

**SOCIAL MEDIA REGULATION AND INFORMATION DISORDER  
IN PUBLIC HEALTH EMERGENCIES\***

**Abstract**

*The sheer indispensability of information dissemination in public health emergencies cannot be overemphasized. While traditional media such as Newspapers, Radio, Television, Postal Mails, is still in use for this purpose, social media platforms have proved effective in providing 24/7 accessibility and availability of information to combat issues on Corona Virus Disease (COVID-19). However, despite the importance of social media during public health crisis, the challenge of regulating false and misleading content during such period presents a global challenge. This paper adopts the Doctrinal research method. It examines the role of Social Media in Public health crisis, and the existing international and regional legal framework protecting freedom of expression. The Paper exposes various attempts or suitable means to regulate social media during public health crisis and recommends the adoption of a multi-stakeholder, inter-dependent approach to effectively tackle the challenge of disinformation.*

**Keywords:** Social Media, Freedom of Expression, Disinformation, Misinformation, COVID-19, International Regulations.

**1. Introduction**

The fragility of traditional media in the 21st century ushered in Social Media Platform, on the rational basis of the opportunities it offers in information dissemination.<sup>1</sup> Its rapid adoption is not unconnected with the demands for 24/7 online presence of informative content and the inability of traditional media to meet up with these demands for availability and accessibility, thereby veering a daily dependence of individuals, organisations, and the government on digital mobile and Social Media Platforms. However, in the wake of the outbreak of COVID-19 pandemic, the challenges of false and misleading Information regarding the origin, prevention, and treatment of COVID-19, threw the world to a media crisis, described as ‘Infodemic’<sup>2</sup> creating tension and distrust among Nations. According to the United Nations Educational, Scientific and Cultural Organization (UNESCO), while probing the information landscape during the pendency of COVID-19 pandemic, reported a colossal spread of disinformation among national government, national organisation, multi-national corporations and individuals.<sup>3</sup> According to the said report, the activities of Bots<sup>4</sup> accounts for 40% of the total number of 178 million tweet that were connected with COVID-19.<sup>5</sup> The Research further indicates that the 40% produced by Bots were unreliable Information regarding COVID-19 global pandemic.<sup>6</sup>

Misinformation<sup>7</sup> and disinformation<sup>8</sup> on the origin, transmission and treatment of COVID-19 continues to be disseminated on several online platform with social media taking the lead in such false information. Bulk of COVID-19 disinformation were expressed with a tinged of xenophobia, racism and hate speech as its most focal theme. While some mis-and disinformation claims that the virus was developed as a bioweapon, other versions holds that the virus was created for the purposes of generating profit from global sells of vaccines. In the same vein, information concerning the cure has also originated from several individuals and same credited to reliable sources who have issued disclaimer on such information. Some African nations have also accused international bodies like the World Health Organisation (WHO) of racial bias, as traditional cure or solution developed in Africa

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<sup>1</sup>Edelman Trust Institute, ‘*Edelman Trust Barometer- Global Results*’ [2017]. <<https://www.edelman.com/global-results/>> accessed 12 November 2020

<sup>2</sup>World Health Organization. ‘*Novel Coronavirus (2019-nCoV) Situation Report-13*’ [2020].

<<https://www.who.int/emergencies/diseases/novel-coronavirus-2019/situation-reports>> accessed 12 November 2021 The World Health Organization describes the concept as a ‘second disease’ accompanying the COVID-19 pandemic. It describes ‘*Infodemic*’ as ‘an overabundance of information, accurate and inaccurate in circulation, which has resulted in difficulty in finding trustworthy and reliable source or guidance on issues relating to COVID-19 Pandemic.

<sup>3</sup> UNESCO ‘*Press Freedom and Disinformation during the COVID-19 Crisis, flagship event of World press freedom day 2020*’ [2020] <<https://en.unesco.org/news/press-freedom-and-disinformation-during-covid-19-crisis-flagship-event-world-press-freedom-day>> accessed 12 August 2020

<sup>4</sup> Bots is ‘a computer program that works automatically, especially one that searches for and finds information on the internet’ Cambridge Online Dictionary, <<https://dictionary.cambridge.org/dictionary/english/bot>> 23 May 2020

<sup>5</sup> World Health Organization. (Supra note 2)

<sup>6</sup> Ibid

<sup>7</sup> Misinformation are false Information Content, disseminated regardless of the medium, with or without the intent to mislead persons or group of persons who are the target of such misinformative Content.

<sup>8</sup> Disinformation is the dissemination of information that is false, misleading or inaccurate, with the intent to promote or intentionally cause public panic or harm with the motive of profit or other form of benefits.

where not given the necessary recognition.<sup>9</sup> Several conspiracy theories have also been propagated on Social Media relating to the origin of COVID-19, while some attributes its origin to 5G network, others see the virus as a human creation and a strategy to reduce world population etc. Social media platforms have played host to bulk of these misinformation, mal-information and disinformation, raising the advocacy and awareness campaigns on the need to regulate social media content under International, regional, and national regulations during public health emergencies. While other expression such as defamation, incitement to violence, incitement to commit genocide etc, are regulated, disinformation remains unregulated. However, while regulations are desirable, to curb false and misleading information during Public health emergencies on Social media, concerns have been raised, that such Regulation could clog the Right to Freedom of Expression.

## 2. Social Media and Freedom of Expression under International Legal Instruments

The sheer indispensability of the Right to Freedom of Expression, accounts for the reference of this Right as a first generation Human Right alongside other Rights, such as, the Right to Life, Right to Private and Family life, Right to Freedom of Movement, Right to Access to Justice, Right to Freedom of Assembly, Right to Freedom from Torture and others.<sup>10</sup> Several protective International Legal Instruments provide for the safeguard of the Right to freedom of Expression, underscoring its importance. These International Legal Instruments can be examined as follows:

### Universal Declaration of Human Rights 1948

The Universal Declaration of Human Rights (UDHR) came into force on the 10<sup>th</sup> of December 1948.<sup>11</sup> The Declaration was a landmark in the history of the development of Human Right. It guaranteed the rights to Freedom of Expression. The UDHR ushered a standard that was adopted universally for the protection of Human Right. The Declaration is grounded on the idea that there are a number of common standards of decency that can and should be accepted by people of all nations and culture.<sup>12</sup> Article 19 of the Declaration provides that: 'everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers'.<sup>13</sup> The Provision of Article 19 of the UDHR was however not intended to have a binding force on signatories or State parties to the United Nations, but to serves as a positive International Law.<sup>14</sup> Building on this Declaration, other binding treaties came into force such as the International Convention on Civil and Political Rights (ICCPR).

### International Covenant on Civil and Political Rights 1966

The International Covenant on Civil and Political Rights (ICCPR),<sup>15</sup> like the provisions of the UDHR, protects and guarantees the Right to Freedom of Expression. The Convention is not limited to the Right to express one's opinion and ideas but also protect the Right to access to information as provided for under Article 19 of the ICCPR. The Article provides that: '(1) everyone shall have the right to hold opinions without interference.(2) everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.'<sup>16</sup> The ICCPR has so far been ratified by 173 States parties.<sup>17</sup> The

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<sup>9</sup> Aryan Bakar, 'Could it work as a cure? Maybe' A Herbal Remedy for Coronavirus is a Hit in Africa, But Experts Have Their Doubts' [2020] <[www.google.com/amp/s/time.com/5840148/coronavirus-cure-covid-organic-madagascar/%3famp=true](http://www.google.com/amp/s/time.com/5840148/coronavirus-cure-covid-organic-madagascar/%3famp=true)> accessed 11 November 2020

<sup>10</sup> Joana Abrisketa 'International Human Rights Law' (eds.), H.-J. Heintze, P. Thielbo"rger International Humanitarian Action, [2018] Springer International Publishing AG, P. 144

<sup>11</sup> The Convention was Resolution 217 of the United Nation conference held in Palais de chaillot. The Resolution was unanimously adopted by 48 Member States of the United Nations out of the 58 Members Nation, while 8 nations were absent from the said meeting, two (2) of the Nations presents did not vote for or against the Resolution. The Declaration consist of 30 Article affirming the Rights of individuals.

<sup>12</sup> Glendon, A.M, 'The Rule of Law in the Universal Declaration of Human Rights' [2004] (2) *Nw. U. J. int'l Human, Rts., Spring*, Pp.1-5.

<sup>13</sup> UN General Assembly, Universal Declaration of Human Rights, 10 December 1948, 217 A (III), Article 19. <<https://www.refworld.org/docid/3ae6b3712c.html>> accessed 30 September 2020

<sup>14</sup> Humphrey, J.P., 'The International Bill of Rights: Scope and Implementation' [1976] (17) *William & Mary Law Review* 527

<sup>15</sup> International Covenant on Civil and Political Rights, 19 December 1966, Res 2200A (XXI), 999 UNTS 171 (entered into force 23<sup>rd</sup> March 1976).

<sup>16</sup> *Ibid*, Article 19

<sup>17</sup> United Nations, *Treaty Series* vol. 999, Multilateral Treaties Deposited with the Secretary-General, Chapter IV: Human Rights, 4. International Covenant on Civil and Political Rights.

<[https://treaties.un.org/pages/viewDetails.aspx?src=TREATY&mtmsg\\_no=IV-4&chapter=4&clang=\\_bottom](https://treaties.un.org/pages/viewDetails.aspx?src=TREATY&mtmsg_no=IV-4&chapter=4&clang=_bottom)> accessed 30 September 2020

Convention imposes a duty on States parties to take every necessary positive step to ensure protection of the Right to freedom of expression by adopting Laws or other positive measures to guarantee effective remedy for cases of human rights infringement.<sup>18</sup>

#### **International Covenant on Economic, Social and Cultural Rights 1966**

The International Covenant on Economic, Social and Cultural Rights (ICESCR) was signed by 71 signatories and has been ratified by 117 States party.<sup>19</sup> Article 15(3) of the ICESCR provides that 'The States Parties to the present Covenant undertake to respect the freedom indispensable for scientific research and creative activity'.<sup>20</sup> The ICESCR requires members States to submit two comprehensive frameworks on the implementation of Human Rights and also a specific regulation or law that contains information on the implementation of the provisions of the ICESCR.<sup>21</sup>

#### **International Convention on the Elimination of all forms of Racial Discrimination 1965**

The International Convention on the Elimination of all forms of Racial Discrimination (ICERD),<sup>22</sup> has 88 signatories and has been ratified by 112 States Parties.<sup>23</sup> The ICERD guarantees and expresses the Right to freedom of expression of all persons. Article 5(d)(vii) and (viii) of the treaty, guarantees Right to freedom of thought, conscience, religion and also the freedom of opinion and expression, respectively. Article 5 provides that: 'In compliance with the fundamental obligations laid down in Article 2 of this Convention, States Parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the Law, notably in the enjoyment of the following Rights,...(d) Other civil rights, in particular (vii) The right to freedom of thought, conscience and religion; (viii) The right to freedom of opinion and expression.' States Parties to the ICERD are mandated to submit a report on the judicial, legislative, administrative measures on human rights protection and other positive actions that the State party have adopted to meet the canons of the ICERD within one year of its entry into force.<sup>24</sup>

#### **Convention on the Rights of the Child 1989**

The United Nations Convention on the Right of the Child (UNCRC)<sup>25</sup> is the most widely ratified Human Rights treaty in the world with 116 signatories and 116 States Parties.<sup>26</sup> The UNCRC firmly set out the Social, Cultural, Political, Economic, Civil and Health Rights of a child. Article 1 of the Convention defines a child to mean persons below the age of eighteen unless majority is attained earlier by means of any other local legislation. The UNCRC protects the freedom of expression of a child under Article 12 and Article 13 of the Convention. Article 13 provides that: 'The child shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of the child's choice.' States Parties to the UNCRC are mandated to report to the Committee on the Rights of the Child within two years of signing and domesticating the

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<sup>18</sup> Brittan Heller, Joris van Hoboken, 'Freedom of Expression: A Comparative Summary of United States and European Law' [2019] A working paper of the Transatlantic High-Level Working Group on Content Moderation Online and Freedom of Expression. <<https://www.ivir.nl/twg/>>. accessed 20 September 2020

<sup>19</sup> UN General Assembly, *International Covenant on Economic, Social and Cultural Rights*, 16 December 1966, United Nations, Treaty Series, Vol.993, P.3, <<https://www.refworld.org/docid/3ae6b36c0.html>> accessed 30 September 2020 The Convention treaty was adopted and opened for signature, ratification and accession by General Assembly Resolution 2200A(XXI) of 16 December 1966. Entry into force 3 January 1976, in accordance with Article 27

<sup>20</sup> ICESCR, Article 15 (3)

<sup>21</sup> Katie Bresner 'Understanding the right to freedom of expression: An international law primer for journalist'[2015] International Human Rights Program (IHRP) University of Toronto Faculty of Law.

<sup>22</sup> *International Convention on the Elimination of All Forms of Racial Discrimination*, 21 December 1965, Res 2106(XX), 660 UNTS195 (entered into force 4 January 1969). [ICERD]

<sup>23</sup> United Nations, *Treaty Series* vol. 660 P.195. Multilateral Treaties Deposited with the Secretary-General, Chapter IV: Human Rights,

<sup>24</sup> International Convention on the Elimination of All Forms of Racial Discrimination.

<[https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-2&chapter=4&lang=en](https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-2&chapter=4&lang=en)> accessed 12 September 2020

<sup>25</sup> Convention on the Rights of the Child, 20 November 1989, Res 44/25, 1577 UNTS 3 (entered into force 2 September 1990).

<sup>26</sup> United Nations, *Treaty Series* vol. 999, Multilateral Treaties Deposited with the Secretary-General, Chapter IV: Human Rights, 11. Convention on the Rights of the Child.

<[https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-11&chapter=4&lang=en](https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-11&chapter=4&lang=en)> accessed 10 September 2020

Convention and every five years thereafter. The said Reports must include steps taken by the States to implement and give effect to the treaty and ‘the progress made on the enjoyment of those rights’ as provided for in the treaty.<sup>27</sup>

### **International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families 1990**

The International Convention on the Protection of all Migrant Workers and Members of their Families (ICMW) 1990 guarantees the Right to freedom of expression of migrant workers and their families. The ICMW have been ratified by 47 States.<sup>28</sup> It protects the Rights to freedom of expression under Article 13.<sup>29</sup> The Article provides that: ‘Migrant workers and members of their families shall have the right to hold opinions without interference. Migrant workers and members of their families shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art or through any other media of their choice.’ Parties to the treaties are mandated to report to the Committee on Migrant Workers within one year of the admission and required to submit a further Report after five years or any time as may be required by the Committee. The judicial, legislative and administrative efforts and checks have been taken domestically to bring the full impact of the ICMW within the state.<sup>30</sup>

In the same vein, some regional treaties have also provided for the protection of the right to freedom of expression. These treaties include:

### **American Convention on Human Rights 1969**

The American Convention on Human Rights (ACHR) exist as a regional multilateral human rights treaty, adopted by the Organization of American States (OAS). The Convention has been ratified by 22 State Party.<sup>31</sup> The Rights to freedom of expression, information and thought regardless of the medium or channel, are protected under the Convention. The ACHR in Article 13 provides that: ‘Everyone has the right to freedom of thought and expression. This right includes freedom to seek, receive, and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing, in print, in the form of art, or through any other medium of one’s choice.’<sup>32</sup> To ensure adequate protection of Human Rights as enshrined in Article 13 ACHR, the Inter-American Commission on Human Rights (IACHR) issued a detail Declaration of Principles on Freedom of Expression in year 2000 outlining the details of the Right to confidentiality, privacy, confidentiality of journalistic source, control and ownership of media source.<sup>33</sup>

### **European Convention on Human Rights**

The European Convention on Human Rights (ECHR) came into force in 1950.<sup>34</sup> The Council of Europe (COE) was instrumental to the enacting of the treaty and also the COE oversees the ECHR. The ECHR has been signed and ratified by 47 Member States of the COE.<sup>35</sup> The Right to freedom of expression is well recognised under Article 10 of the Convention. The Article provides an effective safeguard for Right to hold an opinion, receive and impart such ideas and information without any interference, regardless of the medium. The Convention also specify the duties and restriction attached as a condition to such Rights. Article 10 provides that: ‘Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.’ In order to further

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<sup>27</sup> Convention on the Rights of the Child, 1989, Article 44

<sup>28</sup> United Nations, *Treaty Series* vol. 999, Multilateral Treaties Deposited with the Secretary-General, Chapter IV: Human Rights, 13. International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families. <[https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-13&chapter=4&lang=en](https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-13&chapter=4&lang=en)> accessed 10 September 2020

<sup>29</sup> International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, 18 December 1990, Res A/RES/45/158. [ICMW]

<sup>30</sup> Ibid, Article 78

<sup>31</sup> OAS, *American Convention on Human Right Signatories and Ratifications* <[http://www.oas.org/dil/treaties\\_B-32\\_American\\_Convention\\_on\\_Human\\_Rights\\_sign.htm](http://www.oas.org/dil/treaties_B-32_American_Convention_on_Human_Rights_sign.htm)> accessed 10 January 2021

<sup>32</sup> Organization of American States (OAS), *American Convention on Human Rights, ‘Pact of San Jose,’* B-32, Costa Rica, 22 November 1969, Article 13. [American Convention]

<sup>33</sup> OAS, Inter-American Commission on Human Rights, *Declaration of Principles on Freedom of Expression*, 108<sup>th</sup> Sess, October 2000. [OAS Declaration]

<sup>34</sup> Council of Europe, *Convention for the Protection of Human Rights and Fundamental Freedom, as amended by Protocols No.11 and 14* (4 November 1950) ETS 5, Art 10. [European Convention]

<sup>35</sup> Council of Europe, Treaty Office, *Convention for the Protection of Human Rights and Fundamental Freedoms*, CETS No. 005, <<http://conventions.coe.int/Treaty/Commun/ChercheSig.asp?NT=005&CM=8&DF=&CL=ENG>> accessed 10 September 2020

protect these Rights, the ECHR established the European Court of Human Rights (ECtHR) to assess the level of compliance with the provisions of the ECHR by parties that have ratified the Convention by domesticating same into her local legislation.<sup>36</sup>

### **African Charter on Human and Peoples Rights**

The African Union adopted the African Charter on Human and Peoples Rights (ACHPR) also known as the 'Banjul Charter' in 1981. However the Charter came into force in 1986.<sup>37</sup> The Charter was signed and ratified by fifty-three member states.<sup>38</sup> The Rights to freedom of expression is protected under Article 9 that: '(1) Every individual shall have the right to receive information; (2) Every individual shall have the right to express and disseminate his opinions within the law.'<sup>39</sup> The ACHPR in her 32<sup>nd</sup> Session held in 2002, elaborated and reaffirmed the provision of Article 9 of the Charter in its declaration of principles of freedom of expression. The elaborated provisions, addresses issues burdening on freedom of access to information, interference, protection of media professionals, protection of journalistic source, promotion of diversity, public and private broadcasting, print media, issues relating to reputation, with regulatory bodies and other concept under the scope of protection of freedom of expression.<sup>40</sup>

### **Arab Charter of Human Rights**

The Arab Charter of Human Rights was adopted by the Arab League in 2004 and it came into force in 2008. The Arab League comprises of nations in the Middle East and North Africa countries. In protecting the Right to freedom of expression, the Charter reaffirms the principles of Human Rights as provided for in the Universal Declaration on Human Right, International Convention on Civil and Political Rights, and the Cairo Declaration on Human Rights of Islam. Article 32 of the Charter guarantees the Right to information, freedom to seek, receive and impart such information regardless of the medium.<sup>41</sup> Therefore, the rights to information, freedom to seek, received and also impart through medium such as social media is well guaranteed under several international legal instruments. However, these rights are not without restrictions.

### **3. Restriction and Limitation on the Right to Freedom of Expression**

The Right to freedom of expression as examined by the ECtHR in the case of *Lingens v Austria*,<sup>42</sup> describes freedom of expression as an 'essential foundation of a democratic society.'<sup>43</sup> The UDHR and other Human Rights Treaties guarantees the Right to freedom of expression in three essentials: (a) the right to hold opinions without interference, (b) the right to seek and receive information, and (c) the right to impart information and ideas regardless of frontiers. Article 19(3) of the ICCPR provides that:

The exercise of the Rights provided for in paragraph 2 of this Article carries with its special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are *provided by law* and are *necessary* (a) for the respect of the *Rights or reputation of others*; (b) for the protection of *National Security* or *Public Order*, or of *Public Health or Morals*.<sup>44</sup> (italics mine)

These Rights are not absolute, several provisions of international treaties contain similar provision restricting and limiting the Right to freedom of expression.<sup>45</sup> These limitation and restrictions are deemed necessary for the

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<sup>36</sup> Ibid, Article 19

<sup>37</sup> Organization of African Unity (replaced by African Union), African Charter on Human and Peoples' Rights ('Banjul Charter'), 27 June 1981, CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982), Article 9 (entered into force 21 October 1986). [African Charter]

<sup>38</sup> African Commission on Human and Peoples' Rights, *Ratification Table: African Charter on Human and Peoples' <* <http://www.achpr.org/instruments/achpr/ratification/> accessed 10 September 2020 .

<sup>39</sup> African Charter on Human and Peoples' Rights 1982, Article 9

<sup>40</sup> The African Commission on Human and Peoples' Rights (ACHPR), 32<sup>nd</sup> Sess. *Declaration of Principles of Freedom of Expression*, 23 October 2002, Res.62(XXXII)02.

<sup>41</sup> League of Arab States, Arab Charter on Human Rights, 22 May 2004, Article 32 (entered into force 15 March 2008).

Translation: <<http://www1.umn.edu/humanrts/instree/loas2005.html>> accessed 10 December 2020

<sup>42</sup> *Lingens v Austria*, [1986] ECHR No 9815/82, Para 41.

<sup>43</sup> Supra

<sup>44</sup> ICCPR Article 19(3)

<sup>45</sup> Convention on the Rights of the Child (CRC), Article 13(2) provides for restriction of the right to freedom of expression. Article 13 (3) of the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (ICMW) recognizes these restrictions. Art 13(3)(c) (ICMW) provides restrictions for 'the purpose of preventing any propaganda for war' and 'for the purpose of preventing any advocacy or national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence.' In Article 13(3)(d) of the Convention. Article 13(3) American Convention on Human Rights 1969, Article 10(2) European Convention on Human Rights 1950, Article 32 (2) Arab Charter of Human Right

protection against harmful expression either to the reputation of others, National Security, or for the purposes of Public Health and Morality. In considering what could constitute harmful expression, Frank La Rue, made a clear distinction of three echelons of harmful expression as follows;<sup>46</sup>

- A. Expression constituting an offence that can be criminally prosecuted under International Law. Offences under this category include expressions which are directly or indirectly inciting to commit genocide, incitement to discriminate through racial, religious, national propaganda. Expression that may cause hostilities or violence, inciting expression to commit or carry out terrorism, or expressions relating to child pornography. States parties are mandated to enact National Legislation criminalizing these expressions under the State's National Laws.<sup>47</sup>
- B. Expression not criminally punishable but may justify a restriction and a civil suit. This form of expressions cut across that which constitute defamation (either slanderous or libellous in nature). States have enacted legislation, categorising these expression as either giving rise to a civil claims or offences, or both. Liability under this form of expression gives rise to civil remedies or criminal sanctions as imposed by a competent Court of law.
- C. Expression not giving rise to civil or criminal sanctions, but generates issues relating to tolerance, civility and respect for others.<sup>48</sup> Expressions under this category raise issues which may not necessarily be criminally punishable or have civil remedies. Expression of this nature poses a challenge to international organisation, national government, public institutions, national agencies and parastatals, local and international business corporations, and also individuals. Under this category of expression, issues relating to misinformation, mal-information and disinformation, among nations or within a State to cause panic or confusion on the state of affairs. These harmful expressions are mostly unregulated but generate issues relating to civility, tolerance and mutual respect.

During Public Health Emergencies, such as COVID-19 pandemic, the suspension of the Rights to freedom of expression for public health reasons is permitted in cases of emergencies that threaten the life of a nation. However, the ICCPR provides that such suspension must be within the ambit of International Human Rights Law and such powers must be temporal in a bid to restore the State to normalcy.<sup>49</sup> The States must also have additional powers through enactment of national legislation to deals with such restrictions in emergencies, such national legislation must be of necessity, to provide protection in times of Public Health Emergencies.<sup>50</sup> The restriction must at all-time be proportionate to the interest it seeks to protect, and such law or restriction must not be discriminatory.<sup>51</sup> The law providing for such restrictions must not be arbitral and the burden of justifying such limitation is placed on the government.<sup>52</sup>

Therefore, International Law permits suspension or restriction of the Right to freedom of expression in public health emergency declared under a National Law. However, the issue of misinformation, mal information, and disinformation remains unregulated under International Law. Therefore, while other category of harmful expression is regulated by national and international legislation and can be validly restricted, misinformation, mal-information and disinformation on social media cannot be validly restricted due to lack of proper legal framework regulating same both at national and international front in the wake of the outbreak of COVID-19 Pandemic. Therefore, posing a question on how disinformation and misinformation could be regulated on social media during public health crisis situation.

#### **4. Regulation Versus Self-Regulation of Social Media**

Legislation on traditional mass media, have longed been develop under national and international regulations. In regulating, these laws had traditional mass media (Radio, Television, Newspapers, etc) as its scope or focus, therefore, shaping traditional media practitioners to adhere with all ethics and regulations. Social media regulatory standard at present in both national and international arena is still nascent. The protection of the Right to freedom of expression represents the only universally develop and acceptable protection relating to social media offer by various international and national legal instrument. The challenges as to appropriate steps, nature of regulation,

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<sup>46</sup> Frank La Rue, *Report of the Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression*, [2011] United Nation General Assembly, 66th Session, A/66/290.

<sup>47</sup> Ibid, Paras 20-36; and Frank La Rue, *Report of the Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression* [2010] UNGA Human Rights Council, 14th Session, A/HRC/14/23, 20 April 2010, at Para 79(h).

<sup>48</sup> Ibid, Para 18

<sup>49</sup> United Nations (2020), Emergency Response and COVID-19

<[https://www.ohchr.org/Documents/Events/EmergencyMeasures\\_COVID.pdf](https://www.ohchr.org/Documents/Events/EmergencyMeasures_COVID.pdf) > accessed 10 November 2020

<sup>50</sup> Ibid

<sup>51</sup> Ibid

<sup>52</sup> Ibid

and enforcement of such Regulations in a transnational and borderless media (social media) remain a concern. While content moderation or removal, have been considered by social media platforms as self-regulatory standards, ensuring transparency in the moderation or deletion of content, poses another challenge as lack of transparency exposes such process to the pitfall of clogging the Right to freedom of expressions. While the option of State regulation or self-regulations have been differently advocated, State regulation, raises the question of whether the transactions of a private company towards their customer should be regulated by the government and same will not be considered as an internal matter.<sup>53</sup> The challenge of whether sanctions should be imposed by the state on social media companies or the originator of the content and also how to enforce such sanctions bearing in mind the trans-border nature of social media is also another visible challenge.

The recent practice of co-regulating between the State and social media companies, have so far proved to be the ideal regulatory approach to regulate social media disinformation. Social Media Companies have set up rules, restriction, and also official communication channels on her platforms aimed at regulating disinformation. Efforts such as identification and deletion of illegal accounts, content verification through fact checking tools, use of symbols and signs to mark some designated trustworthy accounts and also alternative content verification link.<sup>54</sup> Social media companies have also employ the use of algorithms to ascertain and flag down unsuitable and disturbing user generated content on their platforms. However, in guaranteeing the suitability of self-regulatory approach, ensuring transparency is of utmost importance. State regulators in approaching social media regulation on matters relating to disinformation and misinformation have adopted several methods such as adapting measures obtainable in traditional media with some modifications to social media. These State regulatory approaches are mostly centred around content regulation, such as prohibiting the dissemination of disinformative Content, and criminalizing content for defamation or hate speech. Public Health emergencies legislation have been enacted by some states mandating compulsory awareness campaign aimed at educating the populace on Public health and other Regulations enacted to regulate social media services providers. Some countries have in recent time channel its policies and legislative effort to address the issues surrounding unethical media practices.<sup>55</sup> Jurisdiction like Germany, have enacted legislation mandating digital platforms to fully pull down illegal content such as fake news and hate speech, within 24 hours of receipt of complaint.<sup>56</sup> Global effort of nations is gear towards advocacy for Bill, promoting media literacy, countering or discrediting of fake content, and amending of existing legislation to curb harmful expressions.<sup>57</sup>

### **5. Social Media and Challenges of Global Regulation of Disinformation**

While regulation of disinformation content is been considered, to effectively activate its restriction under a national regulation in times of public health emergency, raises concern that such restriction may halt the democratisation of information, opinion and subsequently silencing of critical media.<sup>58</sup> The ubiquitous nature of social media defiles jurisdictional barriers. Therefore, the desirability for the adoption of a multi- stakeholder, inter-dependent approach becomes the most potent approach to effectively tackle the challenge of disinformation.<sup>59</sup> This approach entails a combined effort of the government, the Public, media companies, international organisation, public institutions and other stakeholders to combat disinformation with different inter-dependent approach. Such approach must be based on transparency, disclosure of rules, and procedures adopted in evaluating what content amounts to disinformation. Procedures for content moderation or deletion must be transparent, same as request for disclosure of content source. The multi-stakeholder, inter-dependent approach must aim at ensuring the promotion of media literacy, provision of adequate media tools for countering social media disinformation Content, promoting research aimed at monitoring and evaluating the impact of disinformation and other potent means at curbing disinformation. The multi-stakeholder, inter-

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<sup>53</sup> Rozumiłowicz, B. M., Rast'o Kužel 'Social Media, Disinformation and Electoral Integrity'[2016] International Foundation for Electoral Systems. *Working Paper* August 2019 P. 6 <[Ifes\\_Working\\_Paper\\_Social\\_Media\\_Disinformation\\_and\\_Electoral\\_Integrity\\_August\\_2019\\_0.Pdf](#)>

<sup>54</sup> European Commission. 'A Multi-Dimensional Approach to Disinformation' [2018] Final Report of the High-Level Expert Group on Fake News and Online Disinformation. <[http://ec.europa.eu/newsroom/dae/document.cfm?doc\\_id=50271](http://ec.europa.eu/newsroom/dae/document.cfm?doc_id=50271) > accessed 10 November 2020

<sup>55</sup> Malloy, D. (2017). Countries such as Canada, the United Kingdom, France, Australia, Brazil, Indonesia, Philippines, and others are making efforts to regulates such interaction on Social Media.

<sup>56</sup> Federal Ministry of Justice and Consumer Protection. (2017). Act to Improve Enforcement of the Law in Social Networks (Network Enforcement Act, netzdg). [online]. <[http://www.bmjv.de/DE/Themen/fokusthemen/netzdg/\\_documents/netzdg\\_englisch.html](http://www.bmjv.de/DE/Themen/fokusthemen/netzdg/_documents/netzdg_englisch.html) > accessed 10 November 2021

<sup>57</sup> Funke Daniel., Flamini Daniela, *A guide to anti-misinformation actions around the world* Poynter [2020]

<<https://www.poynter.org/ifcn/anti-misinformation-actions-around-world>> accessed 15 November 2020

<sup>58</sup> Nossel, S. 'Faking News: Fraudulent News and the Fight for Truth'. [2017] PEN America <[https://pen.org/wp-content/uploads/2017/10/PEN-America\\_Faking-News-Report\\_10-17.pdf](https://pen.org/wp-content/uploads/2017/10/PEN-America_Faking-News-Report_10-17.pdf) >

<sup>59</sup> European Commission (2018). A Multi-Dimensional Approach to Disinformation, Final report of the High-Level Expert Group on Fake News and Online Disinformation. P. 33 <[http://ec.europa.eu/newsroom/dae/document.cfm?doc\\_id=50271](http://ec.europa.eu/newsroom/dae/document.cfm?doc_id=50271) > accessed 15 November 2020

dependent approach requires the various stakeholders to play several inter-dependent roles. These roles which include both practical and legal approaches can be briefly examined as follows:

### **International Organisation**

International Organisation and bodies has a key role in assisting stakeholders in formulations of a Code of Practices against disinformation, funding the establishment of National Centres for Research, Providing technologies such as fact-checking tools to monitor disinformation, artificial intelligence to detect activities of bots, adequate technology for language translations, funding of Journalist with the aim of cross-border collaboration in combating disinformation, promotion of Media Literacy through funding and exposures of best practices in several Regions and States. The United Nation Organisation in other to create certainty should also formulate Standard and Rules, enforceable on expression relating to disinformation, to serve as a Model Law to states in the formulations of States Regulations and legal regime on Disinformation. The World Health Organisation (WHO) has a key role to play in the formulation of health regulatory guidelines to assist States in combating issues relating to Public Health disinformation in period of Public Health crisis (such as the outbreak of COVID-19 pandemic).

### **States and National Government**

States and national government should facilitate research through funding of establishments to provide adequate fact-checking tools. Research should also be carried out on Best Practices adopted by States to regulate such content during health crisis. States must also coordinate action of credible Journalist to counter disinformation. There should be measures such as embarking on media and information literacy programme and campaigns, orientations, trainings and also developing a national curriculum on disinformation studies. Statute and Regulation should be enacted mandating pluralistic news media that encourages competition and polarises information dissemination. States must also engage in active international and cross border corporation in the fight against disinformation. The enactment of a uniform legislation by nations can help fight against the challenge of disinformation, such legislation must however, not be excessive, as government control of the media is inimical to freedom of expression and the democratic principles of a modern State.

### **Civil Society Organisations**

Civil Society Organisation (CSO) has a role to play as an important stakeholder in the fight against disinformation during public health crisis. The CSO's must engage in planned action aimed at sensitising the public through literacy awareness projects. These organisations must engage in campaigns showing massive support for actions of other stakeholders, especially the government for the benefit of enhancing the fight against disinformation. Monitoring and Evaluation is one aspect CSO's can participate in curbing disinformation in the society. Laws, Regulations, Policies and actions of other stake holders must be properly evaluated and monitored, to assess the impact of these actions towards the fight against disinformation in Public Health Crisis.

### **Social Media Platforms and News Media**

Social media platforms and other media as stakeholder can collaborate in the area of formulating an Industrial Code of Practice to self-regulate social media companies and her platforms. Such Industrial Code, in other to ensure transparency, must specify the role and responsibility of Online Social Media Platforms and her counterpart, the traditional media organisation. The Code must adequately provide standards to be adhered to by Journalists (inclusive of persons who are Journalist by profession or through the practice of journalism). A uniform standard must be in place for organisation involve in fact-checking and advertorial services, with all stakeholders actively striving for transparency in other to protect free media environment and freedom of expression. Self-regulatory approach at regulating social media and disinformation must be transparent, providing for monitoring, evaluation, sanctions, and its implementation strategy. Research relating to use of algorithm, fact-checking, modification of user generated content must be carried out together with an education on the process of having a trust worthy Content on social media.

## **6. Conclusion**

Public health emergencies measures, such as restriction of the Right to freedom of expression can only be validly imposed on the existence of a national law backing such restriction. While several national and international legal instruments have provided for restriction on some forms of expression, (libel, slander, incitement etc) the challenge of disinformation persists due to lack of international or national framework regulating this content more especially on Social Media. Attempt at social media censorship, online surveillance and other forms of restrictions through regulation often put the right to freedom of expression into jeopardy. There is therefore need for a multi-stakeholder inter-dependent approach as a means of combating disinformation in public health crisis such as COVID-19. These approaches where adopted and transparency of the process is ensured by various stakeholder, a multi-stakeholder inter-dependent approach has the potency of curbing disinformation during public health crisis, while also safe-guarding the Rights to freedom of expression.