

# **COVID-19 AND FREEDOM OF EXPRESSION IN THE AMERICAS**

Catharine Christie, Edison Lanza and Michael Camilleri

**AUGUST 2020**

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## Prologue

Colleagues,

The spread of Covid-19 has demanded that governments around the world take unprecedented steps to protect their citizens. While the need to safeguard public health is vital, it is imperative to ensure that these measures are not used to undermine the fundamental civil liberties and human rights of all people.

The right to freedom of expression remains a cornerstone of safe and prosperous societies. It also has far-reaching consequences for the enjoyment of all other rights. Now, more than ever, societies have a right to be informed and to scrutinise the measures taken in response to the crisis.

Canada is pleased to support the development of this report, which will serve as a key tool for all those in the Inter-American community who share an interest in protecting and promoting freedom of expression. It will contribute to identifying practical measures to strengthen common values and enhance cooperation across the hemisphere. These crucial ideas will lend momentum to the second Global Conference for Media Freedom, which Canada looks forward to hosting in 2020.

Protecting public health and respecting human rights are not mutually exclusive. In fact, both go hand in hand toward ensuring the health, safety and security of our communities and our countries. Together, we can respond to the COVID-19 pandemic swiftly and decisively. But as we do so, our approach must reflect compassion, inclusivity and respect for the fundamental rights of everyone.

Sincerely,

The Honourable François-Philippe Champagne, Minister of Foreign Affairs

A handwritten signature in black ink, appearing to read "F. Champagne".

# Table of Contents

Introduction.....6

I. Increased Pressure on Journalism and Free Speech in the Context of Covid-19.....7

II. Limits on Transparency and Access to Information Related to Covid-19.....11

III. Addressing Covid-19 Misinformation and Disinformation.....14

IV. Relevant Recommendations from International Human Rights Bodies .....17

Endnotes.....20

## Introduction

Freedom of expression is, for the Inter-American Court of Human Rights, the “cornerstone upon which the very existence of democratic society exists.” It is indispensable for the formation of public opinion, for scientific knowledge, and for society to be sufficiently informed and, in consequence, truly free.<sup>1</sup>

This is the case in ordinary times and, perhaps even more so, in extraordinary times, such as the current global health emergency caused by the Covid-19 pandemic. Across the Americas, citizens today depend on complete and reliable information to monitor the progression of the virus, protect their own health, debate public policy responses, and understand the measures taken by their governments. As United Nations (UN) High Commissioner for Human Rights Michelle Bachelet has observed, “Undermining rights such as freedom of expression may do incalculable damage to the effort to contain COVID-19 and its pernicious socio-economic side-effects.”<sup>2</sup>

In the Inter-American human rights system, freedom of thought and expression contemplates the “freedom to seek, receive, and impart information and ideas of all kinds.”<sup>3</sup> Unfortunately, not all governments in the Americas have responded to the pandemic with full respect for this right.<sup>4</sup> Indeed, the pandemic has directly or indirectly produced at least three identifiably concerning trends. These include: i) increased pressure against journalists and media outlets, including physical harm and harassment, arrests and prosecutions, and an ever-more-challenging working environment; ii) limits on transparency and access to information; and iii) online misinformation and disinformation, in some

cases promulgated by public officials. While these concerns existed prior to Covid-19, they have found new expression and in some cases been exacerbated by the pandemic. UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression David Kaye has observed that the Covid-19 virus is “not just the cause of illness and death, it is also a pathogen of repression.”<sup>5</sup>

Under the cover of Covid-19 response, for example, states in the Americas have used new or existing laws to criminalize free speech and taken measures to restrict the work of journalists, as well as activists, public health workers and other citizens. Governments have used the pandemic as a justification for official opacity, failing to share accurate health data with the public, respond to access to information requests, or guarantee transparency in Covid-related spending. Some political leaders have actively misled their citizens about the virus and then stigmatized reporters or public health experts who contradict them, contributing to the “infodemic” of misinformation online and placing additional pressure on internet platforms that must balance the protection of public health with respect for free speech.

The decision of some states and officials to restrict freedom of expression and access to information contrasts with that of other national and subnational governments in the Americas that took decisive steps to confront the pandemic without recurring to censorship, as well as governments that corrected early missteps to ensure their public health response was compatible with freedom of expression.

This report, from the Inter-American Dialogue’s Peter D. Bell Rule of Law Program and Edison Lanza, expert on freedom of expression and current Special Rapporteur for Freedom of Expression at the Organization of American States, provides a succinct assessment of freedom of expression developments in the Americas in the early months of the Covid-19 pandemic. It draws on Inter-American legal standards, the ongoing documentation work of the Special Rapporteurship, reports from international human rights bodies, conclusions of the webinar discussion “Voices in the Pandemic: Covid-19 and Freedom of Expression in the Americas,”<sup>6</sup> and available information from governments, national and international civil society, and media organizations. Unless otherwise noted, the information included in the report is updated to July 1<sup>st</sup>, 2020.

The Dialogue and the Special Rapporteur are grateful for the partnership and support of Global Affairs Canada in conceiving and producing this report and the “Voices in the Pandemic” webinar.

**In the Inter-American human rights system, freedom of thought and expression contemplates the “freedom to seek, receive, and impart information and ideas of all kinds.”**

## Increased Pressure on Journalism and Free Speech in the Context of Covid-19

Governments have a duty to ensure that journalism thrives and plays its essential role during the pandemic, as the protection of the media is a protection of the public's right to information.<sup>7</sup> Journalists and the media, as well as medical professionals and relevant experts, should be able to speak and report freely on Covid-19, including coverage that is critical of government responses, without fear or censorship.<sup>8</sup>

Article 27 of the American Convention for Human Rights (ACHR) permits derogation from certain rights, including freedom of thought and expression, in a time of "war, public danger, or other emergency."<sup>9</sup> In response to the Covid-19 pandemic, a number of OAS member states availed themselves of this clause, namely Argentina, Bolivia, Chile, Colombia, the Dominican Republic, Ecuador, Guatemala, Honduras, Paraguay and Peru.<sup>10</sup> Even under states of emergency, however, governments are bound to uphold their human rights obligations. Where suspensions of certain rights are permitted, international law establishes a series of requirements, such as legality, necessity, proportionality, non-discrimination, and timeliness.<sup>11</sup> In the context of the pandemic, for example, public health may require limits on freedom of assembly or movement to achieve physical distancing. However, the IACHR has called on governments to refrain from restricting the movement of journalists and human rights defenders during Covid-19,<sup>12</sup> and has expressed "extreme concern" over the use of criminal law against persons who publish information related to the pandemic.<sup>13</sup>

The relevant recommendations of both the UN and Inter-American human rights systems in the context of the pandemic reflect a strong presumption against restrictions on freedoms of press, expression, and information.<sup>14</sup> In the words of UN High Commissioner Bachelet, "Emergency powers should not be a weapon governments can wield to quash dissent."<sup>15</sup> Nevertheless, Covid-19 has brought new challenges for the exercise of free speech and for the media as a whole.

### *Criminalization of Speech Related to the Pandemic*

The IACHR's longstanding interpretations of the American Convention on Human Rights hold that the use of criminal law mechanisms to punish speech concerning matters of public interest in and of itself violates article 13 of the ACHR.<sup>16</sup> Since the onset of the pandemic, however, several

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states in the Americas have introduced or applied legal provisions that criminalize freedom of expression as it relates to Covid-19, at times in an effort to limit criticism or information that casts the government's pandemic response efforts in a negative light.

In Venezuela, the government has detained journalists and doctors who publish information about the spread of the virus or question the government's response. Journalist Darvinson Rojas was arrested on March 21 by the FAES (Fuerza de Acciones Especiales) police unit on account of his coronavirus reporting.<sup>17</sup> He was conditionally released after 13 days following international pressure, but faces charges of "advocacy of hatred" and "instigation to commit crimes."<sup>18</sup> FAES agents also arrested Julio Molino, the leader of a medical union in Venezuela, after he spoke out against shortages of medical equipment in hospitals.<sup>19</sup> Dr. Molino was allegedly accused of "incitement to hatred, worrying the community, and criminal association."<sup>20</sup>

In Cuba, authorities have used Legal Decree 370 "on the informatization of Cuban society" to subject at least 30 journalists to interrogation and seizure of work equipment such as mobile phones for their coverage of the pandemic and of the state's response to it.<sup>21</sup> Twenty of them were fined \$120, with failure to pay constituting a crime punishable by six months in prison, and seven civil society actors were imprisoned for violating this decree. Decree 370 provides that the dissemination of information on the Internet "contrary to the social interest, morals, good customs and the integrity of persons" will be sanctioned.<sup>22</sup>

In Bolivia, the transitional government adopted, and later repealed, a series of pandemic-related decrees that included provisions purporting to criminalize speech that “misinforms or generates uncertainty in the population.”<sup>23</sup> These provisions provoked concerns due to the vague terms employed and the possibility that they could be used to silence legitimate speech.<sup>24</sup> In response to these concerns, the Bolivian government on May 14 repealed the decrees in whole or in relevant part.<sup>25</sup> It remains unclear how many individuals, if any, were prosecuted while the decrees were in effect or what the legal status of any such cases is. Interior Minister Arturo Murillo remarked on April 15 that the government had apprehended 67 and convicted 37 “political actors” who were engaged in “destabilization and disinformation movements, offending against health, and this has a serious sanction of two to ten years.” However, in responding to a request for further information from Amnesty International, the government did not provide information on the circumstances or legal basis for these arrests and convictions.<sup>26</sup>

In Argentina, a dozen criminal proceedings for “public intimidation” were reportedly initiated against individuals accused of spreading pandemic-related information, including a 21-year old who sent a tweet that included the word “saqueo” (looting).<sup>27</sup> In response to criticism, the Ministry of Security announced it would develop a “protocol” for such cases consistent with Inter-American legal standards and in consultation with civil society.<sup>28</sup>

**States of emergency declarations have in some cases been used to curtail the freedom of movement of journalists, inhibiting their ability to report on the Covid-19 crisis.**

### *Direct and Indirect Restrictions on Pandemic-Related Reporting*

Efforts by the media and others, including in the medical community, to provide the public information regarding the Covid-19 pandemic have at times been met with threats, intimidation, legal obstacles, and physical violence by government officials and third parties.

In Venezuela, Diosdado Cabello, President of the National Constituent Assembly and Vice President of the United Socialist Party of Venezuela, threatened to call police to investigate scientists from the Academia de Ciencias Físicas for releasing a scientific study that contradicted official Covid-19 numbers.<sup>29</sup> In El Salvador in early April, human rights ombudsman José Apolonio Tobar condemned the armed forces’ destruction of the equipment of journalists reporting on the pandemic.<sup>30</sup> In Nicaragua, four executive members of the Center for Research and Health Studies at the National Autonomous University of Nicaragua in Managua were dismissed suddenly on April 23,<sup>31</sup> a step that was criticized as an attempt to silence qualified voices on the deficiencies of the health system.<sup>32</sup> Doctors in Nicaragua were reportedly scared to speak openly about conditions of the public hospitals operating under the Ministry of Health due to fear of recriminations.<sup>33</sup> Indeed, Human Rights Watch reported in June that Nicaraguan authorities have fired at least ten health workers in apparent retaliation for voicing concerns about the government’s management of the Covid-19 health crisis.<sup>34</sup>

States of emergency declarations have in some cases been used to curtail the freedom of movement of journalists, inhibiting their ability to report on the Covid-19 crisis, despite the IACHR’s admonition that governments must allow journalists to move freely as they “perform a key function during a public health emergency by reporting on and monitoring the actions of the state.”<sup>35</sup> President Juan Orlando Hernández of Honduras declared a public health emergency on March 10 and issued emergency decree PCM 021-2020 on March 16, restricting freedom of expression, association, assembly, and movement.<sup>36</sup> In response to domestic and international pressure, the government changed the emergency decree on March 21 and issued PCM 022-2020 to reestablish freedom of expression as enshrined in the constitution. However, the government did not allow journalists with press credentials to move freely during curfew hours until April 5.<sup>37</sup>

In El Salvador, the executive decree establishing a state of emergency on March 15 and enforcing obligatory stay-at-home orders did not include journalists on the list of groups given exceptions.<sup>38</sup> The week prior, two soldiers from the





Photo credit: Ministério da Ciência, Tecnologia e Inovações / Flickr / CC BY 2.0

armed forces prevented a journalist from taking photographs of the construction of a provisional hospital erected to serve patients with Covid-19.<sup>39</sup> The executive decree was modified on April 2 and allowed the press to move freely under the emergency measures.<sup>40</sup> Nonetheless, the Asociación de Periodistas de El Salvador continued to report that journalists faced difficulties moving about freely. On April 18, six soldiers from the armed forces and three members of the national police blocked a journalist from covering local prevention measures, even though he was carrying his press card.<sup>41</sup>

Officials in leadership positions have also targeted members of the press with hostile rhetoric in response to critical—or simply truthful—reporting on the pandemic. While public officials enjoy freedom of expression, senior government representatives must recall that they are subject to particular scrutiny by virtue of their positions of public trust and take care not to make statements that are inconsistent with their duties as guarantors of fundamental rights, especially given the high degree of credibility many citizens apply to their statements.<sup>42</sup> In this regard, it is particularly concerning that stigmatization of journalists by public officials has in some cases been followed by acts of harassment or violence by third parties.

In Brazil, President Jair Bolsonaro made 32 verbal attacks against journalists and the media between January and March,<sup>43</sup> and the president's supporters engaged in daily harassment of reporters outside the Palácio da Alvorada in Brasília. On May 3, reporters were attacked, insulted, and expelled by protestors at a demonstration attended by Bolsonaro. The president was alerted but did not address the issue, though he subsequently condemned the aggression while continuing to criticize the media.<sup>44</sup> On May 26, a number of Brazil's top news organizations decided to suspend

reporting outside the presidential residence as a result of continued harassment and abuse.<sup>45</sup> Separately, a leading Brazilian infectologist received death threats from Bolsonaro supporters after publishing research questioning the efficacy of hydroxychloroquine, a drug that Bolsonaro has promoted as a treatment for Covid-19.<sup>46</sup>

On April 22, Mexican President Andrés Manuel Lopez Obrador criticized the press at length and said there was no such thing as “professional journalism” in Mexico. He explicitly named *Reforma*, *El Universal*, *Milenio*, and *Excélsior* as newspapers he believes are biased against his government.<sup>47</sup> On May 11, President López Obrador criticized the ethics of the national and international “conventional media,” especially the *New York Times*, for questioning official government data on Covid-19.<sup>48</sup> On May 14, the newspaper *Reforma* reported that an anonymous caller, claiming to be a member of the Sinaloa Cartel, told the paper to stop “defaming” the president and threatened to blow up the newspaper's offices.<sup>49</sup>

Heads of state in the United States, Guatemala, and Nicaragua have also stigmatized media organizations for reporting on the pandemic. US President Donald Trump attacked news media in late March during a press briefing, calling them dishonest for their reporting of his handling the crisis and stating that journalists “truly do hurt our country.” Between March 16 and May 15, President Trump confronted at least eight journalists at his daily Covid-19 press briefings.<sup>50</sup> President Alejandro Giammattei in Guatemala stated publicly on March 21, “I would like to put the media in quarantine but I cannot” in response to negative press coverage of his handling of Covid-19.<sup>51</sup> In Nicaragua, President Daniel Ortega accused the press of spreading false news regarding the Nicaraguan government's cover-up of Covid-19 cases, characterizing the reporting as “disinformative terrorism.”<sup>52</sup>

**The weakening and, in particular, the disappearance of media outlets threatens to be a permanent legacy of the Covid-19 pandemic with negative impacts on democracy.**

*Pressure on Journalists' Lives and Livelihoods*

In addition to restrictions imposed by governments, media outlets and journalists confront an acutely challenging environment as a result of the health and economic impacts of Covid-19. While these consequences are not directly attributable to the state, the resulting impact on journalism carries negative implications for democratic society that will extend into the aftermath of the pandemic.

Covid-19 threatens the safety of journalists directly, as many news outlets have not provided reporters with personal protective equipment. This leaves journalists particularly vulnerable to contracting the disease as they continue their essential reporting during the pandemic, including reporting on the pandemic itself. The Press Emblem Campaign tracks the number of journalists who die from Covid-19 worldwide and reports that of the 210 reporters who have died, at least 99 are from Latin America, a number higher than any other region.<sup>53</sup> In Peru, 37 reporters have died from the illness,<sup>54</sup> in Nicaragua more than 30 journalists have reportedly died of the virus,<sup>55</sup> while in Mexico 12 journalists are reported to have died.<sup>56</sup> Many of these deaths can be attributed to both a scarcity of personal protective equipment and the fact that many journalists are forced to purchase their own equipment.<sup>57</sup> In a particularly condemnable development, Honduran journalist David Romero, director of the media outlets Radio Globo and Globo TV, died on July 19 after contracting Covid-19 in prison. Romero was sentenced to 10 years in prison in 2019 for reporting on matters of public interest, and the Honduran state failed to comply with precautionary measures issued by the IACHR recommending the suspension of his sentence.<sup>58</sup>

The pandemic is also exacerbating existing issues of proper funding and resources for the press, and journalists employed

in both national and local media have suffered layoffs and salary cuts. In Paraguay on May 5, unemployed press workers protested in the capital after 100 journalists were laid off across four media houses.<sup>59</sup> In Ecuador, 35 staff members of newspaper outlet La Hora were laid off.<sup>60</sup> In Chile, there was a round of layoffs for press workers at TVN Chile in April, mirroring other mass dismissals at Mega, La Red and El Mercurio.<sup>61</sup> In Colombia, Grupo Semana laid off 250 workers.<sup>62</sup> In Uruguay, the Asociación de Prensa Uruguaya (APU) reported more than 200 journalists dismissed by newspapers and radio and television stations all over the country.<sup>63</sup> In Brazil, the Rio de Janeiro newspaper O Dia reduced salaries of its employees by 25 percent starting in March.<sup>64</sup> This move was replicated by one of the largest newspapers in the country, O Estado de S. Paulo, which cut salaries by 25 percent in May.<sup>65</sup> The Colombian daily El Espectador, founded in 1887, could reportedly become a weekly due to economic stresses exacerbated by the pandemic.<sup>66</sup>

At the local level, community news organizations are especially important in order to provide access to information for rural and indigenous communities, including public health information, and to report on local news that national branches do not cover.<sup>67</sup> In Puebla, Mexico, five media outlets cut salaries by 20 to 50 percent on account of the pandemic.<sup>68</sup> Also in Mexico, local newspapers La Crónica de Hoy, Crónica Hidalgo, and Crónica de Jalisco, part of the Grupo Crónica, ended print editions on April 1.<sup>69</sup> The Inter-American Press Association (IAPA) expressed its concern in April that Bolivian newspapers have mostly moved online.<sup>70</sup> According to data from the Asociación Colombiana de Medios de Información, regional newspapers in Colombia have seen advertising fall between 40 and 80 percent since the beginning of the pandemic, meaning distribution levels have also declined.<sup>71</sup> La Opinión de Cúcuta had to close its print edition and move fully online, La Patria in Manizales reduced its number of pages and took out loans to pay for payroll, and Vanguardia in Bucaramanga cut its full time staff from 625 to 280.<sup>72</sup> In Argentina, editors from 16 local and regional media outlets expressed their concern regarding the state of local journalism under Covid-19, noting that governments were behind on payments and private advertisers were choosing not to take out ads.<sup>73</sup> On July 13, 2020, the Federación de Periodistas de América Latina y el Caribe denounced the “mass layoffs” of media workers in Argentina, Brasil, Colombia, Chile, Ecuador, Honduras, Guatemala, Panamá, Paraguay, Peru, and Uruguay, and called for “urgent actions” by states and media organizations in response.<sup>74</sup>

The weakening and, in particular, the disappearance of media outlets threatens to be a permanent legacy of the Covid-19 pandemic with negative impacts on democracy that will last well beyond the public health crisis itself.

## Limits on Transparency and Access to Information Related to Covid-19

To guarantee the right to access to public information enshrined in Article 13 of the American Convention on Human Rights, states have active and passive obligations in the area of government transparency.<sup>75</sup> In the context of Covid-19, this includes a duty to proactively report in detail on the impact of the pandemic and on emergency spending, and to prioritize requests for access to information related to the public health emergency while refraining from general limits on accessing public information and arbitrary restrictions on journalists' access to official sources.<sup>76</sup> The IACHR recommends that if deadlines for requests for information on matters not linked to the pandemic have to be extended, governments should explain the denial, set a time period in which the obligation will be met, and allow for appeals against such decisions.<sup>77</sup>

Such transparency is both essential to public health campaigns and critical to identifying and preventing the corruption that often thrives on emergency government spending. Indeed, the rapid response necessitated by Covid-19 led some governments to quickly procure medical supplies through large contracts negotiated without normal oversight mechanisms.<sup>78</sup> Evidence is already emerging of inflated contracts for medical equipment and supplies such as ventilators, masks, and body bags in countries including Colombia, Ecuador, Bolivia, and Brazil.<sup>79</sup>

### *Restrictions on Access to Public Information*

While 23 countries in the Americas have in place regulatory frameworks and institutions that ensure access to public information,<sup>80</sup> legal and practical restrictions related to Covid-19 have limited the exercise of this right. As of May 19, a survey by civil society groups found that 83 percent of countries in Latin America were not complying with deadlines for delivery of information.<sup>81</sup> In some countries, the restrictions on processing of freedom of information requests were significant. In Guatemala, legal deadlines for administrative processes of freedom of information requests were suspended for three months.<sup>82</sup> In El Salvador, the government suspended all deadlines for administrative processes under the original national emergency declaration passed on March 14.<sup>83</sup> El Salvador's Access to Public Information Agency (IAIP), charged with carrying out the Access to Public Information Law, suspended all hearings and processes to comply with the state of emergency in place to address Covid-19 as of March 20.<sup>84</sup> As of June 11, IAIP announced that the

suspension of administrative deadlines for access to information requests was no longer in effect and it would again process appeals.<sup>85</sup> However, the Legislative Assembly again suspended deadlines for administrative processes on June 22.<sup>86</sup> The Ombudsperson's Office in El Salvador received over 200 complaints for violations of the right to access information between March 21 and June 1.<sup>87</sup>

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In some cases, agencies suspended processing and deadlines of freedom of information requests, but later reversed course. In Brazil, on March 23, President Bolsonaro issued Provisional Measure 928 to suspend the Access to Information Law (LAI) for freedom of information requests.<sup>88</sup> A resolution from the Federal Supreme Tribunal ruled the order unconstitutional and it was overturned. In Argentina, the government suspended administrative deadlines on March 19,<sup>89</sup> however on April 14, the Agency for Access to Public Information ended this suspension and referenced Resolution 1/20 of the IACHR in its reasoning.<sup>90</sup> In Mexico, the National Institute for Transparency, Access to Information and Personal Data Protection (INAI) suspended its service from mid-March until April 30, but the government reported creating an open database on Covid-19 in order to fulfill its obligations to actively provide public health information.<sup>91</sup> In Honduras, the Access to Public Information Institute (IAIP)

suspended service from late March until late May.<sup>92</sup> In Colombia, the government issued Presidential Decree 491 that increased the deadline for the government to respond to freedom of information requests to 30 days, but never suspended deadlines.<sup>93</sup> The Dominican Republic issued Decree 137-20 suspending administrative procedures and freedom of information requests under the state of emergency; the state of emergency ended on July 1.<sup>94</sup>

In addition to placing limits on the administrative processing of freedom of information requests, some governments have exploited the pandemic to limit the access of certain journalists to government sources. In the United States, Vice President Mike Pence briefly prohibited members of the White House's coronavirus task force from appearing on CNN and Dr. Anthony Fauci, director of the National Institute of Allergy and Infectious Diseases, from speaking to the public without explicit approval.<sup>95</sup> On the state level, Missouri Governor Mike Parson barred reporters from attending daily press briefings and asked staff to select certain reporters' questions,<sup>96</sup> and in Florida, a journalist who previously asked for social distancing measures at press briefings by Governor Ron DeSantis was denied entry to a Covid-19 briefing.<sup>97</sup> In El Salvador, the Asociación de Periodistas de El Salvador denounced restrictions on asking questions at press conferences about the Covid-19 crisis, as well as measures taken

by presidential staff to impede interviews with certain government officials.<sup>98</sup> In Nicaragua, independent media and international press are barred from Ministry of Health press conferences.<sup>99</sup> In Guatemala, an open letter by more than 100 Guatemalan journalists and human rights organizations criticized the difficulty of accessing state-held information, charging that officials removed several journalists from Whatsapp groups after these journalists questioned the origin and location of new Covid-19 cases in the country.<sup>100</sup>

As described in this section, many (though not all) of the restrictions on access to public information introduced at the start of the pandemic were subsequently lifted on account of judicial rulings or pressure from civil society and international organizations. This is notable and important. Concerns remain, however, that the erosion on the public's right to access information and respect for the principle of maximum disclosure under cover of the pandemic could be normalized to a degree, weakening these guarantees going forward. Following decades of progress in expanding access to public information in the Americas, this would represent a major setback.

### *Proactive Publication of Information on the Pandemic and Governments' Response*

Alongside limitations in responding to access to information requests, challenges have also emerged in relation to the proactive publication of information on the pandemic. These shortcomings relate to both public spending on pandemic response and the health emergency itself. A study on 14 Latin American countries by the Alianza Regional Por la Libre Expresión e Información found that in 70 percent of the countries analyzed, public information on public spending to address the public health emergency was scarce or of poor quality.<sup>101</sup> In Venezuela, Nicaragua and Cuba, the report found the absolute absence of this type of information. The same study showed that 58 percent of countries did not clearly and transparently provide information regarding social programs, assistance, and resources for especially vulnerable sectors hit by the pandemic.<sup>102</sup> In the United States, more than \$500 billion was given to businesses through the Paycheck Protection Program (PPP) to address the negative impacts of the pandemic on the economy. While the federal government initially pledged to report individual loan data, on June 10 Treasury Secretary Steven Mnuchin said it would not release the names and amount of PPP loans.<sup>103</sup> On July 6, the Treasury Department and Small Business Administration reversed course and disclosed the names of businesses for roughly three-fourths of total loan dollars approved.<sup>104</sup>

**Concerns remain that the erosion on the public's right to access information and respect for the principle of maximum disclosure under cover of the pandemic could be normalized to a degree, weakening these guarantees going forward.**



Photo credit: Marcos Corrêa / PR / Brasil / CC BY 2.0

With regard to the pandemic itself, several governments in the region have failed to provide accurate statistics on infections and deaths from Covid-19, in some cases purposefully downplaying the spread of disease. In Venezuela, the country's nationwide testing program has been dependent on a single Caracas lab to verify positive test results, meaning low testing capabilities and lack of transparency on case counts and fatalities.<sup>105</sup> The government blocked the National Assembly's web portal on April 22 after the body published information regarding Covid-19 cases in the country. Venezuela's main service provider blocked another 12 websites for linking to this information.<sup>106</sup>

In El Salvador, media outlets and journalists have reported inability to get information from health officials about "difficulties in the provision of protective equipment and reliable figures for confirmed coronavirus cases and deaths."<sup>107</sup>

In Nicaragua, until May 25, President Ortega only recognized 25 cases and eight fatalities, declaring, "we have been able to counter the pandemic."<sup>108</sup> Citizens Observatory, a Nicaraguan NGO and volunteer group of public health workers, is tracking likely cases and deaths and has consistently placed the true number of infections and fatalities much higher than the government-reported figures.<sup>109</sup> As of mid-July, Ortega government claimed only 99 Covid-19 deaths while the Citizens Observatory documented 2,397 likely deaths.<sup>110</sup> According to a Human Rights Watch report, health authorities in Nicaragua

are carrying out hurried burials and misclassifying Covid-19 deaths as "atypical pneumonia."<sup>111</sup> The IACHR has criticized the lack of transparency and information in Nicaragua in relation to the pandemic.<sup>112</sup>

In Brazil, the health ministry stopped reporting on cumulative totals of deaths and infections on June 5 as the number of daily cases hit record levels. The Supreme Court ruled on June 9 that the full set of information previously published needed to be reinstated by the health ministry, which subsequently complied.<sup>113</sup> In Guatemala, President Giammettei indicated that the government would only provide the age and gender of Covid-19 victims so the media would not "make a fuss."<sup>114</sup>

In contrast, countries including Costa Rica, Ecuador, the Dominican Republic and Paraguay have earned plaudits for providing the public with comprehensive and accurate information on the Covid-19 crisis.<sup>115</sup> Good transparency practices on the part of these governments have included the use of specific platforms or websites for Covid-19 information, frequent updates to statistics and information, the ability to trace the complete process of public contracts and spending, and information published in an open data format. To ensure transparency of public spending on Covid-19 response, Paraguay established a platform to track contracts for anti-coronavirus measures based on a data visualization tool developed by the Inter-American Development Bank.<sup>116</sup>

## Addressing Covid-19 Misinformation and Disinformation

The spread of misinformation online regarding the Covid-19 pandemic led the WHO to refer to the public health emergency as an “infodemic,” or “an over-abundance of information – some accurate and some not – that makes it hard for people to find trustworthy sources and reliable guidance when they need it.”<sup>117</sup> Prominent examples include false origin stories about the disease itself and advocacy of cures that are not scientifically proven and can be harmful. UNESCO has identified nine key areas of Covid-related-misinformation: 1) origins and spread of Covid-19; 2) false and misleading statistics; 3) economic impacts; 4) discrediting of journalists and credible news outlets; 5) medical science, symptoms, diagnosis and treatment; 6) impacts on society and the environment; 7) politicization; 8) content driven by fraudulent financial gain; 9) and celebrity-focused disinformation.<sup>118</sup>

Demand for information is especially high in the context of the Covid-19 pandemic, given its novel nature and severe health risks. As such, misinformation and deliberate disinformation (the “mass dissemination of false information with the intent to deceive the public and with the knowledge of its falsehood”<sup>119</sup>) can be extremely harmful to public health. Se-

nior government officials in particular have a responsibility to inform the public with “diligence” and provide “reasoned reports that are science-based.”<sup>120</sup> In addition to faithfully informing the public, both governments and internet platforms have a duty to counter and be transparent about misinformation regarding the pandemic.<sup>121</sup> In doing so, however, states must respect their freedom of expression obligations, refraining for example from censorship or resorting to criminal sanctions. As UN High Commissioner Bachelet has observed, “It is important to counter misinformation, but shutting down the free exchange of ideas and information not only violates rights, it undermines trust. False information about COVID-19 poses a huge risk to people. But so do bad policy decisions.”<sup>122</sup>

### *Misinformation from Government Officials*

The first duty of public officials is to take “special care” in the information they themselves share with the public regarding the pandemic.<sup>123</sup> This is due to the high level of credibility that the public assigns to information from the authorities.<sup>124</sup> It is essential that governments provide truthful information about the nature of the threat posed by the coronavirus.<sup>125</sup>

Nevertheless, in several cases, senior government officials in the Americas have disseminated false information regarding the pandemic. UN High Commissioner Bachelet singled out Brazil, Nicaragua, and the United States as countries where official statements “that deny the reality of viral contagion... may intensify the severity of the pandemic.”<sup>126</sup>

In the United States, President Trump has touted false treatments for Covid-19, such as suggesting that that disinfectants and ultraviolet light were possible cures.<sup>127</sup> He has also repeated in several instances that hydroxychloroquine could be used to treat Covid-19, despite scientific evidence to the contrary.<sup>128</sup> In Brazil, President Bolsonaro criticized social distancing as an effective measure to prevent Covid-19 and called for its end.<sup>129</sup> He also promoted hydroxychloroquine as a method for curing the virus.<sup>130</sup> In Venezuela, Nicolás Maduro originally claimed that Covid-19 was created to wage biological warfare against China.<sup>131</sup> He tweeted a recipe for a ginger lemon tea purported to have anti-coronavirus benefits.<sup>132</sup> A member of Venezuela’s National Constituent Assembly claimed on television that Covid-19 is a disease created by the United States.<sup>133</sup> The Nicaraguan government is also engaged in disinformation campaigns to downplay the threat of Covid-19. It has vastly understated the number of cases in the country, discouraged closures and social distancing, and organized large events such as a “Love in the Time of Covid-19” parade.<sup>134</sup>

**The spread of misinformation online regarding the Covid-19 pandemic led the WHO to refer to the public health emergency as an “infodemic.”**

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### *Government Overreach in Combating Misinformation*

As discussed, governments have both a legitimate interest and a responsibility to counter misinformation regarding the pandemic in order to equip citizens with the information they need to protect their own and their communities' health. However, such measures must be compatible with respect for freedom of expression, including the American Convention's prohibition on prior censorship and the IACHR's recommendation that states refrain from criminalizing the dissemination of misinformation, "which due to the nature of the phenomenon would be vague or ambiguous" and could criminalize observations or critiques about the government by establishing a legal instrument "with a strong chilling effect on the dissemination of ideas, criticism, and information for fear of being subjected to a criminal process."<sup>135</sup>

National and subnational governments in the Americas have in some cases sought to employ criminal law mechanisms against those who spread misinformation regarding the pandemic. Colombia and Argentina have employed "cyber patrols" with the aim of identifying accounts spreading false information.<sup>136</sup> In Argentina, authorities opened at least 12 criminal cases for "public intimidation," a crime eligible for six years in prison, against individuals accused of spreading false information on the pandemic.<sup>137</sup> In Colombia, the government announced it was able to identify 128 sources of fake news through their cyber patrols, suspending 176 online pages.<sup>138</sup>

Bolivia's Interior Minister also announced the use of a cyber patrol run by the armed forces, police and his own staff with the aim of identifying and prosecuting those deemed to be spreading misinformation" during the Covid-19 outbreak.<sup>139</sup> In Peru, the Ministry of Justice indicated that those who misinform the public with false news in order to obtain a benefit or disturb the public peace would be punished with imprisonment of up to 6 years, while in Guatemala, the government

announced the possibility of accusing people of sedition if it was understood that they created panic through social networks.<sup>140</sup> The national legislature in Paraguay proposed a bill on March 18 that would sanction those who spread "false news" during the Covid-19 pandemic. However, this bill was withdrawn on April 1 amid concerns that it would violate freedom of expression and freedom of the press.<sup>141</sup>

In Brazil, the state of Paraíba adopted a law establishing fines of up to R\$10,000 for those who share "fake news" about Covid-19. The Brazilian Association of Investigative Journalism (Abraji) said the legislation fails to define "fake news" and poses a threat to freedom of expression.<sup>142</sup> In addition, on June 30 the Brazilian Senate passed legislation to combat so-called "fake news" that is now pending in the country's Chamber of Deputies. Though not directly pandemic-related, it is being debated in the context of extensive on-line misinformation regarding Covid-19. The legislation has been criticized by UN and IACHR special mandate holders, human rights organizations, and major internet platforms for its impact on privacy and freedom of expression.<sup>143</sup> President Bolsonaro has said he will veto the legislation in its current form.<sup>144</sup>

### *Responses by Internet Platforms*

As the primary vector for the spread of misinformation and disinformation is the Internet, large content platforms have come under pressure to combat false information. In doing so, they also face a countervailing pressure to refrain from becoming censors or arbiters of truth. Generally speaking, measures taken by platforms in response to disinformation fall into five categories: (1) limiting the reach of false news/information; (2) demonetization; (3) addressing inauthentic behavior; (4) contextualization; and (5) transparency.<sup>145</sup> In response to the Covid-19 pandemic, major platforms have applied, and in some cases, expanded the use of such measures. The analysis here includes a non-exhaustive sampling of such initiatives, with a focus on platform efforts to limit the reach of false information through content moderation

**Concerns have been expressed regarding the clarity and consistency of platforms' policies, particularly as applied to the thorny issue of misinformation emanating from public officials.**

and removal and to contextualize such information by promoting verified public health content from sources such as the WHO.

To limit the reach of false information regarding the pandemic, platforms have employed content moderation and fact-checking efforts. On April 28, for example, YouTube expanded the use of “fact check information panels” that were previously launched in Brazil and India, to highlight fact-checked articles in certain searches.<sup>146</sup> Twitter announced on May 11 that it would begin adding warning labels under tweets with disputed or misleading information about Covid-19.<sup>147</sup> Facebook began showing messages in the news feeds of users who interact with harmful Covid-19 claims. The messages direct users to a list of Covid-19 myths debunked by the WHO.<sup>148</sup>

Platforms also introduced guidelines for removing harmful Covid-19 related content. On March 18, Twitter said it would “require users to remove tweets that could fuel the spread of the novel coronavirus” as part of new community guidelines.<sup>149</sup> These include tweets that deny expert guidance, encourage use of fake treatments, and mislead the public by purporting to be from experts or authorities. Between March 18 and April 1, Twitter removed more than 1100 misleading and potentially harmful tweets about Covid-19.<sup>150</sup> Facebook’s new policy removes coronavirus-related disinformation that is fact-checked and considered “harmful.”<sup>151</sup> In April, Facebook shut down some event pages for anti-quarantine protests in the United States.<sup>152</sup> Facebook also began removing posts calling for 5G masts to be attacked, a response to a conspiracy theory that 5G technology was accelerating the spread of the virus or that it weakened immune systems.<sup>153</sup>

YouTube announced it would remove medical misinformation regarding Covid-19, with repeated infractions leading to deletion of a user’s channel.<sup>154</sup> In early May, YouTube deleted the account of popular conspiracy theorist David Icke over his repetition of the hoax that 5G mobile networks are spreading Covid-19.<sup>155</sup>

In addition to actively labeling and in some cases removing Covid-19 related misinformation, platforms have taken steps to promote reliable information from the WHO and public health authorities. Early in the pandemic, Twitter introduced a prompt that directs users who search for coronavirus related-information to content from the WHO or national health authorities in more than 70 countries.<sup>156</sup> On March 6, Google implemented an SOS alert in “search” that redirects users to the WHO for Covid-19 questions.<sup>157</sup> In an April 17 interview, CEO Mark Zuckerberg said that Facebook had directed over two billion people towards their “Covid information center” filled with public health information.<sup>158</sup>

The use of content moderation and removal by platforms has drawn both praise and scrutiny. Some have called on platforms to do more to protect users from false information regarding the pandemic, while others have accused them of censorship for removing legitimate content.<sup>159</sup> This is reflective of both the difficult policy balance that platforms must strike and also the technical challenge of reviewing millions of pieces of content.

Additional concerns have been expressed regarding the clarity and consistency of platforms’ policies, particularly as applied to the thorny issue of misinformation emanating from public officials. Twitter removed misinformation on Covid-19 treatments by the presidents of Brazil and Venezuela, for example, including a video of President Bolsonaro endorsing hydroxychloroquine.<sup>160</sup> Facebook also removed the video.<sup>161</sup> Rudy Giuliani, President Trump’s personal lawyer, had his Twitter account temporarily suspended for quoting a conservative activist claiming, “hydroxychloroquine has been shown to have a 100% effective rate treating Covid-19.”<sup>162</sup> In April, Facebook, Twitter and YouTube declined to remove video of President Trump suggesting that disinfectants and ultraviolet light were possible treatments for the virus, on the rationale that he did not specifically direct people to pursue the unproven treatments.<sup>163</sup> In August, Facebook and Twitter took more aggressive action and removed videos posted by President Trump’s official campaign accounts in which the President claimed children were immune to Covid-19.<sup>164</sup>



# RECOMMENDATIONS FROM HUMAN RIGHTS BODIES

The following is a brief compilation of recommendations for protecting freedom of expression during the Covid-19 pandemic issued by international human rights bodies. They are reproduced here in light of their relevance to the challenges highlighted in the foregoing sections of this report.

The recommendations reflect the existing consensus regarding the parameters for state action in relation to freedom of expression in the context of Covid-19. At the same time, the pandemic has produced or accentuated a number of developments—from government stigmatization of public health reporting to innovations in content moderation by internet platforms—that will require additional reflection to ensure that freedom of expression standards are responsive to the novel circumstances of a global pandemic.

## PRESSURE ON JOURNALISM AND FREE SPEECH IN THE CONTEXT OF COVID-19

- “States are able to restrict some rights to protect public health under human rights law...[T]he restrictions need to be necessary, proportionate, and non-discriminatory. They also need to be limited in duration and key safeguards against excesses must be put in place.”<sup>165</sup>
- “Honor the prohibition on prior censorship and refrain from total or partial blocking of media sites, platforms or private Internet accounts.”<sup>166</sup>
- “No media worker should be in prison by reason of their work...It is critical that any state that continues to criminalize journalism, including under the guise of prohibiting defamation or countering terrorism, does not pursue cases during the pandemic given the additional risk posed by detention. Over the long term, it is also critical that states repeal any laws criminalizing journalism.”<sup>167</sup>

- “During the pandemic it is essential that government officials avoid denigrating those who will be reporting information regarding public health steps that individuals should be taking.”<sup>168</sup>
- “In support of the news industry, media organization should be offered support: By technology companies – through donations, sharing of advertising revenue; By governments – through inclusion in economic rescue packages, tax relief, subsidies, donation, or stimulus packages; Guarantees of editorial independence and a plurality of media must be part of the package.”<sup>169</sup>

## **TRANSPARENCY AND ACCESS TO INFORMATION RELATED TO COVID-19**

- “It is essential that governments provide truthful information about the nature of the threat posed by the coronavirus...provide reliable information in accessible formats to all, with particular focus on ensuring access to information by those with limited internet access or where disability makes access challenging.”<sup>170</sup>
- “We urge all governments to robustly implement their freedom of information laws to ensure that all individuals, especially journalists, have access to information.”<sup>171</sup>
- “Governments should be enabling [media workers] to continue their work, including, where appropriate, by classifying it as essential. When conducting their work, media should be provided with protections deemed necessary in the pandemic, such as protective masks and other relevant gear. An enabling environment also involves the holding of open press conferences that include independent media and ensuring that all media outlets, not just State-owned media, have access to public officials and other information sources.”<sup>172</sup>

## COVID-19 MISINFORMATION AND DISINFORMATION

- “It is essential that governments and internet companies address disinformation in the first instance by themselves providing reliable information. That may come in the form of robust public messaging, support for public service announcements, and emergency support for public broadcasting and local journalism (for instance, through government health advertisements).”<sup>173</sup>
- “The principles of legality and necessity should be applied to any approach to disinformation. In particular, ‘disinformation’ is an extraordinarily elusive concept to define in law, susceptible to providing executive authorities with excessive discretion to determine what is disinformation, what is a mistake, what is truth...In other words, the penalization of disinformation is disproportionate, failing to achieve its goal of tamping down disinformation while instead deterring individuals from sharing what could be valuable information.”<sup>174</sup>
- “State actors should not make, sponsor, encourage or further disseminate statements which they know or reasonably should know to be false (disinformation) or which demonstrate a reckless disregard for verifiable information (propaganda). State actors should, in accordance with their domestic and international legal obligations and their public duties, take care to ensure that they disseminate reliable and trustworthy information, including about matters of public interest, such as the economy, public health, security and the environment.”<sup>175</sup>
- “In seeking to meet their responsibilities to prevent or mitigate human rights harms during the pandemic, it is essential that the [social media] companies conduct ongoing due diligence to determine the impact their content policies are having on the rights to health and to life. Given the nature of the public threat, they should aim towards maximum transparency of their policies and engage, on an urgent basis, not only with public health authorities but with affected communities wherever they operate. They should especially review their policies and practices to ensure that content moderators are available as soon as possible to review COVID-19 information, as reliance solely on automation may have a deleterious impact on health and human rights.”<sup>176</sup>

**ENDNOTES**

1 "Advisory Opinion OC-5/85: Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism," Inter-American Commission on Human Rights para. 70, November 13, 1985, available at [http://www.corteidh.or.cr/docs/opiniones/seriea\\_05\\_ing.pdf](http://www.corteidh.or.cr/docs/opiniones/seriea_05_ing.pdf).

2 "COVID-19: Exceptional measures should not be cover for human rights abuses and violations – Bachelet," United Nations Human Rights Office of the High Commissioner, April 27, 2020, <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25828&LangID=E>.

3 "American Convention on Human Rights 'Pact of San Jose, Costa Rica,'" Organization of American States, article 13, November 22, 1969, available at [https://www.oas.org/dil/treaties\\_B-32\\_American\\_Convention\\_on\\_Human\\_Rights.pdf](https://www.oas.org/dil/treaties_B-32_American_Convention_on_Human_Rights.pdf).

4 States have also established restrictions to the rights of movement and association. Given the complexity of each of these rights and their limitations under the pandemic, these freedoms should each be given their own separate reports. Therefore, this report focuses specifically on the state of freedom of expression in the region during this health crisis.

5 David Kaye, "Disease pandemics and the freedom of opinion and expression: Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression," United Nations, April 23, 2020, <https://undocs.org/A/HRC/44/49>.

6 "ONLINE EVENT: Voices in the Pandemic – Covid-19 and Freedom of Expression in the Americas," Inter-American Dialogue, May 20, 2020, <https://www.thedialogue.org/events/online-event-voices-in-the-pandemic-covid-19-and-freedom-of-expression-in-the-americas/>.

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10 "Recent actions regarding Multilateral Treaties," Organization of American States, [http://www.oas.org/en/sla/dil/inter\\_american\\_treaties\\_recent\\_actions.asp](http://www.oas.org/en/sla/dil/inter_american_treaties_recent_actions.asp).

11 See "Pandemic and Human Rights in the Americas: Resolution 1/2020," Inter-American Commission on Human Rights, sec. B.2 and para. C(3)(g), April 10, 2020, available at <http://www.oas.org/en/iachr/decisions/pdf/Resolution-1-20-en.pdf>.

12 "Pandemic and Human Rights in the Americas: Res-

olution 1/2020," Inter-American Commission on Human Rights, April 10, 2020, <http://www.oas.org/en/iachr/decisions/pdf/Resolution-1-20-en.pdf>.

13 "Press release R78/20: IACHR and its SR FOE express concern about restrictions on freedom of expression and access to information in States' response to the COVID-19 pandemic," Inter-American Commission on Human Rights, April 18, 2020, <http://www.oas.org/en/iachr/expression/showarticle.asp?artID=1173&IID=1>.

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15 See footnote 2.

16 Office of the Special Rapporteur for Freedom of Expression and the Inter-American Commission on Human Rights, "The Inter-American Legal Framework regarding the Right to Freedom of Expression," Organization of American States, para. 114, December 30, 2009, <http://www.oas.org/en/iachr/expression/docs/publications/INTER-AMERICAN%20LEGAL%20FRAMEWORK%20OF%20THE%20RIGHT%20TO%20FREEDOM%20OF%20EXPRESSION%20FINAL%20PORTADA.pdf>.

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20 See footnote 13.

21 IFEX Latin American & Caribbean Alliance, "Joint Statement on Cuban Decree 370 and Limits on Freedom of Expression," IFEX, May 6, 2020, <https://ifex.org/joint-statement-on-cuban-decree-370-and-limits-on-freedom-of-expression/>.

22 See footnote 13.

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## **About the Peter D. Bell Rule of Law Program**

Established in 2015 with support from the Ford Foundation and named in honor of a founding Dialogue co-chair, the Peter D. Bell Rule of Law Program aims to elevate policy discussions around corruption and transparency, democracy and human rights, and citizens security in the Americas.



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