



### **IBAHRI Written Submission to UN Human Rights Council, 44<sup>th</sup> Session**

*Agenda Item 3- Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development*

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The International Bar Association's Human Rights Institute (IBAHRI)<sup>1</sup> welcomes the extensive, detailed report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression on disease pandemics and the freedom of opinion and expression (A/HRC/44/49).

It is now becoming evident that the global health crisis we are facing has contributed to the in expedited global crisis of the right to free expression. The universal, rapid spread of the Covid-19 virus has provided a legitimate justification for governments around the world to implement certain liberticidal measures. Whilst doing so, some governments, both authoritarian and democratic, have implemented measures without regard for the principles of legality, proportionality or necessity, with some choosing to risk extending their powers beyond the constitutional standard without the guarantee for review or relinquishing those powers as the public health situation stabilises.

Concurrently, states have demonstrated that they stand fast to be less tolerant of dissent, criticism and alternative versions of events. Many are cracking down on the spread of false information adopting a fresh wave of legislation to deal with misinformation, silencing critical voices and reporting. This is a trend of grave concern, which clearly risks impeding the work of journalists and the media, restricting the public's right to receive accurate and reliable information at this unprecedented time.

In further limiting this fundamental right, the IBAHRI fears that global leaders are opting to walk the path of opportunism, resulting in a 'parallel epidemic of authoritarian and

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<sup>1</sup> The IBAHRI acts as Secretariat to the High Level Panel of Legal Experts on Media Freedom. The High Level Panel is an independent body convened in July 2019, at the request of the United Kingdom and Canadian governments to advise governments on ways to prevent and reverse abuses of media freedom, as well as ensuring existing international obligations relating to the freedom of expression are upheld. The Chair is Lord Neuberger of Abbotsbury and the Deputy Chair is Amal Clooney, the UK's Special Envoy on Media Freedom. For more information, visit [here](#)

repressive measures<sup>2</sup> enacting and misusing ‘fake news’ laws, imposing censorship on reporting and online content critical of the government, which denies citizens access to critical information on the spread of the virus and undermines public trust in government<sup>3</sup>. Respect for the rule of law and democracy need to be at the forefront of this debate and therefore abusive legislation that acts in contradiction to these principles must be revoked immediately. The IBAHRI have been monitoring these developments closely, and concurs with many of the observations and recommendations made in the Special Rapporteurs’ report.

It has been widely reported that ‘*cyber policing*’ practices have drastically increased, arguably well beyond what would be necessary to contain cyber-criminality or the spread of misinformation relating to the pandemic. Indeed, many countries have resorted to excessive measures often aiming to control or prevent speech where it is deemed to have gone beyond careful and temporary limitations to speech. It should be remembered at all times that freedom of expression is not limited to the truth,<sup>4</sup> or one’s interpretation of the truth, and any restriction imposed on this fundamental right cannot lead to an open-ended criminalisation of lies or inaccurate and biased facts without a serious and legitimate reason, or without meeting the fundamental criteria of necessity, legality and proportionality. If states choose not to strictly abide by these standards, one can expect a damaging and long-lasting erosion to the global freedom of expression.

Another major cause for concern with regards to the excessive repression of free speech is the potential protraction of these contentious measures after the health crisis itself. Since the beginning of the crisis, many have expressed concern that draconian state measures, which may have been desirable, or at the very least justified by extraordinary circumstances, will lead to future abuses, and we will face difficulties removing them once the situation has improved. Historically, there have been many instances at the national level where a rule or a set of rules initially framed as extraordinary, temporary and justified by special circumstances have then been normalised and incorporated into ordinary legislation. The lack of sunset clauses being included in emergency legislation has allowed for unrestrained discretion in the responses by some states to the crisis, without regulation or scrutiny. Therefore, the IBAHRI believes that a principal priority for the international community should be to ensure that, when the current extraordinary circumstances abate, extraordinary measures are revoked, rather than integrated into existing ordinary law.

The Special Rapporteurs’ report aptly highlights the necessity for states to proactively place into the public domain government information of public interest, and stresses that this necessity is all the more evident in the context of the global spread of a highly infectious disease. In many countries, the state is still widely perceived as a reliable, trustworthy source of information.<sup>5</sup> When this coincides with a poor economy and infrastructure, and a lack of media plurality, the state may find itself to be the main purveyor of information of

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<sup>2</sup> Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Selam Gebrekidan, “For autocrats and others, coronavirus is a chance to grab even more power”, New York Times, 30 March 2020

<sup>3</sup> Statement from the High Level Panel on the Covid-19 pandemic, 1<sup>st</sup> May 2020

<sup>4</sup> Lord Neuberger, Chair of the High Level Panel of Legal Experts on Media Freedom, UNESCO & UNDP webinar “The Infodemic: misinformation and disinformation during COVID-19”, 29<sup>th</sup> April 2020

<sup>5</sup> Mr John Omo, Secretary-General, African Telecommunication Union, UNESCO & UNDP webinar “The Infodemic: misinformation and disinformation during COVID-19” 29<sup>th</sup> April 2020

information, even if only in certain geographic areas, for a particular group or on a specific subject, such as the characteristics of the coronavirus. In the execution of duties to act in the best interests of its citizenry, the state should prioritise the health and safety of individuals as is their responsibility to do so, fostering trust and engagement in guidelines to ensure compliance. The quasi-monopoly of the state on information or on a particular brand of information is highly problematic and weakens the framework of state accountability. Cooperation, communication and transparency between governments and the media is crucial in this regard, and action should be taken by the state to permit information and resources in the public interest and inspection of that information.

The IBAHRI reaffirms the Special Rapporteur's position on the importance of accessibility of the internet for all. Internet shutdowns or slowdowns, as in the Indian state of Jammu and Kashmir, have resulted in severe communication issues, which have prevented local doctors and hospitals from downloading vital information and guidelines regarding the adequate conduct of medical services in the context of the pandemic. Underpinning the fundamental rights of individual's offline, must simultaneously provide protections online, with a focus on the freedom of expression, imposing a duty on states to directly spread relevant information for individuals to protect themselves and others. It is imperative that the arbitrary restrictions placed on citizens are not forgotten amidst global government-ordered restrictive measures and states should cooperate with the media, civil society organisations, institutions or individuals that can facilitate the dissemination of this information in any way.

In certain countries, the authorities have seized the opportunity of Covid-19 to silence opposition media or activists, including shutting down websites, limiting journalist access to press conferences, not issuing press cards or licences to restrict activity, refusing exceptions to quarantine rules for journalists, imposing curfews that law enforcement do not act in accordance with. It is vital that states allow journalists and media workers, of whom many serve on the frontline of reporting, to continue doing their work, free from danger, threat or harassment of any kind. Undeniably, media independence, plurality and diversity are indispensable to the proper conduct of the democratic debate, and therefore, they are essential to the stability and sustainability of democracy. They also provide, in the context of the coronavirus pandemic, a 'counter power' to the state apparatus, as they enable the media to keep in check the state position and share information without political motives. Underlining that governments, in order to counter the spread of disinformation, should be more transparent, proactively disclosing credible data, in line with information laws and policies created to uphold the public's right to know.

With regard to surveillance, the pandemic has served as fertile ground to test and experiment with various types of technological advancements, providing the perfect justification for some states who are keen on tracking the speech and movements of their citizens to closely monitor and control. Recognised methods include monitoring via mobile phones, internet connection, an individual's digital life, and the use of contact tracing apps for smartphones to bulk personal data collection or extensive social media policing, the IBAHRI calls on the Special Rapporteur to consider further the implications that technological progress may have on our fundamental rights and to keep this under review. It is crucial to monitor the developments of such policies as it is very likely that these types of invasive tools that can be used to repress citizens will only grow more efficient with time, and thus may become more appealing to governments around the world. It is therefore crucial to develop our

understanding of these technologies in order to ensure compliance with international law, including the freedom of expression and privacy, to promote their regulation and their reasonable use by state actors. Many states have rushed to create such apps without proper, scientific evidence as to their effectiveness and at times without adequate testing, when it is common knowledge that the apps only work in tandem with regular review, sufficient testing and have been known to be used by at least 60% of the population, which requires citizens to trust their governments.

To states and to the Special Rapporteur, we offer our technical assistance and support at this challenging time. To this end, the International Bar Association is working with the High Level Panel of Experts to provide advice and recommendations to governments to prevent and reverse abuses of media freedom. The panel will propose initiatives that can be taken by governments to ensure existing international obligations relating to media freedom are upheld, disseminate elements for model legislation to promote and protect a vibrant free press, and report on means of raising the cost to those who target journalists for their work.

For further information please contact:

1. Zara Iqbal  
Programme Lawyer  
International Bar Association's Human Rights Institute (IBAHRI)  
Zara.Iqbal@int-bar.org
2. Perri Lyons  
Project Manager  
International Bar Association's Human Rights Institute (IBAHRI)  
Perri.Lyons@int-bar.org