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On 4 February 2021, in a historic judgment, the South African Constitutional Court ruled that the Regulation of Interception of Communications and Provision of Communication Related Information Act 70 of 2002 (RICA) was unconstitutional. **Professor Dario Milo, member of the High-Level Panel of Legal Experts on Media Freedom**, who acted for the amaBhungane Centre for Investigative Journalism and Mr. Sam Sole in the case remarked:

'In this case, South Africa's Constitutional Court has acknowledged for the first time that journalists have a constitutional right to protect confidential sources. And in the specific context of journalists being placed under surveillance by the state – as my client was in this case – the Court has ensured that the state will not be able to spy on journalists who are just doing their jobs. This is because before a judge is empowered to grant such a surveillance order, she must be told that the subject is a journalist, must be satisfied that the interception is necessary (which generally would only be the case if the journalist was himself involved in serious crime), and must in any event impose conditions to protect confidential sources. And to ensure accountability and transparency, the Court ruled that the subject of the surveillance must be notified about this within 90 days after the surveillance has ended. With these protections, abuses of the system to spy on journalists will no longer be permissible.'

1. National security and emergency measures

Since the outset of the Covid-19 pandemic, several states have chosen to resort to emergency measures to allow for the issuing of new extraordinary measures. Although a state of emergency may be justified in the context of a pandemic, it is risky to extend a government's powers beyond the constitutional standard, as it becomes difficult to review all measures taken and to ensure that the government relinquishes its newly-extended powers at the end of the crisis.

2. Privacy and surveillance

As the spread of the virus relies heavily on the public's behaviour and on how well-informed people are regarding the virus' transmission and its effects, some states have taken it into their hands to monitor and closely control people's movements, even at the cost of their privacy. Many states have demonstrated how technological surveillance is being used in this context and also how worrying such measures are when they are not strictly defined and limited.

3. Safety of journalists

During this pandemic, the personal safety of journalists and media workers, especially those reporting from the frontlines of this global crisis with accurate and reliable information for the public, is paramount. There are very real concerns about the physical safety of journalists, and the considerable psychological stress of reporting on the outbreak.¹ Across the globe, we are seeing journalists being threatened and punished for speaking out about the extent of the situation in their countries.

4. Free speech

Some countries have sought to restrain freedom of speech, as they consider that alternative reporting on the current state of affairs constitutes a counter-productive discourse and is therefore an obstacle in their response to the crisis. This is a worrying trend that could result in a detrimental unawareness of the real implications of the pandemic. By silencing non-official voices, states not only hinder the global response to the virus, but also sap democratic stability by favouring opacity over transparency.

5. Digital rights and internet shutdowns

It is clear that the internet has played a key role in fighting the spread of coronavirus, as it facilitates the exchange of information about the virus around the globe as well as the international coordination of efforts against the virus. Consequently, restricting access to the internet in general, or to certain websites such as social media platforms, participates in obscuring the reality of this global pandemic, which is tantamount to preventing the public from accessing relevant scientific facts.

¹ UNESCO, 'UNESCO stresses importance of safety of journalists amid Covid-19 pandemic', 27 March 2020 <https://en.unesco.org/news/unesco-stresses-importance-safety-journalists-amid-covid-19-pandemic>

1. National security and emergency measures

A state of emergency usually involves a devolution of power to the executive organs of the state, with little or no legislative review, as justified by the urgency of the situation. It enables a government to take measures, which, for a limited amount of time, may restrain individual liberties or hinder government accountability in order for it to swiftly and adequately respond to a crisis. A state of emergency is an extraordinary status as it allows the state to interfere with individual rights, and there is always the risk that a state may take advantage of this and use its extended powers for purposes less commendable than that of containing the virus.

Ethiopia

The '*Proclamation to Prevent the Spread of Hate Speech and False Information*' took effect on 23 March 2020 in Ethiopia², sanctioning hate speech and disinformation against all those who are critical to the Government's policies.

In January 2021, Article 19 shared a report to state that this law is problematic from a human rights perspective and should be immediately revised³. Following analysis of the proclamation draft, it was identified that it failed to comply with international human rights standards as it imposed criminal sanctions on anyone that published, disseminated, or even possessed content falling under extremely broad definitions of 'hate speech' and 'disinformation.'⁴ The proclamation continues to be incompatible with relevant international standards. It is still wholly unclear to content authors and hosts what will or will not subject them to criminal penalty under this law, as it broadly defines 'hate speech' and 'disinformation'⁵.

The report highlighted that:

- (1) The definition of 'hate speech' in the proclamation is very broad, and Articles 4 and 5 of the law prohibit 'any' dissemination of these forms of content on a multitude of media. International standards differentiate between types of 'hate speech' based on the severity. It should follow the nuanced language of Article 20(2), ICCPR⁶ and guidance of the six-part test under the Rabat Plan of Action. Any limitations on information must adhere to the tripartite test of permissible restrictions under international law, as it is incompatible with the guarantees of the ICCPR⁷.

² Article 19, Hate Speech and Disinformation Prevention and Suppression, www.article19.org/wp-content/uploads/2021/01/Hate-Speech-and-Disinformation-Prevention-and-Suppression-Proclamation.pdf

³ Article 19, Ethiopia: Hate speech and disinformation law must not be used to suppress the criticism of the Government, 19 January 2021, www.article19.org/resources/ethiopia-hate-speech-and-disinformation-law-must-not-be-used-to-suppress-the-criticism-of-the-government/

⁴ Article 19, Ethiopia: Analysis of draft law on hate speech and false information, November 18, 2020. www.article19.org/resources/ethiopia-analysis-of-draft-law-on-hate-speech-and-false-information

⁵ Article 19, n.13

⁶ Article 20(2), ICCPR requires an element of incitement to violence, discrimination, or hostility, which is still absent in the 2020 Proclamation.

⁷ Article 19 of the ICCPR.

(2) Penalties in the proclamation remain severe and catalogued according to whether the offense of hate speech/disinformation resulted in violence or public disturbance and increased according to the number of followers⁸ the issuer has. Under international human rights law, the obligations to prohibit the most severe types of 'hate speech' require states to introduce a variety of measures as sanctions. These sanctions should be guided by an assessment of the level of severity of the offence, based on the necessity test under Article 19 of the ICCPR.

(3) Article 8(1) of the proclamation states that providers should 'act within 24 hours' to remove infringing content 'upon receiving notifications about such communication.' This is alarmingly short and present a host of due process concerns, and it is incompatible with Ethiopia's obligation to protect and promote freedom of expression.

The proclamation appears to be deeply flawed and the IBAHRI supports calls for it to be revised immediately and will be monitoring its use in the meantime - the 'government has made online hate speech an easy scapegoat for violence that may have deeper causes, while pushing through new legislation that increases its power to censor'⁹.

Malaysia

The Malaysian government has repeatedly used blasphemy provisions within its legislative framework to target individuals who challenge majority religious views. Their application to silence religious minorities and dissenters violates the rights to freedom of expression, freedom of religion or belief, and equality and non-discrimination¹⁰.

In March 2019, the Department of Islamic Development Malaysia (the '*Jakim*'¹¹) invited the public to lodge complaints about any media content, including content on social media platforms, that insults the Prophet Muhammad or Islam. Under this policy, authorities arrested several people for allegedly blasphemous online posts¹². In addition, Malaysia's Penal Code and other laws¹³ contain several provisions that have been used to censor and punish expression relating to religion and to entrench a hierarchy of religious beliefs.

In this regard, the free speech organisation Article 19 stated that blasphemy provisions fail to accord with international human rights law and infringe on the rights to freedom of expression, freedom of religion or belief, and equality and non-discrimination. Malaysia's blasphemy

⁸ More than 5,000 followers.

⁹ AccessNow, Ethiopia's hate speech and disinformation law: the pros, the cons, and a mystery, 19 May 2020, www.accessnow.org/ethiopias-hate-speech-and-disinformation-law-the-pros-the-cons-and-a-mystery/

¹⁰ Article 19, Briefing Paper: Blasphemy Provisions in Malaysian Law, January 20, 2021, www.article19.org/wp-content/uploads/2021/01/2021.01.20-Malaysia-blasphemy-briefing-paper-final.pdf

¹¹ The Jakim established a new unit to monitor complaints and refer them to the Royal Malaysia Police (PDRM) and the Malaysian Communications and Multimedia Commission (MCMC) for further action.

¹² Article 19, n.2

¹³ Sections 298 and 298A of Article 4 of the Penal Code; Sections 3(1) and 4(1) of the Sedition Act 1948; Section 233 of the of Communications and Multimedia Act 1998; and Section 7(1) of the Printing Presses and Publications Act 1984.

legislation goes beyond the restrictions on freedom of expression that may be necessary to prevent advocacy of hatred based on nationality, race, or religion.¹⁴

Within its main recommendations contained in the report, many referred to how Malaysia should work to reform its laws to eliminate legal sanctions for blasphemy. The government of Malaysia should 1) repeal Sections 298 and 298A of the Penal Code, the Printing Presses and Publications Act 1984, and Sedition Act 1948; 2) reform Section 233 of the Communications and Multimedia Act 1998; ratify the International Covenant on Civil and Political Rights ('ICCPR'); ensure prohibitions on the advocacy of discriminatory hatred constituting incitement to hostility, discrimination or violence are in compliance with Articles 19(3) and 20(2) ICCPR and the guidance of the Rabat Plan of Action; and ensure an environment for open, robust debate and dialogue, including through a free and open internet. The IBAHRI welcomes this timely report and supports recommendations contained within it.

On 14 January 2021, an Emergency Ordinance¹⁵ ('the Ordinance') was also announced that provides Malaysia's military with police powers, allows the forced confiscation of property with no ability to challenge the compensation offered, and gives the government and military near total immunity for acts taken under the ordinance. Organisations have declared the Ordinance to be vague and overly broad, and call for it to be urgently be revised to meet international human rights standards¹⁶.

Following the announcement, the Malaysian Multimedia and Communication Commission (MCMC) warned that it was 'monitoring social media closely for misinformation and content that is offensive to race, religion and the royalty,'¹⁷ raising concern that this would intensify the crackdown on freedom of expression. Prime Minister, Muhyiddin Yassin's government has been recognised for its aggressive crackdown on freedom of speech and peaceful assembly in the country, with attacks on the independent media and journalists. There has also been a wholesale retreat from genuine police accountability for abuses. According to Human Rights Watch, the decline in media freedom has been particularly striking¹⁸. In July 2020, after Al Jazeera aired a documentary about Malaysia's treatment of migrant workers during the Covid-19 pandemic, the police announced that they were investigating the news media for sedition, defamation, and violation of the Communications and Multimedia Act¹⁹.

The Ordinance indefinitely postpones the holding of any elections and the sitting of the country's parliament and state assemblies, which raises serious concerns about respect for political

¹⁴ Article 19, n.2

¹⁵ Human Rights Watch, Malaysia: Urgently revise Emergency Ordinance, 21 January 2021, www.hrw.org/news/2021/01/21/malaysia-urgently-revise-emergency-ordinance

¹⁶ Human Rights Watch, n.15

¹⁷ Malaymail, MCMC monitoring misinformation, offensive language online, 21 January 2021, www.malaymail.com/news/malaysia/2021/01/12/mcmc-monitoring-misinformation-offensive-language-online/1939834

¹⁸ Human Rights Watch, Malaysia: Dangerous Backsliding on Rights, 13 January 2021, www.hrw.org/news/2021/01/13/malaysia-dangerous-backsliding-rights

¹⁹ Free Malaysia Today, Al Jazeera to also be probed for defamation, improper use of network facilities, 7 July 2020, www.freemalaysiatoday.com/category/nation/2020/07/07/al-jazeera-to-also-be-probed-for-defamation-improper-use-of-network-facilities/

rights.²⁰ The Ordinance is also problematic as it allows for minimal legal recourse for individuals whose rights are violated because it prohibits the filing of any legal action against the government or any 'public officer', in relation to 'any act, neglect or default' in carrying out the provisions of the Emergency Ordinance so long as they were taken 'in good faith.' In accordance with international law and standards, the government may limit certain rights on grounds of public health, but only when such actions are strictly necessary, proportionate to achieve the objective, and neither arbitrary nor discriminatory in application and the IBAHRI are concerned by the ongoing use of the Ordinance to crackdown on minority groups. They must also be of limited duration, based on scientific evidence, respectful of human dignity, and subject to review. Therefore, this provision exceeds the Covid-19 health crisis and violates the rights of those seeking redress for violations.

Russia

In response to recent mass protests in Russia to challenge the ongoing detention of opposition figure, Alexey Navalny, social media platforms have received warnings and face fines and potential blocking for failure to comply with Russia's rapidly growing oppressive internet legislation²¹. Multiple laws were passed through in recent weeks with more expected to follow.

On 30 December 2020, the President passed a law to Russia to block internet sites that allegedly discriminate against Russian media, while the second law imposes a substantial fine on social media companies that fail to remove content banned by Russia²². A third new bill providing for up to two years in prison for 'libel' committed online was signed into law. A final law signed on this date allows for Russia to name individuals as 'foreign agents' and imprison them for five years if they fail to properly report their activities. Foreign agents would also be required to 'inform the authorized body on a quarterly basis about the volume and purposes of the received foreign funding and its actual expenditure' and the state has since added human rights activists and journalists to its foreign agent list²³.

To add to this wave, on 10 January 2021²⁴ a new law introduced fines of up to 10% of any company's annual revenue for websites that fail to block 'illegal' content. Following this, on 1 February 2021²⁵ another law entered into force specifically obliging large social media networks to take down content deemed illegal under the Russian law.²⁶ Both proposals have been justified

²⁰ Human Rights Watch, n.7

²¹ Human Rights Watch (HRW), Russia: Social media pressured to censor posts; February 5, 2021. <https://www.hrw.org/news/2021/02/05/russia-social-media-pressured-censor-posts>

²² Jurist, Russia passes laws to restrict US social media influence, 30 December 2020, www.jurist.org/news/2020/12/russia-passes-laws-to-restrict-us-social-media-influence/

²³ Jurist, n.22

²⁴ Russian Government; Federal law on Amendments to the Code of the Russian Federation on Administrative Offences'. http://www.consultant.ru/document/cons_doc_LAW_372707/

²⁵ Russian Government; Modification of the Federal Law On Information, Information Technology and Information Protection. <http://publication.pravo.gov.ru/Document/View/0001202012300062>

²⁶ HRW, n.21

by the authority²⁷ that ‘illegal content’ among other things, encompasses calls for young people to join ‘unsanctioned’ protests, augmenting the number of protesters, and spreading false information about police violence at these gatherings.²⁸

Further on 4 February 2021, the upper chamber of the Russian Parliament called for legislative amendments imposing fines on social media platforms, as well as temporary and full blocking of entire platforms, for disseminating calls to participate in protests. Parliament members said that in the last two weeks, social media has been directly inciting mass protests, manipulating users’ minds and ‘reaching a thin line separating a social network from a foreign agent, representing the foreign states interests.’

The IBAHRI is concerned about the increasing online censorship and worsening state of freedom of expression in Russia and will continue to monitor these developments closely.

²⁷ Russian Government; Official communication; TikTok is required to stop disseminating information intended to involve minors in the commission of illegal actions. <https://rkn.gov.ru/news/rsoc/news73294.htm>

²⁸ HRW, n.21

2. Privacy and surveillance

Certain states have opted to track down individuals' movements by using their mobile phone data with little, if any, regard for their privacy. Although this sort of measure may be supported in the midst of a pandemic that is lethal for a significant proportion of the population, such technological prowess should be watched attentively, as it is evident that it could be used to serve other purposes.

China

On 8 February 2021, Clubhouse, a social media application released in April 2020, was blocked from China after it allegedly attracted Chinese people to uncensored, cross-border discussions on political and human rights subjects²⁹. Specifically, the app allowed users to listen in to discussions and interviews in online rooms, becoming popular among the Chinese users where they seized the opportunity to discuss taboo topics such as the human rights situation in Taiwan and Hong Kong, as well as the ongoing persecution of Uighur Muslims.

As an invitation-only app, different sites had reportedly been selling invitation codes, and Chinese journalists, analysts and Twitter users monitored conversations between thousands of Han Chinese, Uighurs and Taiwanese, freely discussing sensitive topics including surveillance and democracy.

Chinese users reported the platform was no longer available, and the hashtag 'Clubhouse' was also censored on Chinese social media platform Weibo, where it had been a trending topic³⁰, ending a short-lived period of free political expression in a country where the government goes to extraordinary lengths to suppress it. Users shared their Clubhouse discoveries and commented on the rare chance for people in mainland China to openly and freely discuss politics and gender issues with their peers in Hong Kong and Taiwan.³¹ However, like many other platforms that are blocked by China's 'Great Firewall', the app can still be accessed by using a virtual private network³².

Over the past two decades, Beijing has developed the most sophisticated online censorship system in the world³³ and big online platforms like Google, Facebook, Twitter and YouTube have been blocked for a while. Under Xi Jinping's leadership, a growing number of topics have become off limits on the Chinese internet. Clubhouse gave mainland Chinese users a chance to flock to chatrooms focused on those taboos. China ranks 177th in the 2020 World Press Freedom Index,

²⁹ The Guardian, Beijing blocks access to Clubhouse app after surge in user numbers, February 8, 2021
www.theguardian.com/world/2021/feb/08/bingeing-free-expression-popularity-of-clubhouse-app-soars-in-china

³⁰ CNN, For a brief period, there was a platform for sensitive political debate in China. Then censors shut it down; February 9, 2021, <https://edition.cnn.com/2021/02/08/tech/clubhouse-china-censorship-intl-hnk/index.html>

³¹ Bloomberg, Clubhouse Users in China Say Service Appears to Be Blocked, 8 February 2021, www.bloomberg.com/news/articles/20210208/clubhouseusersinchinasayserviceappearstobeblocked?utm_source=twitter&utm_campaign=socialfloworganic&utm_medium=social&cmpid=socialflowtwitterbusiness&utm_content=business&sref=IAV0tUwz

³² CNN, n.22

³³ The New York Times, The Great Firewall Cracked, Briefly. A People Shined Through, 9 February 2021, www.nytimes.com/2021/02/09/technology/china-clubhouse.html

as President Xi Jinping has succeeded in imposing a social model in China based on control of news and information and online surveillance of its citizens³⁴.

India

On 10 February 2021, tech company, Twitter announced that it took action to suspend scores of social media accounts and reduced visibility of some hashtags in India. This action comes after Twitter was served with several separate blocking orders by India's Ministry of Electronics and Information Technology in the past ten days related to massive farmer protests³⁵. Thousands of farmers gathered over two months in a strike against reforms, stating that it will devastate their earnings.³⁶ On the suspensions, the Internet Freedom Foundation wrote to the Ministry of Electronics and Information Technology to request transparency, stating that the blocking of pro farmer protests Twitter accounts are 'excessively opaque' and 'reek of government censorship'³⁷.

Prime Minister Narendra Modi's government called for suspending more than 1,000 accounts and posts, claiming that they disseminated false fake news about the protests and India's agricultural laws³⁸, as well as incite violence, invoking a law under which it has the power to direct online intermediaries and internet service providers to block certain content without providing any explanation. On 8th February, fresh reports emerged of a new order having been sent by the Ministry on 4th February, sharing a list of 1,178 more accounts that it wanted removed³⁹. However, Twitter has refused to comply with all the government's requests to censor the accounts of protesters and those discussing their cause, in some cases citing the country's own free speech laws⁴⁰.

The IBAHRI is concerned with the ongoing situation in India and call on Twitter to operate, and in turn demand, transparently to avoid compliance with orders in order to crush dissent and facilitate censorship. As noted by Dia Kayyali, Associate Director for advocacy at digital human rights Organisation, Mnemonic, 'We are going to see — at a national and international level — a variety of ways to try to force platforms to take more responsibility, but also to try to force platforms to do what governments want them to do'⁴¹.

³⁴ RSF, China, <https://rsf.org/en/china>

³⁵ The Independent, Twitter suspends more India accounts amid free speech debate, 11 February 2021, www.independent.co.uk/news/twitter-suspends-more-india-accounts-amid-free-speech-debate-twitter-government-speech-india-debate-b1800176.html

³⁶ The Guardian, Twitter suspends hundreds of Indian accounts after government demand, 2 February 2021, www.theguardian.com/world/2021/feb/02/twitter-suspends-hundreds-of-indian-accounts-after-government-demand

³⁷ Internet Freedom Foundation, Government censorship and the dire need for transparency, 8 February 2021, <https://internetfreedom.in/government-censorship-and-the-dire-need-for-transparency/>

³⁸ DW; India protests: Twitter suspends 'harmful' accounts, 10 February 2021, www.dw.com/en/india-protests-twitter-suspends-harmful-accounts/a-56524773

³⁹ Internet Freedom Foundation, n.37

⁴⁰ Financial Times, Twitter feels the heat as India tightens grip on social platforms, 16 February 2021, www.ft.com/content/4cad0ce3-6fba-4cfb-b883-1efde891ed4a

⁴¹ Financial Times, n.40

Pakistan

Pakistani authorities have been taking action to impose a targeted censorship strategy, including issuing new rules late last year that give it broader powers to block online content and granting disproportionate and discretionary powers to the Pakistan Telecommunication Authority (PTA), the online content regulator. The rules allow the PTA to block and censor content online that could, in its view, harm the government or threaten the security of Pakistan⁴². They also restrict content that could be deemed 'blasphemous' content. The Asia Internet Coalition, an industry group whose members include Amazon, Apple, Facebook, and Google, have openly stated that the 'rules in their current form make it extremely difficult for AIC Members to make their platforms and services available to Pakistani users and businesses' and 'prevent Pakistani citizens from accessing a free and open internet'. It appears members of the AIC are now succumbing to pressure.

According to reports, over the last two years, the government of Pakistan has applied significant pressure on technology companies, including Google and Apple, to take down apps in the country created by developers based in other nations who are part of a repressed religious minority.

Pakistan is one of several countries, including China, Vietnam, Germany, Nigeria, and Russia, that have data localisation rules to exercise greater control over tech platforms⁴³. When tech companies store data or have offices in a country, they must comply with local laws.

The PTA has been using anti-blasphemy rules to pressure the tech companies, claiming that the apps host misleading content about the present khalifa (spiritual head) of Islam and requested the removal of the unauthentic version of the Quran, published by representatives of the community on the Google Play Store. The PTA sent takedown notices for Ahmadi content to Google and Wikipedia in late December 2020. Two days later, Google took one of the Qur'an apps down⁴⁴. In December 2020 the Lahore High Court Chief Justice Qasim Khan ordered the Federal Investigative Agency to issue notices to Google, stating that shutting down websites was not enough⁴⁵, setting a worrying example.

The Ahmadiyya religious community are highly persecuted in Pakistan who are referred to as non-believers. The penal code of Pakistan explicitly discriminates against religious minorities and targets Ahmadis by prohibiting them from indirectly or directly posing as a Muslim, declaring or propagating their faith publicly, building mosques, or making the Muslim call for prayer⁴⁶.

According to Amnesty International, in December 2020, the PTA also sent a legal notice to the administrators of trueislam.com, a US Ahmadi website, to remove content associated with the community. Stating that the site was in violation of Pakistan's Constitution, the PTA warned they

⁴² RSF, Analysis: Pakistani government's new online censorship strategy, 18 December 2020, <https://rsf.org/en/news/analysis-pakistani-governments-new-online-censorship-strategy>

⁴³ BuzzFeed News, Google And Apple Have Caved To Pakistani Pressure To Take Down Apps Made By This Persecuted Religious Minority, 4 February 2021, www.buzzfeednews.com/article/meghara/pakistan-forced-down-ahmadiyya-apps

⁴⁴ BuzzFeed, n.43

⁴⁵ Dawn, Can FIA file case against Google, wonders LHC, 29 December 2020, www.dawn.com/news/1598431

⁴⁶ Jurist, Pakistan regulatory body issues notices to Google, Wikipedia for 'disseminating sacrilegious content', 27 December 2020, www.jurist.org/news/2020/12/pakistani-regulatory-body-issues-notices-to-google-wikipedia-for-disseminating-sacrilegious-content/

could be charged with blasphemy for referring to themselves as Muslims. The site's administrators have also been threatened with a fine of 500 million PKR (US\$3.1 million) if they fail to take the website down⁴⁷.

The IBAHRI joins groups to call on the government of Pakistan to abide by its international obligations and bring its national legal framework in line with international human rights law, particularly Article 19 of the ICCPR and the UDHR and urge the authorities to reconsider the current approach for the removal or censorship of content. Further, we call on tech companies to not bow to pressure and comply with laws and regulations that facilitate censorship.

South Africa

On 4 February 2021, in a historic judgement, the Constitutional Court of South Africa found the Regulation of Interception of Communications and Provision of Communication-Related Information Act 70 of 2002 ('RICA') unconstitutional and declared it unlawful and invalid⁴⁸ outlining that it fails to provide adequate safeguards to protect the right to privacy, rights of access to courts, freedom of expression, and legal privilege, as well as the role of the independent media and journalists.

The case was brought by two applicants, the amaBhungane Centre for Investigative Journalism, an investigative journalist organisation, and journalist Sam Sole (co-founder of amaBhungane) after learning that state spies had been recording Sole's phone communications for months in 2008. The confidential conversations were with senior public prosecutor Advocate Billy Downer, in charge of the prosecution in the criminal charges against former South African president, Jacob Zuma.

A case was made for bulk surveillance to have a legal basis after the applicants challenged the constitutionality of certain sections of the regulatory framework of South Africa. The Constitutional Court found that RICA was unconstitutional and not authorised by any law to the extent that it fails to 1) provide for notifying the subject of surveillance of the fact of their surveillance as soon as notification can be given without jeopardising the purpose of surveillance after surveillance has been terminated; adequately provide safeguards to address the fact that interception directions are sought and obtained ex parte and adequately prescribe procedures to ensure that data obtained pursuant to the interception of communications is managed lawfully and not used or interfered with unlawfully, including prescribing procedures to be followed for examining, copying, sharing, sorting through, using, storing, or destroying the data.

Most importantly, the Court found that RICA also failed to provide adequate safeguards where the subject of surveillance is a practising lawyer or journalist. In an interview with CPJ, Mr. Sole commented how he had 'long been concerned about the potential chilling threat – on sources and journalists – posed by the surveillance of journalists' and reflected on this success for the debate around protection of journalistic sources, 'The court also recognized that journalists, like lawyers,

⁴⁷ Amnesty International, Pakistan: Persecution of Ahmadis must end as authorities attempt shutdown of US website, 3 February 2021, www.amnesty.org/en/latest/news/2021/02/pakistan-persecution-of-ahmadis-must-end-as-authorities-attempt-shutdown-of-us-website/

⁴⁸ Privacy International, South African Constitutional Court declares bulk surveillance powers unlawful, 4 February 2021, www.privacyinternational.org/news-analysis/4416/south-african-constitutional-court-declares-bulk-surveillance-powers-unlawful

have special duties of confidentiality. That acknowledgement of the duty to protect sources was an important gain, as there is no formal 'shield law' in South Africa – and this duty has frequently been contested by the authorities'.⁴⁹

South African Parliament now has three years to fix the problems with RICA - in the interim, targets of surveillance must, in general, be notified within 90 days of the expiry of the interception order (or its extension)⁵⁰. In a blogpost, lawyer Dario Milo, acting for Mr. Sole and amaBhungane who also sits as a member of the High Level Panel of Legal Experts on Media Freedom stated 'If this rule had been in place at the time, Sole would have found out in late 2008 or early 2009 about his surveillance. And where the target of interception is a journalist or lawyer, these facts must be made known to the designated judge, the judge must only grant the order if it is necessary, and only then with conditions to protect the confidentiality of the communications that are constitutionally protected. This would have meant that the order against Sole would not have been granted in the first place – it was clearly an abuse of the system'⁵¹

United States

The recent invasion of the USA Capitol Hill by Trump supporters encouraged the American government to implement certain mechanisms in practise to identify the aggressors. Although it helps the State to hold them accountable for their crimes, the use of facial recognition technologies to compare the photos of the unidentified individuals involved in the Capitol Hill event to database of images of other known people disregards the right of privacy, and consequently, violates international human rights⁵². Clearview AI, allows law enforcement officers to upload a photo of an unidentified person and, allegedly, get back publicly-posted photos of that person. Clearview has reportedly seen a surge in usage since the attack however the faceprints in Clearview's database were collected, without consent, from millions of unsuspecting users across the web, from places like Facebook, YouTube, and Venmo, along with links to where those photos were posted on the Internet⁵³. The International Covenant on Civil and Political Rights ('ICCPR') prohibits state parties to illegally interfere on the privacy of individuals. Former UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Frank La Rue, has previously noted that technological surveillance without adequate safeguards to protect the right to privacy endangers the enjoyment of fundamental freedoms⁵⁴.

⁴⁹ Committee to Protect Journalists, South African journalist Sam Sole on landmark court victory: '2008 surveillance was the tip of the iceberg', 10 February 2021, <https://cpj.org/2021/02/south-african-journalist-sam-sole-on-landmark-court-victory-2008-surveillance-was-the-tip-of-the-iceberg/>

⁵⁰ Musings on Media by Dario Milo, The spy who notified me: Six-love to amaBhungane in the RICA Constitutional Court case, 9 February 2021, <http://blogs.webberwentzel.com/2021/02/the-spy-who-notified-me-six-love-to-amabhungane-in-the-rica-constitutional-court-case/#more-843>

⁵¹ Musings on Media by Dario Milo, n.50

⁵² Electronic Frontier Foundation, Face Surveillance and the Capitol Attack, 12 January 2021, <https://www.eff.org/deeplinks/2021/01/face-surveillance-and-capitol-attack>.

⁵³ Electronic Frontier Foundation, n.52

⁵⁴ Privacy International, December 2013, https://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/ARG/INT_CCPR_ICA_ARG_16054_E.pdf.

Facial recognition technology has been known to be incompatible with the safeguards of privacy as it does not have effective ways to avoid misunderstandings and false identification of individuals and can therefore be considered a disproportionate mechanism that violates the Article 17(1) of the ICCPR.

Research by the Georgetown Centre on Privacy and Technology claims that facial recognition produces a generalised search, something that neglects that necessity of showing a probable cause and a particularised description of who or what will be searched or seized⁵⁵. In 2020, the Miami police employed facial recognition to arrest protesters during the Black Lives Matter protests⁵⁶ despite awareness that such technology poses serious threats to personal privacy and could lead to racial injustice. Facial recognition technology can create an overwhelming restriction on fundamental rights and freedoms and its advancement is far from the scope of necessary intervention identified in Article 21, ICCPR. It stimulates an unlawful intervention on individual's right to freedom of assembly by neglecting the limits of their right to privacy and use should not be normalised.

⁵⁵ Georgetown Law Unregulated Police Face Recognition in America, October 2016, www.perpetuallineup.org/risk-framework .

⁵⁶ NBC, Miami Police Used Facial Recognition Technology in Protester's Arrest, 17 August 2020, www.nbcmiami.com/investigations/miami-police-used-facial-recognition-technology-in-protesters-arrest/2278848/

3. Safety of journalists

The independence and safety of journalists is a crucial factor of transparency and accountability, and, therefore, a vital component of democracy. As a result, any attempt by a state against the integrity, the livelihood or the safety of journalists is fundamentally anti-democratic. In addition, the current state of the pandemic has made the work of journalists even more crucial, as the exchange of information relating to the virus and our consequent increased knowledge of its characteristics and impact will eventually contribute to the outcome of this crisis. However, a trend of grave concern to the IBAHRI is how many governments across the world are adopting legislation that clearly risks impeding the work of journalists and the media, therefore restricting the public's right to receive accurate and reliable information at this unprecedented time. Problematically, many laws also carry heavy fines and criminal sanctions, threats of arrest and jail time for those on the frontline simply doing their jobs.

Belarus

Two journalists, Katsyaryna Andreyeva and Darya Chultsova, were arrested on 15 November 2020, while they were covering a rally in Minsk commemorating Raman Bandarenka. Mr. Bandarenka died from injuries sustained in a vicious beating by a group of masked assailants - who rights activists allege were affiliated with the authorities - during one of the weekly rallies demanding the resignation of authoritarian ruler Alyaksander Lukashenko. President Lukashenko, who has led the country since 1994, was declared the victor in the disputed August 2020 Presidential Elections, with outrage from opposition and the public which sparked continuous mass protests in the country. Moreover, the European Union, United States, Canada, and other countries have refused to recognise President Lukashenko as the legitimate leader of Belarus.⁵⁷

Both journalists have gone on trial in Minsk on a charge of 'organizing public events aimed at disrupting civil order' however they maintain that they were just undertaking their professional duties as journalists at the event where they were arrested. To date, security forces have arrested more than 360 journalists, with 20 already behind bars and three now facing serious criminal charges for their coverage of the demonstrations, according to a statement from the Belarusian association of journalists⁵⁸. If found guilty, the two women face up to three years in prison. The Belarusian human rights organisations have declared the two journalists' political prisoners⁵⁹ and the IBAHRI joins voices to call on authorities to drop the criminal charges against all journalists and release them unconditionally. Further, we call on the authorities to protect and enable the work of journalists acting as first responders in the context of protests.

⁵⁷ Radio Free Europe: Two Belarusian Journalists Go On Trial Accused Of Organizing Protests; February 9, 2021. www.rferl.org/a/two-belarusian-journalists-go-on-trial-accused-of-organizing-protests/31094009.html

⁵⁸ Organized Crime and Corruption reporting project; Protests Quashed in Belarus as Reporters Face Serious Charge; February 12, 2021, www.occrp.org/ru/daily/13474-protests-quashed-in-belarus-as-reporters-face-serious-charges

⁵⁹ Radio Free Europe, n.36

Egypt

On 6 February, Egyptian journalist and producer of Al Jazeera, Mr. Mahmoud Hussein, was released from prison after having spent over four years in preventive detention in Cairo after Saudi Arabia, the United Arab Emirates, Bahrain and Egypt agreed to restore diplomatic, trade and travel ties with Qatar.

On 23 December 2016, Mr. Hussein was arrested upon his arrival to Egypt from Doha to visit his family. Mr. Hussein was interrogated for more than 15 hours without the presence of a lawyer, before being released and then arrested again days later. Egypt's Ministry of Interior publicly accused Mr. Hussein of 'disseminating false news and receiving monetary funds from foreign authorities in order to defame the state's reputation'⁶⁰, and he was then arrested on charges of 'membership of a terrorist organisation' and 'spreading fake news.'⁶¹ Reports indicate that Egypt took umbrage with his employment with Al Jazeera the Egyptian State regards the media outlet's coverage as biased in favour of the Muslim Brotherhood, the movement that backed former President Mohamed Morsi but is widely regarded as a terrorist organisation by the current government.⁶²

Despite no formal charges other than the trumped-up allegations being brought before Mr. Hussein, he has spent the last four years in arbitrary detention and his case was never brought to trial.⁶³ Since 2016, Mr. Hussein's detention had been extended more than a dozen times, far surpassing the country's maximum period for pre-trial detention in violation of both Egyptian and international law.

In January 2018, the United Nations Working Group on Arbitrary Detention concluded that the conditions of Hussein's imprisonment amounted to 'cruel, inhuman and degrading treatment'.⁶⁴ Despite the publication of these observations, Egyptian authorities continued to detain Mr. Hussein, holding him for significant periods of time in solitary confinement and denied him proper medical treatment.⁶⁵ Egypt is currently ranked 166th out of 180 countries in RSF's 2020 World Press Freedom Index. The number of journalists and bloggers detained in Egypt now stands at 33. This is more than in any other country in the world except China and Saudi Arabia.⁶⁶

Egypt is recognised as one of the biggest jailers of journalists and media workers in the world. While Egyptians recently marked 10 years of the revolution, the freedom of speech has deteriorated further. According to the Reporters Without Borders (RSF) 2020 World Press Freedom Index, Egypt ranked 166 out of 180. Despite Articles 65 and 70 of Egyptian Constitution

⁶⁰ International Press Institute, 'Mahmoud Hussein Completes 1400 days in Egypt Prison: IPI Demands his Immediate Release' 23 October 2020 <https://ipi.media/mahmoud-hussein-completes-1400-days-in-egypt-prison/>

⁶¹ Al Jazeera, 'Al Jazeera's Mahmoud Hussein Released from Jail in Egypt' 6 February 2021 www.aljazeera.com/news/2021/2/6/al-jazeeras-mahmoud-hussein-released-from-jail-in-egypt

⁶² Reporters without Borders, 'Al Jazeera Journalist Mahmoud Hussein Back Home After Four Years in Prison' 6 February 2021 <https://rsf.org/en/news/al-jazeera-journalist-mahmoud-hussein-back-home-after-four-years-prison>

⁴² Al Jazeera, n.61

⁶⁴ UN Human Rights Council, *Opinions Adopted by the Working Group on Arbitrary Detention: Opinion No. 83/2017 concerning Mahmoud Hussein Gommaa Ali (Egypt)*, 15 January 2018 A/HRC/WGAD/2017/83 www.ohchr.org/Documents/Issues/Detention/Opinions/Session80/A_HRC_WGAD_2017_83.pdf

⁶⁵ International Press Institute, n.60

⁶⁶ RSF Egypt, <https://rsf.org/en/taxonomy/term/156>

guaranteeing the right to freedom of expression and media freedom⁶⁷, since 2017, more than 500 independent websites have been blocked and dozens of journalists arrested with many still in prison.⁶⁸

On 25 January 2021, Ashraf Hamdi, the Egyptian cartoonist was arrested from his home in Giza a day after he posted an animation video commemorate to the 10th anniversary of uprising in Egypt. Mr. Hamdi had dedicated the video to protestors who were shot dead security forces at Mohamed Mahmoud street in central Cairo. Shortly before his arrest, Hamdi posted 'I'm getting arrested' on his Facebook personal account and the post has been shared over 400 times. The cartoonist who runs a YouTube channel with more three million subscribers is currently held in pre-trial detention on charges of 'misusing social media' and 'spreading misinformation'.⁶⁹ In the animation, the main character recounts 2011 revolution events and his hopes for revolution to be continued saying "I am the voice when the world wants silence. I'm the one who stood in the face of injustice, corruption, tyranny. I am the one who called for peace, bread, freedom and social justice".⁷⁰

While the IBAHRI welcomes the release of Mr. Hussein as a milestone towards press freedom, a long journey lies ahead to restore public faith in the security of journalists, starting with the immediate release of those still held in Egyptian captivity and call on the Egyptian authorities to immediately release Mr. Hamdi and drops all charges against him. The IBAHRI reiterates that Egyptian authorities must cease harassing journalists and obstructing free expression in the country, in accordance with the states' international obligations, including those set out in the International Convention on Civil and Political Rights.

India

In January, India saw the arrest of at least ten journalists who covered the farmers' protests⁷¹ and violence in Delhi on charges of sedition, promoting communal disharmony and making statement contrary to national integration, in what critics have decried as a new government push to curtail free speech.⁷²

These actions came as a result of the violence that took place during the 26 January, India's Republic Day, demonstrations by farmers to protest at a raft of agriculture reform laws that saw the death of one protestor, Navreet Singh, whose cause of death remains disputed. While police have alleged his cause of death to be the result of his tractor being overturned, his family's account, which was subsequently published by six senior journalists and editor - Rajdeep

⁶⁷ Egyptian Constitution (2014) www.constituteproject.org/constitution/Egypt_2014.pdf

⁶⁸ RSF 'Less press freedom than ever in Egypt, 10 years after revolution', <https://rsf.org/en/news/less-press-freedom-ever-egypt-10-years-after-revolution>

⁶⁹ Aljazeera 'Egyptian police arrest cartoonist on 10th anniversary of uprising', 25 January 2021, www.aljazeera.com/news/2021/1/25/egyptian-police-arrest-cartoonist-on-10th-anniversary-of-uprising

⁷⁰ MiddleEastEye 'Egypt: Animation artist arrested for video commemorating revolution', 25 January 2021 www.middleeasteye.net/news/egypt-cartoonist-arrested-video-january-revolution

⁷¹ The Guardian, Farmers' protests in India: why have new laws caused anger?, 12 February 2021, www.theguardian.com/world/2021/feb/12/farmers-protests-india-why-laws-caused-anger

⁷² Human Rights Watch, 'India: Journalists Covering Farmers Protests Charged – Drop Case, Protect Media Freedom', 2 February 2021 <https://www.hrw.org/news/2021/02/02/india-journalists-covering-farmer-protests-charged>

Sardesai, Mrinal Pande, Zafar Agha, Paresh Nath, Anant Nath, Vinod K Jose, and a Congress party politician, Shashi Tharoor – refer to a post-mortem report which indicates that he sustained a gunshot to the head.⁷³ On this basis, the police in Bharatiya Janata Party-ruled Uttar Pradesh, Madhya Pradesh, Karnataka, and Haryana states have filed cases against this group of individuals for allegedly ‘misreporting’ the facts. If charged and convicted of sedition, the six journalists could face up to life imprisonment per Section 124A of the Indian Penal Code.⁷⁴

On January 30, Delhi police also detained the journalists Dharmender Singh and Mandeep Punia, who were covering the protests, alleging that the two ‘misbehaved’ with the police. Mr. Punia had been investigating a mob who threw stones at the farmers and vandalised their tents at the protest site on the Singhu border between Delhi and Haryana on 29 January.⁷⁵ While the police released Mr. Singh the next day, they sent Mr. Punia, a freelance journalist, to judicial custody for 14 days for allegedly obstructing and assaulting a police officer.⁷⁶ Recent reports observe that the Ministry of Electronics and IT recently directed Twitter to block several accounts that were reporting on the Indian farmer protests.⁷⁷ The blocked accounts included The Caravan, a magazine and staunch critic of the Indian government.

The IBAHRI remains extremely concerned for the safety of journalists and the free flow of information in India at this time. The role of journalists and the independent media is indispensable in facilitating access to information for the public as well as calling for accountability. The IBAHRI condemns in the strongest of terms the targeting of journalists, persecuted under draconian laws, and call for their immediate release to be allowed to report without fear, but freedom.

Hungary

In previous editions of this Bulletin, the IBAHRI reported that the state media authority in Hungary, the National Media and Info-communication Authority Council, published an unexpected statement announcing the cancellation of independent outlet, Klubrádió’s frequency broadcasting contract as of February 2021. The government-controlled Media Council justified its decision by referring to the commercial station’s alleged breach of Hungary’s restrictive Media Act.

According to the Media Council, during the seven years of Klubrádió’s operation and broadcasts on the frequency, ‘it has repeatedly violated the provisions of the Media Act, due to which the

⁷³ BBC, ‘Why Journalists in India are under attack’ 4 February 2021 <https://www.bbc.co.uk/news/world-asia-india-55906345>

⁷⁴ Committee to Protect Journalists, ‘Indian Police Arrest, Investigate Journalists Covering Farmers’ Protests’, 1 February 2021 <https://cpi.org/2021/02/indian-police-arrest-investigate-journalists-covering-farmers-protests/>

⁷⁵ Outlook Web Bureau, ‘Farmers’ Protests – Journalist Mandeep Punia Denied Bail’, 31 January 2021, www.outlookindia.com/website/story/india-news-farmers-protest-journalist-mandeep-punia-denied-bail-sent-to-jail/372788

⁷⁶ The Indian Express, ‘Journalist Mandeep Punia held at Singhu is sent to jail for 14 days’, 1 February 2021, indianexpress.com/article/india/journalist-mandeep-punia-held-at-singhu-is-sent-to-jail-for-14-days-7169366/

⁷⁷ First Post, ‘Twitter blocks 250 tweets and accounts, including The Caravan, Kisan Ekta Morcha following direction from IT Ministry’ 1 February 2021, www.firstpost.com/india/twitter-withholds-multiple-accounts-including-caravan-kisan-ekta-morcha-following-direction-from-it-ministry-9261161.html

Media Authority applied various legal consequences.’ They wrote that the decisions affected by the repeated infringement were noted by Klubrádió, the legal remedy was not initiated in court, and fines were paid. Agnes Urban, head of the MerteK Media Monitor think-tank, said the move amounted to ‘executing Klubrádió ... [T]he systematic eradication of media freedom in Hungary is underway.’⁷⁸ The radio station has now been resigned to broadcasting solely from the internet after February 14 and cap the end of a decade-long campaign by the ruling Fidesz party led by Prime Minister Viktor Orbán to muzzle one of the country’s last remaining critical radio stations⁷⁹.

The IBAHRI condemned the system of media capture in Hungary and extraordinary efforts to monopolise and control the media in the state and stood in solidarity with Klubrádió and organisations including the International Press Institute in calling on the EU to act, ‘the European Union claims that press freedom and fair market competition are among its core values, yet it has so far failed to defend these values in Hungary.’⁸⁰

It was reported that on 4 February, a decision handed down by a court in Budapest rejected the temporary license extension to Klubrádió in Hungary, upholding the September decision by the to revoke Klubrádió’s licence for alleged breaches of the country’s restrictive media laws.⁸¹ Dunja Mijatovic, the Council of Europe’s human rights commissioner, tweeted: ‘Another silenced voice in Hungary, another sad day for media freedom.’

The Hungarian government actions are in direct breach of Article 11 of the European Union’s Charter of Fundamental Rights on freedom of expression and information.⁸² The IBAHRI joins organisations, including Article 19 and Media Freedom Rapid Response in urging the European Commission to address this issue to find an immediate solution that prevents the silencing of another independent media outlet in Hungary.

Myanmar

On 2 February, the International Bar Association and IBAHRI issued a joint statement⁸³ following the unlawful seizure of power by Myanmar’s military forces on 1 February and the arbitrary detention of leading figures, including democratically elected leader Aung San Suu Kyi, journalists have reported credible threats of an imminent, broader-sweeping crackdown on media workers and fears over the threat to life.⁸⁴

⁷⁸ DW, ‘Hungary’s Klubrádió critical of Viktor Orban set to lose license’, 11 September 2020, www.dw.com/en/hungarys-klubradiocritical-of-viktor-orban-set-to-lose-license/a-54900168

⁷⁹ Media Freedom Rapid Response, Leading independent radio station muzzled in Hungary, 9 February 2021, www.mfrr.eu/leading-independent-radio-station-muzzled-in-hungary/

⁸⁰ International Press Institute, ‘Hungary’s last independent radio station could be forced off airwaves’, 11 September 2020, <https://ipi.media/hungarys-last-independent-radio-station-could-be-forced-off-airwaves/>

⁸¹ Human Rights Watch, ‘Hungary Renews Attacks on Independent Radio Station’ 15 September 2020, www.hrw.org/news/2020/09/15/hungary-renews-attacks-independent-radio-station

⁸² Article 19, ‘Hungary: MFRR calls for EU action as Klubrádió is silenced’ 4 February 2021, www.article19.org/resources/mfrr-klubradio/

⁸³ IBAHRI, ‘IBA and IBAHRI condemn the military coup d’état in Myanmar’, 2 February 2021, www.ibanet.org/Article/NewDetail.aspx?ArticleUid=55be4933-0f93-45f3-90e9-ef0162064bfa

⁸⁴ Human Rights Watch, ‘Myanmar: End Crackdown on Media Communications – Journalists Threatened, Internet Restricted’, 5 February 2021, www.hrw.org/news/2021/02/05/myanmar-end-crackdown-media-communications

On 4 February, the Assistance Association for Political Prisoners (AAPP) reported that in addition to 133 officials and lawmakers whom the military detained at the onset of the coup, 14 activists had also been detained. On 5 February, the authorities detained Aung San Suu Kyi's senior aide, Win Htein, as he is faced with charges for his comments denouncing the coup. While no journalists have been arrested as of yet, the AAPP reported that five persons were abducted across the country on 11 February, including prominent lawyer U Myo Aung in Myawaddy Township, Karen State.⁸⁵ Correspondingly, the press have confirmed that the message has been loud and clear from the newly created State Administration Council which said some media organisations and people were posting rumours on social media and releasing statements to incite riots and create 'unstable situations', warning journalists 'not to make such moves' and 'to cooperate with the government.'⁸⁶ The Committee to Protect Journalists reported that security forces have resorted to firing rubber bullets and live rounds at protesters in Naypyidaw injuring journalist, Than Htike Aung, a reporter with the local Mizzima English-language news website.

The IBAHRI remains alarmed increasing mass detention since the 1 February coup stands and will continue to closely monitor the situation. We call on the authorities in Myanmar to allow peaceful protests to take place and most importantly, afford protection for journalists covering the protests. In this regard, we once again condemn the military coup in the strongest possible terms and demand the immediate release of all those held in unlawful captivity by the military junta.

Poland

On 10 February 2021, Polish independent media, including commercial TV channels and radio stations, suspended news coverage and web pages, replacing front pages with black screens,⁸⁷ to protest a new advertising tax that broadcasters and publishers argue is aimed not at raising money as the State claims, but at undermining the freedom of the press.⁸⁸ This comes a day after Hungary's leading private radio station, Klubrádió, who were known to criticise the Hungarian government lost its broadcasting licence after the country's media regulator said it had infringed administrative rules, as reported by the IBAHRI in previous editions of the Bulletin, raising new press freedom concerns in the EU member state.⁸⁹

The new tax, which ranges from 2% to 15%, is being rushed through Parliament at the insistence of the government who claim that this is a way to repair public finances strained by the pandemic,

⁸⁵ Assistance Association for Political Prisoners, 'Daily Briefing in Relation to the Military Coup for 11 Feb 2021' 11 February 2021 <https://aappb.org/?p=13082>

⁸⁶ Bangkok Post, 'Myanmar Journalists Wait and Watch' 8 February 2021, www.bangkokpost.com/opinion/opinion/2064219/myanmar-journalists-wait-and-watch

⁸⁷ The Irish Times, 'Polish media blackout flags up press freedom fears over tax plan', 10 February 2021 www.irishtimes.com/news/world/europe/polish-media-blackout-flags-up-press-freedom-fears-over-tax-plan-1.4481439

⁸⁸ POLITICO Europe, 'Polish Media Suspend Reporting to Protest a Planned Tax on Advertising', 10 February 2021, www.politico.eu/article/polish-media-suspend-reporting-to-protest-a-planned-tax-on-advertising/

⁸⁹ France24, 'Hungary's Leading Independent Radio Station Loses Broadcast License' 10 February 2021 www.france24.com/en/europe/20210210-hungary-s-leading-independent-radio-station-loses-broadcast-license

with the money going to health care and culture.⁹⁰ Conversely, media outlets and the political opposition see the tax as an effort to cow the independent press by the government led by the nationalist law and justice (PiS) party. Dozens of privately-owned Polish media firms signed an open letter opposing plans for the tax on advertising revenue, arguing that the wildly varying charges facing different companies were ‘outrageous’ and that changing the terms of existing broadcast licenses was unacceptable in a country governed by the rule of law.⁹¹

The European Commission expressed its concern for press freedom in the country, given the government’s actions to stifle opposition outlets and is currently under investigation for alleged rule of law violations.⁹² Poland has plummeted in recent press freedom rankings by Reporters Without Borders in its annual World Press Freedom Index. Poland ranked 62 out of 180 countries in 2020.

The IBAHRI shares concerns surrounding the developments across Poland; all countries must refrain from imposing legislative constraints and fiscal policies that would obstruct their duty to ensure a free and independent media ecosystem.

Russia

The IBAHRI has been monitoring the ongoing situation in Russia that has to date led to the arrests of more than 6,000 protestors across the country following the arrest of Alexey Navalny. On 2 February 2021, a court ruled that Mr Navalny, an anti-corruption campaigner, had breached the terms of a 2014 suspended sentence on fraud charges – which he maintains were fabricated and politically motivated – and commuted the sentence to jail time of three years and six months. This will be reduced, by the amount of time that he has already spent in detention, to two years and eight months⁹³. We condemned the violence inflicted by the country’s security forces on peaceful demonstrators who were demanding the release of the detained, and subsequently jailed, opposition leader Mr. Navalny as well as the use of law to stifle dissidents. In the context of attacks against journalists, the Justice for Journalists Foundation recorded 195 incidents of detentions and arrests of professional and citizen journalists during the nationwide protests in support of Alexey Navalny between January 16 and February 3 2021⁹⁴.

The number of attacks demonstrate an unprecedented scale of repressions by the Russian authorities aimed at impeding the professional work of journalists in covering protest activities. The clearly marked PRESS vests, editorial tasks and press cards served as a reason for the journalists’ detention, rather than their protection from the police and the riot units (OMON).

Attacks included:

⁹⁰ The Irish Times, n.87

⁹¹ POLITICO Europe, n.88

⁹² The Guardian, “This used to be your favourite show’: Polish Media Hold Blackout in Protest at Tax Threat’ 10 February 2021, www.theguardian.com/world/2021/feb/10/polish-media-hold-blackout-in-protest-at-tax-threat

⁹³ IBAHRI, IBAHRI condemns mass arrests, police brutality and use of law to suffocate dissent in Russia, 5 February 2021 www.ibanet.org/Article/NewDetail.aspx?ArticleUid=3eb4feb3-8fe04e17a169472b44a39a01&fbclid=IwAR0Xh-TKzw2cEjHwGig_IJkym7uLqoZlwh4k6_cXAktBnWCdkVlg2488Dl0

⁹⁴ Justice for Journalists Foundation, Unprecedented Repressions against Russian Professional and Citizen Journalists, 4 February 2021, <https://jfi.fund/unprecedented-repressions-against-russian-professional-and-citizen-journalists/>

- 164 cases of detentions (sometimes the same journalists were detained twice during the day or various protest actions);
- 31 cases of non-fatal attack/beatings/injury/torture during the detentions as a result of which some journalists were seriously injured; 31 journalists were sentenced to between 3 to 30 days in detention centres under administrative cases for violation of the established procedure for the organisation or holding of a meeting, rally, demonstration;
- 11 media workers received administrative fines, and administrative reports were drawn up in other 13 cases – those journalists were released with the obligation to appear in court at a later date; and
- at least six criminal cases have initiated against five journalists on the grounds of the public calls for extremist activities; calls for riots; use of violence against a law enforcement officers in the course of an unauthorised action; violation of epidemiological norms and the organisation of mass disorder, with prison sentences of three years or more⁹⁵.

Other attacks against professional and citizen journalists included intimidation, harassment, pressure and threats; deprivation of the freedom to leave the dwelling; confiscation, seizure and damage of the professional equipment; surveillance and hacking into emails and social media accounts. The IBAHRI joins Justice for Journalists Foundation in calling for the immediate release of those arrested and calls on Russia's authorities to respect international human rights norms. Having ratified the International Covenant on Civil and Political Rights (ICCPR), the Russian government has an obligation to protect citizens' rights to peaceful assembly as laid out in Article 21. The government also has the duty to safeguard the right of freedom of expression as defined in Article 19 of the ICCPR and attacks against journalists are undoubtedly in violation of this obligation and perpetrators must be held accountable⁹⁶.

Turkey

On 3 February 2021, the Thirteenth Istanbul Court of Serious Crimes began hearings for the retrial of RSF representative, Erol Önderoğlu alongside two other defendants, Şebnem Korur Fincancı, the chair of the Turkish Medical Association trade union and a columnist for daily Evrensel, and Ahmet Nesin, a columnist for the online newspaper Artı Gerçek. The human rights defenders are facing 'terrorist propaganda' charges and face up to 14 years in prison under the Anti-Terror Law No. 3713 and the Penal Code of Turkey.⁹⁷⁹⁸

In May 2016, numbers of journalists, academics and artists joined a campaign to symbolically act as co-editor of a pro-Kurdish daily newspaper, Özgür Gündem to protest the Turkish authorities' misconducts. A month later, Erol Önderoğlu, Şebnem Korur Fincancı and Ahmet Nesin were

⁹⁵ Justice for Journalists Foundation, n.94

⁹⁶ IBAHRI, n.93

⁹⁷ Reporters without Borders (RSF), 'Joint statement in support of Erol Önderoğlu, facing 14 years in prison', 02 February 2021, <https://rsf.org/en/news/joint-statement-support-erol-onderoglu-facing-14-years-prison>

⁹⁸ Committee to Protect Journalist 'Turkey to begin retrial of RSF representative, other press freedom advocates on terrorism charges', 1 February 2021, <https://cpj.org/2021/02/turkey-to-begin-retrial-of-rsf-representative-other-press-freedom-advocates-on-terrorism-charges/>

arrested 'on incitement and terrorism charges'.⁹⁹ The three were briefly detained before release, pending trial. In 2019, the three defendants were acquitted after three years of persecution; however, Turkish government appealed against the decision and subsequently, on 3 November 2020, the 3rd Penal Chamber of the Court of Appeals of Istanbul reversed the previous ruling and allowed retrial. As a result, once again the three individuals are being tried on charges of 'propagandizing for a terrorist organization', 'openly inciting to commit crimes' and 'praising the crime and the criminal'.¹⁰⁰

The IBAHRI joins with organisations including RSF, PEN International, Article 19 and others to condemn the judicial harassment of journalists and human rights defenders in Turkey and calls on the state to stop pursuing baseless charges under the guise of national security considerations. The three defendants' retrial is the part of a widespread crackdown against freedom of expression and media freedoms by President Erdogan's government in the wake of the failed coup in July 2016. Article 28 of the Constitution of Turkey provides rights to freedom of the press and provisions of International Covenant on Civil and Political Rights to which Turkey is a state party, guarantee the freedom of expression. Yet, Turkish authorities undermine such provisions by imposing restrictive measures and criminal law to silence dissent voices, journalists, and human rights defenders.

Zimbabwe

On 8 January, Hopewell Chin'ono was arrested by the police for the third time in six months and remanded in custody on allegations of publishing or communicating falsehoods prejudicial to the State. In previous issues of the Bulletin and in publicly issued statements¹⁰¹, the IBAHRI expressed concern over the arrest of Mr. Chin'ono, a prominent Zimbabwean investigative journalist, following the publication of corruption allegations against Zimbabwe's ruling elite.

According to one of Mr. Chin'ono's lawyers, Mr. Doug Coltart, the arrest followed a Twitter post from Mr. Chin'ono describing how a police officer had beaten and killed a child strapped to its mother's back using a baton after a video of the alleged incident went viral.¹⁰² Mr Coltart believes that Mr. Chin'ono arrest is in accordance with Section 31 of the Criminal Code for spreading 'false news'. Yet, it has been brought to public attention that the section of the law criminalising the dissemination of 'falsehoods' had been struck down in 2014 by the Zimbabwean Constitutional Court.¹⁰³ Despite a court order preventing police from detaining journalists doing their jobs

⁹⁹ Committee to Protect Journalist, 'Turkey Crackdown Chronicle: Week of June 26', 27 June 2016 <https://cpi.org/2016/06/turkey-crackdown-chronicle-week-of-june-26/>

¹⁰⁰ RSF, n.97

¹⁰¹ IBAHRI, 'Zimbabwe: IBA and IBAHRI voice concerns over Hopewell Chin'ono arrest and harassment of Beatrice Mtetwa' 18 August 2020, www.ibanet.org/Article/NewDetail.aspx?ArticleUid=404c6562-ec93-47a0-87e3-f79c6fc7f1de and www.ibanet.org/Article/NewDetail.aspx?ArticleUid=341F01C7-30B5-41C1-8A34-D22F89441922

¹⁰² Business Live, 'Zimbabwean journalist Hopewell Chin'ono arrested again after tweet about police' 8 January 2021, www.businesslive.co.za/bd/world/africa/2021-01-08-zimbabwean-journalist-hopewell-chinono-arrested-again-after-tweet-about-police/

¹⁰³ The Economist, 'Inconvenient Truths – Censorious Governments are Abusing Fake News Laws' 13 February 2021, www.economist.com/international/2021/02/13/censorious-governments-are-abusing-fake-news-laws

during the pandemic,¹⁰⁴ Zimbabwe has remained one of the worst offenders of press freedom in the African region.

The African Commission on Human and Peoples' Rights (ACHPR) Special Rapporteur on Freedom of Expression and Access to Information in Africa expressed concern over the arrest and pre-trial detention of Mr. Chin'ono, recalling that freedom of expression and access to information are fundamental human rights guaranteed by Article 9 of the African Charter on Human and Peoples' Rights, and other regional and international human rights treaties.¹⁰⁵ Further, the Special Rapporteur urged Zimbabwe to ensure that the fair trial rights of Mr. Chin'ono, and others in pre-trial detention, are guaranteed and secured and that the principles in the Guidelines on the Conditions of Arrest, Police Custody and Pre-Trial Detention in Africa are complied with.

The IBAHRI joins the ACHPR to condemn the arrest of Mr. Chin'ono as further instance of Zimbabwe's neglect for international standards and a flagrant disregard for individual freedoms, particularly the right to liberty and security of the person. The continued arrest and active pursuit of Mr. Chin'ono indicates a persecution on the safety of journalists and media independence and the IBAHRI will remain actively seized on this matter.

¹⁰⁴ Nehanda Radio, 'Victory for media as High Court orders police not to arrest journalists' 20 April 2020 <https://nehandaradio.com/2020/04/20/victory-for-media-as-high-court-orders-police-not-to-arrest-journalists/>

¹⁰⁵ African Commission on Human and Peoples' Rights, 'Press Statement on the Arrest of and Pre-Trial Detention of Mr. Hopewell Chin'ono' 21 January 2021 <https://www.achpr.org/pressrelease/detail?id=561>

4. Free speech

Article 19 of the Universal Declaration of Human Rights allows for everyone to possess the right to freedom of opinion and expression, including freedom to hold opinions without interference and to seek, receive and share information. Globally, in recent years, we have seen freedom of expression being eroded, and the Covid-19 crisis intensifies concerns of greater repression of free speech.

Bahrain

Prominent human rights defender and co-founder of both the Gulf Centre for Human Rights (GCHR) and the Bahrain Center for Human Rights (BCHR), Abdul-Hadi Al-Khawaja completed his tenth year in prison in Bahrain of a life-sentence after his arrest in 2011. In June 2011, Mr. Al-Khawaja was sentenced to life imprisonment following unfair trials in courts that did not comply with Bahraini criminal law or international fair trial standards¹⁰⁶. On 2012, four United Nations human rights mandate holders, the Special Rapporteurs on human rights defenders, on independence of judges and lawyers, on torture, and on freedom of assembly and association called on Bahraini authorities to immediately release Mr. Al-Khawaja¹⁰⁷.

Over 100 human rights organisations also called for his immediate release through a letter issued to the Danish Prime Minister, to encourage immediate action for the release of Mr. Al-Khawaja. In the open letter, they insist that he is serving a life sentence 'for his peaceful political and human rights activities in violation of his right to freedom of expression'¹⁰⁸.

The letter details concerns from Mr. Al-Khawaja as to violations of the United Nations Standard Minimum Rules for the Treatment of Prisoners including that prison authorities are arbitrarily denying him proper medical treatment and refusing to refer him to specialists for surgeries he requires. Further, Mr. Al-Khawaja has been restricted on phone calls with his family whom he has not seen in person since January of 2020 due to Covid-19, and hundreds of his books and reading materials have been confiscated¹⁰⁹. The IBAHRI joins calls for the Bahraini authorities to stop attempts to silence dissent in Bahrain and urge for his immediate release as Mr. Al-Khawaja should never have been detained in the first place.

Thailand

On 19 January 2021, Anchan Preelert, a former civil servant in Bangkok was sentenced to a record 43 years in prison under Thailand's *lèse-majesté law* which considers 'insult' or 'defame' the King

¹⁰⁶ Human Rights Watch; Bahrain: Free protests leaders immediately, 26 March 2012, www.hrw.org/news/2012/04/30/bahrain-free-protest-leaders-immediately

¹⁰⁷ United Nations Human Rights Commissioner; Bahrain: UN human rights experts urge immediate release of Abdulhadi Al-Khawaja, 12 April 13 2012. <https://newsarchive.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=12056&LangID=E>

¹⁰⁸ IFEX; Bahrain: Open letter to Danish Prime Minister to take immediate action to free Abdul-Hadi Al-Khawaja, 22 January 2021. <https://ifex.org/bahrain-open-letter-to-danish-prime-minister-to-take-immediate-action-to-free-abdul-hadi-al-khawaja/>

¹⁰⁹ IFEX, n.108

or the royal family. Accordingly, Ms. Praelert had reportedly shared audio clips on social media that the court deemed critical of the Thai monarchy. Ms. Praelert was originally sentenced to 87 years but the term was reduced to half due to a guilty plea.

The extreme sentence signals how criticism of the monarchy in Thailand will not be tolerated and the role of the courts in ensuring this. The sentence itself is draconian and demonstrates how the law is being used as a tool for political repression alongside its complete incompatibility with international standards for freedom of expression¹¹⁰. Under the law, an insult to the Monarchy is punishable by three to fifteen years imprisonment and Ms. Praelert's prison sentence exceeds this due to a number of charges arising under the same provision, with each charge counting separately. International legal experts, including the former UN Special Rapporteur on Freedom of Opinion and Expression, have explicitly denounced the application of the lèse-majesté law, deeming it to be inconsistent with Thailand's international legal, human rights obligations¹¹¹.

Thailand has seen a significant rise in cases falling under this law since 2020 in the wake of protests calling for political reform, including reforms to ensure that the monarchy is subject to the constitution. Thai authorities have wielded the lèse-majesté law¹¹², among other criminal provisions that target speech, against leaders and supporters of the protest.

Rwanda

The IBAHRI recently issues calls¹¹³ for due process to be followed in the trial of the exiled Rwandan dissident Paul Rusesabagina, who has been in police custody in Rwanda's capital, Kigali, since 31 August 2020. Exiled as a Belgium citizen and United States resident, Mr Rusesabagina had been living abroad prior to his arrest in Kigali. His family has stated that he would never have willingly returned to Rwanda and conclude that he was 'kidnapped'.

Mr Rusesabagina, an outspoken critic of President Paul Kagame, told the court when applying for bail that he was held bound, blindfolded and incommunicado for three days, before being taken to the court in Kigali under heavy security. He faces a multitude of charges, including terrorism and supporting armed rebels in a conspiracy to overthrow the government of President Kagame. He has denied all allegations against him and refused to enter any pleas in court. His trial, originally scheduled to start on 26 January 2021, has been adjourned indefinitely.

The Rwanda Investigation Bureau stated on social media that the arrest occurred through 'international cooperation'. However, clarity on the exact meaning of the phrase has not been forthcoming, leading to speculation that international law was breached. The current unsatisfactory situation finds Mr Rusesabagina detained without a trial date and without legal

¹¹⁰ PEN America; Thailand sentences civil servant to 43 years for insulting monarchy, 20 January 2021, <https://pen.org/press-release/thailand-sentences-civil-servant-to-43-years-for-insulting-monarchy/>

¹¹¹ UN News, Thailand should amend defamation laws to comply with freedom of speech – UN expert, October 2011. <https://news.un.org/en/story/2011/10/390882-thailand-should-amend-defamation-laws-comply-freedom-speech-un-expert#.WlOZG6519Rs>

¹¹² New York Times; A feared law to protect the monarchy turns amid Thailand's protests, 25 November 2020. www.nytimes.com/2020/11/25/world/asia/thailand-protest-lese-majeste-monarchy.html

¹¹³ IBAHRI, IBAHRI calls for due process as trial of 'Hotel Rwanda' Paul Rusesabagina faces indefinite delay, 27 January 2021, www.ibanet.org/Article/NewDetail.aspx?ArticleUid=560ec8da30974adba3fd9736bc1263d5&fbclid=IwAR0foUQVFKRU2SCVrWxui7DtEA75ibk954VwrmP15m7IFSNAIQ9TPIGvDHI

representation of his choosing. The IBAHRI emphasises the need for due process and international fair trial standards to be upheld, as set out in the Universal Declaration of Human Rights, notably Article 10.

5. Digital rights and internet shutdowns

Governments that are currently imposing an internet shutdown in states, including Jammu and Kashmir, restrict the flow of information during the Covid-19 global crisis. Other states have instead elected to simply cap internet speed, making it virtually impossible to download files, communicate and disseminate information.

India

On 26 January 2021, the nation's Republic Day, India's Union Ministry of Home Affairs issued orders directing internet shutdowns across several areas of the National Capital Territory (NCT) of Delhi.¹¹⁴ This came as a result of a clash between protesting farmers and the Delhi police as a result of nationwide demonstrations against three recently introduced farm laws.¹¹⁵ The directive issued by the Union Ministry of Home Affairs under provisions of the *2017 Telecom Network Suspension Rules* ordered internet suspensions in the Singhu, Ghazipur, Tikri, Mukarba Chowk, and Nangloi areas of the NCT of Delhi, from 12:00 to 23:59 local time on January 26.¹¹⁶

Digital rights organisation, Access Now, reported that as the nationwide Farmers Protests continue to grow, the wave of online censorship has accelerated across India, detailing the expansion of government-mandated internet shutdowns how and mobile internet and SMS have been targeted to block protester communication.¹¹⁷ Reports indicate that the internet has not been fully restored in most areas that were initially cut off on 26 January and the shutdowns in at least two districts were reportedly extended until at least 5 February. The government of India also ordered Twitter to block the accounts of hundreds of users, many associated with the farmers' protests, and several specific hashtags.¹¹⁸

The UN Office of the High Commissioner on Human Rights called for the Indian authorities and protesters to exercise 'maximum restraint' on 5 February, adding that the rights to freedom of peaceful assembly and expression should be protected both offline and online.¹¹⁹ The IBAHRI shares its concerns over the shutting down of critical communications infrastructure, particularly considering that in the last 5 years, there have been more than 400 instances of internet shutdowns across India making it the largest in the world, despite being a member of the Human Rights Council and state party to the ICCPR. To this end, the IBAHRI reminds State officials of their

¹¹⁴ The Indian Express, 'Farmers' Protest Turns Violent: Internet Snapped in Parts of Delhi-NCR', 26 January 2021, <https://indianexpress.com/article/india/farmers-protest-internet-shutdown-delhi-7162537/>

¹¹⁵ Amnesty International, 'India: Government Must Stop Crushing Farmer's Protests and Demonizing Dissenters' 9 February 2021, www.amnesty.org/en/latest/news/2021/02/india-government-must-stop-crushing-farmers-protests-and-demonizing-dissenters/

¹¹⁶ Telecom, 'Farmers' Protest: Farmers' protest: Jio, Airtel, Vodafone Idea suspend internet services in Delhi-NCR region' 26 January 2021 <https://telecom.economictimes.indiatimes.com/news/farmers-protest-indian-telcos-asked-to-suspend-internet-services-in-delhi-ncr-region/80465905>

¹¹⁷ Access Now, 'Government Orders Internet Shutdown in Delhi on India's Republic Day' 4 February 2021 www.accessnow.org/internet-shutdown-in-delhi-on-indias-republic-day/

¹¹⁸ The Hindu Business Line, 'Concerns Raised Over Blocking of Twitter Accounts in India' 3 February 2021 www.thehindubusinessline.com/info-tech/social-media/concerns-raised-over-blocking-of-twitter-accounts-in-india/article33734279.ece

¹¹⁹ UN News, 'India: UN rights office urges 'maximum restraint' in ongoing protests' 7 February 2021 <https://news.un.org/en/story/2021/02/1084072>

obligations under international law¹²⁰ and that indiscriminate measures to curtail the flow of information contravenes their international commitments.

Myanmar

On 3 February 2021, the Myanmar military ordered telecommunications companies in the country to fully shutdown internet and 4G services and to block Facebook — including Instagram, WhatsApp, and Messenger — until midnight, 7 February in response to civilian protests against the 1 February coup d'état.¹²¹ The order went into effect on 4 February when social media platforms became inaccessible on mobile data networks for people with SIM cards from the telecommunications company MPT.¹²² The internet was blocked again on 14 February which followed warnings by diplomats, 'the world is watching'¹²³.

Telenor, a Norway-based telecommunications company, issued a statement saying that it had complied with the order that had a 'legal basis in Myanmar law,' but expressed 'grave concern regarding the breach of human rights.'¹²⁴ Facebook is the main source of news and information in the country and for many Myanmar people is synonymous with the internet.¹²⁵ Approximately 22 million people in Myanmar rely on these platforms and are now completely cut off.¹²⁶ Under the UN Guiding Principles on Business and Human Rights, business enterprises have a responsibility to respect human rights independent of state actions or obligations, and over and above compliance with national laws.¹²⁷

In addition, under international human rights standards, any internet-based restrictions must be provided for in law and be necessary and proportionate and pursuant to a legitimate aim in accordance with Article 19 of the International Covenant on Civil and Political Rights (ICCPR).¹²⁸ Internet shutdowns fail to meet these standards and pose a real danger to at-risk civilian populations, especially when access to information is so vital during the Covid-19 pandemic – and

¹²⁰ UN Human Rights Committee, *General Comment no. 34, Article 19, Freedoms of Opinion and Expression*, 12 September 2011, CCPR/C/GC/34, www2.ohchr.org/english/bodies/hrc/docs/gc34.pdf

¹²¹ Access Now, 'Access Now Condemns Myanmar's Internet Shutdown During Military Coup' 4 February 2021 <https://www.accessnow.org/myanmar-internet-shutdown-military-coup/>

¹²² Human Rights Watch, n.63

¹²³ The Guardian, Myanmar: armoured vehicles roll into cities as internet shut down, 14 February 2021, www.theguardian.com/world/2021/feb/14/tanks-on-streets-of-myanmar-city-prompt-us-embassy-warning

¹²⁴ Telenor Group, 'Directive to Block Social Media Service' 3 February 2021, www.telenor.com/directive-to-block-social-media-service/

¹²⁵ Amnesty International, 'Myanmar: New Internet Blackout 'Heinous' and 'Reckless'' 6 February 2021 www.amnesty.org/en/latest/news/2021/02/myanmar-new-internet-blackout/

¹²⁶ Access Now, n.121

¹²⁷ UN High Commissioner for Human Rights, *Guiding Principles on Business and Human Rights – Implementing the United Nations 'Protect, Respect and Remedy' Framework*, 2011 HR/PUB/11/04 www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf

¹²⁸ UN Human Rights Committee, n.120

even more so when the current situation in Myanmar¹²⁹ is so volatile amid the coup, and in conflict-affected areas of Rakhine and Chin States where mobile internet restrictions have been in place for more than a year.¹³⁰

The IBAHRI endorses calls to cease escalated censorship measures, to reinstate all telecommunications immediately and echoes the sentiment expressed by Ming Yu Hah, Amnesty International's Deputy Regional Director for Campaigns, 'to shut down the internet amid a volatile coup, a humanitarian crisis and a health pandemic is a heinous and reckless decision.'¹³¹ We continue to monitor the situation closely.

Uganda

On 20 January 2021, the IBAHRI released a statement to strongly condemn the internet shutdown in Uganda ahead of the general election that took place on 14 January. Such restrictions, introduced under the guise of national security concerns not only severely interfere with the free flow of information and freedom of expression, but also undermine the overall integrity of the election and its final result, where President Yoweri Museveni was re-elected for the sixth term.

Whilst internet connectivity has since been restored however some social media and messaging restrictions have continued to be in place. Government spokesman, Ofwono Opondo said the shutdown was a method of war against elements that were a threat to the credibility of the elections¹³² and since those threats have been greatly neutralised, he said, the government has restored access to social media websites, with the exception of Facebook, 'We have released elements of social media — Twitter, Instagram, WhatsApp — because we think to a less extent, those are not as lethal as Facebook... 'So, we shall examine going forward, their posture on these other social media platforms that have been released. And that will inform how soon Facebook is restored.'

On 11 February 2021, the European Parliament adopted a resolution considering the political situation in Uganda and condemning 'the violence, continued harassment and systematic crackdown faced by political opposition leaders in Uganda, as well as the suppression of civil society. All those arrested and detained for participating in peaceful political assemblies or for exercising their right to freedom of expression and association must be released immediately and unconditionally and have their charges dropped'. The Parliament also expressed need to employ 'sanctions against individuals and organisations responsible for human rights violations in Uganda must be adopted under the new EU human rights sanction mechanism, the so-called EU Magnitsky Act'¹³³.

¹²⁹ Amnesty International, Myanmar: UN special session welcome first step, but concrete action required, 8 February 2021, www.amnesty.org/en/latest/news/2021/02/myanmar-un-special-session-welcome-but-concrete-action-required/

¹³⁰ Amnesty International, n.129

¹³¹ Amnesty International, n.129

¹³² VOA, Ugandan Government Restores Social Media Sites, Except Facebook, 10 February 2021, www.voanews.com/africa/ugandan-government-restores-social-media-sites-except-facebook

¹³³ Europarl News, Human rights breaches in Uganda, Rwanda and Kazakhstan, 11 February 2021, www.europarl.europa.eu/news/en/press-room/20210204IPR97122/human-rights-breaches-in-uganda-rwanda-and-kazakhstan. Full resolution can be found - www.europarl.europa.eu/plenary/en/texts-adopted.html

The IBAHRI is concerned that Uganda continues to act in breach of its constitutional and international human rights obligations. We call for full and immediate restoration of services, and adequate protection of citizens' right to information and free expression.