



# A HUMAN RIGHTS APPROACH TO TACKLE DISINFORMATION

SUBMISSION TO THE OFFICE OF THE HIGH COMMISSIONER FOR HUMAN RIGHTS  
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# 1. INTRODUCTION

Amnesty International submits this document in response to the call for comments issued by the Office of the High Commissioner for Human Rights pursuant to General Assembly resolution 76/227 on “Countering disinformation for the promotion and protection of human rights and fundamental freedoms”.<sup>1</sup>

During recent years, the world has been grappling again with pervasive levels of false or misleading information that is reaching ever wider audiences in new and often insidious ways. The adverse impact of false or inaccurate information shared without malicious intent (misinformation) and that shared to deliberately deceive or mislead people (disinformation) has been brought to the front during the Covid-19 pandemic, which provided new steam for the rapid spread of false or misleading information and a concerning response by governments that instantly resorted to the use of criminal law to address these challenges.<sup>2</sup> Yet, misinformation and disinformation have also been pervasive around various electoral processes, armed conflicts, attacks against discriminated minorities, and in public discourse around many political and social issues.<sup>3</sup>

The human rights implications of misinformation and disinformation have been further amplified as the quantity, availability and speed in which false and misleading information can spread have rapidly increased in the last decade or so. As a result, the ability of individuals to access truthful and accurate information from diverse points of views has been undermined with a direct impact on their right to form an opinion and make choices free from manipulation and other adverse intervention.

States’ responses to the problems of misinformation and disinformation have often been inadequate and detrimental. On one hand, many States have adopted repressive measures, such as censorship and criminalization of what is deemed “fake news”, despite their counterproductive effects and impact on the right to freedom of expression. What is more, censorship and criminalization can actually create more mistrust and confusion. On the other hand, States have failed to get a grip on the mechanics behind the viral spread of false and misleading information, specifically by failing to ensure human rights oversight over how social media platforms operate.

For their part, social media companies have also failed to uphold their responsibilities to respect human rights while countering misinformation and disinformation. While some tech companies started to take some measures to reduce the impact of misinformation and disinformation on their platforms after repeated calls and increased pressure, the financial incentives to not act in a comprehensive have prevailed with a detrimental impact on human rights.

Instead of criminalising or otherwise silencing people to address misinformation and disinformation, States should step up their efforts to ensure credible, reliable, objective, evidence-based and accessible information is disseminated to all. States should also implement comprehensive and coordinated measures to address the spread of misinformation and disinformation online, including by regulating business models that incentivise social media companies to promote and amplify false and misleading information and requiring companies to carry out human rights due diligence, providing an enabling environment for quality reporting and

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<sup>1</sup> <https://www.ohchr.org/en/calls-for-input/calls-input/call-comments-countering-disinformation-promotion-and-protection-human>

<sup>2</sup> See Amnesty International, “Silenced and misinformed: freedom of expression in danger during Covid-19”, October 2021, Index: POL 30/4751/2021; Amnesty International “A Fair Shot: Ensuring universal access to COVID-19 diagnostics, treatments and vaccines”, December 2020, Index: POL 30/3409/2020

<sup>3</sup> See UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, “Disinformation and freedom of opinion and expression”, 13 April 2021, UN Doc. A/HRC/47/25.

independent media, ensuring that there is a diversity of sources of information and opinions, promoting a healthy civic space, and supporting media and internet literacy initiatives.<sup>4</sup>

## 2. PUNITIVE AND CRIMINAL RESPONSES TO MISINFORMATION AND DISINFORMATION

Legislation limiting the right to freedom of expression has long been used by officials to criminalize and muzzle independent journalists, human rights defenders, critics, and even ordinary people posting their views on social media. Such legislation, often written in broad or vague terms, has allowed officials to arbitrarily determine what may constitute criminal behaviour, often in relation to ill-defined notions such as “fake news”, “morals”, “threats to national security”, or “terrorism”. The existence of such vague laws has been a tool for controlling what is discussed in public and gives the authorities the power to censor uncomfortable information and determine what is considered to be true or false, offensive, dangerous or seditious in a way that enables them to target dissenting and critical voices.

Since 2020, the Covid-19 pandemic has provided a new context in which such legislation can be used to effectively shut down independent reporting and other voices under the guise of protecting public health. This has stifled public debate and the ability to access reliable and trustworthy information about the pandemic and has instilled fear in journalists and all those criticizing government measures or sharing information online or offline. It has also directly endangered the lives of those arrested and sent to prison solely for exercising their right to freedom of expression.

For example, **Cambodia** introduced the State of Emergency Law in April 2020 to respond to the outbreak of Covid-19, which enables open-ended emergency powers and martial law.<sup>5</sup> Amongst other measures, the law includes provisions for conducting surveillance on telecommunications “using any means necessary”, and the power to ban or restrict the “distribution of information that could scare the public, cause unrest, or that can negatively impact national security, or that can cause confusion in response to the state of emergency”. In May 2021, the Cambodian authorities placed a de facto ban on independent reporting in Phnom Penh’s red zones (areas deemed to be high risk for Covid-19 transmission) and the Ministry of Information announced that only state media or journalists invited by the government would be permitted to report from red zones. The Ministry warned journalists not to disseminate information that could “provoke turmoil in society” and threatened legal action against those who disobey. In a press release dated 1 May 2021, the government demanded the immediate cessation of social media posts intended to

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<sup>4</sup> See UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, “Disease pandemics and the freedom of opinion and expression”, 23 April 2020, UN Doc. A/HRC/44/49, para. 47.

<sup>5</sup> Amnesty International, “Cambodia: Proposed emergency powers would obliterate human rights”, 2 April 2020, [amnesty.org/en/latest/news/2020/04/cambodia-proposed-emergency-power-obliterate-human-rights/](https://www.amnesty.org/en/latest/news/2020/04/cambodia-proposed-emergency-power-obliterate-human-rights/)

“provoke and create chaos” in the context of the pandemic, referring to such posts as “acts of attack” that must be punished. The Cambodian authorities arrested dozens of individuals for expressing critical opinions about the government’s Covid-19 response, including at least six individuals for their criticism of the government’s vaccination campaign.<sup>6</sup>

**China** has a history of controlling freedom of expression and access to information online and offline, and the authorities regularly control and censor all types of media, from print to social media. In the early stage of the Covid-19 pandemic, health workers and journalists that attempted to raise the alarm as early as December 2019 were targeted for reporting on the outbreak of what was then an unknown disease. By 21 February 2020, there were already more than 5,511 criminal investigations opened against individuals who published information in relation to the outbreak for “fabricating and deliberately disseminating false and harmful information”, according to the Ministry of Public Security.<sup>7</sup> Numerous articles relating to the virus were also censored by the authorities, including many published by mainstream media. Extensive application of personal and technological surveillance in the name of public health and safety further tightened the state’s grip on society. The authorities further blocked hundreds of keyword combinations on social media and messaging apps. Online posts that expressed dissent, contained sensitive hashtags related to the outbreak or demanded free speech were quickly deleted.<sup>8</sup>

In the **Gulf Countries**, specifically **Bahrain, Kuwait, Oman, Saudi Arabia, and the United Arab Emirates**, there is a years-old pattern of summoning, interrogating, arresting, prosecuting, and imprisoning those who post comments online that cast the government in a negative light – or that the government perceives as such. This has continued over the past year, but now with the frequent invocation of Covid-19 and the protection of public health as a justification. Since March 2020, each of these governments have issued statements warning of criminal liability for publishing “false news” or “spreading misinformation”, and in many instances have prosecuted individuals who posted content on social media about the pandemic or the government’s response. Amnesty International analysed multiple cases in all these countries and found that governments in the region did not demonstrate that the restrictions imposed on the right to freedom of expression were justified under the narrow exceptions permitted under international human rights law.<sup>9</sup> Indeed, it appears that investigations, summons, and prosecutions were often initiated specifically to target online criticism of these governments’ responses to the pandemic, which fall clearly within the right to freedom of expression.

In April 2020, the **Indonesian** National Police Headquarters issued a Telegram Letter instructing police on the handling of “hoax spreaders” and any act of insult to the President and his administration during the Covid-19 pandemic in a measure touted as “maintaining security and order”.<sup>10</sup> The circular ordered police to carry out cyber patrols to monitor developments in cyberspace and to counter criminal acts. The measure was based on existing criminal law provisions for the crime of “insults to state authorities”, and on the Information and Electronic Information and Transactions Law (ITE Law),<sup>11</sup> relating to the distribution of false and misleading

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<sup>6</sup> Amnesty International, *Cambodia: Stop silencing critical commentary on COVID-19: Joint statement* (Index: ASA 23/4183/2021), 25 May 2021, [amnesty.org/en/documents/asa23/4183/2021/en/](https://www.amnesty.org/en/documents/asa23/4183/2021/en/)

<sup>7</sup> Amnesty International, *Report 2020/2021: the state of the world’s human rights* (Index: POL 10/3202/2021), 7 April 2021, [amnesty.org/en/documents/pol10/3202/2021/en/](https://www.amnesty.org/en/documents/pol10/3202/2021/en/) p. 121

<sup>8</sup> Amnesty International, *Report 2020/2021: the state of the world’s human rights*, p.122

<sup>9</sup> Amnesty International, *COVID-19 Is New Pretext for Old Tactics of Repression in GCC* (Index MDE 04/3136/2020) 15 October 2020, [amnesty.org/en/documents/mde04/3136/2020/en/](https://www.amnesty.org/en/documents/mde04/3136/2020/en/)

<sup>10</sup> Indonesia, Telegram Letter of the Chief of Police of the Republic of Indonesia Number ST/1100/IV/HUK.7.1/2020, April 2020, [hukumonline.com/pusatdata/detail/lt5e8c53d860eab/node/534/surat-telegram-kepala-kepolisian-republik-indonesia-nomor-st-1100-iv-huk71-2020-tahun-2020](https://hukumonline.com/pusatdata/detail/lt5e8c53d860eab/node/534/surat-telegram-kepala-kepolisian-republik-indonesia-nomor-st-1100-iv-huk71-2020-tahun-2020)

<sup>11</sup> First enacted in 2008, and amended in 2016, the ITE Law has been used to prosecute hundreds of peaceful activists, media officers and human right defenders who criticize the government. It contains vague language which has been misused by the government to criminalize the rights to freedom of expression, thought, conscience and religion in Indonesia. The criminal defamation and “incitement” provisions under ITE Law have been used to criminalize freedom of expression. These include Article 27(3), which criminalizes “the conduct of anyone who intentionally and without right distributes and/or transmits and/or makes accessible electronic information and/or electronic documents that contains insults and/or defamation”. Article 28(2) of the ITE Law also criminalizes “the dissemination of information that incites hate or enmity among certain individuals and/or groups based on ethnicity, religion, race or intergroup relation”, Amnesty International, “Indonesia: Papuan farmer imprisoned for Facebook post: Soon Tabuni” (Index: ASA 21/4034/2021), 27 April 2021, [amnesty.org/en/documents/asa21/4034/2021/en/](https://www.amnesty.org/en/documents/asa21/4034/2021/en/)

news.<sup>12</sup> Amnesty International documented at least 57 people accused of spreading “false news” and insulting the President and his administration related to Covid-19 in the first three months since the measure was put in place.<sup>13</sup> In February 2021, a “virtual police squad”<sup>14</sup> was set up to reinforce these measures with the power to send warnings to users and give them instructions to amend or delete their posts.

In **Nicaragua**, amidst the violent repression of social protests that started in 2018 and a growing number of laws aimed at severely restricting the space for dissent and independent journalism, the parliament approved the “Special Law on Cybercrimes” in October 2020. This law includes vague and broad offences to criminalize “fake news” and a range of legitimate activities carried out through communication and information technologies and various forms of online expression.<sup>15</sup> The law provides a legal framework that can be used to punish those who express opinions which, in the eyes of the authorities, “may cause alarm, fear or anxiety”, under the pretext of avoiding the publication or distribution of what they consider to be false information. In practice, its wording suggests that it is also seeking to punish those who criticize government policies.<sup>16</sup> The law was adopted at a time when the government attempted to downplay and suppress information about the spread of the pandemic and intimidate health workers who dared to criticize the government’s Covid-19 response.<sup>17</sup>

In **Niger**, the Cybercriminality law of 2019 was used to arrest about 10 individuals between March and April 2020 under article 31 penalizing “the dissemination, production and making available to others data that may disturb public order or violate human dignity through an information system”. This law has been used to muzzle dissenting voices, including a human rights defender who was detained for a month at the end of April after he shared via WhatsApp a public document critical of measures implemented by the government to contain the spread of the virus.<sup>18</sup>

In March 2020, **the Philippines** enacted the Bayanihan to Heal as One Act, which granted the President special powers to address the pandemic and included a provision that punishes “creating, perpetuating or spreading false information” with up to two months in prison, up to P1 million in fines (approximately 19,860 USD), or both. The National Bureau of Investigation summoned individuals suspected of spreading fake news related to Covid-19, but human rights groups said these included those who were merely airing their grievances online.<sup>19</sup> A Cebu City-based artist was also arrested without warrant in April 2020 over a Facebook post that claimed that 9,000 people in her city had the virus, which police considered as “fake news”. She was detained for three days, but the charges against her were eventually dismissed after a court ruled that her post was a “satire” which is “constitutionally protected speech”.<sup>20</sup>

In March 2020, **Russia** expanded existing anti-“fake news” legislation by introducing amendments to the Criminal Code and to the Code of Administrative Offences with new criminal

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<sup>12</sup> Merdeka, “Kapolri Santai Telegram Covid-19 Soal Penghinaan Presiden Dikritik”, 8 April 2020, [merdeka.com/peristiwa/kapolri-santai-telegram-covid-19-soal-penghinaan-presiden-dikritik.html](https://merdeka.com/peristiwa/kapolri-santai-telegram-covid-19-soal-penghinaan-presiden-dikritik.html)

<sup>13</sup> Amnesty International, *Indonesia: COVID-19 and its human rights impact in Indonesia* (Index: ASA 21/2230/2020), 29 April 2020, [amnesty.org/en/documents/asa21/2238/2020/en/](https://www.amnesty.org/en/documents/asa21/2238/2020/en/)

<sup>14</sup> The Jakarta Post, “New ‘virtual police’ adds to fears over loss of online civic space, civil freedoms”, March 2021, [thejakartapost.com/news/2021/03/19/new-virtual-police-adds-to-fears-over-loss-of-online-civic-space-civil-freedoms.html](https://thejakartapost.com/news/2021/03/19/new-virtual-police-adds-to-fears-over-loss-of-online-civic-space-civil-freedoms.html)

<sup>15</sup> For a range of concerns with the law, see: Access Now, “Ley Especial de Ciberdelitos en Nicaragua: la opresión se traslada al mundo en línea”, 30 September 2020, [accessnow.org/ley-especial-de-ciberdelitos-en-nicaragua-opresion-en-linea/](https://accessnow.org/ley-especial-de-ciberdelitos-en-nicaragua-opresion-en-linea/) and Article 19, “Ley Especial de Ciberdelitos en Nicaragua promueve la censura y la criminalización del uso cotidiano de las tecnologías”, 30 September 2020, [articulo19.org/ley-especial-de-ciberdelitos-en-nicaragua-promueve-la-censura-y-la-criminalizacion-del-uso-cotidiano-de-las-tecnologias/](https://articulo19.org/ley-especial-de-ciberdelitos-en-nicaragua-promueve-la-censura-y-la-criminalizacion-del-uso-cotidiano-de-las-tecnologias/)

<sup>16</sup> Amnesty International, *Silence at any cost. State tactics to deepen the repression in Nicaragua* (Index: AMR 43/3398/2021), 15 February 2021, [amnesty.org/en/documents/amr43/3398/2021/en/](https://www.amnesty.org/en/documents/amr43/3398/2021/en/)

<sup>17</sup> As noted by OHCHR, “In some cases, authorities publicly blamed those who questioned the State response to the COVID-19 pandemic, stigmatizing them as traitors, terrorists or coup plotters. In a document (libro blanco) released on 25 May 2020, the Government accused the opposition of plotting a coup and waging a massive disinformation campaign in the context of the pandemic. OHCHR registered the dismissal, without respect for the applicable legal procedures, of at least 16 medical doctors (8 men and 8 women) who had criticized the State response to the COVID-19 pandemic”, OHCHR, *Situation of human rights in Nicaragua. Report of the United Nations High Commissioner for Human Rights*, UN Doc. A/HRC/46/21, 19 February 2021.

<sup>18</sup> Amnesty International « Niger : La loi sur la cybercriminalité est un instrument de répression des voix dissidentes », 8 May 2020, [amnesty.org/fr/latest/news/2020/05/niger-la-loi-sur-la-cybercriminalite-est-un-instrument-de-repression/](https://www.amnesty.org/fr/latest/news/2020/05/niger-la-loi-sur-la-cybercriminalite-est-un-instrument-de-repression/)

<sup>19</sup> Amnesty International, “Philippines: Major TV network threatened by authorities must be allowed to air”, 5 May 2020, [amnesty.org/en/latest/news/2020/05/philippines-major-tv-network-threatened-allowed-to-air/](https://www.amnesty.org/en/latest/news/2020/05/philippines-major-tv-network-threatened-allowed-to-air/)

<sup>20</sup> Inquirer, “Poet posts bail for COVID-19 ‘fake news’ case”, 21 April 2020, [newsinfo.inquirer.net/1262341/poet-posts-bail-for-covid-19-fake-news-case](https://newsinfo.inquirer.net/1262341/poet-posts-bail-for-covid-19-fake-news-case)

penalties for “public dissemination of knowingly false information” in the context of emergencies, and administrative penalties for media outlets that publish such information.<sup>21</sup> The changes also expanded criminal sanctions for violating sanitary and epidemiological regulations. The two laws were passed by the State Duma and Council of Federation and signed by President Putin with extraordinary speed, going through the whole legislative process on the same day and with nearly no public discussion. Although the amendments are officially described as part of the authorities’ response to the Covid-19 pandemic, the new laws do not restrict the provisions to the current situation but rather can be applicable to any situation broadly defined as an “emergency” and will remain in force beyond the pandemic. The language in the laws is very vague and broad, which leaves the new legal provisions open to wide interpretation and abuse. Soon after their adoption, the laws started to be used against activists and health workers who dared to criticise the government response to Covid-19.<sup>22</sup>

Following Russia’s invasion of Ukraine, Russian authorities unleashed an unprecedented crackdown on independent journalism by strengthening their anti-“fake news” legislation. On 28 February 2022, Russia’s media regulator ordered all media outlets to only use official, state-sanctioned sources of information or else face severe punishments for spreading “fake news”. The words ‘war’, ‘invasion’ and ‘attack’ were all effectively banned from use when describing Russia’s military actions in Ukraine. On 4 March, Russia’s parliament introduced legislation that further criminalizes sharing “false information” about the activities of the Russian Armed Forces or “discrediting” Russian troops. Anyone accused of committing these “crimes” could face extortionate fines or a prison sentence of up to 15 years. Over the following three days, more than 140 people were detained under the new law effectively banning the word “war” and calls for “peace”. From 1 March, the media regulator also began slowing traffic on Twitter and Facebook to a crawl and accused the two companies of disseminating “inaccurate” information about the conflict in Ukraine. On 4 March, both social media platforms were blocked.<sup>23</sup>

In March 2020, as part of a package of Covid-19 emergency measures, the **Serbian** government decided to centralize all information about the pandemic and made journalists liable for prosecution if they used information that was not government sanctioned or taken from “unofficial sources”.<sup>24</sup> As a result, journalists were prevented from attending press conferences, obtaining information from health authorities or documenting the operations of law enforcement officials. At least one journalist was arrested for reporting on the situation at a hospital in April, though she was later released and the charges dropped.<sup>25</sup> Following widespread criticism at national and international level, the measure was eventually withdrawn.

In March 2020, the **South African** government declared a National State of Disaster and enacted a series of restrictions and regulations that included lockdowns and other public health measures. The regulation included the criminalization of disinformation related to Covid-19 or the government’s response to the pandemic with fines and imprisonment.<sup>26</sup> Six months later, the government eased most of the emergency measures, but penalties criminalizing misinformation were retained. These regulations were compounded by ministerial directives requiring

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<sup>21</sup> Amnesty International, *Russian Federation: “Fake news” bill prompted by COVID-19 threatens freedom of expression* (Index: EUR 46/2093/2020), 2 April 2020, [amnesty.org/en/documents/eur46/2093/2020/en/](https://www.amnesty.org/en/documents/eur46/2093/2020/en/)

<sup>22</sup> Amnesty International, *Report 2020/2021: the state of the world’s human rights*, (previously cited), p. 302, 304; Amnesty International, “Amnesty International demands termination of fake news case against doctor Yulia Volkova”, 8 May 2020, [eurasia.amnesty.org/2020/05/08/amnesty-international-trebuje-prekrashheniya-dela-o-fake-news-v-otnoshenii-vracha-yulii-volkovoi/](https://eurasia.amnesty.org/2020/05/08/amnesty-international-trebuje-prekrashheniya-dela-o-fake-news-v-otnoshenii-vracha-yulii-volkovoi/); Amnesty International, “Russia: Authorities detain doctor who exposed flaws in COVID-19 response”, 3 April 2020, [amnesty.org/en/latest/news/2020/04/russia-authorities-detain-doctor-who-exposed-flaws-in-covid19-response/](https://www.amnesty.org/en/latest/news/2020/04/russia-authorities-detain-doctor-who-exposed-flaws-in-covid19-response/)

<sup>23</sup> Amnesty International, “Russia: Kremlin’s ruthless crackdown stifles independent journalism and anti-war movement”, 10 March 2022 <https://www.amnesty.org/en/latest/news/2022/03/russia-kremlins-ruthless-crackdown-stifles-independent-journalism-and-anti-war-movement/>

<sup>24</sup> European Journalism Observatory, “Serbia: Coronavirus and the media”, 13 May 2020, [en.ejo.ch/media-politics/serbia-coronavirus-and-the-media](https://en.ejo.ch/media-politics/serbia-coronavirus-and-the-media); International Press Institute, “European media freedom suffers under COVID-19 response”, 10 April 2020, [ipi.media/european-media-freedom-suffers-covid-19-response/](https://www.ipi.media/european-media-freedom-suffers-covid-19-response/)

<sup>25</sup> Article 19, “Serbia: Journalist Ana Lalic arrested for reporting on inadequate hospital facilities for coronavirus”, 2 April 2020, [article19.org/resources/serbia-journalist-ana-lalic-arrested-for-reporting-on-inadequate-hospital-facilities-for-coronavirus/](https://www.article19.org/resources/serbia-journalist-ana-lalic-arrested-for-reporting-on-inadequate-hospital-facilities-for-coronavirus/)

<sup>26</sup> South Africa, Regulations issued in terms of section 27(2) of the Disaster Management Act 2002, 18 March 2020, 11(5), [gov.za/sites/default/files/gcis\\_document/202003/regulations.pdf](https://www.gov.za/sites/default/files/gcis_document/202003/regulations.pdf)



communication service providers, media outlets and social media companies to remove “fake news” from their platforms.<sup>27</sup> This led to several arrests and fines against broadcasters.<sup>28</sup>

The government of **Tanzania** introduced a raft of laws in the run up to the October 2020 elections and used them to silence journalists, civil society organizations, human rights defenders and members of the political opposition.<sup>29</sup> Between March and May 2020, authorities used laws prohibiting and criminalizing “false news” and other measures to restrict media coverage of the government’s handling of the Covid-19 pandemic. The authorities suppressed information about the government’s disregard of global best practice in countering Covid-19,<sup>30</sup> and cracked down on critical media without disseminating reliable, accessible and evidence-based information to the public, including on government measures to protect public health.

As part of the crackdown on the media, Star Media Tanzania Limited, Multichoice Tanzania Limited, and Azam Digital Broadcast Limited were each fined five million Tanzania shillings (approximately 2,150 USD) in April 2020 and ordered to apologize for “transmission of false and misleading information” on the country’s approach to managing Covid-19.<sup>31</sup> In the same month, the authorities also suspended Mwananchi Newspaper Online for six months and fined the media outlet five million Tanzanian shillings (approximately 2,150 USD) for publishing a photo of the late President John Pombe Magufuli buying fish in his home village of Chato, north-western Tanzania, apparently in breach of physical distancing guidelines. Authorities said the photo was not recent and that Mwananchi Newspaper Online violated the Electronics and Postal (Online Content) Regulations of 2018.<sup>32</sup> In May 2020, two Kenyan journalists were fined and repatriated in connection with interviews of members of the public in Tanzania on the status of the pandemic in the country,<sup>33</sup> while in July 2020, Kwanza Online TV, an independent online channel, was suspended for 11 months for reposting an alert by the US embassy in Tanzania regarding the pandemic in the country.<sup>34</sup>

In March 2022, **Tunisia’s** President Kais Saied issued a new law to address what he has described as a campaign against goods speculators. Decree-Law 2022-14 contains vaguely worded provisions that could lead to prison terms of between ten years and life, including for public debate of the economy. The decree-law criminalises the deliberate spread of “false or incorrect news or information” that would cause consumers to refrain from buying, or to disrupt the supply of goods to markets and thereby cause prices to rise. Article 2 of decree-law 2022-14 states that its provisions apply to those engaged in economic activities. Article 17 provides for prison terms ranging from 10 years to life in prison, depending on the circumstances, for acts defined as goods speculation.<sup>35</sup>

**Uzbekistan** already had severe penalties in place for the dissemination of information that could harm the state or cause panic, with prison sentences of up to eight years.<sup>36</sup> The language used in the criminal code is vague and broad and has left these legal provisions open to misinterpretation

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<sup>27</sup> South Africa, Electronic Communications, Postal and Broadcasting Directions Issued under Regulation 10(8) of the Disaster Management Act, 2002, 5(1.3), [gov.za/sites/default/files/gcis\\_document/202003/43164gon-417.pdf](http://gov.za/sites/default/files/gcis_document/202003/43164gon-417.pdf)

<sup>28</sup> CIPESA, “Regulating Freedom of Expression Amidst the Covid-19 Response in South Africa”, 25 November 2020, [cipesa.org/2020/11/regulating-freedom-of-expression-amidst-the-covid-19-response-in-south-africa/](http://cipesa.org/2020/11/regulating-freedom-of-expression-amidst-the-covid-19-response-in-south-africa/)

<sup>29</sup> Amnesty International, *Lawfare: Repression by Law ahead of Tanzania’s General Elections* (Index: AFR 56/3051/2020), 12 October 2020, [amnesty.org/en/documents/af/56/3051/2020/en/](http://amnesty.org/en/documents/af/56/3051/2020/en/); Civicus, “Tanzania: Systematic restrictions on fundamental freedoms in the run-up to national elections”, 22 October 2020, [civicus.org/index.php/media-resources/media-releases/4700-tanzania-systematic-restrictions-on-fundamental-freedoms-in-the-run-up-to-national-elections](http://civicus.org/index.php/media-resources/media-releases/4700-tanzania-systematic-restrictions-on-fundamental-freedoms-in-the-run-up-to-national-elections)

<sup>30</sup> Mail and Guardian, “SADC’s silence on access to Covid-19 vaccines is too loud”, 11 March 2021, [mg.co.za/africa/2021-03-11-sadcs-silence-on-access-to-covid-19-vaccines-is-too-loud/](http://mg.co.za/africa/2021-03-11-sadcs-silence-on-access-to-covid-19-vaccines-is-too-loud/)

<sup>31</sup> Amnesty International, “Authorities must end crackdown on journalists reporting on COVID-19”, 21 April 2020, [amnesty.org/en/latest/news/2020/04/tanzania-authorities-must-end-crackdown-on-journalists-reporting-on-covid19/](http://amnesty.org/en/latest/news/2020/04/tanzania-authorities-must-end-crackdown-on-journalists-reporting-on-covid19/)

<sup>32</sup> Amnesty International, “Authorities must end crackdown on journalists reporting on COVID-19” (previously cited)

<sup>33</sup> Tanzania Human Rights Defenders Coalition, “Two Kenyan Journalists convicted and fined in Tanzania, repatriated back to Kenya”, 21 May 2020, [thrdc.or.tz/two-kenyan-journalists-convicted-and-fined-in-tanzania-repatriated-back-to-kenya/](http://thrdc.or.tz/two-kenyan-journalists-convicted-and-fined-in-tanzania-repatriated-back-to-kenya/)

<sup>34</sup> American Bar Association, Center for Human Rights, *Report on the arbitrary suspension of Kwanza Online TV for sharing information related to the COVID-19 pandemic*, October 22, 2020. [https://www.americanbar.org/content/dam/aba/administrative/human\\_rights/justice-defenders/aba-chr-kwanza-tv-tanzania-report.pdf](https://www.americanbar.org/content/dam/aba/administrative/human_rights/justice-defenders/aba-chr-kwanza-tv-tanzania-report.pdf). Kwanza TV, Instagram post, 1 July 2020, [instagram.com/p/CCGT\\_5ECT\\_n/?utm\\_source=ig\\_web\\_button\\_share\\_sheet](https://www.instagram.com/p/CCGT_5ECT_n/?utm_source=ig_web_button_share_sheet)

<sup>35</sup> Amnesty International, “Tunisia: New anti-speculation law threatens freedom of expression”, 25 March 2022 <https://www.amnesty.org/en/latest/news/2022/03/tunisia-new-anti-speculation-law-threatens-freedom-of-expression/>

<sup>36</sup> Radio Odzolk, “In Uzbekistan, the number of COVID-19 cases has reached 10; Spreading panic will be punished with a fine or prison”, 17 March 2020, [rus.ozdolik.org/a/30491533.html](http://rus.ozdolik.org/a/30491533.html)

and abuse. In response to the Covid-19 pandemic, the Prosecutor General's Office set up an interagency working group to monitor social media for 'fake news' or misleading information on the spread of the infection.<sup>37</sup> Within days, the group identified 33 social media accounts that had allegedly spread false information that caused panic and destabilized the situation in the country. At the end of March 2020, the President introduced even stricter penalties for the dissemination of false information on the spread of the virus, increasing prison sentences from five to a maximum of 10 years in prison. At a time when more voices were raising concerns that the authorities in Uzbekistan were trying to conceal the true extent of Covid-19 infections and failures in the government's response, the moves by the government made it even more difficult for the people to seek and receive vital information.<sup>38</sup>

## 3. THE ROLE OF TECHNOLOGY IN SPREADING MISINFORMATION

While governments around the world have failed to address the challenges of disinformation and misinformation in a way that respects and protects the right to freedom of expression, social media companies have also failed to uphold their responsibility to respect human rights while countering misinformation.

There is no doubt that the exponential spread of misinformation and disinformation has been facilitated by new digital technologies and that all major search engines and social media platforms have played a role in the spread of erroneous and misleading information.<sup>39</sup> Social media platforms are purposefully designed to captivate users' attention and maximise their engagement to a degree that can become highly addictive.<sup>40</sup> This engagement, coupled with the very detailed information these companies are collecting on people from across the digital world, enables them to infer detailed pictures of peoples' lives and behaviours which can be monetized – primarily for highly targeted advertising. This algorithmically driven targeting, profiling, and personalised content play an enormous role in shaping the online experience of each user and in determining the information they see, which may often include high levels of misinformation.

Since people are more likely to be drawn to novel information that confirms their biases, or sensationalist and incendiary information,<sup>41</sup> algorithms that curate what users see on social media may end up promoting or amplifying false or misleading content.<sup>42</sup> By virtue of repetition of similar content, some of these platforms can end up persuading users that falsehoods are true. For example, YouTube's recommendation algorithm automatically promotes similar content in a way

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<sup>37</sup> Radio Odzolik, "Revealed 25 accounts abroad, misinterpreting the situation in the country", 18 March 2020, [rus.ozodlik.org/a/30493704.html](https://rus.ozodlik.org/a/30493704.html)

<sup>38</sup> Amnesty International, "Eastern Europe and Central Asia confronted with Covid-19: Responses and responsibilities", 29 April 2020, Index EUR 01/2215/2020

<sup>39</sup> Amnesty International, *Surveillance giants: How the business model of Google and Facebook threatens human rights* (POL 30/1404/2019), November 2019, [amnesty.org/en/documents/pol30/1404/2019/en/](https://www.amnesty.org/en/documents/pol30/1404/2019/en/)

<sup>40</sup> This has also been recognized by former employees of companies like Facebook who have been talking publicly about this in the last few years. According to an internal Facebook report from 2018, "if left unchecked," Facebook would feed users "more and more divisive content in an effort to gain user attention and increase time on the platform", Wall Street Journal, "Facebook Executives Shut Down Efforts to Make the Site Less Divisive", 26 May 2020, [wsj.com/articles/facebook-knows-it-encourages-division-top-executives-nixed-solutions-11590507499](https://www.wsj.com/articles/facebook-knows-it-encourages-division-top-executives-nixed-solutions-11590507499). For more information on the power of algorithms and the business model of tech giants, see Amnesty International, *Surveillance giants: How the business model of Google and Facebook threatens human rights* (previously cited).

<sup>41</sup> Scientific American, "Biases Make People Vulnerable to Misinformation Spread by Social Media", 21 July 2018, [scientificamerican.com/article/biases-make-people-vulnerable-to-misinformation-spread-by-social-media/](https://www.scientificamerican.com/article/biases-make-people-vulnerable-to-misinformation-spread-by-social-media/)

<sup>42</sup> According to a report by the American Association for the Advancement of Science based on data collected from Twitter, "falsehood diffused significantly farther, faster, deeper, and more broadly than the truth", Soroush Vosoughi, Deb Roy, Sinan Aral "The spread of true and false news online", 9 March 2018, *Science*, Vol. 359, Issue 6380, [science.sciencemag.org/content/359/6380/1146](https://www.science.org/doi/10.1126/science.1257533)

that can reinforce false information, conspiracy theories and rumours by joining together different videos that repeat similar false narratives.<sup>43</sup> This creates the illusion that there are multiple sources for the same idea, persuading the user of the veracity of the information. In some cases, users can develop a sort of “tunnel vision” and lose their capacity for discerning between scientific facts, misleading information and outright lies.

The combination of algorithmically-driven ad targeting and personalized content has allowed Google and Facebook’s platforms to play an enormous role in shaping people’s online experience and determining the information they see. This can influence and modify opinions and thoughts, which risks affecting peoples’ ability to make autonomous choices and form opinions free from manipulation. Moreover, the algorithms are designed to find the best ways to nudge people towards particular outcomes based on an individual’s predicted personal characteristics and behaviors. These capabilities mean there is a high risk that the companies could be directly harming the rights to freedom of thought, conscience and religion and to freedom of opinion and expression through their use of algorithmic systems.<sup>44</sup> As human rights lawyer Susie Alegre argues, “the scale and range of interferences with our ability to think and feel freely that technology can and might facilitate is in many ways beyond our imagination. But it is happening now. We have forgotten that rights need protections to be real and effective”.<sup>45</sup> Furthermore, the way in which these algorithms work risk providing a platform for other actors to access, utilize or weaponize their platforms to abuse the rights of other users.<sup>46</sup>

UNESCO has also warned that intentionally misleading content spread on social media platforms can affect peoples’ understanding of reality and undermine trust, informed dialogue, a shared sense of reality, mutual consent, and participation.<sup>47</sup> In other words, in a world in which erroneous or misleading information is so prevalent, the right to be informed and form an opinion based on facts, as well as the ability to have a debate around those facts, becomes fundamentally undermined. Similarly, the Council of Europe’s Committee of Ministers has also warned that “fine grained, sub-conscious and personalised levels of algorithmic persuasion may have significant effects on the cognitive autonomy of individuals and their right to form opinions and take independent decisions”.<sup>48</sup> As individuals are deprived of the ability to discern truth from fiction and to hold an informed opinion based on the best available information and a diversity of sources, and as they are nudged towards certain types of information based on harvesting of their personal data, their right to freedom of thought is deeply affected. As UNICEF has pointed out, children and young people are at heightened risk of being affected by online misinformation.<sup>49</sup>

Social media companies bear a direct responsibility for how their platforms are making the public vulnerable to misinformation and thus posing a direct threat to their human rights, including the right to seek, receive and impart information. The UN Guiding Principles on Business and Human Rights state that the responsibility to respect rights extends to all companies, wherever they operate, regardless of their size, sector, operational context, ownership and structure.<sup>50</sup> This means that social media companies must consider the human rights risks that arise from their operations and services and take concrete action when their activities might have a negative effect on the enjoyment of human rights.

After repeated calls and increased pressure to address the problem of false and misleading information driven by social media and search engines, some tech companies started to take some measures to reduce the impact of misinformation and disinformation on their platforms.

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<sup>43</sup> Amnesty International, *Surveillance giants*, p. 35

<sup>44</sup> E. Aswad, “Losing the Freedom to be human”, *Columbia Human Rights Law Review*, Vol. 52, 29 February 2020, [ssrn.com/abstract=3635701](https://ssrn.com/abstract=3635701)

<sup>45</sup> Susie Alegre, *Freedom to Think*, April 2022, <https://msha.ke/susiealegre/#links>

<sup>46</sup> Amnesty International, *Surveillance giants*, p. 30.

<sup>47</sup> UNESCO, *Journalism, “fake news” and disinformation*, 2018, p. 36, [unesdoc.unesco.org/ark:/48223/pf0000265552\\_eng](https://unesdoc.unesco.org/ark:/48223/pf0000265552_eng)

<sup>48</sup> Council of Europe’s Committee of Ministers, Declaration on the Manipulative Capabilities of Algorithmic Processes, February 2019, [search.coe.int/cm/pages/result\\_details.aspx?ObjectId=090000168092dd4b](https://search.coe.int/cm/pages/result_details.aspx?ObjectId=090000168092dd4b)

<sup>49</sup> UNICEF, Digital misinformation / disinformation and children, August 2021, <https://www.unicef.org/globalinsight/media/2096/file/UNICEF-Global-Insight-Digital-Mis-Disinformation-and-Children-2021.pdf>

<sup>50</sup> UN Guiding Principles on Business and Human Rights, Principle 14.

Some of these measures include taking down or flagging false information,<sup>51</sup> banning certain groups and users, or reducing the number of people a message can be forwarded to. However, the financial incentives to not act in a comprehensive way surface: misinformation and disinformation can be lucrative,<sup>52</sup> while taking decisive steps requires resources and may infringe upon the right to freedom of expression if not carried out within clear policies that have human rights and transparency at the core.

The spread of misinformation and disinformation online following Russia's invasion of Ukraine presents a grim example to illustrate the ad-hoc approach of technology companies to the issue. In a conflict situation, there are high risks that the spread of false or malicious information may lead to human rights harms including when such content amounts to propaganda for war or advocacy of hatred. While social media companies have taken a range of measures to respond to this rapidly evolving situation, including changes to their algorithmic recommender systems to reduce the viral spread of misinformation and hate speech on their platforms, such actions have been widely inconsistent with the response by companies in other ongoing conflict scenarios such as in Myanmar and Ethiopia.<sup>53</sup>

Tech companies' self-regulation has proven to be ineffective, and as long as States fail to enact and enforce digital regulation and data protection laws to overhaul the way technology works for essential digital services and infrastructure, it is hard to believe that technology companies will adopt rights-respecting business models on their own.<sup>54</sup> Ultimately, tackling the spread of misinformation and disinformation on social media platforms will require going beyond content moderation to overhaul corporate practices reliant on invasive mass surveillance and profiling.<sup>55</sup> As recommended by the UN Special Rapporteur on the right to freedom of expression, companies should proactively respond to expressed concerns and review their business models to ensure compliance with human rights.<sup>56</sup>

## 4. HUMAN RIGHTS APPROACH TO TACKLING MISINFORMATION AND DISINFORMATION

False and misleading information cannot be easily censored or simply expunged, particularly in the age of social media and messaging apps. Restricting information and the free expression of

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<sup>51</sup> Guardian, "Facebook bans misinformation about all vaccines after years of controversy", 8 February 2021, [theguardian.com/technology/2021/feb/08/facebook-bans-vaccine-misinformation](https://www.theguardian.com/technology/2021/feb/08/facebook-bans-vaccine-misinformation)

<sup>52</sup> According to the CCDH, advertising revenue from the anti vaxx industry pays \$1 billion, CCDH, *The Anti-Vaxx Industry. How Big Tech powers and profits from anti-vaccine misinformation*, 2020, [www.counterhate.com/anti-vaxx-industry](http://www.counterhate.com/anti-vaxx-industry). See also Guardian, "Facebook 'still making money from anti-vax sites'", 30 January 2021, [theguardian.com/technology/2021/jan/30/facebook-letting-fake-news-spreaders-profit-investigators-claim](https://www.theguardian.com/technology/2021/jan/30/facebook-letting-fake-news-spreaders-profit-investigators-claim)

<sup>53</sup> New York Times, *Facebook Admits It Was Used to Incite Violence in Myanmar*, November 2018 <https://www.nytimes.com/2018/11/06/technology/myanmar-facebook.html>; CNN, *Facebook knew it was being used to incite violence in Ethiopia. It did little to stop the spread, documents show*, October 2021 <https://edition.cnn.com/2021/10/25/business/ethiopia-violence-facebook-papers-cmd-intl/index.html>

<sup>54</sup> See Amnesty International's position on the EU's proposed Digital Services Act and Digital Markets Act, March 2021, [amnesty.org/en/latest/news/2021/03/amnesty-international-position-on-the-proposals-for-a-digital-services-act-and-a-digital-markets-act/](https://www.amnesty.org/en/latest/news/2021/03/amnesty-international-position-on-the-proposals-for-a-digital-services-act-and-a-digital-markets-act/)

<sup>55</sup> New America, *It's Not Just the Content, It's the Business Model: Democracy's Online Speech Challenge*, March 2020, [newamerica.org/oti/reports/its-not-just-content-its-business-model/](https://www.newamerica.org/oti/reports/its-not-just-content-its-business-model/)

<sup>56</sup> UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Irene Khan, *Disinformation and freedom of opinion and expression*, 13 April 2021, UN Doc. A/HRC/47/25, paras. 95-103

opinions and ideas through censorship, punitive laws, internet shutdowns, closing down of media outlets, and persecution of journalists, human rights defenders and others expressing their views, are not only in contravention of international human rights law but are also ineffective measures that do not tackle the root causes of why the public remains vulnerable to misinformation. On the contrary, censorship and a blunt overregulation of the exercise of the right to freedom of expression increases mistrust in the authorities and drives more people to seek out “alternative”, “anti-establishment” or covert sources of information that may not have been put through scrutiny and cannot be debunked in the public arena.

Restrictions on the right to freedom of expression that impose blanket prohibitions on the dissemination of information, including those based on vague and ambiguous concepts such as “false news” or “spreading misinformation”, are incompatible with international human rights law.<sup>57</sup> As stated by the UN Human Rights Committee, international law does not permit general prohibitions of expressions of an erroneous opinion or an incorrect interpretation of events.<sup>58</sup> Legislation prohibiting and criminalizing “false news” also risks having a chilling effect on the general population and the media, leading to self-censorship out of fear of reprisals. As noted by the UN Special Rapporteur on the right to freedom of expression, such limitations often appear not to be imposed for the legitimate purpose of promoting accurate information but in order to suppress relevant information uncomfortable for the government or to use the situation as a pretext to crack down on opposition politicians, critical media outlets or human rights defenders.<sup>59</sup>

Instead of punishment and censorship, human rights offer a different path which States should take in order to minimize the impact of false and misleading information. By upholding the right to freedom of expression, States would ensure that individuals and groups, including journalists and other civil society actors, can exchange information, air and debate diverse opinions, discuss effective ways of tackling social problems, hold governments accountable, defend human rights, debunk false information and challenge propaganda.

Public officials play a particular role in stemming the impact of misinformation, and it is crucial that they do not make, sponsor, encourage or further disseminate statements which they know or reasonably should know to be false or misleading. As emphasised by regional and international experts on the right to freedom of expression, public officials should take care to ensure that they disseminate reliable and trustworthy information, including about matters of public interest.<sup>60</sup>

International human rights mechanisms have further recommended that state authorities build up a reliable and prompt system of accurate information that leads to increased trust by the general public. In order for the public to have that trust, the public needs to have access to all relevant and available information. States are therefore required to step up their efforts to ensure that they disseminate reliable, accessible, evidence-based and trustworthy information, which is crucial to counter false and misleading information.<sup>61</sup>

States also have an obligation to ensure an enabling environment for freedom of expression, including by promoting a free, independent and diverse communications environment which is a key means of addressing misinformation and propaganda.<sup>62</sup> In 2017 international and regional experts on freedom of expression laid down a series of obligations and general principles for

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<sup>57</sup> Joint Declaration on freedom of expression and “fake news”, disinformation and propaganda. UN Special Rapporteur on Freedom of Opinion and Expression, OSCE Representative on Freedom of the Media, Special Rapporteur on Freedom of Expression of the Inter-American Commission on Human Rights, and the Special Rapporteur on Freedom of Expression and Access to Information of the African Commission on Human and Peoples’ Rights (2017), para. 2.a; Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, 23 April 2020, UN Doc. A/HRC/44/49, para. 49

<sup>58</sup> Human Rights Committee, General Comment No. 34, Article 19: Freedoms of opinion and expression, UN Doc. CCPR/C/GC/34 (2011), para. 49.

<sup>59</sup> Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, 23 April 2020, UN Doc. A/HRC/44/49, para. 47

<sup>60</sup> Joint Declaration on freedom of expression and “fake news”, disinformation and propaganda. UN Special Rapporteur on Freedom of Opinion and Expression, OSCE Representative on Freedom of the Media, Special Rapporteur on Freedom of Expression of the Inter-American Commission on Human Rights, and the Special Rapporteur on Freedom of Expression and Access to Information of the African Commission on Human and Peoples’ Rights (2017), para. 2.d

<sup>61</sup> Joint Declaration on freedom of expression and “fake news”, disinformation and propaganda, 2017 (previously cited), para. 2.d

<sup>62</sup> Joint Declaration on freedom of expression and “fake news”, disinformation and propaganda, 2017 (previously cited), para. 3.a.

States to follow in order to combat misinformation.<sup>63</sup> As a key step, the independent experts identified the obligation of States to create an enabling environment for freedom of expression and highlighted the importance of ensuring access to a wide variety of sources of information and ideas, including through “promoting, protecting and supporting diverse media”, which can facilitate public debates and the open confrontation of ideas, as well as acting as a watchdog of government and others in power. In addition, this would require States to ensure the presence of strong, independent and adequately resourced public service media operating under a clear mandate to serve the overall public interest and to set and maintain high standards of journalism.

UN human rights experts further called on States to take measures to address misinformation in a way that complies with their human rights obligations, including by reaffirming their commitment to the freedom, diversity and independence of the media, and guaranteeing the safety of journalists. Moreover, experts have urged States to invest in media, information and digital literacy to equip individuals with the critical thinking tools to distinguish between verifiable and unverifiable information, which they recommend should become part of the national school curriculum, and to ensure full, honest and evolving communication with the public.<sup>64</sup>

Similarly, UNESCO has encouraged States to take steps to understand and monitor the reasons behind and the sources of misinformation and disinformation.<sup>65</sup> Among other relevant measures, UNESCO has recommended governments to create an environment in which it is possible to conduct careful fact-checking and debunking of false or misleading information; providing government support and funding for quality and public interest journalism and counter-disinformation campaigns on media and social media platforms; supporting the target audiences of disinformation campaigns; strengthening ethical standards in reporting; educating the public and journalists and empowering them to differentiate between quality news and unreliable information.<sup>66</sup>

States also need to ensure people can effectively exercise their right to freedom of expression without discrimination, including by protecting individuals against abuses by non-state actors.<sup>67</sup> In this sense, authorities are therefore required to prohibit and address the effects of the spread of information that amounts to advocacy of hatred that constitutes incitement to discrimination, hostility or violence.<sup>68</sup> This does not necessarily need to be through means of criminalization, and in any event must meet all general requirements of any permissible restriction to the right to freedom of expression. Expression which falls short of the definition of advocacy of hatred, even if it is shocking, offensive or disturbing, should not be subject to criminal punishment nor any other restrictions which do not meet the principles of legality, necessity and proportionality in the pursuit of a legitimate aim.<sup>69</sup>

States should also ensure that companies do not abuse the right to freedom of expression, including online. As called for by the UN Special Rapporteur on the promotion and protection of the right to freedom of expression, States should avoid delegating responsibility to companies as adjudicators of content, which empowers corporate judgment over human rights values to the

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<sup>63</sup> Joint Declaration on Freedom of Expression and “Fake News”, Disinformation and Propaganda, March 2017, available at: [ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=21287&LangID=E](https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=21287&LangID=E)

<sup>64</sup> UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Irene Khan, *Disinformation and freedom of opinion and expression*, 13 April 2021, UN Doc. A/HRC/47/25; Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, 23 April 2020, UN Doc. A/HRC/44/49

<sup>65</sup> For more info, see UNESCO, *Disinfodemic. Deciphering Covid-19 disinformation*, 2020, [en.unesco.org/sites/default/files/disinfodemic\\_deciphering\\_covid19\\_disinformation.pdf](https://en.unesco.org/sites/default/files/disinfodemic_deciphering_covid19_disinformation.pdf)

<sup>66</sup> For example, States promote media and digital literacy, including by covering these topics as part of the regular school curriculum and by engaging with civil society and other stakeholders to raise awareness about these issues. See example of Finland in CNN “Finland is winning the war on fake news. What it’s learned may be crucial to Western democracy” May 2019, [edition.cnn.com/interactive/2019/05/europe/finland-fake-news-intl/](https://edition.cnn.com/interactive/2019/05/europe/finland-fake-news-intl/)

<sup>67</sup> Human Rights Committee, General Comment No. 34, Article 19: Freedoms of opinion and expression, UN Doc. CCPR/C/GC/34 (2011), para. 7

<sup>68</sup> Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, 23 April 2020, UN Doc. A/HRC/44/49, para. 48

<sup>69</sup> Human Rights Committee, General Comment No. 34, Article 19: Freedoms of opinion and expression, UN Doc. CCPR/C/GC/34 (2011), para. 52

detriment of users.<sup>70</sup> In this regard, states must uphold the principle that intermediaries should not be required to substantively evaluate the legality of third-party content, in line with the Manila Principles on Intermediary Liability.<sup>71</sup> However, companies involved in moderating online content must uphold their human rights responsibilities,<sup>72</sup> including by carrying out human rights due diligence and ensuring greater transparency regarding, and oversight of, content moderation practices and policies and the algorithmic systems underpinning their platforms to ensure that human rights are respected in practice.<sup>73</sup>

## 5. RECOMMENDATIONS

### TO STATES:

#### RESTRICTIONS ON THE RIGHT TO FREEDOM OF EXPRESSION

- Ensure that restrictions on the right to freedom of expression are provided for by a law formulated with sufficient precision and are necessary and proportionate to the purpose of protecting one of the legitimate purposes under international human rights law.
- Refrain from imposing blanket bans on the dissemination of information, including those based on vague and ambiguous concepts such as “false news” or “spreading misinformation”.
- Repeal or amend legislation that imposes criminal penalties simply for sharing or distributing information.

#### ACCESS TO RELIABLE INFORMATION

- Step up efforts to disseminate reliable, accessible, evidence-based and trustworthy information, which is crucial to counter false and misleading information and to build trust among the population in the integrity and reliability of the journalistic environment.
- Ensure people can have access to a wide variety of sources of information and ideas, including from a diverse media and through reliable and unfettered access to the internet, to facilitate public debates and the open confrontation of ideas.
- Promote media, information and digital literacy to equip individuals with the critical thinking tools to distinguish between verifiable and unverifiable information.
- Take appropriate measures to ensure public officials refrain from making, sponsoring, encouraging or further disseminating statements which they know or reasonably should know to be false or misleading. Public officials should take care to ensure that they provide reliable and trustworthy information, including about matters of public interest.

#### PROTECTION OF JOURNALISTS

- Guarantee a safe and enabling environment in which journalists and other media workers can work independently in a diverse communications environment and without fear of reprisals.

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<sup>70</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. A/HRC/38/35. See also our recommendations in *Amnesty International's position on the EU's proposed Digital Services Act and Digital Markets Act*, March 2021, [amnesty.eu/news/amnesty-international-position-on-the-proposals-for-a-digital-services-act-and-a-digital-markets-act/](https://www.amnesty.eu/news/amnesty-international-position-on-the-proposals-for-a-digital-services-act-and-a-digital-markets-act/)

<sup>71</sup> Manila Principles on Intermediary Liability, [manilaprinciples.org/](https://manilaprinciples.org/) (accessed 20 September 2021).

<sup>72</sup> As set out in the UN Guiding Principles on Business and Human Rights

<sup>73</sup> Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, UN Doc. A/HRC/38/35, 6 April 2018

- Enable and support journalists, media outlets, human rights defenders and civil society organizations to contribute in efforts to counter misinformation and disinformation.
- Provide effective protection to journalists, media outlets, human rights defenders and civil society organizations from threats and attacks to allow them to carry on their work without fear of punishment, reprisal or intimidation.

#### REGULATION OF THE ONLINE SPACE

- Ensure that companies do not abuse the right to freedom of expression while countering misinformation and disinformation, including online.
- Uphold the principle that intermediaries should not be required to substantively evaluate the legality of third-party content, in line with the Manila Principles on Intermediary Liability.
- Refrain from imposing duties on social media companies to proactively monitor online content or intermediary liability regimes that incentivize overbroad censorship.
- Legally require technology companies to carry out human rights due diligence to identify and address human rights impacts related to their global operations, including risks and abuses linked to their algorithmic systems or arising from their business model as a whole.
- Enact and enforce strong digital regulation, including a ban on surveillance advertising that relies on invasive tracking and the processing of personal data; independent oversight over the algorithmic recommendation systems used by online platforms and require these to be profiling-free by default; and measures to ensure people can practically choose rights-respecting alternatives to online platforms.

#### TO SOCIAL MEDIA COMPANIES:

- Uphold the corporation's human rights responsibilities by engaging in human rights due diligence, including to address risks arising from their business model, and taking concrete action to respond to the dissemination of false or misleading information.
- Ensure greater transparency regarding content moderation practices and policies, as well as the algorithmic systems underpinning their platforms. This must include enabling third parties to scrutinise and assess the functioning of the platforms and their underlying algorithmic systems.



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# A HUMAN RIGHTS APPROACH TO TACKLE DISINFORMATION

## SUBMISSION TO THE OFFICE OF THE HIGH COMMISSIONER FOR HUMAN RIGHTS

During recent years, the world has been grappling again with pervasive levels of false or misleading information that is reaching ever wider audiences in new and often insidious ways. The human rights implications of misinformation and disinformation have been further amplified as the quantity, availability and speed in which false and misleading information can spread have rapidly increased in the last decade or so.

States' responses to the problems of misinformation and disinformation have often been inadequate and detrimental. On one hand, many States have adopted repressive measures, such as censorship and criminalization of what is deemed "fake news", despite their counterproductive effects and impact on the right to freedom of expression. On the other hand, States have failed to get a grip on the mechanics behind the viral spread of false and misleading information, specifically by failing to ensure human rights oversight over how social media platforms operate. For their part, social media companies have failed to uphold their responsibilities to respect human rights while countering misinformation and disinformation.

Instead of criminalising or otherwise silencing people to address misinformation and disinformation, States should step up their efforts to ensure credible, reliable, objective, evidence-based and accessible information is disseminated to all.

Amnesty International submits this document in response to the call for comments issued by the Office of the High Commissioner for Human Rights pursuant to General Assembly resolution 76/227 on "Countering disinformation for the promotion and protection of human rights and fundamental freedoms".