 'Defying Trump, Twitter Doubles Down on Labeling Tweets', The New York Times, 28 May 2020.

<sup>47</sup> Louise Mtsakis, 'Coronavirus Disrupts Social Media's First Line of Defense', Wired, 18 March 2020, <https://www.wired.com/story/coronavirus-social-media-automated-content-moderation/>

<sup>48</sup> See, among others, 'A Conversation with UN Special Rapporteur David Kaye: COVID-19 and Freedom of Expression', Just Security, 21 May 2020, <https://www.justsecurity.org/70288/a-conversation-with-u-n-special-rapporteur-david-kaye-covid-19-and-freedom-of-expression/>; UN Special Rapporteur on Freedom of Expression, 'Disease pandemics and the freedom of opinion and expression, UN Doc. A/HRC/44/49, 23 April 2020, 49-53.

<sup>49</sup> Article 19, 'Viral Lies: Misinformation and the Coronavirus', Policy Brief, March 2020. See also UN Guiding Principles on Business and Human Rights, Pillar III, UN Doc. HR/PUB/11/04, 2011.

including false claims on how the virus spread.<sup>50</sup> Resort to this law to deal with Covid-19 raises a number of concerns from a human rights perspective. As the NGO Article 19 argued when it was first enacted, the definition of disinformation is very vague, which risks broad and subjective application.<sup>51</sup> The penalties are also particularly severe with up to 10 years of imprisonment. As a result, the concern is that the law has a chilling effect on freedom of expression without actually addressing the spread of misinformation, including on Covid-19.<sup>52</sup> Thailand is also reported to have applied its anti-disinformation laws to deal with misleading information about the spread of the virus.<sup>53</sup>

In other countries that do not have dedicated anti-disinformation laws, existing criminal laws have been interpreted to include misinformation. For instance, in India, one-hundred people have reportedly been arrested on charges related to spreading misinformation about the virus,<sup>54</sup> following a broad interpretation of the existing provisions in the Indian Penal Code.<sup>55</sup> Individual states have also introduced specific legislation, such as the state of Maharashtra that passed an order specifically related to the pandemic of Covid-19, reportedly requiring that 'any information on the virus must be approved by the government before dissemination'.<sup>56</sup>

Other states have approved new legislation that criminalises Covid-19 misinformation. An example is that of Hungary, whose 'coronavirus legislation' includes a provision that 'provides penalties of up to five years in prison for those spreading misinformation during the pandemic'.<sup>57</sup> The government justifies the provision to prevent 'distortions that could undermine or thwart efforts to protect the public against the spread of the virus'.<sup>58</sup> However, journalists and NGOs have criticised the measure as a possible gateway for censorship of independent journalists and dissenting voices in the country.<sup>59</sup>

The criminalisation of misinformation through general anti-disinformation laws, specific Covid-19 legislation or the application of general criminal law has been criticised for its incompatibility with international human rights law.<sup>60</sup> Many anti-disinformation laws are vaguely formulated, with unclear guidance on implementation and often with excessive

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<sup>50</sup> Ibid and Shibani Mahtani, 'Singapore introduced tough laws against fake news. Coronavirus has put them to test', The Washington Post, 16 March 2020; Kirsten Han, 'Coronavirus: How effective is Singapore's Anti-Fake News Law?', The News Lens, 8 April 2020, <https://international.thenewslens.com/article/133521>

<sup>51</sup> See, for instance, Article 19, 'Singapore: New law on "online falsehoods" a grave threat to freedom of expression', 9 May 2019, <https://www.article19.org/resources/singapore-new-law-on-online-falsehoods-a-grave-threat-to-freedom-of-expression/> and 'Singapore fake news law a 'disaster' for freedom of speech, says rights group', The Guardian, 9 May 2019.

<sup>52</sup> Ibid.

<sup>53</sup> 'Stop using "fake news" laws in battle against coronavirus, MP say', ASEAN Parliamentarians for Human Rights, 12 February 2020, <https://aseanmp.org/2020/02/12/stop-fake-news-laws-coronavirus/>

<sup>54</sup> Bhavya Dore, 'Fake News, Real Arrests', Foreign Policy, 17 April 2020, <https://foreignpolicy.com/2020/04/17/fake-news-real-arrests/>

<sup>55</sup> Ibid.

<sup>56</sup> Ibid.

<sup>57</sup> Shaun Walker, 'Hungarian journalists fear coronavirus law may be used to jail them', The Guardian, 3 April 2020.

<sup>58</sup> Comment made by Orban's spokesman, Zoltan Kovacs, as reported in *ibid*.

<sup>59</sup> See, for instance, Reporters Without Borders, 'COVID-19 and press freedom: Europe must oppose measures proposed by Viktor Orban', 26 March 2020, <https://rsf.org/en/news/covid-19-and-press-freedom-europe-must-oppose-measures-proposed-viktor-orban>.

<sup>60</sup> Access Now, 'Fighting misinformation and defending free expression during COVID-19: recommendation for states', Policy Report, April 2020; Article 19, 'Viral Lies: Misinformation and the Coronavirus'.



sanctions. As such, they can infringe freedom of expression directly, as enshrined in Article 19 UDHR and ICCPR, and can produce a chilling effect, where users refrain from exercising their freedom of expression because of the fear of the possible punishment.<sup>61</sup> Prior to the Covid-19 pandemic, these laws were already criticized as posing disproportionate limitations to individuals' freedom of expression while placing little responsibility on the platforms.<sup>62</sup>

Anti-disinformation laws remain a problematic measure, even under the exceptional circumstances of a pandemic.<sup>63</sup> As repeatedly warned by Access Now and Article 19, 'under no circumstances should any government allow people's fundamental rights to fall victim to this pandemic'<sup>64</sup> and states should use criminal penalties only 'as a last resort and in the most severe cases'.<sup>65</sup> Indeed, according to Access Now, criminal law is not an appropriate tool to fight misinformation and 'broad criminalisation of speech can contribute to the worsening of the ongoing health crisis'.<sup>66</sup> Rather, they recommend addressing the issue through different responses that do not pose further threats to human rights, such as media and digital literacy and stronger data protection laws.

## V. Conclusion

The Covid-19 pandemic has illustrated the serious impact misinformation can have on individuals and society, both directly by threatening the rights to health or life of the individuals who believe the misinformation and act upon it, and indirectly, by undermining public health initiatives.

The approaches adopted by states and tech companies underscore the ongoing need to identify the parameters of human rights-compliant approaches to dealing with misinformation. This is a continuing challenge as many approaches are necessary but insufficient while others are overly broad and introduce new challenges.

At one end of the spectrum, the critical importance of access to media pluralism and accurate and reliable information as a baseline for addressing misinformation has been underlined by both states and tech companies' approaches to Covid-19 misinformation. This aligns with the plea by the UN Special Rapporteur on freedom of expression<sup>67</sup> and the work that UN agencies such as UNESCO are undertaking to enhance digital and media literacy and 'good journalism' more generally.<sup>68</sup> In this regard, social media platforms have adopted new approaches to elevating content in order to ensure that users are exposed to

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<sup>61</sup> UN SR on Freedom of Expression, 'Disease pandemics and the freedom of opinion and expression' (n. 47), 42.

<sup>62</sup> Ibid. See also, Joint Declaration on "Fake News," Disinformation and Propaganda', The United Nations (UN) Special Rapporteur on Freedom of Opinion and Expression, the Organization for Security and Co-operation in Europe (OSCE) Representative on Freedom of the Media, the Organization of American States (OAS) Special Rapporteur on Freedom of Expression and the African Commission on Human and Peoples' Rights (ACHPR) Special Rapporteur on Freedom of Expression and Access to Information (3 March 2017), <https://www.osce.org/fom/302796>.

<sup>63</sup> UN OHCHR, 'Emergency Measures and Covid-19: Guidance', 27 April 2020.

<sup>64</sup> Ibid and Access Now, 'Fighting misinformation.' (n. 59)

<sup>65</sup> Ibid.

<sup>66</sup> Ibid, 3.

<sup>67</sup> UN SR on Freedom of Expression, 'Disease pandemics and the freedom of opinion and expression' (n. 47), 58-63.

<sup>68</sup> UNESCO, 'Combating the disinfodemic: Working for truth in the time of COVID-19', <https://en.unesco.org/covid19/disinfodemic>.

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accurate and reliable information. Questions arise, however, on whether this type of approach is contained to public health misinformation, particularly due to the possibility of partnerships with national public health authorities and the WHO, or whether it can – or should - be replicated in other contexts.

At the other end of the spectrum, the Covid-19 pandemic has underscored the wider risks to human rights posed by approaches to counter misinformation through overly broad content removal processes, the adoption of dedicated anti-disinformation laws and the extension of the criminal law to deal with misinformation.<sup>69</sup> In particular, the over-reliance on automated systems to remove content and not simply flag it can raise significant problems as well as the definition of which kind of political speech should be subject to content moderation rules. As these approaches have serious consequences for human rights, the ‘infodemic’ raises the urgent need to identify measures that are compatible with international human rights law, so that mis and disinformation can be effectively addressed without introducing new risks to human rights in the process. This can only be achieved through increased transparency, thorough human rights due diligence, meaningful multi-stakeholders engagement and accountability for states and companies.

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<sup>69</sup> UN SR on Freedom of Expression, ‘Disease pandemics and the freedom of opinion and expression’ (n. 47), 41-53.