



# DISINFORMATION, PANDEMIC, AND HUMAN RIGHTS

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# **DISINFORMATION, PANDEMIC, AND HUMAN RIGHTS**

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Human Rights

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# INTRODUCTION

Disinformation has emerged as a concerning phenomenon globally, viewed as a threat to one of the basic elements of the democratic system: elections.<sup>1</sup> In October 2019, this Office of the Special Rapporteur for Freedom of Expression issued a document with recommendations and good practices specifically for electoral processes.<sup>2</sup> During 2020, this concern extended to matters of public health as a result of the pandemic of the SARS-CoV-2 virus, which causes the illness known as COVID-19. In this context, the Inter-American Commission on Human Rights (IACHR) created the Rapid and Integrated Response Coordination Unit for the COVID-19 pandemic crisis (SACROI COVID-19),<sup>3</sup> the aim of which is to address the multiple human rights challenges exacerbated by the pandemic.

The point of entry of this analysis is the inflection point at which we currently find freedom of expression in the region. As the IACHR recently indicated, this inflection point is characterized by “the widespread erosion of public debate” and “the potential spillover of online violence into physical spaces, with a certain capacity for harm; attempts to control the public discourse through disinformation and misinformation; and compatibility dilemmas between the processes, decisions, and business models of private companies and democratic and human rights standards. This is a regional challenge that affects all the States of the Americas, poisons much of their internal deliberations, and will test their future electoral processes and the strength of their institutions.”<sup>4</sup> This document is in the framework of this organizational effort and is structured as follows:

The first part describes the phenomenon of disinformation in the more general framework of the restrictions on fundamental rights adopted in the context of the pandemic by the majority of the States of the region. In this regard, the first part reviews the strict juridical standards required by the Inter-American system for restrictions on fundamental rights—including during emergencies—to be legitimate.

The second part reviews the juridical approach to disinformation adopted by the Office of the Special Rapporteur in 2019, while the third part applies these general principles to the current situation of the pandemic and the states of emergency. The issue is approached from different viewpoints. On one hand is the standard of “legitimate objective” that could justify restricting fundamental rights under the principles of necessity, suitability, and proportionality. Another approach is developed based on the concept of *harm to health*, which, in the context of the pandemic, must be part of any analysis of proportionality and in the absence of which State reactions cannot be defended as legitimate. Also addressed are positive approaches that do not restrict rights, such as State obligations to guarantee access to public information that, in this context, take on certain special characteristics and specifications, and the obligation to promote “digital literacy” measures.

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<sup>1</sup> Ver, p.ej., AG/OEA, «Resoluciones aprobadas», 6/6/2018, dónde la Asamblea General de la OEA pidió a la CIDH producir una «Guía de buenas prácticas» en materia de desinformación y elecciones.

<sup>2</sup> CIDH, «Guía para garantizar la libertad de expresión frente a la desinformación deliberada en contextos electorales». Relatoría Especial para la Libertad de Expresión de la Comisión Interamericana de Derechos Humanos, Washington D.C. 17 de octubre de 2019.

<sup>3</sup> Ver [http://www.oas.org/es/cidh/SACROI\\_COVID19/](http://www.oas.org/es/cidh/SACROI_COVID19/)

<sup>4</sup> CIDH, «La CIDH advierte un punto de inflexión de la libertad de expresión en internet y convoca a diálogo en la región». Comisión Interamericana de Derechos Humanos, Washington D.C. 26/21. 5 de febrero de 2021.



The fourth part looks at the issue of actions to moderate Internet content that, during 2020, have played a predominant role in the responses of intermediary platforms to disinformation. In addition to describing the main characteristics of this novel and constantly evolving phenomenon, some general obligations are reviewed that companies must adhere to in order to ensure their actions are respectful of international human rights standards.

Lastly, the fifth part addresses the central question of the challenges posed to the public democratic debate by the Internet's horizontal communications environment, especially with regard to the role of professional journalism, which is offered as a possible "solution" to the problem of disinformation, but that nevertheless is facing a crisis in terms of its model for sustainability and therefore requires the development of a sustainable production and management model in the context of multiple crises. The document concludes with a series of recommendations for relevant actors.

## CHAPTER 1

# CONCURRENT EMERGENCIES AND THE EROSION OF THE RULE OF LAW

In most States of the region, the COVID-19 pandemic has led to constitutional declarations of emergency that aim to protect public health by restricting fundamental rights on the grounds that doing so was necessary to limit or control the spread of the virus and adjust the State response to the imminent and unforeseen circumstances produced by the pandemic. One of the measures commonly adopted in this context in response to the characteristics of this pandemic in particular was limiting the right to the free circulation of persons. Restrictions on large gatherings, the closure of certain public spaces (restaurants, cinemas, theaters, among others), limits on public transportation, or more extreme measures like the different degrees of quarantine (social isolation, shelter in place, etc.) are some of the common ways the States of the region have responded.

These declarations of emergency have been implemented in different ways: sometimes through the exercise of the ordinary authorities of public officials, while in other cases through special authorities recognized under domestic law. In many cases, these restrictions have led to the concentration of the decision-making process in executive branches.<sup>5</sup> Many of the legislative branches of the region have had to limit their agendas and adjust how they operate, for example by using virtual tools, which generally require changes to rules of procedure. Such actions led to unusual situations that affected the normal operations of legislative branches and almost all the countries of the region.<sup>6</sup> The judicial branch has also been affected. On this point, and in view of the institutional impacts of the pandemic from its beginning, the IACHR recalled "the fundamental role of the independence and of the actions of the public authorities and oversight institutions, in particular of the judiciary and the legislature, whose operations must be assured even in the context of a pandemic."<sup>7</sup> In sum, although the exceptional nature of the pandemic would justify executive branches increasing their room to maneuver, it is also true that doing so weakens the brakes and institutional balances, thus increasing the executives' margin for discretion and posing a challenge to the validity of the rule of law.

Concentrating power in the executive branch poses a serious problem from the perspective of Inter-American standards, which require all restrictions on human rights to be established by law, both formally and materially.<sup>8</sup> Although the IACHR has

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<sup>5</sup> M. Alegre y otros, «Cuidar la vida y la Constitución: La limitación de derechos durante la emergencia». Instituto de Investigaciones Jurídicas y Sociales A. L. Gioja, Buenos Aires, Argentina. 1. 13 de julio de 2020; O. GROSS; F. N. AOLAÍN, *Law in Times of Crisis: Emergency Powers in Theory and Practice*, 1st, Cambridge University Press, Cambridge, 2006, pág. 8 («Crises tend to result in the expansion of governmental powers, the concentration of powers in the hands of the executive, and the concomitant contraction of individual freedoms and liberties»); R. Uprimny, *¿Una ley estatutaria para enfrentar la pandemia?*, DEJUSTICIA, 19/07/2020, disponible en <https://www.dejusticia.org/column/una-ley-estatutaria-para-enfrentar-la-pandemia/> Fecha de consulta: 21/julio/2020.

<sup>6</sup> Cf. FDL; ParlAmericas, «COVID-19: El desafío de adaptar y fortalecer el rol de los Congresos». Fundación Directorio Legislativo & ParlAmericas, Buenos Aires, Argentina. abril de 2020.

<sup>7</sup> CIDH, «Pandemia y derechos humanos». Comisión Interamericana de Derechos Humanos, Washington D.C. Resolución 1/2020. 10 de abril de 2020. Pág. 6.

<sup>8</sup> *Ibid.*, párr. 3.g («...el derecho internacional impone una serie de requisitos—tales como el de legalidad, necesidad, proporcionalidad y temporalidad...»); Corte IDH, *Opinión Consultiva 6/86. La expresión «leyes» en el artículo 30 de la Convención Americana sobre Derechos Humanos*, Serie A 6. (May 9, 1986).

recognized that challenges like this pandemic can justify restricting some rights, it has also recalled that such restrictions cannot be disproportionate.<sup>9</sup>

Regarding states of exception, the IACHR recalled that States must:

“(…) Ensure that any and all restrictions or limitations placed on human rights to protect health in the context of the COVID-19 pandemic comply with the requirements of international human rights law. In particular, such restrictions must comply with the principle of legality, be necessary for a democratic society and therefore be strictly proportionate to achieving the legitimate purpose of protecting health. Ensure that if a state of emergency is declared: i) it must be stated that an exceptional emergency situation does exist, the seriousness, imminence and intensity of which represent a real threat to the independence and security of the State; ii) the suspension of some rights and guarantees is only for a period of time strictly limited to the requirements of the situation; iii) the measures taken are proportionate, that suspension of rights or guarantees is the only means of addressing the situation, and that it cannot be dealt with by the use of the regular powers of government, and that the measures taken do not cause greater harm to the right that is suspended in comparison with the benefit obtained; and iv) the measures taken are not incompatible with other obligations under international law and do not entail any type of discrimination on the basis of, in particular, race, color, sex, language, religion or social origin.”<sup>10</sup>

Freedom of expression is affected in numerous ways by the pandemic and by the emergency measures adopted to fight it. Thus, the restriction on the free circulation of persons prevents or complicates—in the event of exceptions—journalists’ ability to report or contact sources of information. Although journalism is an activity that is generally respected as essential and exempt from social distancing measures, general restrictions on circulation still pose an obstacle. At the same time, the closure of certain private establishments —like cinemas and theaters— may also impact the right to freedom of expression directly, as these are essentially channels of expression being closed. Perhaps one of the most direct ways in which the restrictions have impacted freedom of expression is by limiting the right of assembly and the right to demonstrate and petition authorities, which, in the American Convention, are explicitly guaranteed by Article 15. Although this right can be restricted for reasons of public health—a circumstance provided for explicitly in the text of the Convention—the link to freedom of expression is a close one in this case. Freedom of expression guarantees citizens’ right to express themselves through peaceful demonstrations, and limits on the right of assembly directly impact their ability to do so.

In this regard, it is worth recalling (as will be discussed later in this document) the general principles of legality, necessity, suitability, and strict proportionality based on which the necessity of restrictions on fundamental rights are judged. From this point of view, it is crucial to recall that measures restricting the circulation of persons and measures specifically limiting the right of assembly for purposes of political expression deserve strict scrutiny that considers the degree to which the right involved is impacted and the benefit to the public interest sought in exchange. The emergency

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<sup>9</sup> CIDH, “Pandemia y derechos humanos”, cit., pág. 6 («...el rol crítico de la prensa, el acceso universal a Internet a través de las fronteras, la transparencia y el acceso a la información pública respecto de la pandemia y las medidas que se adoptan para contenerla y enfrentar las necesidades básicas de la población, así como la preservación de la privacidad y la protección de datos personales de las personas involucradas»).

<sup>10</sup> CIDH, “Pandemia y derechos humanos”, cit., párrs. 20-21.

authorities invoked by the governments of the region in addressing the challenges posed by the pandemic cannot be abused, as doing so would erode the very foundation of the Rule of Law and jeopardize the soundness of the democratic systems of the region. Therefore, emergency contexts justifying restrictions on rights must be subjected to constant scrutiny and regular review of the factual basis initially justifying the restrictions, which cannot extend over time without limits.

## CHAPTER 2

# DISINFORMATION AND FREEDOM OF EXPRESSION

The IACHR has previously noted that disinformation involves the mass dissemination of false information circulated (i) knowing it is false and (ii) with the intention of deceiving the public, in whole or part.<sup>11</sup> It is a complex phenomenon that has without question evolved in recent years with the expansion of the use of the Internet and the emergence of large intermediary actors with a large portion of the information flow circulating through them.

Historically speaking, disinformation emerged forcefully in recent years in the context of elections. Multiple studies have revealed disinformation campaigns in recent years,<sup>12</sup> although there is no solid evidence on their impacts.<sup>13</sup> The causes of the phenomenon are also under investigation: political polarization<sup>14</sup> and Internet business models based on exploiting personal information<sup>15</sup> have been identified as potential causes of a phenomenon that is still not yet fully understood. Likewise, there seems to have been a clear link between disinformation and other deeper phenomena like, for example, the "epistemic" crisis that many democracies appear to be

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- <sup>11</sup> Cf. C. Botero Ignacio Álvarez, Eduardo Bertoni, Catalina Botero, Edison Lanza (eds.) («La regulación estatal de las llamadas "noticias falsas" desde la perspectiva del derecho a la libertad de expresión», en *Libertad de expresión: A 30 años de la Opinión Consultiva sobre la colegiación obligatoria de periodistas*, 1a, Comisión Interamericana de Derechos Humanos, Washington D.C., 2017, (OAS. Documentos oficiales ; OEA/Ser.D/XV.18)), 69. Ver también M. Verstraete; D. E. Bambauer; J. R. Bambauer («Identifying and Countering Fake News». Social Science Research Network, Rochester, NY. ID 3007971. 1 de agosto de 2017.); CIDH ("Guía para garantizar la libertad de expresión frente a la desinformación deliberada en contextos electorales", cit.) Esta definición permite distinguir a la desinformación de la *sátira* (información falsa protegida por la libertad de expresión, porque no tiene fin de engañar) y de la *propaganda* (que implica un discurso que busca persuadir a las personas para actuar o pensar de determinada manera, pero que no necesariamente tiene que estar basado en información falsa). Pero debe tomarse como una definición provisoria: el fenómeno de la desinformación es dinámico y cambiante y no puede ser capturado en una definición acotada y permanente.
- <sup>12</sup> H. Allcott; M. Gentzkow, «Social Media And Fake News In The 2016 Election», JOURNAL OF ECONOMIC PERSPECTIVES, vol. 31, 2, 2017, Disponible en <http://pubs.aeaweb.org/doi/10.1257/jep.31.2.211>; Civil Liberties Union for Union; Access Now; EDRI, «Informing the "Disinformation" Debate». Civil Liberties Union for Union, Access Now and EDRI. 18 de octubre de 2018; Cf. R. Faris y otros, «Partisanship, Propaganda, and Disinformation: Online Media and the 2016 U.S. Presidential Election». Harvard University, Berkman Klein Center for Internet & Society. 2017; M. Isaac; K. Roose, «Disinformation Spreads on WhatsApp Ahead of Brazilian Election», THE NEW YORK TIMES, 19/10/2018, disponible en <https://www.nytimes.com/2018/10/19/technology/whatsapp-brazil-presidential-election.html> Fecha de consulta: 22/octubre/2018.
- <sup>13</sup> Ver, p.ej., H. Allcott; M. Gentzkow, "Social Media and Fake News in the 2016 Election", cit.; A. Guess; B. Lyons, *Fake news, Facebook ads, and misperceptions*, Working paper, 2018.
- <sup>14</sup> *Network propaganda: manipulation, disinformation, and radicalization in American politics*, Oxford University Press, New York, NY, 2018.
- <sup>15</sup> Cf. D. Ghosh; B. Scott, «Digital Deceit: The Technologies Behind Precision Propaganda on the Internet». New America, Washington D.C. enero de 2018; A. Marwick; R. Lewis, «Media Manipulation and Disinformation Online». Data & Society Research Institute. 2017.

experiencing.<sup>16</sup> The phenomenon of disinformation is impossible to understand without taking these more universal trends into account, which manifest themselves in the popularity of certain conspiracy theories or the growth of anti-science social movements, like flat earthers or the anti-vaccine movement.

The phenomenon of disinformation is also emerging in the framework of profound changes in information and content consumption habits, driven by technological changes in the network itself—with its steadily increasing speeds—and in the types of “devices” people use to stay informed. While people have for years consumed content through devices with which they interacted on a daily but limited basis, people now access a constant stream of information through their mobile phones, with which they have a much closer relationship than they did with television, radio, or print media.

This cultural change produces an “acceleration” of the production and dissemination of information, which has radically changed the scale of the global conversation and worsened the problem of the “attention challenge,” the result of when information proliferates and becomes more difficult to process. A number of the problems or challenges that today seem urgent are related to this phenomenon; disinformation is only one of them. Others include the so-called “filter bowls” or “echo chambers” that enable people to “close themselves into” worlds of communication in which the only information and perspectives circulating are those with which they would be in agreement. However, not enough is known about all these phenomena, and a number of studies have produced contradictory or inconclusive findings. In any case, the “attention economy” built on the challenge posed by the “excess” of information seems to be behind these phenomena.

Another point of concern for the IACHR and its Office of the Special Rapporteur in this scenario is that public persons and relevant political leaders try to exploit this phenomena, either through highly directional advertising—that may or may not have negative connotations—or through the use of institutional or other mass media channels to reproduce false, misleading or biased information for political interests. This is a serious problem: when disinformation campaigns are promoted by public officials, either directly or indirectly, openly or surreptitiously, these officials are failing in the obligations they have to take special care when exercising the right to freedom of expression, as the IACHR recalled years prior.<sup>17</sup> Additionally, the IACHR recently underscored that “those who take part in debates of general interest participate in a public arena that they are also called upon to protect. While the exchange of arguments and the public voicing of disagreements enrich the debate, violence and hate speech erode the democratic system.”<sup>18</sup>

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<sup>16</sup> Cf. Y. BENKLER; R. FARIS; H. ROBERTS, *Network propaganda*, cit., pág. 6 (hablando de crisis epistémicas); W. L. Bennett; S. Livingston, “The disinformation order”, cit., pág. 127 (atribuyendo el problema al «quiebre de la confianza de las instituciones democráticas de la prensa y la política»); S. Bradshaw; P. N. Howard, «Challenging Truth and Trust: A Global Inventory of Organized Social Media Manipulation». Oxford Internet Institute, Oxford. 2018.

<sup>17</sup> CIDH, «Marco jurídico interamericano del Derecho a la Libertad de Expresión». Relatoría Especial para la Libertad de Expresión de la Comisión Interamericana de Derechos Humanos. OEA/Ser.L/V/II CIDH/RELE/INF. 2/09. 30 de diciembre de 2009., párr. 199 y ss.

<sup>18</sup> CIDH, “La CIDH advierte un punto de inflexión de la libertad de expresión en internet y convoca a diálogo en la región”, cit.



## CHAPTER 3

# DISINFORMATION AND PUBLIC HEALTH

During the COVID-19 pandemic, that began toward the end of 2019 and that took over the world in the years that followed, disinformation once again emerged as a serious problem. If during some of the recent electoral processes disinformation had posed a threat to democratic systems, during the pandemic this risk was associated with State's capacity to design and implement efficient public health responses and the consequences for public health of the dissemination of false guidance and ineffective or even harmful remedies.

First of all, protecting public health from a threat like COVID-19 is a legitimate objective from the perspective of inter-American human rights standards. The protection of "public health or morals" is a phrase that numerous of the rights clauses in the American Convention use explicitly and consistently, including Article 13. This legitimate objective does not, however, grant authorities *carte blanche* to do what they want, and no legitimate objective does. Rather, it is a step in the required "tripartite test" that the inter-American system and its organs use to weigh restrictions on the human rights they are bound to protect. Also, any restriction must be established formally and materially by law,<sup>19</sup> and the restriction must be necessary in a democratic society. This latter step in the analysis is generally itself divided into three additional and concordant analyses, on suitability, on necessity or narrowness, and on strict proportionality.<sup>20</sup> These additional steps are crucial for properly weighing the restrictions and their relationship to the facts justifying them.

Thus, for instance, one of the IACHR's main concerns in this regard has been the restrictions on the right of assembly in the context of the pandemic, that directly affect their freedom of expression by limiting or directly prohibiting public demonstrations. Following the three-part test, from a perspective of *suitability*, it is, in principle, correct to hold that the measure is suitable for achieving the public health objectives involved, related to reducing infections and the rate thereof. However, it is worth asking if there are *narrower* alternative measures that have less of an impact on the right to freedom of expression. Thus, for example, in some countries, demonstrations were allowed, but with restrictions: They had to be in open air spaces with people maintaining distancing between each other.<sup>21</sup>

In terms of the analysis of strict proportionality, not all restrictions on social gatherings have a similar impact from a human rights perspective. From the perspective of the American Convention, social meetings with private purposes (e.g., celebrating a birthday) or a football game do not have the same value as the right of citizens to demonstrate publicly or the right of children to receive an adequate education. This type of analysis cannot be done in the abstract, but it is essential to remind government authorities in the region that not only must they aim for measures that are suitable, but also ensure the restrictions impact the right involved as little as possible. They must also

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<sup>19</sup> Corte IDH, *Opinión Consultiva 6/86. La expresión «leyes» en el artículo 30 de la Convención Americana sobre Derechos Humanos*, cit.

<sup>20</sup> CIDH, «Marco jurídico interamericano del Derecho a la Libertad de Expresión». Relatoría Especial para la Libertad de Expresión de la Comisión Interamericana de Derechos Humanos. OEA/Ser.L/V/II CIDH/RELE/INF. 2/09. 30 de diciembre de 2009, párrs. 86-88.

<sup>21</sup> Abadolu Agency, *Anti-government protest in Israel*, ANADOLU AGENCY, 19/04/2020, disponible en <https://www.aa.com.tr/en/pg/photo-gallery/israelis-protest-government-keeping-social-distancing-/0> Fecha de consulta: 16/noviembre/2020.

balance the degree of the impact against the importance of the right when evaluating the preponderance of the objectives sought by the restrictive measures.<sup>22</sup>

In the context of the pandemic, the Office of the Special Rapporteur<sup>23</sup> received reports about situations in which—for example—criminal law was intended to be used to threaten citizens who shared certain information arbitrarily tagged as false on social media. Likewise, in some cases, the Office of the Special Rapporteur observed cases of dissemination of official information of questionable veracity by public leaders. In some countries, there have been draft bills seeking to adopt regulatory frameworks restricting the right to freedom of expression. In many cases, such initiatives, according to the information received, were allegedly aimed at limiting information of journalists, opinion leaders or activists who criticized the government's management of the pandemic. For the IACHR and its Office of the Special Rapporteur, these types of direct restrictions on freedom of expression in response to the pandemic that seek to deter the spread of disinformation by imposing disproportionate or unnecessary limitations in a democratic society should be rejected since they have a negative impact on the search for, dissemination and reception of information of high public interest during a global health crisis, as well as on the right to freedom of expression. There are at least three reasons for this.

First, only in the most extreme cases is it possible to make a relatively simple determination as to whether information is clearly false or not. A typical example of this has been the false recommendation to drink "detergent" to combat the virus. Aside from these obvious cases, most of the time, tagging specific information or opinions as true or false can be very complex. And this complexity does not mix well with restrictive and punitive regulatory measures. This same complexity leads to mistrust in those who quickly classify content as false, interpreting it as a situation in which they may have an interest or responsibility. Professional journalism has worked with very few resources to develop fact-checking units and information verification efforts, applying them to statements in the public interest.<sup>24</sup> A look at these pages will find a vast number of variables separating true content from false content.

These types of measures are also not advisable for situations in which there is a lack of knowledge on the central factual aspects of the matter about which the disinformation is circulating. This is especially clearly the case for the pandemic. What was known – especially in the early months and even the first year of the pandemic – about the COVID-19 was limited and imperfect, and even scientists and health authorities have continued to regularly review the evidence available when making decisions. Essential aspects of the current crisis like the mode of infection, the risks posed by different activities, the effectiveness of palliative measures or vaccines were open for debate, and much was learned in the process. This virtuous process was possible because there was

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<sup>22</sup> CIDH, "Marco jurídico interamericano del Derecho a la Libertad de Expresión", cit., párrs. 88-89.

<sup>23</sup> Cf. <https://www.poynter.org/ifcn/anti-misinformation-actions/>

<sup>24</sup> Existen diversas redes de agencias verificadoras o "fact-checkers". La principal a nivel global, que establece también estándares profesionales, es la International Fact-Checking Network (IFCN). En América Latina, la desinformación en procesos electorales y la pandemia del SARS-CoV-2 también parecen haber empujado a los verificadores locales, quienes están en contacto entre sí y han formado parte de redes regionales. Ver p.ej., <https://ojo-publico.com/1727/verificadores-de-15-paises-de-latinoamerica-se-unen-contra-infodemia>.

a reasonable margin for freedom of expression within the scientific community that allow for the sharing of information, discussion of alternatives, and comparing evidence. Not only must this process not be limited, it should be encouraged. Not only does open debate enhance scientific knowledge, it is a necessary condition for it to make progress.

From the perspective of States, actions to raise awareness on and disseminate information *in line with current scientific evidence* are more effective at combating disinformation than punitive actions, which are not only inefficient at reducing the spread of false information but may be counterproductive.<sup>25</sup> Effectively, the available information about false beliefs in health matters suggests that the best strategy for combating this problem is proactive communication of information processed in good faith, with due diligence to establish its veracity, and with the intention of contributing to the public debate, premises which are all in harmony with what the recommendations of the Special Rapporteur for Freedom of Expression in electoral matters<sup>26,27</sup>

This reasoning would suggest against direct restrictions, but to a certain extent, indirect restrictions are inevitable. Such restrictions must be weighed based on the aforementioned standards of the tripartite test. However, there is one aspect that deserves special consideration due to the prevalent role it has played in the public debate: this is the issue of the *harm* to health that seems to be at the center of concerns over disinformation in the context of the pandemic. The concept of *harm* is not an autonomous elements in the analysis of proportionality and the evaluation it requires, but it is an essential part of the legitimate objective that States pursue with restrictions on fundamental rights, an aspect that is also included in the Inter-American Convention where it speaks—as it does in Article 13—of “respect for the rights... of others.” Thus, preventing harm to the health of others is an objective that the state can and should pursue.<sup>28</sup> However, it is important for this harm to also be weighed as part of the general analysis of proportionality. From this point of view, it is clear—and the evidence continues to mount as the weeks go by—that the harm the virus does to the health of children or young people is not the same as the harm it causes to older adults. This difference must be weighed when, for example, adopting different measures to deal with diverse situations and actors, such as older adults or children.

One issue that is central and that emerged through a consultation process carried out in preparing this document has to do with the State’s production of good-quality information to combat the phenomenon of disinformation. Effectively, the right of access to information is a fundamental and autonomous right under the American

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<sup>25</sup> Sobre esta cuestión, ver J. A. Whitson; A. D. Galinsky («Lacking Control Increases Illusory Pattern Perception», *SCIENCE*, vol. 322, 5898, 2008, Disponible en <https://www.sciencemag.org/lookup/doi/10.1126/science.1159845>); jolley2014; S. E. Gorman; J. M. Gorman (*Denying to the Grave: Why We Ignore the Facts That Will Save Us*, Edición: 1, Oxford University Press, Oxford; New York, 2016.) (analizando disintas facetas del problema del discurso “anticientífico” en los últimos años, y discutiendo estrategias para combatirlo).

<sup>27</sup> CIDH, “Guía para garantizar la libertad de expresión frente a la desinformación deliberada en contextos electorales”, cit., págs. 18-19.

<sup>28</sup> El artículo 10 del Protocolo de San Salvador resguarda de manera expresa el derecho a la salud de la población.

Convention.<sup>29</sup> It establishes different obligations for States, including obligations of "active transparency" and the obligation to produce and collect information under certain circumstances. This right is fundamental for framing how States respond when providing good-quality information to citizens because, as stated previously, the proactive production of good-quality information continues to be, to this day, one of the most efficient tools for combating disinformation.

The main focus of a strategy for producing official information must be providing good-quality and trustworthy information, something that can be difficult unless processes for collecting and reporting that information are well-designed. This was somewhat the case in a number of countries in the region with regard to figures on the number of dead and the number of people infected, problems that appear to have been the result of failures in administrative processes for collecting information and the different criteria for designating or identifying cases or causes of death. Such difficulties are normal, but it is crucial that States be transparent about them from the start. In this regard, it is ideal that these difficulties are included in the communications from the start, as it is crucial to understand fully the decision-making process. In this regard, this objective—that citizens be able to see how the representatives make decisions that directly impact their rights and their daily lives—is the primary one, and the right to access to information provides a tool that is especially useful for this purpose. The whole decision-making process must be transparent and verifiable for citizens. This strategy is also in line with the approach that the World Health Organization (WHO) takes to pandemics, in which "early warnings" are among the recommended strategies.<sup>30</sup> Public communications must be issued with all "candor and comprehensiveness" as "people are more likely to overestimate the risk if information is withheld."<sup>31</sup> The opacity of the work States do, along with the fear and anxiety that pandemics produce among citizens, lead to an especially fertile environment for disinformation.

The right to access to public information has much to contribute to this communications strategy, especially through its three elements. First, the obligations of active transparency and to produce information are crucial for complying with the objective of keeping citizens informed. This means it is important to identify the type of information that must be produced, its level of disaggregation, and the regularity and rate of updates to it. Second, open data—access to the "raw data"—also offers a useful transparency tool, as access to this type of information can put more eyes on the facts and produce different interpretations, adding to the public debate.<sup>32</sup> Third, it is important for the authorities to be transparent with regard to the predictive models they use when making decisions to relax or increase restrictions. Indeed, in recent months, a number of the predictive models used to predict the course of infections have turned out to be mistaken. States are not required to develop predictive models that are 100% effective or accurate, which would be very difficult. However, they are required to

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<sup>29</sup> CIDH, «El acceso a la información en el marco jurídico interamericano». Comisión Interamericana de Derechos Humanos. 2010, párrs. 95 y ss.

<sup>30</sup> OMS, «Normas de comunicación de brotes epidémicos de OMS», 2005.

<sup>31</sup> *Ibid.*, pág. 3.

<sup>32</sup> Cf. CIDH, "El acceso a la información en el marco jurídico interamericano", cit., párr. 81.

explain how they function and the premises and assumptions on which they are based so citizens can review them and raise questions where needed.

One fundamental aspect of official communications on matters of public health must be the quality of the information released. In this regard, the IACHR has called for “special care when making statements or declarations about the evolution of the pandemic. In current circumstances, it is the duty of the authorities to inform the population, and as they do so, they must act with diligence and give reasoned reports that are science-based. They should also remember that they are exposed to greater scrutiny and to public criticisms, even during special periods.”<sup>33</sup> This point is especially important considering that in many countries of the region, public officials—sometimes, high-ranking authorities—made controversial statements from a scientific, medical and epidemiological perspective given the time at which they were issued and those giving voice to them:<sup>34</sup> proposals for skipping the normal approval processes for drugs and treatments,<sup>35</sup> recommending untested or home remedies,<sup>36</sup> and even encouraging risky behavior, like gatherings.<sup>37</sup> From this perspective, it should be recalled that these special obligations that apply to public officials mean they must not only provide truthful information but avoid making statements that put others at risk.

Lastly, if the proper response to a crisis of disinformation on public health is the early dissemination of truthful information, it is essential for these communications actions to be accompanied by proper digital literacy strategies to help the citizens of the Americas efficiently navigate the Internet’s complex information environment. In this regard, if public policies must guarantee access to the Internet,<sup>38</sup> it is equally important for these policies to combine the process of connecting people to the Internet with actions aimed at raising awareness and teaching people how to use it and understand how it functions

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<sup>33</sup> CIDH, “Pandemia y derechos humanos”, cit., párr. 34.

<sup>34</sup> Sobre esto, ver J. S. Brennen; F. M. Simon; P. N. Howard; R. K. Nielsen, «Types, Sources, and Claims of COVID-19 Misinformation». Oxford Internet Institute, Oxford. abril de 2020. Pág. 1.

<sup>35</sup> S. Owerhohle, «*Bad advice from the president*»: *Trump touts unproven coronavirus drugs*, POLITICO, 19/03/2020, disponible en <https://www.politico.com/news/2020/03/19/trump-slash-red-tape-to-find-coronavirus-drugs-137575> Fecha de consulta: 23/julio/2020.

<sup>36</sup>T. Haelle, *Man Dead From Taking Chloroquine Product After Trump Touts Drug For Coronavirus*, FORBES, 23/03/2020, disponible en <https://www.forbes.com/sites/tarahaelle/2020/03/23/man-dead-from-taking-chloroquine-after-trump-touts-drug-for-coronavirus/> Fecha de consulta: 23/julio/2020; Infobae, *Las 7 recomendaciones de Bolsonaro para conseguir «la soñada inmunidad» contra el coronavirus*, INFOBAE, 17/05/2020, disponible en [/america/america-latina/2020/05/17/las-7-recomendaciones-de-bolsonaro-para-conseguir-la-sonada-inmunidad-contra-el-coronavirus/](https://www.infobae.com/america/america-latina/2020/05/17/las-7-recomendaciones-de-bolsonaro-para-conseguir-la-sonada-inmunidad-contra-el-coronavirus/) Fecha de consulta: 23/julio/2020.

<sup>37</sup> El Observador, *Bolsonaro vuelve a arengar simpatizantes y causa aglomeración en medio de la pandemia*, EL OBSERVADOR, 31/05/2020, disponible en <https://www.elobservador.com.uy/nota/bolsonaro-vuelve-a-arengar-simpatizantes-y-causa-aglomeracion-en-medio-de-la-pandemia-202053116624> Fecha de consulta: 23/julio/2020; Infobae, *Alberto Fernández recomendó tomar bebidas calientes contra el coronavirus: la opinión de los especialistas*, INFOBAE, 12/03/2020, disponible en [/america/tendencias-america/2020/03/12/alberto-fernandez-recomendo-tomar-bebidas-calientes-contra-el-coronavirus-la-opinion-de-los-especialistas/](https://www.infobae.com/america/tendencias-america/2020/03/12/alberto-fernandez-recomendo-tomar-bebidas-calientes-contra-el-coronavirus-la-opinion-de-los-especialistas/) Fecha de consulta: 23/julio/2020.

<sup>38</sup> CIDH, «Estándares para una Internet libre, abierta e incluyente». Relatoría Especial para la Libertad de Expresión de la CIDH, Washington D.C. INF.17/17. 2017. Párr. 32 y ss.

so they can enjoy its advantages as much as possible and protect themselves from some of its most serious risks.

## CHAPTER 4

# CONTENT MODERATION



Partly as a reaction to demands for more "accountability," the large intermediary platforms handling the flow of the Internet's information have in recent years modified their policies on content moderation, classifying "disinformation" as questionable and prohibited speech that can fit under their criteria of what is acceptable and what is not in their virtual spaces.

These actions are not free of problems that pose challenges to freedom of expression standards. First, right now, the definition of these criteria is covered by the intellectual property rights that platforms have to their products, expressed in the language of private law as *terms and conditions* or *community guidelines*. This poses challenges, because while users utilize these services as channels for exercising their freedom of expression on multiple facets of social life, on many occasions they also use it to disseminate public interest content.

The companies themselves seem to be using public criteria and revising their own policies in accordance with international standards on freedom of expression, although the legal basis for doing so is tenuous. These days, attempts to moderate content take the form of self-regulation and are influenced by external actors.<sup>39</sup> Although it is difficult to foresee how this matter will develop over time, recent years have seen steady pressure at least for more transparency and accountability.<sup>40</sup> In any case, and given the impact that regulatory actions have on the public debate, international human rights standards must be taken into account. As the Office of the Special Rapporteur has stated, "Private actors must also establish and implement service conditions that are transparent, clear, accessible, and consistent with international human rights standards and principles, including the conditions that might give rise to infringements of users' rights to freedom of expression or privacy. Companies must seek to ensure that any restriction derived from the application of the terms of service does not unlawfully or disproportionately restrict the right to freedom of expression."<sup>41</sup> Indeed, "corporations should undertake to respect and promote freedom of expression in their internal policies, product engineering, business development, staff training, and other relevant internal processes."<sup>42</sup>

In this context, some of the trends observed in recent months surrounding the pandemic and disinformation should be noted. First, there has been an increase in moderation actions, with companies showing some willingness to exercise their prerogative more robustly and with transparent criteria, relatively speaking.<sup>43</sup> Recent months have seen efforts by companies to act in response to content presumed to be

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<sup>39</sup> Sobre este punto, ver C. Marsden; T. Meyer; I. Brown, «Platform Values And Democratic Elections: How Can The Law Regulate Digital Disinformation?», *COMPUTER LAW & SECURITY REVIEW*, vol. 36, 2020, Disponible en <http://www.sciencedirect.com/science/article/pii/S026736491930384X>.

<sup>40</sup> Ver <https://santaclaraprinciples.org/>

<sup>41</sup> CIDH, «Libertad de expresión e Internet». Comisión Interamericana de Derechos Humanos, Washington, DC. 2013. Párr. 112.

<sup>42</sup> CIDH, "Estándares para una Internet libre, abierta e incluyente", cit., párr. 97.

<sup>43</sup> J. D'Urso, *How the coronavirus pandemic is changing social media*, REUTERS INSTITUTE FOR THE STUDY OF JOURNALISM, 06/07/2020, disponible en <https://reutersinstitute.politics.ox.ac.uk/risi-review/how-coronavirus-pandemic-changing-social-media> Fecha de consulta: 10/julio/2020 («During the pandemic, social media companies have shown some signs of going further than before when it comes to removing content...»).

false, regarding both elections and matters related to disinformation. Second, in the context of COVID-19, the platforms have prioritized official communications, especially from global health authorities (like the WHO) and domestic health authorities, such as public health ministries or offices.<sup>44</sup> Third, the platforms have had to face a serious dilemma: how to respond to disinformation from official sources, which could be senior government officials. Fourth, there seems to have been a certain amount of social pressure for and greater tolerance of actions to moderate content, something that, again, is often seen in electoral matters in polarizing environments, contexts of social and political crises, as well as in matters related to the pandemic.

Given an environment in which moderation actions and demands for them appeared to have increased, it is important to recall the human rights standards that must guide these companies' actions.

First, inter-American human rights standards establish the need to ensure that intermediaries are not held liable for the content produced by their users in view of the "prior restraint" incentives such rules would produce.<sup>45</sup> At the same time, a recent discussion process known as the Santa Clara Principles on Transparency and Accountability in Content Moderation, launched in February 2018 and involving the participation of experts, NGOs, and digital rights defenders, established minimum criteria that companies must respect when moderating the content of their users.<sup>46</sup> This includes obligations to proactively publish quantitative information on the amounts of content removed; the obligation to notify users of the reasons for the decision to remove; and the need to establish internal "appeals" procedures to ensure these decisions can be reviewed. In late 2021, a coalition of civil society organizations and academia presented the second edition of the Santa Clara Principles. Among other things, in this second version, the revised principles incorporate standards for companies of varying size, resources, and scope, as well as principles directed at state

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<sup>44</sup> Las grandes plataformas intermediarias—Google, Facebook y Twitter, especialmente—han actuado en ese sentido. Cf. J. D'Urso (*Ibid.*) ("Social media companies' immediate response was to proactively promote health-related information from sources which it deemed more reliable"). Cuando uno busca "coronavirus" en Google el resultado es una página especial con información de fuentes confiables, incluyendo medios de comunicación, información agregada de acuerdo a la locación del usuario, información de autoridades sanitarias locales, etcétera. Sería difícil, por esa vía, llegar a información falsa. Facebook y Twitter, por su parte, también han actuado en el marco de la pandemia. En el caso de Facebook, la búsqueda del término también lleva a un *Coronavirus (COVID-19) Information Center* con acceso a consejos y fuentes oficiales de información. Ver [https://www.facebook.com/coronavirus\\_info](https://www.facebook.com/coronavirus_info). Y en Twitter, la búsqueda de información sobre el virus arroja como primer resultado a la cuenta del Ministerio de Salud de la Nación (Argentina, en este caso), bajo la promisoría invitación a "conocer los hechos". Ver [https://twitter.com/search?q=coronavirus&src=typed\\_query](https://twitter.com/search?q=coronavirus&src=typed_query).

<sup>45</sup> Cf. CIDH, "Libertad de expresión e Internet", cit., párrs. 92-94; CIDH, "Estándares para una Internet libre, abierta e incluyente", cit., párr. 102 y ss; OAS, OSCE, UN y ACHPR, «Declaración Conjunta sobre Libertad de Expresión e Internet», 1/6/2011, disponible en <http://www.oas.org/es/cidh/expresion/showarticle.asp?artID=849&IID=2>. Fecha de consulta: «Declaración conjunta sobre la libertad de expresión y el combate al extremismo violento», 4/5/2016, disponible en <http://www.oas.org/es/cidh/expresion/showarticle.asp?artID=1022&IID=2>. Fecha de consulta:

<sup>46</sup> Ver <https://santaclaraprinciples.org/>.

and government actors. The platforms appear to be implementing these general principles. One example of this is the recently<sup>4748</sup>.

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<sup>48</sup> CIDH, "Estándares para una Internet libre, abierta e incluyente", cit., párr. 98.

## CHAPTER 5

# THE CHALLENGES OF THE DEMOCRATIC PUBLIC DEBATE

Lastly, a point that seems worth highlighting arises from one of the main challenges for modern democracies going forward. This is the so-called epistemic crisis facing modern democracies, or at least many of them. Essentially, it is becoming impossible to establish common ground for public debate and determine decisively what is true and what is false.<sup>49</sup> This is a consequence of what Bennett calls the "breakdown of trust in democratic institutions of press and politics."<sup>50</sup> The challenge is precisely this: How to reestablish trust in the central institutions of representative democracy.

Professional journalism is an essential activity for democratic life, fundamental for the public debate and indispensable for ensuring the pandemic is handled with full respect for the rule of law. These missions historically assigned to journalism come just as the media is facing an especially severe crisis. While this is true globally, in the Americas, the crisis is particularly dramatic and is combined with long-running problems resulting from media systems with serious pluralism issues, weak transparency with regard to legitimate relationships between media companies and other sectors of the economy, and political loyalties that go undeclared or are not made sufficiently explicit for audiences. These variables mean that a significant number of voices have been historically excluded from the public debate. The migration of advertising revenue to the Internet has deepened and weakened this situation and accelerated its de-professionalization. The question of how to sustain, support, and empower indispensable professional journalism is a question that demands an urgent answer if the region's representative democracies aspire to emerge from this crisis stronger. In this context, there is an urgent need for reflection on possible alternatives on which the actors responsible for guaranteeing freedom of expression can agree. In order for this to happen, some of the boundaries framing this crisis must be identified.

First, in recent years, the Internet has captured a majority and growing portion of the advertising market, which had previously gone to other media outlets like television, radio, and print media. This migration to different media outlets has brought changes to the actors and to the influence of pre-existing actors. Powerful intermediary companies have attracted most of these funds, throwing the traditional 20th century journalism model that was based on selling advertisements into crisis. A number of solutions have been proposed, from changing copyright law to redistributing funding from intermediaries to information producers, and creating new payment models—in a handful of cases, in central countries—seems to have worked for a very small number of media outlets. In any case, there is no question that this transfer of resources affected the previous model, and that a sustainable model for professional journalism is crucial if journalism is to fulfill its role of "principal manifestation" of freedom of expression, understood as the "cornerstone" of a democratic society.<sup>51</sup>

Second, this global trend is combined with other problems endemic to Latin America. For example, state advertising has been used in the region to reward or punish media outlets for their editorial stances.<sup>52</sup> Not only such practices persist, their pernicious influence on professional journalism has increased as the private advertising market

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<sup>49</sup> Y. BENKLER; R. FARIS; H. ROBERTS, *Network propaganda*, cit.

<sup>50</sup> W. L. Bennett; S. Livingston, "The disinformation order", cit., pág. 127.

<sup>51</sup> Corte IDH, *La colegiación obligatoria de periodistas*, Serie A 5/85. Expediente No. 5/86 (Nov. 13, 1985).

<sup>52</sup> CIDH, «Principios sobre regulación de la publicidad oficial en el Sistema Interamericano de Protección de los Derechos Humanos». Comisión Interamericana de Derechos Humanos. 2010.

shrinks. In this context, it is worth emphasizing something that the Inter-American Commission and its Office of the Special Rapporteur have noted on numerous occasions: the need for clear regulatory frameworks that establish objective criteria for distributing State advertising budgets, with adequate transparency and accountability standards.

Third, professional journalism in the region has historically been subjected to dynamics of workplace informality, leading to low salaries and conditions that are not conducive to the exercise of journalism with security and independence. The weakening of media companies in the advertising market seems to have worsened this trend, and there is no evidence of new online advertising arrangements changing it. Along with how economically discouraging it can be for anyone to do journalism, in order to increase Internet traffic, a considerable number of media have chosen to alternate their good-quality journalism content with ephemeral posts that are attractive to audiences and earn some money. In practice, newsrooms have less and less resources for doing professional journalism and are tempted to mutate or incorporate ephemeral journalism content that tends toward clickbait. This mix of professional and ephemeral content—or transition to the latter—confuses audiences and lowers expectations of finding reliable information for understanding the news environment and how society functions.

Fourth, public nongovernment media can contribute to the ecosystem of the democratic public debate by including voices not affected by the advertising market, which is ultimately based on the popularity of certain content. Public media can put forward voices that tend to be excluded from the public debate, produce good quality content without needing to meet certain audience metrics, and develop long-term projects.<sup>53</sup> Unfortunately, this is not common practice in Latin America, where public media do not have adequate budgets and, when they do, are not sufficiently independent. In this regard, public media outlets are often government media outlets, that act as the official voice of a political faction rather than an independent and noncommercial voice of the public debate. Likewise, community and nonprofit media often operate without adequate official support, and often their informality makes it difficult for them to do their work.

Fifth, and partly as a consequence of the crisis facing the system, in recent years, many public and private programs have emerged to strengthen good quality journalism, especially in countries of the global north. The platforms that have benefited most from the advertising market's migration to the Internet have launched support programs like the Google News Initiative and the Facebook Journalism Project. Also, a number of European countries have established plans for supporting the industry, including extensive discussions on changing tax and copyright regimes to incentivize monetary transfers from Internet intermediary companies to journalism companies.

Sixth, the migration of the advertising market has also obviously led to a migration between information consumption platforms. Newspapers, radio stations, and television stations are increasingly read, listened to, and watched over the Internet. This shift in platforms also brings changes in how the information flows. The most notable change in this regard is that people often access this content not because they

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<sup>53</sup> OAS, OSCE, UN y ACHPR, «Declaración Conjunta sobre la independencia y la diversidad de los medios de comunicación en la era digital», 2/5/2018, disponible en <http://www.oas.org/es/cidh/expresion/showarticle.asp?artID=1100&lid=2> Fecha de consulta:

want to but because the information is shared through social contacts, content recommendation algorithms, or advertising. Specifically, the circulation of information on social media has multiplied the number of outlets that produce information, and this is part of the issue with disinformation. In this regard, universal access policies of the kind that the Office of the Special Rapporteur has encouraged on numerous occasions in the past must be balanced by actions to spread digital literacy so citizens can acquire the tools and skills they need to navigate the massive quantity of information available and that they receive in the communications ecosystem through social networks, digital media, and traditional outlets.

All of these elements have led to a profound crisis that the pandemic has laid bare. Although part of the solution to the challenge of deliberate disinformation is the existence of solid civil society institutions like the media that people trust, the question of financing is central. The media can only gain this trust if it can play its role independently, and that requires a sustainable business model. The breakdown of the advertising system that funded these operations during the 20th century means that institutional support is needed for designing, developing, and implementing measures to secure the sustainability of a robust and independent media ecosystem capable of fulfilling the role that professional journalism is expected to play in a democratic society. This requires the States of the region, as guarantors and responsible for the fundamental rights recognized in the American Convention on Human Rights, to develop initiatives aimed at ensuring this sustainability: new tax arrangements that redistribute advertising revenue so as to strengthen and empower local journalism; the establishment by law of clear criteria for distributing government advertising; and the development of public plans to positively impact the sustainability of professional journalism, with guarantees of nondiscrimination and in full adherence to the principle that States must not interfere in editorial content and decisions.

## CHAPTER 6

# LESSONS AND RECOMMENDATIONS



The Office of the Special Rapporteur understands that it will be useful to reiterate some of the conclusions of the Guide to guarantee freedom of expression regarding deliberate disinformation in electoral contexts (2019), as disinformation has not changed substantially during the pandemic, nor has the seriousness of the phenomenon nor the suitability of the measures needed to combat it proportionally and while respecting human rights. But it is possible to confirm some of the lessons learned.

First, it remains the case that providing early and good-quality information is the best tool for combating disinformation campaigns. Regarding public health, this means guaranteeing access to information and detailed active transparency policies that capture all relevant dimensions of the issue that could be exposed to disinformation campaigns.

Second, emergencies do not give States *carte blanche* to restrict rights however they want. Even in the most extreme cases, in which restrictions may be necessary, such determination must be made on a case-by-case basis and following the strict standards that the Inter-American system establishes in the form of the tripartite test. In this regard, the restrictions must be established by law, accomplish a legitimate and pressing State objective, and be necessary in a democratic society, meaning that they must be suitable, narrow, and strictly proportional.

Third, moderation actions taken by the large platforms must continue to be subjected to adequate public scrutiny. Four principles must be respected in this process: (a) transparency regarding numbers, data, cases; (b) clarity regarding criteria; (c) consistent application of principles; and (c) respect for due process and the right to appeal.

Recommendations are as follows:

## TO STATES

### Legislative branch

- *Avoid establishing regulatory frameworks that hold intermediaries responsible for content produced by third parties.* It continues to be the case that these types of approaches incentivize private actors to take a central role in the circulation of information that is contrary to freedom of expression and the free debate of ideas. Effectively, they would be inclined to remove more content to avoid being punished, thus impacting protected speech. Such regulatory approaches are difficult to administer because they are based on the false belief that determining what is true and what is false is simple. As described in this report, this is often not the case, and in matters of public health—which requires scientific judgment in the context of uncertainty—discovering the truth *requires* the free debate of ideas.
- *Strength in the legal frameworks on access to information, especially on active transparency.* As indicated in this report, the transparency of public actors in (a) contexts of a pandemic and (b) in the exercise of their constitutional emergency authorities requires a redoubling of active transparency efforts. In this regard, it would be desirable for legal frameworks to be updated to incorporate the lessons learned during the pandemic, such as, for example, the need to describe the predictive models used to make epidemiological decisions or strengthen information reporting systems, including adequate acknowledgment of their potential errors and weak points. In this regard, there are at least three categories of information whose transparency, publicity, and truthfulness must be guaranteed by State authorities. First is information related to the course of the

pandemic, meaning the number of infections, people infected, deaths, daily tests, geographic distribution, etc. This information is used to monitor the spread of the problem and must be available to citizens whose lives are profoundly impacted by the pandemic and by the decisions made by States to address it. In this regard, the information must not only be provided in a format that is easy to understand for the majority of the population, but must also be provided in open formats, disaggregated, guaranteeing access to the raw data.<sup>54</sup> Second is the information related to government authorities' decision-making processes. The expectation is that these decisions are based on the available epidemiological information, as well as epidemiological models and projections of various scenarios. It is crucial for this information to also be made available to citizens so they can evaluate the success or failure of the measures taken by the authorities. Lastly, a third category of information that must be guaranteed is on access to health services and care measures that, when taken by citizens, ensure the success of public health measures. In this case, access should be guaranteed to trustworthy and up-to-date information that is adjusted to what is known about the phenomenon in question based on scientific evidence and studies of proven quality. Thus, for example, it is important to guarantee information on proper care measures, conditions that favor the spread of the virus, and evaluations of the risks posed by different activities. It is also important for the scientific studies on the basis of which different actions are adopted—for example, the approval of a certain vaccine or medical treatment—to be made available to citizens.

#### **Judicial branch**

- *Protect the rights of the population and subject measures restricting rights to strict scrutiny.* As described in this report, even in emergencies, restrictions to fundamental rights deemed necessary to pursue legitimate objectives—such as, in this case, protecting the health of the population—must be subjected to the strictest of scrutiny by the judicial branches of the region to ensure that the restrictions comply with the conditions that make them legitimate in the eyes of the inter-American human rights system.

#### **Executive branch**

- *Remember the special responsibilities that they have in the exercise of their own freedom of expression.* The executive branches of the region have special responsibilities regarding freedom of expression and the fight against misinformation, and these responsibilities apply to all public officials in positions of leadership. The dissemination of information on the pandemic requires officials to keep in mind their special responsibilities, not only to help combat disinformation through truthful information but also to not contribute—not even accidentally—to the spread of false information that would endanger the health of the population.
- *Carry out positive educational, training, and awareness-raising actions on the phenomenon of disinformation.* This recommendation must be insisted upon, and it falls particularly on executive branches, which are usually in charge of the health authorities in the countries of the region. Campaigns to educate, raise

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<sup>54</sup> CIDH, «El acceso a la información en el marco jurídico interamericano». Comisión Interamericana de Derechos Humanos. 2010. , párr. 81 y ss.

awareness, and train are fundamental. They must focus on providing citizens with tools for distinguishing truthful information from false information; making citizens aware of their own participation in processes that spread information; and raise awareness on the harm that disinformation causes to the public debate.

- *Promote universal Internet access and set up digital literacy programs.* One of the basic conditions for combating disinformation is being able to access a variety of sources of information to compare and check if the information people received is true. This means citizens must have access to all the possibilities offered by the Internet. At the same time, it means access must be accompanied by broader training efforts to enable citizens to not only access a variety of information but understand the basics of how it circulates in the Internet's horizontal informational ecosystem.

### **Health authorities**

- *Promote active transparency and access to information.* Health authorities are responsible for providing adequate information on matters of public health during pandemics, including both medical advice on protecting citizen health and information on the course of an epidemic. It is crucial for health authorities to be transparent early on and not only provide the information they have available but note its potential shortcomings, errors, or "blind spots." It is also crucial for them to carry out communications campaigns and periodically compare their messaging with what the world is learning about the illness.

## **PRIVATE ACTORS**

### **Platforms**

- *Strengthen transparency and accountability processes with regard to content moderation.* The pandemic has made the large intermediary platforms more willing to moderate the content of their users. As they exercise this role, it is crucial that they respect the principles of transparency and accountability, provide clarity on the criteria used, and apply those criteria consistently.
- *Do not blindly defer to official statements.* Deference toward official statements can be problematic if not subjected to reasonable control. The pandemic has shown that official statements are often problematic from the perspective of disinformation.

