

Emphasising the Importance of the Right to Information in the Fight Against Disinformation

“The truth is powerful and will prevail.”
-Sojourner Truth-

This paper posits the adoption and effective implementation of right to information regimes as a viable tool in the battle against state-led disinformation campaigns. Youth and members of civil society are encouraged to use it to inform their efforts in tackling state-led disinformation practices and calls for accountability.

Introduction

The global ascendancy of populist politics is a real threat to the consolidation of justice and democracy. Between 1990 and 2018, the number of populists in power around the world has increased fivefold; from four to 20.¹ Jan-Werner Mueller argues that a populist is both anti-elitist and anti-pluralist, and typically resorts to both demonising the opposition and delegitimising groups that do not conform to their ideological world-view.² To this end, one of the distinguishing features of populist movements the world over is the use of disinformation and intentionally misleading propaganda to weaken those with opposing views. Disinformation campaigns and propaganda events upset democracy in two key ways: (1) they distort the public discourse and corrupt the process of democratic decision-making, and (2) when this process leads to political success, the “victorious” political force might capture the state and deconstruct the democratic system.

Therefore, this essay makes the argument that introducing a robust national right to information regime and enshrining it as a constitutional right is a viable tool in the fight against state-led disinformation. Constitutionalising, legislating, and integrating it will enable citizens to make informed decisions, carry out their civic duties, and meaningfully engage in political processes. Citizens will also be able to question the State and request clarification on statements made by public officials or information released by official sources via the media (either traditional or alternative). Establishing such a regime will obligate the State to respond and disclose this information.

Right to information laws offer a channel through which people can exercise their sovereignty, demand accountability from powerholders, and insist on transparency. Second only to voting, freedom of information regimes arguably provide the most direct form of public accountability and are a powerful tool - when wielded properly. This essay will go on to highlight the ways in which information and its dissemination are controlled and manipulated by populist state actors and the nature of disinformation campaigns today. It will then examine how right to information regimes can intervene in this sphere and discuss the general principles those mechanisms should adopt. While recognising that disinformation is perpetuated by both state

¹ Kyle, Jordan and Gultchin, Limor, *Populists in power around the world*, Tony Blair Institute for Global Change, 7 November 2018, p. 19. Available at: <https://institute.global/sites/default/files/articles/Populists-in-Power-Around-the-World-.pdf>

² <https://www.haaretz.com/us-news/.premium.MAGAZINE-the-real-danger-posed-by-populist-leaders-like-trump-and-netanyahu-1.5445180>

and non-state actors, this paper will focus specifically on its use by state actors since right to information as an accountability mechanism is more relevant when applied to public officials.

The role of the State in disinformation and information manipulation

Exercising control over the information and knowledge space is, at its most basic, a manoeuvre of power. The powerful have always sought to control and manipulate information in order to shape public opinion, garner support, and discredit independent ideologies and their proponents. The word *propaganda* first appeared in the English language in reference to tactics used by the Catholic Church in the 18th century to propagate its ideology.³ The Cold-War era disinformation tactics of the USSR were an extension of this practice. Although the modern practice of propaganda is more commonly attributed to authoritarian regimes or extremist non-state actors, democracies too seek to shape public opinion and discourse to reinforce entrenched power structures and ideological narratives. The wartime messaging used by allied forces in support of the 2003 war in Iraq is one such example.⁴

The advent of the internet and social media posed an unprecedented challenge to governments the world over regarding the extent of their control over publicly available information. The sheer volume and diversity of information, and its accessible nature, meant that governments needed to adopt new methods of information control. This resulted in two notable forms of state information-control practices⁵. Firstly, states began adopting restrictive methods of information control, not only through selective censorship but, in some cases, restricting access to the internet entirely. Secondly, while these censorship practices continue to this day in many parts of the world, there has been a demonstrable evolution in the way states view the digital space. The internet has offered new opportunities for propaganda dissemination and state actors are increasingly in the business of information generation and false amplification⁶.

At present, state actors and populists in particular resort to disinformation in a conscious effort to distort and mould narratives on matters of public interest. These range from Boris Johnson's fictitious claims that the UK paid GBP 350 million a year to the EU⁷, and Hungarian President Victor Orban's claims about regional migration policies⁸; to Filipino President Rodrigo

³ Fellows, Erwin W. 'Propaganda: History of a Word. American Speech, vol. 34, no. 3, 1959, pp. 182–189. JSTOR. Available at: www.jstor.org/stable/454039.

⁴ Shanker, Thom and Schmitt, Eric, *HEARTS AND MINDS; Firing Leaflets and Electrons, U.S. Wages Information War*, The New York Times, 24 February 2003. Available at: <https://www.nytimes.com/2003/02/24/world/threats-responses-hearts-minds-firing-leaflets-electrons-us-wages-information.html>

⁵ Monaco, Nicholas and Nyst, Carly, *State-Sponsored Trolling: How Governments are Deploying Disinformation as Part of Broader Digital Harassment Campaigns*, Institute for the Future, 2018, p. 8. Available at: https://www.iftf.org/fileadmin/user_upload/images/DigIntel/IFTF_State_sponsored_trolling_report.pdf

⁶ Weeden, Jen et al. *Information Operations and Facebook*, 27 April 2017. Available at: <https://fbnewsroomus.files.wordpress.com/2017/04/facebook-and-information-operations-v1.pdf>

⁷ Lichfield, John, *Boris Johnson's £350m claim is devious and bogus. Here's why*, The Guardian, 18 September 2017. Available at: <https://www.theguardian.com/commentisfree/2017/sep/18/boris-johnson-350-million-claim-bogus-foreign-secretary>

⁸ "Fake news": EU rejects Orban's migration media campaign, Al Jazeera, 19 February 2019. Available at: <https://www.aljazeera.com/news/2019/02/news-eu-rejects-orban-migration-media-campaign-190219160120434.html>

Duterte's exaggerated claims about poverty and unemployment reduction⁹, and former White House Press Secretary Sean Spicer's claims about the turnout at Donald Trump's inauguration.¹⁰

While some of these claims could appear harmless, they have serious and dangerous implications. This is especially true when populist rhetoric scapegoats' refugees, immigrant communities, and minorities as part of their disinformation campaigns. For instance, researchers at the Southern Poverty Law Centre found that, in the ten days following President Trump's victory in the polls, there was a surge in identity-based violence and intimidation across the United States.¹¹ Many of the assailants invoked the President's name or alluded to him during the assaults. Similarly, data shows¹² that as many as 90% of religious hate crimes in India between 2009 and 2018 occurred after Prime Minister Narendra Modi led the BJP to power in 2014. This points to a clear permissive environment created under Modi's watch which enables and even encourages people to act out their hate and attack minorities.

Some writers argue that populists lie so blatantly in order to be seen—to subvert liberal democratic norms and demonstrate that they will stop at nothing to “serve the people.”¹³ Countering such phenomena poses a daunting task, particularly when such populist figures enjoy an outpouring of public support. Nonetheless, it is also in the interest of this public that those who resort to blatant lies and disinformation are held accountable.

Combatting disinformation through transparency: a case study and global possibilities

Disinformation as a phenomenon undermines the democratic process by making it difficult for the citizenry to make informed decisions. State actors who are increasingly willing to resort to the use of disinformation operations often function with impunity and reap major political successes. Therefore, in the interest of preserving the democratic space against corruption, accountability is required; with *transparency* being a prerequisite to establishing that accountability. Transparency can be achieved by improving access to government-held information through a robust legal mechanism—a mechanism which ultimately recognises that information held by public authorities is held for the benefit of the public as a whole. This is where right to information legislation plays an essential role.

Many right to information regimes around the world leave a lot to be desired since they largely depend on the willingness of public officials to cooperate with the process. However, once enacted, strong right to information legislation can be utilised to address the phenomenon of state-led disinformation and propaganda activity around a number of areas of public concern by offering the public an additional channel through which to reclaim their right to be informed.

⁹ <https://www.rappler.com/thought-leaders/249891-analysis-economic-lies-duterte-legacy>

¹⁰ <https://www.theguardian.com/us-news/2017/jan/22/trump-inauguration-crowd-sean-spicers-claims-versus-the-evidence>

¹¹ <https://www.splcenter.org/20161129/ten-days-after-harassment-and-intimidation-aftermath-election>

¹² <https://scroll.in/article/901206/new-hate-crime-tracker-in-india-finds-victims-are-predominantly-muslims-perpetrators-hindus>

¹³ <https://www.theguardian.com/commentisfree/2019/sep/30/europe-populist-lie-shamelessly-salvini-johnson>

For instance, while implementation remains problematic, attempts at engaging with Sri Lanka's right to information regime by my organisation, Alliance Development Trust (ADT) —Sri Lanka, have produced results. In 2017, a year after right to information legislation was enacted, ADT requested information regarding a particular government circular issued in 2008, which pertained to the construction of religious places of worship.¹⁴ The legal basis of this circular is highly contentious, and it is regularly used by public officials to discriminate against religious minorities and impede on their right to freely practice their faith. The existence of this circular has also emboldened non-state actors such as ultra-nationalist groups who regularly use it to justify their harassment of minorities.

With this in mind, ADT wrote to the relevant government ministries in 2017, seeking clarification regarding the veracity of this circular and its requirements. The ministries complied with the right to information legislation and responded in a timely manner, stating that no such requirements needed to be met. These letters became an important tool in our advocacy efforts and empowered victims of religious discrimination. Now, when public officials attempt to curtail the rights of religious minorities, victims are able to produce the documentation received through right to information petitions in order to strengthen their position and reclaim their rights in the face of intentionally misleading government information.

Similarly, right to information regimes could assist in addressing a number of contemporary disinformation challenges. For instance, public officials around the world have made numerous false claims regarding the COVID-19 pandemic, ranging from speculation about the seriousness of the outbreak¹⁵ to exaggerations about the extent of government efforts at testing.¹⁶ In an ideologically polarised world, responses to the pandemic have been deeply politicised. Such disinformation can have dangerous implications on public health.

Furthermore, access to information laws can be used when challenging populist narratives of exclusion, such as those, which link immigrant communities and asylum seekers to criminal activity¹⁷ or job insecurity. In situations such as these, a citizenry with access to a robust right to information regime has the opportunity to verify such claims by requesting official data from relevant public authorities and can then form their own opinions about the motivations of their representatives.

Principles for enacting freedom of information laws

There has been a growing call for the full realisation of the right to information in countries around the world, and as of September 2019, approximately 120 countries around the world

¹⁴ The circular outlines certain requirements to be met when constructing a new place of religious worship and is often used by government officials to limit the practice of minority religions. Its legal basis is contentious since the circular is not grounded in any existing legislation. According to the Constitution of Sri Lanka, any restrictions on the practice of religious worship must be based in law. It can be argued, therefore, that the circular is an arbitrary restriction on the right to manifest one's religion.

¹⁵ <https://www.aljazeera.com/news/2020/05/bolsonaro-called-biggest-threat-brazil-coronavirus-response-200509054352022.html>

¹⁶ <https://www.bbc.com/news/world-us-canada-51818627>

¹⁷ *Hungary's Orban vows defence of "Christian" Europe*, Al Jazeera, 10 February 2019. Available at: <https://www.aljazeera.com/news/2019/02/hungary-orban-vows-defence-christian-europe-190210195421238.html>

had enacted access to information laws.¹⁸ Adopting such legislation can result in several potential developments:

- Reducing the states' ability to monopolise information control and dissemination.
- Offering a degree of accountability by states directly to the public.
- Building confidence in governments and public institutions when laws encourage proactive disclosure.
- Ensuring data on issues communities face enters the public domain for consumption without interpretation by the state.
- Empowering traditional media organisations and strengthening the fourth estate.

However, merely constitutionalising and legislating the right to information is ineffective without proper implementation. In countries where right to information laws exist, states must adopt robust supporting frameworks to build public awareness around the law and its processes, including training public officials on their duty to comply. For instance, in Sri Lanka, public officials have been both willing and unwilling to address requests, and responses are sometimes either delayed or non-existent. Civil society should assist in training and awareness-building, monitoring compliance, and advocating for domestic right to information laws to meet international standards.

In order for freedom of information laws to be effective and meaningful, they should abide by certain principles¹⁹ - primarily, *the principle of maximum disclosure*. International right to information legislation should function under the assumption that all information held by public authorities is subject to disclosure. Public bodies have an obligation to disclose information and members of the public have a corresponding right to receive it.²⁰ Any freedom of information regime will be ineffective if there is no obligation on the part of public officials to disclose as much information as is practical for the public good, above and beyond private interest. Additionally, in order to avoid non-compliance by public officials, enacted legislation should include strong mechanisms for redress.

Requests for information may be rejected, but only in keeping with appropriate exceptions prescribed in legislation and only if the authority can demonstrate that disclosure would result in substantial harm to protected interests; namely where the disclosure of information could amount to a serious invasion of an individual's privacy, make public commercial confidence or trade secrets, or undermine ongoing criminal investigations etc. Any refusal or rejection must be subject to appeal by an independent administrative entity with sufficient power to enforce compliance with the law. If this body too upholds the rejection, the request should be made appealable to a court of law.²¹

Secondly, states that adopt right to information legislation should also include in its respective law an obligation to publish, also known as a requirement for *proactive disclosure*. Not only

¹⁸ https://www.transparency.org/news/feature/right_to_information_people_power

¹⁹ Report of the Special Rapporteur, *Promotion and protection of the right to opinion and expression*, UN Doc E/CN.4/2000/63, 18 January 2000. Available at: <https://www.refworld.org/docid/3b00f3e10.html>

²⁰ *ibid*

²¹ Mendel, Toby, *Freedom of Information as an Internationally Protected Human Right*. Available at: <https://www.article19.org/data/files/pdfs/publications/foi-as-an-international-right.pdf>

are public authorities under an obligation to respond to requests for information, but they must also publish and disseminate widely any and all documents of significant public interest. This may include the types of information an authority holds, operational information about the body (audited accounts, objectives etc), the content of decisions and policies affecting the public, and so on. Proactive disclosure practices can potentially prevent public officials from resorting to the use of disinformation tactics when they know that certain information already exists in the public domain.

Finally, the operationalisation of national access to information laws should be supported by the overall *promotion of open government*. Public education on the right to information and associated legal regimes is imperative to promote a culture of openness within government and to ensure the effective implementation of the law. This includes addressing the overall culture of government secrecy upheld by public officials. Moreover, providing adequate mechanisms for legal redress may also serve as a strong motivator for compliance. Without willingness on the part of public officials to cooperate with the law, and if members of the public are unaware of how the law works, simply having it exist is inadequate.

Conclusion

Bearing in mind that disinformation is a dynamic problem compounded by the involvement of a number of players who bear significant responsibility for its proliferation, state actors have resorted to disinformation tactics to capture and consolidate power through campaigns which resort to polarising rhetoric and brazenly false propaganda.

In a democracy, governments derive their legitimacy from the consent of the governed. That consent is only meaningful if it is informed. Disinformation campaigns distort the public's ability to give their informed consent and lend legitimacy to government action. The principle function of democracy is to ensure that governments function in accordance with the will of the people, and to vest in people the power to replace those governments which fail to do so. However, this fundamental aspect of democracy is severely undermined when governments operate in secrecy, deliberately misleading the public.

Therefore, access to true and accurate information is fundamental in preserving this core imperative of the democratic process. The public's right to know is an essential and basic fundamental prerequisite to the meaningful functioning of democracy. The power of information cannot be denied, and it is evident that a movement to secure access to information has begun to spread around the world.

Where no such mechanisms exist, civil society groups working in the space of countering disinformation should recognise its potential as a tool to address state-led disinformation and advocate for constitutionalising and legislating a strong national right to information regime. In states where there are existing mechanisms in place, civil society should insist that these mechanisms abide by international norms and principles, and should work closely with citizens to educate them on how to effectively use the law to inform themselves and cut through the fog of disinformation.