

ARTICLE 19

# Viral Lies: Misinformation and the Coronavirus

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Policy Brief



## Executive summary

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In the past three months, COVID-19, the disease caused by a new strain of coronavirus, has exploded across the globe. The spread of the virus has been matched by the proliferation of misinformation and ‘hate speech’ directed at individuals of Chinese or Asian descent. Freedom of expression has been one of the casualties of the epidemic, as some governments have used censorship, arrests and the application of repressive laws to address these challenges and control public narratives about the crisis.

In February, the World Health Organization (WHO) raised concerns about an “infodemic” caused by a flood of false and misleading information about COVID-19. Social media posts advancing bogus cures, conspiracy theories and inaccurate reports of the virus’s spread are viewed more often than information from authoritative sources. At times untruths creep into the reporting of traditional media outlets. In many instances, misinformation has diverted the attention of policymakers, fostered distrust in governments, and sowed confusion among the public.

The COVID-19 outbreak has also stoked fear, discrimination and intolerance in many parts of the world. Individuals and communities targeted with ‘hate speech’ worry that hateful rhetoric may be followed by discrimination or violence.

In their efforts to address these challenges, governments have at times embraced heavy-handed and counterproductive approaches. China’s attempt to stifle public reporting about COVID-19’s emergence impaired the initial response to the outbreak. Governments in Southeast Asia have relied on repressive legislation to arrest and charge those spreading supposedly false information about COVID-19. The Iranian authorities have arrested social media users posting about the virus while simultaneously suppressing information about the outbreak.

Independent journalism, citizen reporting, open public discourse and the free flow of information are indispensable in the global effort to counter COVID-19. Governments must develop policies and responses to the outbreak that embrace freedom of expression and access to information. Approaches to misinformation and ‘hate speech’ that rely on censorship and criminal sanctions should be replaced with those emphasising transparency and media freedom.

The media and social media companies must also contribute to the fight against misinformation and ‘hate speech’ related to the COVID-19 crisis. Journalists should report accurately and without bias, investigate propaganda campaigns and official discrimination, and make sure there is the right of correction and reply. Social media companies should continue to work with the WHO and health authorities to promote dissemination of accurate, authoritative information about COVID-19. They should also ensure adverse actions taken against misinformation and ‘hate speech’ are based on clear and easily understood policies and backed by due process guarantees.

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# Introduction

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COVID-19, previously known as the ‘2019 novel coronavirus’, is the disease caused by a new strain of the coronavirus family of viruses.<sup>1</sup> While most cases of COVID-19 are mild, severe cases can cause pneumonia and a small percentage of cases are fatal. Health officials first detected COVID-19 in the city of Wuhan, Hubei province, China in December 2019. As of 6 March 2020, 95,270 cases have been confirmed in 79 countries, with 3,280 fatalities.<sup>2</sup>

In the weeks after COVID-19 was identified, the Chinese government aggressively sought to control narratives surrounding the outbreak. Authorities have withheld information from the public, systematically under-reported the number of infections, stage-managed state media reporting, censored online message boards, detained whistleblowers, and harassed netizens, journalists and health workers sharing information about the disease.<sup>3</sup> The suppression of information about COVID-19 has damaged the response to the outbreak, according to experts.<sup>4</sup>

In February, pent up frustration burst into public view after the death of Li Wenliang, a 33-year-old doctor who succumbed to COVID-19. Dr. Li had been one of the first to raise concerns about the disease and was subsequently detained, admonished for ‘making false claims on the internet’, and forced to sign a statement admitting ‘illegal behaviour’. Chinese people defied censors to mark his death, expressing outrage at his treatment by authorities and questioning the government’s handling of the crisis.<sup>5</sup>

As COVID-19 spread to neighbouring countries and then around the globe, governments and populations grappled with a deluge of lies, myths and misreporting on the Internet and, occasionally, in traditional media outlets. In February, the WHO warned about the “massive infodemic” accompanying the COVID-19 outbreak that “makes it hard for people to find trustworthy sources and reliable guidance when they need it.”<sup>6</sup> The WHO has also repeatedly warned that misinformation<sup>7</sup> about COVID-19 threatens response efforts.<sup>8</sup>

Among the myths circulating online and elsewhere are claims that using hand dryers, eating garlic and drinking bleach can cure infections, that the origins of the outbreak lie in American or Chinese biological weapons or a sinister plot by the Bill & Melinda Gates Foundation, and that a 1993 episode of *the Simpsons* predicted the coronavirus by name.<sup>9</sup> More mundane falsehoods include exaggerated infection figures and inaccurate descriptions of government policies. Researchers have found that false information about COVID-19 has circulated much more widely than information from authoritative sources such as the WHO and the Centers for Disease Control and Prevention.<sup>10</sup>

The COVID-19 outbreak has also stoked anti-Chinese and anti-foreigner sentiment in many parts of the world, leading to the proliferation of ‘hate speech’. This has been most prominent on social media platforms and, at times, has been spread from anonymous accounts. However, traditional media outlets and public officials have also at times pushed discriminatory messages, and there have been reports of businesses posting signs banning Chinese customers.<sup>11</sup>

Many governments have responded with a heavy hand to misinformation related to the COVID-19 outbreak. Although China has reoriented its approach to the outbreak, applying strict quarantines and cooperating with global health officials, it has continued to tightly control media narratives and harass those criticising government officials and policies. Elsewhere in Asia, governments have applied repressive laws governing ‘fake news’, online communications and cyber-crimes to arrest and charge those supposedly spreading untruths about the virus.<sup>12</sup> Thailand has empowered a new ‘Anti-Fake News Center’ to investigate false claims about COVID-19 and make criminal complaints.<sup>13</sup> Iran’s government set up a ‘coronavirus defence base’ that has prompted the arrest of individuals’ supposedly spreading misinformation while simultaneously hiding information about the spread of COVID-19 in the country.<sup>14</sup>

There have been some positive initiatives to tackle the above problems. In January, the WHO launched the WHO Information Network for Epidemics (EPI-WIN), its program to combat misinformation by providing “timely accurate information from trusted sources.”<sup>15</sup> The WHO is also partnering with tech companies including Facebook, Google, Tencent, Baidu, Twitter, TikTok, Weibo, Pinterest, as well as online ‘influencers’, to promote accurate information about COVID-19.<sup>16</sup> Prominent social media platforms have taken steps to promote authoritative content about the virus in news feeds and reduce the visibility of misinformation.<sup>17</sup>

ARTICLE 19 supports these positive initiatives. Alongside other fundamental human rights, the right to freedom of expression and information should provide the legal foundation for tackling the COVID-19 outbreak. During a public health crisis such as the COVID-19 outbreak, the free flow of information is critical. Viral epidemics and pandemics are by their nature diffuse events, impacting populations on a regional, national or global scale. State authorities cannot comprehensively monitor the spread of a virus and the emergence of new hotspots in real time. Instead, effective public health responses to epidemics and pandemics rely on monitoring and reporting by the general public. Journalists, researchers and public health professionals also play essential roles in tracing the spread of a virus.

At the same time, individuals, doctors and epidemiologists cannot effectively protect themselves and others without access to accurate and up-to-date information from authorities. Official denials and withholding of information fuel viral epidemics.<sup>18</sup> Government bodies have direct access to information collected by public servants and are often best placed to compile information from diverse state and non-state data sources. Access to this information is essential to inform the behaviour of individuals, communities and public health professionals. Moreover, in order to evaluate official responses to public health crises, the public requires access to information about state policies and actions.

This paper sets out ARTICLE 19’s position on freedom of expression issues impacted by the COVID-19 crisis. It describes international standards on the right to freedom of expression and information especially in relation to the right to health. It highlights the key role played by these rights in the development and implementation of effective public health strategies. The briefing details several challenges to freedom of expression and information during the current COVID-19 crisis and makes recommendations to state and other actors, notably the media and social media platforms.

# Applicable human rights standards

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## The right to freedom of expression and information

The right to freedom of expression is protected by Article 19 of the Universal Declaration of Human Rights (UDHR)<sup>19</sup> and given legal force through Article 19 of the International Covenant on Civil and Political Rights (ICCPR)<sup>20</sup> and regional human rights treaties.<sup>21</sup>

The scope of the right to freedom of expression is broad. Article 19(2) of the ICCPR requires States to guarantee to all people the “freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.”<sup>22</sup> The UN Human Rights Committee (HR Committee), the body tasked with interpreting the ICCPR, has affirmed that the right extends to political commentary, journalism, teaching, discussion of human rights issues, personal commentary and private communications, and provides protection for online expression.<sup>23</sup>

While the right to freedom of expression is fundamental, it is not absolute. States may restrict the right in order to protect legitimate state interests, including public health. However, the HR Committee has stated that restrictions must be exceptional and meet a strict “three-part test”.<sup>24</sup> Any restriction must be:

- **Provided for by law:** restrictions must be given effect by a law or regulation formulated with sufficient precision to enable individuals to adapt their conduct accordingly;
- **In pursuit of a legitimate aim:** any restriction must target one of the state interests enumerated in Article 19(3), listed exclusively as respect for the rights or reputations of others, the protection of national security, public order or public health or morals;
- **Necessary and proportionate:** the state must demonstrate in a specific and individualised fashion the precise nature of the threat, and the necessity and proportionality of the specific action taken, in particular by establishing a direct and immediate connection between the expression and the threat.

Further, Article 20(2) of the ICCPR provides that any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence must be prohibited by law.

When acting to restrict speech, governments have an obligation to demonstrate the precise nature of the supposed threat to public health or another legitimate state interest,<sup>25</sup> as well as the necessity and proportionality of their chosen method for restricting expression.<sup>26</sup> The HR Committee has raised specific concerns about the use of criminal law to target journalists, researchers and human rights defenders sharing information of legitimate public interest.<sup>27</sup>

Public health crises such as viral epidemics or pandemics often place a spotlight on the actions of policymakers. During the COVID-19 outbreak, public fears and frustrations have at times manifested

in criticisms — both founded and unfounded — of state officials and critiques of government policies. State action to stifle criticism of public authorities is inconsistent with the right to freedom of expression. The HR Committee has stated that “in circumstances of public debate concerning public figures ... the value placed [on] uninhibited expression is particularly high.”<sup>28</sup>

The right of access to information is a fundamental component of the right to freedom of expression. In particular, individuals have the right to obtain information held by public bodies.<sup>29</sup> The HR Committee has specified that states should proactively publish information of public interest and take steps to facilitate access to information held by public bodies, including by passing freedom of information legislation.<sup>30</sup> The right to access information extends to all public authorities and bodies, including those in the executive, legislative and judicial branches and at the national, regional or local level.<sup>31</sup> The right also applies to information held by other entities carrying out public functions.<sup>32</sup> As a constituent part of freedom of expression, the right to access information may also be restricted, but only in line with the same strict criteria provided by Article 19(3) of the ICCPR.

## Media regulation

The guarantee of freedom of expression applies with particular force to the media. International human rights bodies have repeatedly emphasised the “pre-eminent role of the press in a State governed by the rule of law”<sup>33</sup> and the essential role of the media in a democratic society.<sup>34</sup> For instance, the HR Committee has highlighted that:

The free communication of information and ideas about public and political issues between citizens, candidates and elected representatives is essential. This implies a free press and other media able to comment on public issues without censorship or restraint and to inform public opinion. The public also has a corresponding right to receive media output.<sup>35</sup>

The Special Rapporteur on the right to health has more specifically emphasised the importance of media in ensuring accountability in health systems.<sup>36</sup>

While international human rights law places obligations on States to protect, promote and respect human rights, it is widely recognised that business enterprises also have a responsibility to respect human rights.<sup>37</sup> The UN Guiding Principles on Business and Human Rights offer a non-binding vehicle for applying human rights standards to corporations, including social media companies.<sup>38</sup> The Guiding Principles state that “[b]usinesses should respect human rights”<sup>39</sup> and enumerate further duties for companies. Among these are duties to apply internationally recognised human rights standards,<sup>40</sup> mitigate adverse human rights impacts,<sup>41</sup> develop policies that promote human rights,<sup>42</sup> carry out due diligence to identify human rights risks,<sup>43</sup> and provide remedies for human rights violations.<sup>44</sup>

Given the broad powers social media platforms have at their disposal to manage and restrict online speech, human rights standards relating to the freedom of expression are particularly important. In a recent series of reports, the UN Special Rapporteur on freedom of expression and access to information has examined the conduct of social media companies in this regard. He has repeatedly raised concerns that “few companies apply human rights principles in their operations”<sup>45</sup> and that companies manage issues like hate speech “almost entirely without reference to the human rights implications of their products.”<sup>46</sup>



Content moderation policies should be clearly articulated and easily understood, giving users certainty in how their online expression will be evaluated.<sup>47</sup> In a 2018 report, the Special Rapporteur raised specific concerns about ‘subjective’ and ‘vague’ content moderation rules applied by social media companies.<sup>48</sup> Moreover, social media companies should provide basic due process guarantees, including notification and justification of content removal decisions and opportunities for appeal.<sup>49</sup>

## The right to health

The right to health is enshrined in the UDHR<sup>50</sup> and given legal force through Article 12 of the International Covenant on Economic, Social and Cultural Rights (ICESCR), which *inter alia* requires state parties to prevent, treat and control epidemics.<sup>51</sup> It also refers to states’ individual and joint efforts to use and improve epidemiological surveillance and data collection on the disease.<sup>52</sup> It follows that access to information includes the right to look for, receive and share information and ideas about health issues. States hold the same obligations in relation to the right to information during times of outbreak.

The right to health is inextricably linked to the rights to freedom of expression and information.<sup>53</sup> The UN Committee on Economic, Social and Cultural Rights has emphasised that “information accessibility” is a key component of the right to health.<sup>54</sup> When states restrict speech relating to health issues or block access to health-related information and do not publish health information proactively, populations suffer adverse health impacts and cannot fully enjoy the right to health.

The Committee on Economic, Social and Cultural Rights has specifically warned against censoring health-related information or taking other steps to prevent public participation in public health conversations and initiatives.<sup>55</sup> As demonstrated by China’s early response to COVID-19, stifling public reporting of an outbreak hampers monitoring and response efforts. Conversely, protecting freedom of expression ensures that vital information collected by the public, journalists and local health officials reaches policymakers and other key stakeholders.

The Special Rapporteur on the right to health has also emphasised the need for transparency in public health policy and the importance of information in holding policymakers accountable and empowering individuals to protect their own health.<sup>56</sup> The Committee on Economic, Social and Cultural Rights has likewise condemned “the deliberate withholding or misrepresentation of information vital to health protection or treatment.”<sup>57</sup>

# Freedom of expression challenges associated with COVID-19 outbreak

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## Misinformation and COVID-19

Misinformation represents a serious challenge in addressing a viral epidemic or other public health crisis. During the COVID-19 outbreak, individuals around the world have struggled to decipher fact from fiction. Some have embraced beliefs or practices that deepen, rather than mitigate, health risks. Governments are right to take the threat of misinformation seriously. They should develop policies to effectively halt the spread of myths and to counter deliberate disinformation campaigns. Misinformation not only disrupts public health efforts; it can lead to the violation of other human rights.

Despite the threat posed by misinformation, any restrictions on the dissemination of supposedly false information must comply with the requirements of legality, legitimacy and necessity and proportionality described above. In assessing these criteria, it should be noted that protections under the right to freedom of expression are not limited to truthful statements or information.<sup>58</sup> Indeed, untruthful statements may enjoy protection under the right to freedom of expression.

In particular, the 2017 Joint Declaration of four freedom of expression rapporteurs provides guidance that is highly relevant to government responses to the COVID-19 outbreak.<sup>59</sup> In the Joint Declaration, the Special Rapporteurs warned that:

[G]eneral prohibitions on the dissemination of information based on vague and ambiguous ideas, including “false news” or “non-objective information”, are incompatible with international standards.<sup>60</sup>

Unfortunately, governments around the world have repeatedly used precisely these types of repressive and overbroad laws to target supposed misinformation concerning COVID-19. ARTICLE 19 has consistently raised concerns about many of these laws;<sup>61</sup> and the vast discretion they afford to authorities to restrict speech, rising to arbitrary application and depriving individuals of the guidance needed to regulate their conduct in accordance with the law.<sup>62</sup>

Additionally, official responses to misinformation that rely heavily on censorship, criminal sanction and custodial sentences raise concerns about the element of proportionality. As described above, some governments — notably China — have embraced widespread censorship of information about COVID-19 without demonstrating that less intrusive methods would be insufficient. Furthermore, many nations have targeted those supposedly spreading misinformation using laws that prescribe severe criminal penalties, including imprisonment. ARTICLE 19 suggests that custodial sentences are only proportionate in relation to the most severe forms of speech-related crimes, such as discriminatory hatred that constitutes incitement to violence.<sup>63</sup>

Additionally, there are strong public policy arguments for refraining from coercive approaches to countering misinformation in the context of an epidemic or pandemic. It is imperative that individuals feel empowered to raise concerns about the spread of COVID-19 or the response of authorities without fear of punishment if their concerns turn out to be unjustified. The punishment of individuals for unwittingly spreading false information casts a severe chilling effect on communication, impeding the type of information sharing that is needed to quickly identify and respond to a viral outbreak. Heavy-handed approaches to misinformation stifle the type of public reporting that can lead to early detection and effective mitigation efforts.

Unfortunately, beyond merely embracing responses to misinformation that violate international human rights law, some states have also spread disinformation and propaganda themselves.<sup>64</sup> 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. 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>65</sup> Others have been accused of covering up the spread of the virus<sup>66</sup> or promoting falsehoods for political gain. State-sponsored misinformation is especially dangerous. It both erodes trust in state authorities and promotes misguided responses by the public and health officials.

### **‘Hate speech’**

There is no universally accepted definition of ‘hate speech’ in international human rights law. Nevertheless, government, politicians and ordinary citizens use the term to condemn opinions with which they disagree and to call for restrictions on certain types of expression.

Anti-Chinese and anti-foreigner sentiment driven by the spread of COVID-19 have widespread human rights implications. ‘Hate speech’ can be the trigger for violence and discrimination and can prevent targeted groups from exercising their rights. Conversely, heavy handed responses to ‘hate speech’ can stifle public discourse and violate the right to freedom of expression. Therefore, any official restrictions on ‘hate speech’ must satisfy the criteria established by Articles 19(3) and 20(2) of the ICCPR.

Although states may at times have a legitimate interest in restricting ‘hate speech’ — for example to promote public health or protect the rights of others — they often err by relying on criminal sanction rather than less severe measures. Civil and administrative law offers many opportunities for proportionate and effective responses to ‘hate speech’. Criminal penalties should be imposed only as a last resort and in the most severe cases, and penalties should not be excessive.<sup>67</sup>

States’ over-reliance on criminal penalties often comes at the expense of other effective approaches to addressing ‘hate speech’. In documents such as the Human Rights Council Resolution 16/18<sup>68</sup> and the Rabat Plan of Action,<sup>69</sup> UN bodies have provided guidance on positive policy measures that states can take to combat discrimination and ‘hate speech’, including creating official mechanisms to identify and address societal tensions, training government officials to promote tolerance, empowering leaders to speak out against intolerance, promoting dialogue within and between communities, promoting media pluralism and diversity, and passing strong antidiscrimination legislation.

Governments should incorporate these types of measures into plans to counter anti-Chinese and anti-foreigner sentiment and ‘hate speech’ in the context of the COVID-19 outbreak.

Non-state actors, including the media, social media companies and the general public also have a role to play in combatting ‘hate speech’ and intolerance (see more below). The WHO has partnered with UNICEF and the International Federation of the Red Cross to issue guidelines to government, media and civil society on combatting the social stigma associated with COVID-19.<sup>70</sup>

# Effective responses to COVID-19 outbreak: the role of freedom of expression and information

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## Free flow of information

Information is essential to ensuring effective responses to COVID-19, including the implementation of protective measures by the public. Hence, an essential step in the implementation of public health crisis strategies must be the identification of the key information needs of populations, communities and individuals. Consideration must be given, not only to what information needs to be provided, but also to how it should be presented so that it is accessible and understandable to a variety of intended audiences.

Denial of access to information stems largely from the absence of freedom of information legislation and institutional secrecy of numerous state authorities. Additionally in many countries repressive legislation curtails access to, and circulation of, information of vital public interest. Rarely is freedom of information acknowledged as essential towards identifying and responding to human rights challenges.

## The role of media

A free and independent media is especially important during a public health crisis such as the COVID-19 outbreak. The media plays a central role in providing information to people most likely to be affected. A free and independent media can monitor national and international responses to an outbreak and promote transparency and accountability in the delivery of necessary public health measures. The media can also serve to relay back key messages from those affected to policymakers and other important stakeholders.

From the moment they first reported on the emergence of COVID-19 in China, journalists have played a key role in efforts to reduce risks associated with the virus. They have identified new hotspots, provided information on protective measures, exposed falsehoods and held governments accountable for their policies. However, journalists have also at times failed to uphold the highest professional standards, reporting inaccurately or contributing to discriminatory narratives.

Governments undermine their own ability to respond to COVID-19 when they attack journalists. Arrests or the filing of criminal charges against journalists reporting on the virus, as has been reported in several countries,<sup>71</sup> are egregious examples of government overreach. However, subtler forms of harassment or intimidation, such as invasive surveillance or arbitrary denial or revocation of visas, are also harmful and counterproductive.

Legacy media plays an indispensable role in public health crises such as the COVID-19 outbreak. Rigorous, fact-based reporting by journalists can debunk myths, disarm propaganda campaigns, and

combat ‘hate speech’. However, inaccurate, discriminatory or intentionally misleading reporting can contribute to cycles of misinformation and intolerance.

Adherence to ethical journalism standards is crucial in this respect.<sup>72</sup> Journalists should adhere to high professional standards to provide accurate and reliable information to the public. Media companies should ensure that professional standards are known, shared and promoted across their organisations, and that internal structures support journalists in identifying and raising issues related to those standards. Media regulators should support and promote high professional standards, be accessible to complainants, and be able to provide appropriate remedies such as a right of reply or correction.

The media also plays a crucial role in countering misinformation and ‘hate speech’ and in promoting non-discrimination and intercultural understanding at a time of crisis.<sup>73</sup> Where misinformation is spreading, the media, especially public service media, may have a role in identifying and debunking untruths. Journalists should report accurately, avoid negative stereotyping, should not unnecessarily refer to race or nationality, and should report on acts of discrimination, among other efforts.<sup>74</sup> Media regulators should provide detailed recommendations, based on professional standards, on how journalists should approach issues of disinformation, ‘hate speech’, and discrimination.

### **The role of social media**

Social media platforms play an increasingly dominant role in facilitating communications, disseminating information and sharing opinions. Dominant platforms — Facebook, Twitter, YouTube, Weibo and others — can both be harnessed for public good and can be used to sow chaos and distrust. These possibilities have been evident in the use of social media during the COVID-19 outbreak. Governments, health workers, communities and individuals have regularly turned to social media platforms to get essential information concerning the virus. However, they have also been confounded by the diverse and conflicting information found online.

Social media platforms now wield powers of censorship that rival or surpass those of governments. However, they are not bound by the same international standards that bind governments, and few meaningfully incorporate human rights standards into their policies and operations.

Social media platforms should ensure that any adverse actions taken against online content or users are transparent and clearly articulated in their terms of service. They have access to a greater range of responses to disinformation than governments, providing many opportunities for flexible responses that comply with the Guiding Principles.<sup>75</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 untruthful content, tightly enforce advertising policies, temporarily suspend accounts, or provide links to authoritative sources of information.<sup>76</sup>

Partnerships between social media companies and other bodies may also offer opportunities to counter misinformation and ‘hate speech’. As noted earlier, for example, Facebook has partnered with the WHO and health ministries by promoting links to authoritative content on newsfeeds.<sup>77</sup> Facebook has also partnered with third-party fact-checkers to counter misinformation about the virus. Such partnerships and initiatives have been encouraged by the UN Special Rapporteur on freedom of

expression and access to information, regional rapporteurs, and others.<sup>78</sup> However, partnerships that facilitate content removal or other adverse actions against online speech can also unjustifiably restrict freedom of expression. Social media platforms should be transparent about these relationships and ensure that such engagements advance international standards relating to freedom of expression.

Governments have frequently sought to influence the way that social media companies manage and facilitate expression 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. As described in the Guiding Principles, businesses should “[s]eek ways to honour the principles of internationally recognized human rights when faced with conflicting requirements.”<sup>79</sup>

Although regulation of social media platforms is not necessarily incompatible with international human rights standards, it must be done in a way that protects freedom of expression. The Manila Principles on Intermediary Liability set out standards governing the relationship between governments and online platforms.<sup>80</sup> Chief among these is the principle that intermediaries should not be held liable for content posted or sent by third parties.<sup>81</sup> Governments should repeal or reform laws imposing intermediary liability and refrain from passing such legislation in the future.

Crucially, social media platforms should ensure transparency in their relationships with governments. The Special Rapporteur has urged disclosure of “[i]nformation about government activities that require corporate assistance”<sup>82</sup> and has also criticised the ‘transparency reports’ published by social media companies for being insufficiently comprehensive.<sup>83</sup>

As described above, misinformation constitutes a grave threat to human rights and severely impedes efforts to respond to the spread of COVID-19. Governments, the media and social media platforms all have a role to play in combating information but should pursue policies that are founded on respect for the right to freedom of expression and information.

# Recommendations

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Responses to the COVID-19 outbreak should reflect international human rights guarantees, including these relating to the right to freedom of expression and information. ARTICLE 19 urges states, media actors and social media platforms to take the following measures.

## To states

- Governments should **proactively disclose information** relating to the spread of COVID-19, including the number of cases, geographical distribution, statistics on mortality and recovery, and government policies and response efforts. Public education campaigns, dedicated webpages and social media messaging with up-to-date information about the virus and recommendations on prevention strategies are an important first step. Commitments to transparency and disclosure should be included in all policies and action plans developed in response to the spread of COVID-19.
- Governments should use **freedom of 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 authorities should **refrain from reliance on criminal prosecution** and other coercive measures as a primary means of combating ‘hate speech’ and misinformation about the spread of COVID-19. Criminal proceedings and custodial sentences should be reserved for the most serious forms of speech-related crimes. Outside cases that fall within this narrow category, authorities should **drop charges** against all individuals currently facing charges because of their communications regarding the virus, and release from prison those already imprisoned on similar grounds. Moreover, governments should **impose a moratorium on the use of repressive legislation** in response to communications regarding COVID-19. They should begin steps to **reform laws** to ensure compliance with international standards relating to the freedom of expression.
- Public authorities should ensure that they **do not spread misinformation**, and governments should abandon intentional propaganda or disinformation campaigns.
- Governments should **ensure strong protections for whistleblowers**. Many states already have whistleblower 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 policy failures relating to COVID-19. Those without dedicated whistleblower legislation should refrain from prosecutions or restrictions on those who release information related to COVID-19 in the public interest.



- Governments 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.
- Governments 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, including by reporting on COVID-19 and other public health crises.
- State authorities should **end the harassment of journalists** reporting on COVID-19 and official responses to the spread of the virus.
- Governments should consider measures to **promote media and digital literacy**, both generally and in relation to the COVID-19 outbreak. This could include incorporating media and digital literacy lessons into school curriculum and engaging with civil society and social media platforms on similar efforts.

### To the media

- Media outlets and journalists should **proactively report on disinformation, propaganda and discrimination** by state or non-state actors in the context of the COVID-19 outbreak. Accurate reporting by reputable journalistic sources is one of the most powerful tools to push back against misinformation and ‘hate speech’.
- Media outlets and journalists should **support effective systems of self-regulation**, including both national press complaints bodies and ombudsmen or public editors at individual news outlets. Such bodies or officials should help to **ensure the right of correction or reply** to address inaccurate or discriminatory reporting in the context of the COVID-19 outbreak.
- Media outlets and journalists should **adhere to the highest ethical standards, including equality principles**, when reporting on COVID-19. They should report about COVID-19 accurately and without bias, avoiding stereotyping, and without unnecessarily referring to race or nationality or ethnic origin.

### To social media platforms

- Social media companies should **articulate clear and easily understood policies** governing misinformation and ‘hate speech’ on their platforms in line with the ‘human rights by default’ approach advocated for by the UN Special Rapporteur on freedom of expression. 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 the COVID-19 outbreak, these policies should likewise be precise and nuanced in line with the standard of legality set out in international human rights law.

- Social media platforms should **ensure minimum due process guarantees** when taking adverse action against ‘hate speech’ and misinformation about COVID-19. 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.
- Social media companies should **ensure full transparency in their engagements with governments** concerning misinformation and COVID-19. 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**.
- Finally, social media platforms should **leverage partnerships to combat ‘hate speech’ and misinformation** around COVID-19. They should maintain and deepen their engagement with the World Health Organization and health ministries around the world to promote the dissemination of accurate information concerning the virus. Partnerships with third-party fact-checkers are also promising. However, companies should ensure that these types of engagements are carried out in line with international human rights standards.

## End notes

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- 1 World Health Organization (WHO), [Naming the coronavirus disease \(COVID-19\) and the virus that causes it](#), n.d.
- 2 WHO, [Novel Coronavirus \(COVID-19\) Situation Dashboard](#), n.d.
- 3 See e.g., Li Yuan, [China Silences Critics Over Deadly Virus Outbreak](#), New York Times, 22 January 2020; 'Human Rights Watch, [China: Respect Rights in Coronavirus Response](#), 30 January 2020.
- 4 See, e.g., G. Shih, E. Rauhala & L.H. Sun, [Early missteps and state secrecy in China probably allowed the coronavirus to spread farther and faster](#), Washington Post, 1 February 2020; Chris Buckley and Steven Lee Myers, [As New Coronavirus Spread, China's Old Habits Delayed Fight](#), New York Times, 1 February 2020.
- 5 See, e.g. Li Yuan, [Widespread Outcry in China Over Death of Coronavirus Doctor](#), New York Times, 7 February 2020.
- 6 WHO, [Novel Coronavirus \(2019-nCoV\) Situation Report – 13](#), 2 February 2020.
- 7 In this briefing, 'misinformation' refers to all inaccurate or misleading information, as contrasted with 'disinformation' which is inaccurate information shared with a specific, malicious intent, such as to deceive, confuse or manipulate.
- 8 WHO, [Director-General's remarks at the media briefing on 2019 novel coronavirus on 8 February 2020](#), 8 February 2020. The Director General stated that "while the virus spreads, misinformation makes the job of our heroic health workers even harder. It is diverting the attention of decision makers. And it causes confusion and spreads fear to the general public."
- 9 See, e.g., WHO, [Coronavirus disease \(COVID-19\) advice for the public: Myth busters](#); M. Richtel, [W.H.O. Fights a Pandemic Besides Coronavirus: an "Infodemic"](#), New York Times, 6 February 2020; E.J. Dickson, [Coronavirus Is Spreading-And So Are the Hoaxes and Conspiracy Theories Around It](#), Rolling Stone, 2 March 2020.
- 10 J. Gregory, [The coronavirus 'infodemic' is real. We rated the websites responsible for it](#), 28 February 2020.
- 11 See, e.g., H-J. Kim, [Fears of new virus trigger anti-China sentiment worldwide](#), 2 February 2020.
- 12 See, e.g., Amnesty International, [Singapore: Social media companies forced to cooperate with abusive fake news law](#), 19 February 2020, <https://www.amnesty.org/en/latest/news/2020/02/singapore-social-media-abusive-fake-news-law/>; M. Tostevin & J. Geddie, [Coronavirus sends Asia's social media censors into overdrive](#), 4 February 2020; B.Schmidt, [Wuhan Doctor's Death Shows Risks of Asia's Fake News Crackdown](#), 7 February 2020.
- 13 See, e.g., T. Boonbandit, [Two arrested for spreading coronavirus fake news](#), 30 January 2020.
- 14 ARTICLE 19, [Iran: Coronavirus crisis highlights need for the free flow of information](#), 27 February 2020.
- 15 WHO, [About EPI-WIN](#), n.d.
- 16 WHO, Director-General's remarks, *op.cit.*
- 17 E.g. Facebook is placing 'education pop-ups' featuring information from the WHO and national health authorities at the top of result pages for searches relating to the coronavirus; see K-X. Jin, Facebook Head of Health, [Keeping People Safe and Informed About the Coronavirus](#), 30 January 2020, updated 3 March 2020. Facebook also uses a network of certified third-party fact-checkers to flag false claims relating to the virus. In a March Facebook post, Mark Zuckerberg announced the company would give the WHO "as many free ads as they need," with the goal of promoting the dissemination of accurate information; see M. Zuckerberg, [Facebook post](#), 4 March 2020. Twitter is likewise promoting credible information at the top of search results and blocking search suggestions that are likely to lead to non-credible results; see J. Chu & J. McDonald, [Twitter, Helping the world find credible information about novel #coronavirus](#), 29 January 2020.
- 18 See, A. Maryon-Davis, [Outbreaks under wraps: How denials and cover-ups spread ebola, Sars and Aids](#), Index on Censorship, vol. 14(1), 12 March 2015.
- 19 UN General Assembly, [Universal Declaration of Human Rights](#), 10 December 1948, 217 A (III). The UDHR, though adopted by a resolution of the UN General Assembly, is not strictly binding on states. However, many of its provisions are regarded as having acquired legal force as customary international law since its adoption in 1948; see: *Filartiga v. Pena-Irala*, 630 F. 2d 876 (1980) (US Circuit Court of Appeals, 2nd circuit).
- 20 International Covenant on Civil and Political Rights, 16 December 1966, Treaty Series, vol. 999, p. 171.
- 21 Article 10 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, 4 September 1950; Article 9 of the African Charter on Human and Peoples' Rights (Banjul Charter), 27 June 1981; Article 13 of the American Convention on Human Rights, 22 November 1969.
- 22 ICCPR, Article 19(2).
- 23 ICCPR, Article 19(3); HR Committee, General Comment No. 34 on Article 19: Freedom of opinion and expression, UN Doc. CCPR/C/GC/34, paras 11 and 12.
- 24 *Ibid.*, paras. 21-36.
- 25 *Ibid.* para 35.
- 26 *Ibid.*
- 27 *Ibid.*, para 30.

- <sup>28</sup> General Comment No. 34, para 38.
- <sup>29</sup> *Ibid.*, para 18.
- <sup>30</sup> *Ibid.*, para 19.
- <sup>31</sup> *Ibid.*, para 7.
- <sup>32</sup> *Ibid.*, para 18 (referencing para 7 and footnote 7).
- <sup>33</sup> See, e.g. the European Court for Human Rights (the European Court), *Thorgeirson vs Iceland*, 25 June 1992, App. No. 13778/88, para 63 or *Castells vs Spain*, 24 April 1992, App. No. 11798/85, para 43.
- <sup>34</sup> European Court, *Dichand and others vs Austria*, 26 February 2002, App. No. 29271/95, para 40.
- <sup>35</sup> General Comment 34, para. 13.
- <sup>36</sup> Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, 11 August 2008, UN Doc. No. A/63/263, para 11.
- <sup>37</sup> Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy” Framework (The Ruggie Principles), A/HRC/17/31, 21 March 2011, Annex. The UN Human Rights Council endorsed the guiding principles in HRC resolution 17/4, A/HRC/RES/17/14, 16 June 2011.
- <sup>38</sup> UN Guiding Principles on Business and Human Rights, adopted by the UN Human Rights Council on 16 June 2011, UN Doc. No. HR/PUB/11/04.
- <sup>39</sup> *Ibid.*, Principle 11.
- <sup>40</sup> *Ibid.*, Principle 12.
- <sup>41</sup> *Ibid.*, Principle 13(b).
- <sup>42</sup> *Ibid.*, Principle 15.
- <sup>43</sup> *Ibid.*, Principles 17 and 18.
- <sup>44</sup> *Ibid.*, Principle 22.
- <sup>45</sup> Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, 6 April 2018, UN Doc. No. A/HRC/38/35 para 10.
- <sup>46</sup> Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, 9 October 2019, UN Doc. No. A/74/486, para 42.
- <sup>47</sup> The 2017 Joint Declaration, *op.cit.*, para 4(a) and (b).
- <sup>48</sup> Report of Special Rapporteur, April 2018, para 26.
- <sup>49</sup> The 2017 Joint Declaration, *op.cit.*, para 4(c); Report of Special Rapporteur, April 2018, paras 37-38.
- <sup>50</sup> UDHR, article 25(1).
- <sup>51</sup> International Covenant on Economic, Social and Cultural Rights, 16 December 1966, Treaty Series, vol. 993, p. 3, article 12.
- <sup>52</sup> *Ibid.*, para16
- <sup>53</sup> See, ARTICLE 19, [A Healthy knowledge: Right to information and the right to health](#), 2012.
- <sup>54</sup> Committee on Economic, Social and Cultural Rights, General Comment No. 14: The Right to the Highest Attainable Standard of Health (Art. 12), adopted 11 August 2020), UN Doc. E/C.12/2000/4, para 12(b).
- <sup>55</sup> *Ibid.*, para. 34.
- <sup>56</sup> Human Rights Council, Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, Paul Hunt, 31 January 2018, UN Doc. A/HRC/7/11, para 40.
- <sup>57</sup> General Comment No. 14, *op.cit.*, para 50.
- <sup>58</sup> *Ibid.*, preamble.
- <sup>59</sup> The 2017 Joint Declaration, *op.cit.*
- <sup>60</sup> *Ibid.*, para 2(a).
- <sup>61</sup> See, e.g., ARTICLE 19, [Thailand: Computer Crime Act](#), 31 January 2017; ARTICLE 19, [Singapore: New law on “online falsehoods” a grave threat to freedom of expression](#), 9 May 2019; or ARTICLE 19, [Malaysia: Communications and Multimedia Act must be urgently revised](#), 24 March 2017.
- <sup>62</sup> See General Comment 34, *op.cit.*, para 25.
- <sup>63</sup> General Comment 34, paras. 34 and 46-49, read together with ICCPR, Article 20(2).
- <sup>64</sup> The 2017 Joint Declaration, *op.cit.*, preamble. The rapporteurs identified state-sponsored disinformation and propaganda as a major threat to the public’s right to know.
- <sup>65</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>66</sup> ARTICLE 19, Iran: Coronavirus crisis, *op.cit.*
- <sup>67</sup> General Comment No. 34, *op.cit.*, para. 34; Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, 9 October 2019, UN Doc. No. A/74/486, para 15.
- <sup>68</sup> Human Rights Council (HRC) [Resolution 16/18 on combating intolerance, negative stereotyping and stigmatization of, and discrimination, incitement to violence and violence against, persons based on religion or belief](#), UN Doc. A/HRC/Res/16/18,

24 March 2011.

<sup>69</sup> [Rabat Plan of action on the prohibition of advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence](#), UN Doc. A/HRC/22/17/Add.4, 5 October 2012.

<sup>70</sup> WHO, UNICEF & International Federation of the Red Cross, [Social Stigma associated with COVID-19](#), n.d.

<sup>71</sup> See reporting by the Committee to Protect Journalists, [Alerts](#).

<sup>72</sup> *C.f.* Joint Declaration, *op.cit.*, para 5(a) and (b); ARTICLE 19, [Camden Principles on freedom of expression and equality](#), 30 April 2009, Principle 7.

<sup>73</sup> Camden Principles, *op.cit.*, Principles 6, 7 and 9.

<sup>74</sup> *Ibid.*

<sup>75</sup> *Op.cit.*

<sup>76</sup> See Report of Special Rapporteur, *op.cit.*, April 2018, para 31; Report of Special Rapporteur, *op.cit.*, October 2019, para 51.

<sup>77</sup> *Op.cit.*

<sup>78</sup> The 2017 Joint Declaration, *op.cit.*, para 4(e).

<sup>79</sup> Guiding Principles, *op.cit.*, Principle 22(b).

<sup>80</sup> Manila Principles on Intermediary Liability, 24 March 2015, <https://www.manilaprinciples.org/>.

<sup>81</sup> *Ibid.*, Principle 1; or Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, 30 March 2017, UN Doc. No. A/HRC/35/22, para. 49; the 2017 Joint Declaration, *op.cit.*, para 1(2).

<sup>82</sup> Report of the Special Rapporteur, March 2017, para 70.

<sup>83</sup> Report of the Special Rapporteur, April 2018, para 40.