



## **IBAHRI Freedom of Expression Bulletin**

**For Release: 30 June 2020**

### **Message from Professor Can Yeginsu, Barrister and Member of the High-Level Panel of Legal Experts on Media Freedom<sup>1</sup>:**

In a landmark judgement of 25 June 2020, the Court of Justice of the Economic Community of West African States has ruled that the September 2017 shutdown of the internet in Togo was unlawful, and contrary to international law. In response to the decision, **Professor Can Yeginsu**, member of the [High-Level Panel of Legal Experts on Media Freedom](#) and the lead barrister on the case representing Access Now, the Committee to Protect Journalists, and ARTICLE 19, remarked:

‘The Internet is now one of the principal means by which individuals exercise their right to the freedom to receive and impart information and ideas: it is a key gateway to the public’s access to news. The decision of the Togolese authorities to shut down the Internet completely in September 2017 therefore constituted a very severe interference with the fundamental rights of the Togolese people. This was not an isolated case on the African continent: Gabon, the Democratic Republic of Congo, Sudan, Chad, Benin, and Zimbabwe have all seen the Internet shut down in recent years. As have other countries all over the world: these sorts of restrictions are now very much a global concern.

The decision of the ECOWAS Court to declare the 2017 shutdown in Togo unlawful, a violation of the right to freedom of expression as protected by international law, and its injunction to the state “to take necessary measures” to ensure that the Internet is not shut down in the future sends an important message to Togo, to the West African States, and to other countries contemplating similar action. This is also another landmark judgment from the ECOWAS Court in the area of freedom of expression, following its decision in February 2018 to order the Gambia to repeal its criminal libel laws.

The Togo judgment came, of course, only two days after the European Court of Human Rights held Russia’s law on website blocking to have an excessive and arbitrary impact on the right to freedom of expression. These are important and timely judgments from international courts: they give effect to an international minimum standard of protection for freedom of expression at a time when national authorities are moving to curb essential freedoms’.

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<sup>1</sup> The International Bar Association’s Human Rights Institute serves as Secretariat to the Panel.

### **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.<sup>2</sup> 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.

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<sup>2</sup> 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.

### Brazil

On 25 June 2020, the proposed 'Brazilian Law on Internet Freedom, Responsibility and Transparency' (Draft Law No. 2.630/2020) was scheduled to go before the Brazilian senate after two previous postponements. The law, which has been branded the 'Fake News Law Project', aims to control and limit the spread of 'fake news' and misinformation in the country.<sup>3</sup> The bill contains measures that include the creation of a system of massive surveillance of Internet users and disproportionate penalties that directly threaten freedom of expression and opinion and respect for online privacy.<sup>4</sup>

Article 5 of the proposed bill requires all social media and messaging apps users to provide a national ID card, a cellphone number registered in Brazil and a passport in the case of foreign phones.<sup>5</sup> Another article includes a provision on data retention, requiring apps to keep logs of message forwards 'from their origin, for a minimum of four months', which can be, in turn, requested by a court order. This applies to all content, without any discrimination of the legality (or not) of the content of the messages.<sup>6</sup> These two articles together provide the framework by which the Brazilian authorities plan to track the origin of 'fake news' and identify those responsible.

The proposed bill allows for mass surveillance which greatly jeopardises online privacy and effectively censors some parts of the population who will be disproportionately affected, including journalists, media workers and human rights defenders. Journalists greatly rely on encrypted messaging to communicate with their sources safely and the bill is set to endanger that safe channel. The freedom to inform is also greatly at risk. Additionally, the bill does not give a clear and detailed definition of 'false information', and rather uses broad concepts such as 'political preference' and threats to 'social peace' or 'economic order', which can allow for disproportionate interpretations and sanctions against legitimate opinions and posts.<sup>7</sup>

David Kaye, the UN Rapporteur on Freedom of Opinion and Expression, stated that 'the Brazilian Government is promoting a Bill on misinformation which seems to be extremely problematic in

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<sup>3</sup> IAAP, 'Controversial 'fake news' bill could set back privacy protections for Brazilians', 23 June 2020  
<https://iapp.org/news/a/controversial-fake-news-bill-could-set-back-privacy-protections-for-brazilians>

<sup>4</sup> RSF, 'Brazil's "fake news" bill poses major threat to freedom to inform' 25 June 2020  
<https://rsf.org/en/news/brazils-fake-news-bill-poses-major-threat-freedom-inform>

<sup>5</sup> IAAP, n.3

<sup>6</sup> IAAP, n.3

<sup>7</sup> RSF, n.4

relation to topics such as censorship, privacy, rule of law and due process'.<sup>8</sup> This concern was later echoed by Edison Lanza, current Special Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights.<sup>9</sup> The text of the draft bill has caused grave concern amongst international organisations and experts who have collectively joined to call on Brazil to refrain from adopting legal frameworks in dealing with misinformation and disinformation that contravene freedoms provided international law. The IBAHRI joins these organisations to call on Brazil to reject the latest version of the draft law and invoke a multi-stakeholder approach to inform the creation of a bill that will uphold and respect Brazil's existing obligations to International human rights standards.

### **Hong Kong**

On Tuesday 30 June 2020, Chinese authorities approved the controversial national security law at the National People's Congress Standing Committee (NPCSC) extraordinary session<sup>10</sup>. The new law criminalises secession, subversion, terrorism and collusion with foreign forces,

On 16 June 2020, the IBAHRI joined 85 civil society organisations in a [joint letter](#) addressed to Li Zhanshu, chairman of the Standing Committee of the National People's Congress (NPCSC) to express serious concern of the implications of the national security bill to be enacted in Hong Kong SAR. On 20 June 2020, China's legislative body gave a first look at the proposed national security legislation to be enacted in Hong Kong. As drafted, the law, due to be listed under Annex III of the Basic Law, appears to destroy the autonomy of Hong Kong's valued legal system, allowing Beijing to override local laws while increasing its ability to suppress political oppression. The law also gives Beijing the power to exercise jurisdiction over select criminal cases, raising the prospect for the first time in Hong Kong's history that suspects could be extradited to mainland China to face trial and potentially incarceration.<sup>11</sup> The law may also allow agencies such as the Ministry of State Security and the National Security Bureau of the Ministry of Public Security to operate in the region. Additionally, the new law would allow Beijing to set up a national security office in Hong Kong to collect intelligence and empowers the Hong Kong Chief Executive, Carrie Lam, to selectively appoint judges to hear cases that threaten national security.<sup>12</sup> Hong Kong-based lawyer Anthony Dapiran noted that the new law 'effectively sets up a parallel judiciary (and) takes interpretation and final adjudication power away from Hong Kong courts'.<sup>13</sup>

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<sup>8</sup> IAPP, n.3

<sup>9</sup> IAPP, n.3

<sup>10</sup> AP News, 'China approves contentious Hong Kong national security law', 30 June 2020 <https://apnews.com/b50a256d97b7199ea2e8b0530c24eabe>

<sup>11</sup> CNN, 'China revealed some details of Hong Kong's national security law and it may be as bad as critics feared', 22 June 2020 [www.cnn.com/2020/06/22/asia/china-hong-kong-national-security-law-intl-hnk/index.html](http://www.cnn.com/2020/06/22/asia/china-hong-kong-national-security-law-intl-hnk/index.html)

<sup>12</sup> Al Jazeera, 'Hong Kong's Lam defends power to select judges under security law', 23 June 2020 [www.aljazeera.com/news/2020/06/hong-kong-lam-defends-power-select-judges-security-law-200623045636147.html](http://www.aljazeera.com/news/2020/06/hong-kong-lam-defends-power-select-judges-security-law-200623045636147.html)

<sup>13</sup> CNN, n.11

Concerningly, despite its passing, the full text of the law has not yet been released<sup>14</sup>- reports presented that the bill had not been presented in full to Hong Kong leadership in days leading up to the passing of the bill. On 23 June 2020, Chief Executive Carrie Lam admitted that she had not seen the full text of the bill and was only able to comment on the portions she had seen. From what she has seen, Lam argued that the law is consistent with Hong Kong's Basic Law, which guarantees rights and freedoms are not similarly protected on the mainland until at least 2047. She also claimed the law would not abolish Hong Kong's freedoms of speech, press or assembly.<sup>15</sup> Officials in Beijing and Hong Kong have gone to great lengths to assure skeptics that the law will not erode Hong Kong's autonomy, but will only target a select group of 'troublemakers' who pose threats to national security.<sup>16</sup>

Emily Lau, a member of Hong Kong's Democratic Party, expressed her frustration with the lack of transparency from the Chinese legislature and what she perceives as empty assurances from Hong Kong leadership: 'No one in Hong Kong...has seen the bill. If you are going to pass a law on Hong Kong, I think common decency would mean that the Hong Kong people should be consulted and be allowed to express their views. But they say the draft law is a secret so no one can see it. So, without seeing it, how can Carrie Lam come out and fool everybody by saying "Oh, don't worry, human rights will be protected. The independence of the judiciary will be intact", I think that's nonsense'.<sup>17</sup>

Legal experts have commented how the law will stifle dissent and political freedoms and is a huge blow to Hong Kong's autonomy as promised under the 'one country, two systems' framework.<sup>18</sup> The IBAHRI is deeply concerned by China's imposition of national security legislation in Hong Kong generally, especially during a global pandemic whilst the world remains distracted, as IBAHRI Director, Baroness Helena Kennedy QC recently remarked, '*They wait for a crisis, when heads are turned.*' The bill is supposedly necessary to counter the threat of 'terrorism' and violence – the law prohibits acts of 'splittism, subversion, terrorism,' and activities of 'foreign and overseas intervention in Hong Kong affairs,' vague terms that can encompass any criticism of the government and be used against people peacefully exercising and defending their human rights.

Any national security legislation in Hong Kong must unambiguous, accessible, watertight and subject to public consultation as well as respecting and securing fundamental rights as protected rights within Basic Law. The IBAHRI calls on the Chief Executive to ensure full respect for the provisions of the International Covenant on Civil and Political Rights (ICCPR) and International Covenant on Economic, Social and Cultural Rights (ICESCR) as a starting point in order to comply with China's international human rights obligations and to immediately withdraw the bill in its current form with immediate effect.

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<sup>14</sup> The Guardian, China passes controversial Hong Kong national security law, 30 June 2020  
[www.theguardian.com/world/2020/jun/30/china-passes-controversial-hong-kong-national-security-law](http://www.theguardian.com/world/2020/jun/30/china-passes-controversial-hong-kong-national-security-law)

<sup>15</sup> Time, 'Hong Kong Leader Says She Still Hasn't Seen Draft Text of Security Law', 23 June 2020  
<https://time.com/5857735/hong-kong-draft-security-law-text>

<sup>16</sup> CNN, n.11

<sup>17</sup> CNN, n.11

<sup>18</sup> The Guardian, n.14

## **Hungary**

On 2 June 2020, the IBAHRI [reported concerns](#) that the repeal of Hungary's state of emergency legislation was in fact designed to codify President Viktor Orbán's extended authority. The Bill on Terminating the State of Danger (T/10747) and the Bill on Transitional Provisions related to the Termination of the State of Danger (T/10748), adopted on 16 June 2020, as examined in a [joint statement](#) and from the Hungarian Helsinki Committee (HHC), Amnesty International Hungary, and the Hungarian Civil Liberties Union and an [explanatory note](#) from the HHC are 'nothing but an optical illusion.' The statement and note argue that if the termination bills are adopted in their present form, it will allow the government to again rule by decree for an indefinite period of time with significantly weakened constitutional safeguards.<sup>19</sup>

The bills now give the government unchecked authority to declare state of medical emergencies, giving the government the power to curtail rights like freedom of assembly for up to six months, renewable indefinitely.<sup>20</sup> The bills also give the government the power to conduct all and any measures it deems necessary without parliamentary approval—including suspending laws—to respond to current and future public health emergencies. An analysis of the bill by Karoly Eotvos Institute, a watchdog organisation in Budapest, concluded that the legislation had no intent of restoring Hungary's pre-pandemic legal order, but rather 'creates a legal basis for the use of newer extraordinary and unlimited government powers.'<sup>21</sup>

Under existing state of emergency legislation, Hungarian cities have been stripped of tax receipts, authorities have detained government critics for social media posts, parliamentary parties have seen their state subsidies cut in half, data privacy safeguards have allegedly been breached, and the military has been dispatched to support businesses deemed to be important by the state. Other measures—undeniably unrelated to the pandemic—including a bill that denied rights to transgender people and another that classified contracts related to a business deal with China have raised further concerns. The IBAHRI joins fellow rights watch organisations and urges the EU Commission to continue to monitor Orbán's proposed legislation.

## **Philippines**

On 12 June 2020, more than 1,000 Filipinos took to the streets of the capital city to protest President Duterte's controversial new anti-terrorism bill which has drawn the condemnation of the UN and legal experts alike. Mass gatherings remain prohibited even though the government has loosened the pandemic lockdown, however, protest leaders said they were forced to come out and fight for their fundamental freedoms, including the right to freedom of expression.

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<sup>19</sup> Hungarian Helsinki Committee, 'Explanatory Note for Bills T/10747 and T/10748 Pending Before the Hungarian Parliament', 12 June 2020

[www.helsinki.hu/wpcontent/uploads/HHC\\_explanatory\\_note\\_Bills\\_T10747\\_and\\_T10748.pdf](http://www.helsinki.hu/wpcontent/uploads/HHC_explanatory_note_Bills_T10747_and_T10748.pdf)

<sup>20</sup> Human Rights Watch, 'Ending Hungary's State of Emergency Won't End Authoritarianism', 29 May 2020

[www.hrw.org/news/2020/05/29/ending-hungarys-state-emergency-wont-end-authoritarianism](http://www.hrw.org/news/2020/05/29/ending-hungarys-state-emergency-wont-end-authoritarianism)

<sup>21</sup> New York Times, 'Hungary Moves to End Rule by Decree, but Orbán's Powers May Stay', 16 June 2020

[www.nytimes.com/2020/06/16/world/europe/hungary-coronavirus-orban.html](http://www.nytimes.com/2020/06/16/world/europe/hungary-coronavirus-orban.html)

As [previously reported](#) by the IBAHRI, Section 9 of the law criminalises incitement to commit terrorism 'by means of speeches, proclamations, writings, emblems, banners or other representations tending to the same end' and establishes specialised anti-terrorism courts to hear cases under the new law, raising concerning questions of constitutionality. Journalist [Maria Ressa](#), who is facing up to six years in prison after being found guilty of 'cyberlibel' on 15 June 2020, cautioned: 'This anti-terror bill could essentially codify, institutionalise the abuses – what we used to say of abuses of power...Even the definition of what a terrorist could be expanded. A government critic could now effectively be made a terrorist if the anti-terror council (ATC) decides you're a terrorist'<sup>22</sup> According to the Philippine Commission on Human Rights, the bill's loose definition of terrorism allows the government to essentially tag any and all dissenters as terrorists without any judicial oversight.<sup>23</sup> Critics have also expressed concerns about relaxing legal restrictions for security agencies and police, which might create openings for abuse.<sup>24</sup>

On 4 June 2020, a [UN report](#) on the situation of human rights in the Philippines, due to be discussed at the 44<sup>th</sup> Session of UN Human Rights Council in Geneva, argued: 'The proposed 2020 Anti-Terrorism Act, slated to replace the already problematic Human Security Act, dilutes human rights safeguards, broadens the definition of terrorism and expands the period of detention without warrant from three to 14 days, extendable by another ten days. The vague definitions in the Anti-Terrorism Act may violate the principle of legality.'<sup>25</sup> The IBAHRI joins the UN in its concerns and fears that the sentencing of Maria Ressa and the proposed anti-terrorism bill have created an extremely hostile climate to free speech and free press in the Philippines. These freedoms are more important than ever in a global pandemic and the IBAHRI urges President Duterte to respect his domestic and international obligations under the Philippine Constitution, the Universal Declaration of Human Rights, the International Covenant on Civil and political Rights and the ASEAN Human Rights Declaration. The IBAHRI stands with rights organisations critical of the proposed law and urges President Duterte to veto the bill and reconsider the implications of the measures proposed.

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<sup>22</sup> Rappler, 'Democracy faces "death by a thousand cuts" with looming anti-terror law—Maria Ressa', 13 June 2020 [www.rappler.com/nation/263761-democracy-death-thousand-cuts-anti-terrorism-law-ressa](http://www.rappler.com/nation/263761-democracy-death-thousand-cuts-anti-terrorism-law-ressa)

<sup>23</sup> Washington Post, 'Another nail in the coffin of the Philippines' waning democracy', 8 June 2020 [www.washingtonpost.com/opinions/2020/06/08/another-nail-coffin-philippines-waning-democracy](http://www.washingtonpost.com/opinions/2020/06/08/another-nail-coffin-philippines-waning-democracy)

<sup>24</sup> South China Morning Post, 'The Philippines need Duterte's anti-terror bill, but addressing roots of extremism means going beyond its text', 18 June 2020 [www.scmp.com/week-asia/opinion/article/3089558/philippines-needs-dutertes-anti-terror-bill-addressing-roots](http://www.scmp.com/week-asia/opinion/article/3089558/philippines-needs-dutertes-anti-terror-bill-addressing-roots)

<sup>25</sup> UN, 'Report of the United Nations High Commissioner for Human Rights on the situation of human rights in the Philippines', 4 June 2020 [www.ohchr.org/Documents/Countries/PH/Philippines-HRC44-AEV.pdf](http://www.ohchr.org/Documents/Countries/PH/Philippines-HRC44-AEV.pdf)

## 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.

Contact tracing apps are reported to be in operation in China, Czech Republic, Ghana, Hong Kong, Iceland, India, North Macedonia, Poland, Singapore and South Korea. The IBAHRI, along with many global privacy campaigners, activists and lawyers, is concerned about the implications of mass surveillance through these apps. Particularly whether the current Covid-19 pandemic is being used as a 'Trojan horse' to build a surveillance infrastructure that will long continue after the health threat has passed, or one that is largely dependent on political will to have conditions reviewed and revoked. In April 2020, Amnesty International, along with 100 other organisations, issued a statement calling for limits on this kind of surveillance.<sup>26</sup> The statement requests that states interested in Covid-19 containment projects comply with eight conditions endorsed by the IBAHRI:

- 1) Surveillance must be 'lawful, necessary and proportionate'.
- 2) Extensions of monitoring and surveillance must have sunset clauses.
- 3) The use of data would have to be limited to Covid-19 purposes.
- 4) Data security and anonymity would have to be protected and shown to be protected based on evidence.
- 5) Digital surveillance would have to avoid exacerbating discrimination and marginalisation.
- 6) Any sharing of data with third-parties would have to be defined in law.
- 7) There must be safeguards against abuse and procedures in place to protect the rights of citizens to respond to abuses.
- 8) 'Meaningful participation' by all 'relevant stakeholders' would be required, including public health experts and marginalised groups.

### Follow up from the previous issue:

- **Israel:** the Israeli cabinet has approved unanimously to resume contact-tracing in the country after a resurgence of new cases.<sup>27</sup> The vote was taken in an emergency session and authorises the Shin Bet to use a contact-tracing app to track Israelis to stop the spread

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<sup>26</sup> Joint civil society statement: States use of digital surveillance technologies to fight pandemic must respect human rights (PDF), Amnesty International, 2 April 2020  
[www.amnesty.org/download/Documents/POL3020812020ENGLISH.pdf](https://www.amnesty.org/download/Documents/POL3020812020ENGLISH.pdf)

<sup>27</sup> Globes, 'Israeli cabinet unanimously approves phone-tracking app bill', 24 June 2020  
<https://en.globes.co.il/en/article-israeli-cabinet-unanimously-approves-phone-tracking-app-bill-1001333588>



of the pandemic.<sup>28</sup> The country had stopped the practice when the number of cases fell after concerns were raised by the head of the Shin Bet, Nadav Argaman.

### **Bahrain and Kuwait**

Research by Amnesty International has found that Kuwait and Bahrain have rolled out some of the most invasive Covid-19 contact-tracing apps in the world, putting the privacy and security of their users at risk.

Bahrain has rolled out the contact-tracing app, 'BeAware Bahrain', with the aim of limiting the spread of Covid-19. The app raises serious questions about privacy, as it actively carries out live or near-live tracking of users' locations by frequently uploading GPS coordinates to a central server.<sup>29</sup> Users need to register on the app with a national ID number.<sup>30</sup> The app effectively broadcasts the locations of users, who can easily be identified, to a government database in real time.<sup>31</sup> This information was then published online when the Bahraini authorities uploaded to the internet the personal information of those suspected to have contracted the virus, including nationality, age, gender and travel history.<sup>32</sup>

The app can be paired with a Bluetooth bracelet to make sure that the user remains near the phone. The use of a bracelet is mandatory for all individuals who have been registered for home quarantine. Those who don't comply face legal penalties including imprisonment for at least three months and/or a fine of between BD1,000 and BD10,000 (approximately US\$2,700, and US\$27,000 respectively).<sup>33</sup> To further encourage people to stay at home, the app was linked to a national television show that aired during Ramadan called 'Are You at Home?'. Using contact details from the app, ten phone numbers chosen randomly and called live on air to check if the users were at home, and if they were, they won a prize.<sup>34</sup> Participation in the programme was mandatory at first but was later made optional by Bahrain's Information and eGovernment Authority. The Kuwaiti contact-tracing app, 'Shlonik', functions in a very similar way to the Bahrain's 'BeAware Bahrain'. The only divergence between the two apps is that the Kuwaiti version regularly checks the location.

Sarah Aoun, chief technologist at privacy campaign organisation Open Tech Fund remarked: 'When you equip a repressive state with the means to surveil an entire population – whether it's in the name of public safety or not – you can be certain that it's only going to enhance their means of control and repression to then track down dissidents or anyone that they consider to be a

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<sup>28</sup> Globes, n.2

<sup>29</sup> Amnesty International, 'Bahrain, Kuwait and Norway contact tracing apps among most dangerous for privacy', 16 June 2020

[www.amnesty.org/en/latest/news/2020/06/bahrain-kuwait-norway-contact-tracing-apps-danger-for-privacy](http://www.amnesty.org/en/latest/news/2020/06/bahrain-kuwait-norway-contact-tracing-apps-danger-for-privacy)

<sup>30</sup> Amnesty International, n.21

<sup>31</sup> Amnesty International, n.21

<sup>32</sup> Amnesty International, n.21

<sup>33</sup> Amnesty International, n.21

<sup>34</sup> Amnesty International, n.21

public threat. And in a lot of places like the Gulf, that means activists'.<sup>35</sup> The IBAHRI calls on the Bahraini and Kuwaiti Governments to comply with the protection of human rights by ensuring measures including informed, volutary consent as a basic requirement and to allow for independent, narrow identification as to the purpose and use of these surviellance tools to ensure privacy rights are not in breach.

## **Morocco**

On 22 June 2020, Amnesty International published a report from an investigation into allegations that the Moroccan government illegally targeted journalists, dissenters and human rights defenders by using Pegasus spyware from Israeli company NSO Group, including against Omar Radi, a Moroccan prominent human rights defender and journalist.<sup>36</sup>

Two days after the release of Amnesty's report, on 24 June 2020, Radi posted a photo of summons issued by police which ordered him to appear before the National Brigade of Judicial Police. On the same day, the Royal Public Prosecutor at Casablanca's Court of Appeal issued a statement that confirmed Radi had been summoned and accused of 'being a suspect of obtaining funds from foreign sources related to intelligence groups.' Radi believes the summon is directly linked to Amnesty International report and while rejecting all accusations against him stated 'I'm not afraid of anything; I'm going in with my head held high. My goal is to reveal through my journalism the injustices and the true reality of Morocco and to campaign for a better Morocco as an activist.'<sup>37</sup>

Omar Radi is an award-winning investigative journalist, human rights defender and vocal critic of Moroccan human rights issues and has worked with several domestic and international media outlets, often addressing lack of justice and persistence impunity in Morocco.

In October 2019, Amnesty International released the first part of series of investigative reports uncovering Moroccan government use of illegal surveillance software against two predominant human rights defenders, Maati Monjib and Abdessadak El Bouchattaoui. The Pegasus spyware is produced by Israeli based tech company NSO group which enables remote surveillance through smartphones.<sup>38</sup> The spyware users primarily targeted victims by tricking them into opening a malicious link through SMS or WhatsApp messages, which led in exploitation and infection of their mobile devices. Amnesty report from October 2019 revealed NSO created technique of 'network injections' which enable attackers to install the spyware to target smartphones without any interaction being required. Amnesty International's Security Lab performed a forensic analysis of Omar Radi's phone and found traces suggesting he was subjected to a 'network

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<sup>35</sup> BBC, 'Coronavirus: Alarm over 'invasive' Kuwait and Bahrain contact-tracing apps', 16 June 2020  
[www.bbc.co.uk/news/world-middle-east-53052395](http://www.bbc.co.uk/news/world-middle-east-53052395)

<sup>36</sup> Amnesty International, 'Moroccan Journalist Targeted With Network Injection Attacks Using NSO Groups Tools, 22 June 2020' [www.amnesty.org/en/latest/research/2020/06/moroccan-journalist-targeted-with-network-injection-attacks-using-nso-groups-tools](http://www.amnesty.org/en/latest/research/2020/06/moroccan-journalist-targeted-with-network-injection-attacks-using-nso-groups-tools)

<sup>37</sup> The Guardian, 'Moroccan police summon journalist days after Israeli spyware allegations' 24 June 2020  
[www.theguardian.com/world/2020/jun/24/moroccan-police-summon-journalist-days-after-israeli-spyware-allegations](http://www.theguardian.com/world/2020/jun/24/moroccan-police-summon-journalist-days-after-israeli-spyware-allegations)

<sup>38</sup> Amnesty International, 'Morocco: Human Rights Defenders Targeted with NSO Group's Spyware', 10 October 2019  
[www.amnesty.org/en/latest/research/2019/10/Morocco-Human-Rights-Defenders-Targeted-with-NSO-Groups-Spyware](http://www.amnesty.org/en/latest/research/2019/10/Morocco-Human-Rights-Defenders-Targeted-with-NSO-Groups-Spyware)

injection' attack during the same period he was prosecuted. Radi has been repeatedly targeted by NSO spyware between January 2019 and January 2020.<sup>39</sup>

In September 2018, Ronald Deibert, a Canadian Professor of Political Science and Director of the Citizen Lab at the Munk School of Global Affairs, University of Toronto published a research report under 'Hide and Seek: Tracking NSO Group's Pegasus Spyware to Operations in 45 Countries'. The research conducted from August 2016 to August 2018 by Citizen Lab, identified 45 countries including major states in the MENA region were deploying NSO group's Pegasus spyware which designed to target iPhones for targeted digital surveillance.<sup>40</sup>

The IBAHRI condemns the Moroccan government's implementation of unlawful digital surveillance tools against individuals, including journalists and human rights defenders and calls on Morocco to consider, respect and uphold its obligations under relevant international treaties, including the ICCPR to respect human and privacy rights.

### **Norway**

On 15 June 2020, the Norwegian government announced it would suspend the use of their contact tracing app due to privacy concerns. The Norwegian data protection agency Datatilsynet issued a warning that it would stop the Norwegian Institute of Public Health from handling data collected via Smittestopp. Amnesty International also shared concerns over the invasive technology and breaches of privacy with the head of development for the 'Smittestopp' app on 10 June 2020. Norway's contact-tracing app, 'Smittestopp', launched in April 2020 and was downloadable on a voluntary basis. The application used centralised data storage, as is planned in France and the UK<sup>41</sup>, and required user registration with a phone number, captures the location data of the device through GPS and later uploads this information to a central database. The app was being used by 600,000 of Norway's 5.4 million inhabitants and arguably therefore had little impact. Datatilsynet stated that the restricted spread of coronavirus in Norway, as well as the app's limited effectiveness due to the small number of people using it, meant the invasion of privacy resulting from its use was disproportionate<sup>42</sup>. The IBAHRI welcomes this diligent move by the Norwegian government and review of alternative options to manage the virus outbreak in Norway.

### **Guatemala**

'Alerta Guate', the country's app used to alert about the spread of Covid-19, raised concerns relating to privacy and about its use by the Guatemalan Authorities. The app, created to send information to users about the spread of the pandemic, has been found to collect the users' exact

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<sup>39</sup> Amnesty International, n.28

<sup>40</sup> Citizen Lab, 'Watching NSO Group', 18 September 2018 <https://deibert.citizenlab.ca/2018/09/watching-nso-group>

<sup>41</sup> The Guardian, 'Norway suspends virus-tracing app due to privacy concerns', 15th June 2020 [www.theguardian.com/world/2020/jun/15/norway-suspends-virus-tracing-app-due-to-privacy-concerns](http://www.theguardian.com/world/2020/jun/15/norway-suspends-virus-tracing-app-due-to-privacy-concerns)

<sup>42</sup> The Guardian, n.34

location, even when the app is closed.<sup>43</sup> Alerta Guate was removed from both iOS and Android app stores in mid-April, apparently after bloggers in Guatemala and overseas picked up on some of the app's potential privacy issues, but versions of the app already installed on users' phones are likely continuing to function.<sup>44</sup> The app's privacy policy allows for the data to be collected and stored for up to ten years.<sup>45</sup> This shows that the app is meant to stay long after the Covid-19 pandemic. This is particularly concerning in Guatemala, which has been one of the most dangerous places on earth for land and environmental defenders, according to *Global Witness*.<sup>46</sup> In addition, recent investigations have shown that mass cyber-surveillance operations are carried out against business people, politicians, journalists, diplomats and social leaders.<sup>47</sup> In-telligent Properties, the app's developer, highlighted to media that the app does not share data with either the Guatemalan government or Tenlot – the company that donated the app – and that the information it collects is kept strictly confidential. Tenlot's Chief Executive Officer, meanwhile, has stated that neither Tenlot nor the Guatemalan government can access the app's data<sup>48</sup> The IBAHRI calls on the Government of Guatemala and tech companies approached to develop tools in order to combat the pandemic at this time to consider, respect and safeguard human rights, including the right to privacy, and to ensure that users are informed as to the strictly limited collection and storage of their data which must be time-bound.

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<sup>43</sup> Global Witness, 'Investigation reveals serious concerns over Guatemala COVID-19 app', 14 May 2020 [www.globalwitness.org/en/press-releases/investigation-reveals-serious-concerns-over-guatemala-covid-19-app](http://www.globalwitness.org/en/press-releases/investigation-reveals-serious-concerns-over-guatemala-covid-19-app)

<sup>44</sup> Global Witness, n.35

<sup>45</sup> Global Witness, n.35

<sup>46</sup> Global Witness, 'Enemies of the State?', 30 July 2019 [www.globalwitness.org/en/campaigns/environmental-activists/enemies-state](http://www.globalwitness.org/en/campaigns/environmental-activists/enemies-state)

<sup>47</sup> Global Witness, n.35

<sup>48</sup> IBA, 'Covid-19: digital contact tracing raises both hopes and concerns', 12 June 2020 [www.ibanet.org/Article/NewDetail.aspx?ArticleUid=3C3F71D4-4964-4329-B948-3679287E35CC](http://www.ibanet.org/Article/NewDetail.aspx?ArticleUid=3C3F71D4-4964-4329-B948-3679287E35CC)

### 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.

#### Algeria

On 12 June 2020, Algerian police forces arrested journalist, Merzoug Touati, while he was covering anti-government protests in the city of Béjaïa. The day after his arrest, a prosecutor charged him with 'inciting an unarmed assembly, distributing publications harmful to national unity, and putting the lives of others in danger by violating Covid-19 lockdown restrictions' and ordered for Touati remain in pre-trial detention for further investigation. On 17 June 2020, Touati's appeal for bail was denied, and his hearing adjourned to 1 July 2020. The Committee to Protect Journalists (CPJ) remarked that if charged with 'distributing publications harmful to national unity', Touati would be open to a sentence of a decade behind bars.

Touati works for the news website, *L'Avant-Garde*, where he has covered issues concerning the ongoing Covid-19 pandemic and anti-government protests across the country since February 2019. In light of a bill being approved on 19 April 2020 amending Algeria's penal code to criminalise breaking the government-imposed Covid-19 lockdown rules and spreading 'false news' that harms national unity, *L'Avant-Garde* was among news sites blocked in an attempt to silence critical voices and evade scrutiny.

Although the news website is not funded by foreign sources it has been treated as a foreign news outlet. Algerian regulation requires journalists and media workers who work for foreign news agencies to obtain 'valid press accreditation to be able to report legally'. In this case, Touati does not have such accreditation.<sup>49</sup>

Since the beginning of the pandemic, the crackdown against independent journalists has increased. Djamel Ali Toubal, another independent journalist, was sentenced to two years' imprisonment for covering 'Hirak anti-government street protests on Facebook'; Mustapha Bendjama, the editor of the regional French-language newspaper *Le Provincial*, is facing charges of 'inciting an unarmed gathering,' 'opposing the holding of an election' and 'using a gathering to oppose actions approved by state authorities', which possibly entails a minimum of three years'

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<sup>49</sup> CPJ, Algerian journalist Merzoug Touati arrested over protest coverage, 17 June 2020, <https://cpj.org/2020/06/algerian-journalist-merzoug-touati-arrested-over-protest-coverage>

incarceration. Khaled Drareni, the editor of the *Casbah Tribune* news site and Algeria correspondent of both TV5 Monde and RSF, was arrested while covering a peaceful Hirak protest in Algiers and faces up to ten years' imprisonment.<sup>50</sup> Reporters Without Borders (RSF) has recently called on the Algerian authorities to end their increasingly blatant use of the judicial system to persecute journalists, gag the media and throttle freedom of the press.<sup>51</sup>

IBAHRI joins RSF in calling on Algerian authorities to refrain from using the Covid-19 pandemic as pretext to harass and detain journalists and media workers and urges Algerian authorities drop all charges against journalists and stop obstructing free flow of information at this time.

## **Egypt**

On 15 June 2020, the Egyptian security forces arrested Mohamed Monir, a 65-year-old predominant Egyptian journalist from his apartment in Giza. It is believed his arrest is linked to recent work activities namely an article at Qatari-based network, *Aljazeera* and an interview with Aljazeera news where he openly criticised the Egyptian government's response to the Covid-19 pandemic. According to a Facebook post by Monir's lawyer, Nabeih el-Ganadi, Egypt's national security prosecutor charged Monir with 'joining a terrorist group, spreading false news, and misusing social media'.

Subsequently, Monir will be detained for 15 days, which is extendable at the discretion of prosecutor. Two days prior to this incident, security cameras recorded plainclothes security forces raided his home and searched his personal belongings in his absence and a mere two hours later, another group of armed security forces have reportedly returned to raid Monir's house. Monir suffers from multiple health conditions including diabetes and severe heart problems and given of Covid-19 outbreak, keeping him detained is cruel and inhumane.<sup>52</sup> The arrest of Monir comes as part of a serious crackdown on free speech, media workers and journalists since Abdel Fattah el-Sisi became president in 2014. The state ranked 166 out of 180 countries on the RSF World Press Freedom Index 2020 primarily due to its status as one of the biggest jailers of journalists in the world and for increased raids, arrests, harassment and attacks against journalists.

The IBAHRI remains concerned for Monir's safety and health at this unpredictable time and urges Egyptian judicial authorities to release this journalist immediately.

## **Yemen**

In Yemen, four journalists, Abdulkhaleq Ahmed Amran, Akram Saleh Al-Walidi, Al-Hareth Saleh Hamid and Tawfiq Mohammed Al-Mansouri, have been arrested and sentenced to death by the

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<sup>50</sup> RSF, 'RSF condemns flagrant erosion of press freedom in Algeria', 19 June 2020 <https://rsf.org/en/news/rsf-condemns-flagrant-erosion-press-freedom-algeria#:~:text=Merzoug%20Touati%2C%20a%20blogger%20and,245%20km%20east%20of%20Algiers.>

<sup>51</sup> RSF, n.36

<sup>52</sup> CPJ, Egyptian journalist Mohamed Monir detained charged with spreading false news, 15 June 2020 <https://cpj.org/2020/06/egyptian-journalist-mohamed-monir-detained-charged-with-spreading-false-news>

Houthis for their reporting.<sup>53</sup> Another five journalists, Hisham Ahmed Tarmoom, Hisham Abdulmalik Al-Yousefi, Haitham Abdulrahman Al-Shihab, Essam Amin Balgheeth and Hassan Abdullah Annab have been detained.<sup>54</sup>

The situation comes after a series of attacks by the Houthis against journalists, seriously jeopardising media freedom and freedom of expression. In a statement released on 25 June 2020, the [Media Freedom Coalition](#), a partnership of countries working to defend media freedom where it is under threat, via its Executive Group, formed by Canada, Germany, Latvia, the Netherlands, the United Kingdom and the United States, called on the Houthis to free all detained Yemeni journalists and refrain from undermining the exercise of the right to freedom of expression by all Yemeni journalists and media workers in the pursuit of their essential work. The group further called on all parties to guarantee the safety of journalists and to respect human rights and international humanitarian law, so that they can carry out their work without fear of detention, reprisals or restrictions inconsistent with the right to freedom of expression.

### **United States**

On 22 June 2020, the US State Department classified four more Chinese media organisations, the *China Central Television*, the *People's Daily*, the *Global Times*, and the *China News Service*, as 'foreign missions.'<sup>55</sup> They join five other Chinese news agencies that received the same classification in February 2020. In justifying the decision, a spokesperson for the State Department told reporters 'this determination is not intended to reduce or constrain journalistic activity by foreign media outlets. Again, these four entities are not media but propaganda outlets'.<sup>56</sup> The consequences of the classification, which is normally reserved for embassies and consulates, are wide-ranging. Among other things, the news outlets will now be required to report their personnel rosters and real estate holdings to the State Department, and can face limits in how many people they have working in the country.<sup>57</sup>

The decision comes after China expelled more than a dozen American journalists working for major news outlets, such as the *New York Times*, *The Wall Street Journal* and *The Washington Post* and required those outlets, as well as the *Voice of America* and *TIME* magazine in March 2020. The Foreign Correspondents' Club of China published a report in the same month highlighting that the conditions of international journalists working in China have 'markedly deteriorated' and that the Chinese government was using visas as 'weapons against the foreign press'.<sup>58</sup> In such unprecedented and uncertain times like the Covid-19 outbreak, state actors should favour international cooperation and global equal access to accurate, reliable and scientific facts and information which is facilitated in environments where media pluralism is recognised and

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<sup>53</sup> Gov.UK, 'Statement on media freedom in Yemen' 25 June 2020 [www.gov.uk/government/news/statement-on-media-freedom-in-yemen](http://www.gov.uk/government/news/statement-on-media-freedom-in-yemen)

<sup>54</sup> Gov.UK, n.35

<sup>55</sup> NPR, 'Trump Administration labels 4 more chinese news outlets foreign missions' 22 June 2020 [www.npr.org/2020/06/22/881755421/trump-administration-labels-4-more-chinese-news-outlets-foreign-missions?t=1593422465444](http://www.npr.org/2020/06/22/881755421/trump-administration-labels-4-more-chinese-news-outlets-foreign-missions?t=1593422465444)

<sup>56</sup> NPR, n.47

<sup>57</sup> NPR, n.47

<sup>58</sup> <https://www.fcchk.org/wp-content/uploads/2020/03/control-halt-delete.pdf>

upheld. We call on the US to refrain from further controlling the context within which journalists, arguably key workers during the pandemic, have to execute their professional duties.



#### 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.

##### **Iraq**

On June 15 2020, in a letter to the Iraqi Ministry of Culture, the Kurdistan Regional Government (KRG) Public Prosecutor's Office in Erbil demanded the closure of NRT, the Kurdish news channel. The letter stated: 'The reports and news of NRT's channels are a reason that people were encouraged to violate all the health ministry's guidelines and measures and they disrupt the mental state of people during such a sensitive and dangerous time'.<sup>59</sup>

In the past month, the social and economic impact of pandemic, including many individuals not being paid wages, have ignited protests throughout the Kurdistan region. NRT coverage of the ongoing protests is the principal reason for the Public Prosecutors' request to suspend the channel's license. On 2 June 2020, the Ministry of Culture issued a formal warning alleging that NRT encourages people to protests, which is against public interest at the time of crisis.

NRT is an Arabic and Kurdish news broadcaster, however, since October 2019, the Arabic service is no longer broadcasting after an armed militia group smashed the NRT Arabic service office in Baghdad and caused significant damage to media equipment. The attack was 'in response to its extensive coverage of the anti-government protests that began that month in Iraq's central and southern provinces'.<sup>60</sup>

NRT is one of the main media platforms recognised to be critical of Kurdistan Regional Government's policies and has encountered frequent attacks. From the outset of pandemic, the letter from the Public Prosecutors office is the third KRG attempt to shut down NRT.<sup>61</sup> The IBAHRI calls on Kurdistan Regional Government and Iraqi authorities to stop attacking dissenting voices and impeding the right to information which impacts the public's right to know.

##### **Tanzania**

On 23 June 2020, Tanzania's Information Services Department announced it would revoke the distribution and publication license of the newspaper *Tanzania Daima* the next day, on 24 June. The decision cited the publication of 'breaching the law and professional ethics'.<sup>62</sup> The paper had been previously warned over ten times for legal and ethical breaches by the Information Services

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<sup>59</sup> NRT, Public Prosecutor calls on KRG Culture Ministry to close NRT', 21 June 2020  
<https://nrttv.com/En/News.aspx?id=22030&MapID=1>

<sup>60</sup> NRT, n.51

<sup>61</sup> NRT, n.51

<sup>62</sup> CPJ, 'Tanzanian government revokes license of Tanzania Daima newspaper', 26 June 2020  
[cpj.org/2020/06/tanzanian-government-revokes-license-of-tanzania-daima-newspaper](http://cpj.org/2020/06/tanzanian-government-revokes-license-of-tanzania-daima-newspaper)

Department.<sup>63</sup> The decision, however, does not specify which content was illegal nor which laws the paper was accused of breaking.

The decision's legal basis is the Media Services Act of 2016, a law which has received criticism on its use by the government to crack down on media outlets indiscriminately. The Media Council of Tanzania and the Tanzania Editor's Forum, two Tanzanian press rights groups, state that 'the law allows the government to be complainant, prosecutor and judge of its own case'.<sup>64</sup> In little over a year, three other media outlets have received suspensions similar to that of *Tanzania Daima*.

The newspaper, owned by the family of a prominent opposition politician Freeman Mbowe, was previously banned for 90 days back in 2017 on allegations of publishing 'fake news'.<sup>65</sup> This assault on the freedom of the press is especially concerning in light of the upcoming elections scheduled for October 2020.

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<sup>63</sup> CPJ, n.54

<sup>64</sup> CPJ, n.54

<sup>65</sup> CPJ, n.54

## 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.

### **Myanmar**

The internet shutdown in Rakhine and Chin states marked a year anniversary, disappointedly making it the world's longest internet shutdown. The shutdown was imposed on 21 June 2019 by the Ministry of Transportation and Communications in order to 'stop mobile internet traffic'.<sup>66</sup>

The government first imposed the shutdown in the townships of Buthidaung, Kyauktaw, Maungdaw, Minbya, Mrauk-U, Myebon, Ponnagyun and Rathedaung in Rakhine State and Paletwa township in Chin State.<sup>67</sup> In September 2019, the shutdown was lifted in five townships but reintroduced in February 2020. Since then, it has only been lifted from the Maungdaw township in Rakhine State. A representative of the Ministry of Transportation and Communication said that the shutdown will remain until at least 1 August 2020, and stated that 'we will restore internet service if there are no more threats to the public or violations of the telecommunications law'.<sup>68</sup> The shutdown is affecting more than a million people living in a conflict zone.<sup>69</sup>

Access Now, a non-governmental organisation working on defending and extending digital rights, has claimed shutdowns like the one in Myanmar 'violate human rights, put people in danger, harm the economy... curtail freedom of expression, cut access to information, and can inhibit people from assembling and associating peacefully, online and off'.<sup>70</sup> The negative effect of the shutdown has been exacerbated by the Covid-19 pandemic. In a country where 'the internet is overwhelmingly accessed through mobile phones', a block on mobile internet strongly hampers access to vital information on the spread of the virus.<sup>71</sup> This is of particular concern given the presence of ethnic minorities in the townships where the shutdown has been imposed, prompting international organisations to question the 'the Myanmar government's commitment to preventing the spread of the virus, particularly in ethnic minority areas.'<sup>72</sup> Humanitarian workers in the area have reported that some villages are completely unaware of the Covid-19 outbreak.<sup>73</sup>

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<sup>66</sup> Article 19, 'Myanmar: One year on, Internet shutdown imperils human rights in Myanmar 19 June 2020 [www.article19.org/resources/myanmar-one-year-on-internet-shutdown-imperils-human-rights-in-myanmar](http://www.article19.org/resources/myanmar-one-year-on-internet-shutdown-imperils-human-rights-in-myanmar)

<sup>67</sup> HRW, Myanmar: End World's Longest Internet Shutdown, 19 June 2020 [www.hrw.org/news/2020/06/19/myanmar-end-worlds-longest-internet-shutdown](http://www.hrw.org/news/2020/06/19/myanmar-end-worlds-longest-internet-shutdown)

<sup>68</sup> HRW, n.59

<sup>69</sup> HRW, n.59

<sup>70</sup> Forbes, 'Myanmar Shutdown as a means of Curbing Human Rights, 7 February, 2020 [www.forbes.com/sites/ewelinaochab/2020/02/07/myanmar-shutting-down-internet-as-a-means-of-curbing-human-rights/#6a3404177110](http://www.forbes.com/sites/ewelinaochab/2020/02/07/myanmar-shutting-down-internet-as-a-means-of-curbing-human-rights/#6a3404177110)

<sup>71</sup> Article 19, n.58

<sup>72</sup> Article 19, n.58

<sup>73</sup> HRW, n.59

Yanghee Lee, the Special Rapporteur on the situation of human rights in Myanmar previously called on the government of Myanmar to 'reverse its decision to impose the mobile internet ban' and calling on 'the restrictions on the media and humanitarian organisations must be lifted immediately'. The IBAHRI restate this with urgency given the exacerbated situation with the Covid-19 pandemic and will continue to monitor this situation.

## **Russia**

On 23 June 2020, the European Court of Human Rights found in a series of judgements [Vladimir Kharitonov v. Russia](#), [OOO Flavus and Others v. Russia](#), [Bulgakov v. Russia](#), and [Engels v. Russia](#), that the Russian law on website blocking had disproportionately impacted the right to freedom of expression. The Court held that there had been a violation of Article 10 (right to freedom of expression) of the European Convention on Human Rights (ECHR) and a violation of Article 13 (right to an effective remedy) in conjunction with Article 10.

These cases concerned the blocking of websites in Russia and, in particular, different types of blocking measures, including 'collateral' blocking (where the IP address that was blocked was shared by several sites including the targeted one); 'excessive' blocking (where the whole website was blocked because of a single page or file), and 'wholesale' blocking (three online media were blocked by the Prosecutor General for their coverage of certain news). It was found the blocking measures in the cases had not been sanctioned by a court or other independent adjudicatory body providing a forum in which the interested parties could have been heard, a restrictive approach. It was also found that Russian law did not call for any impact assessment of the blocking measure prior to its implementation.<sup>74</sup>

The applicants complained that the blocking of access to their websites had been unlawful and disproportionate, and that the Russian courts had failed to consider the substance of their complaints. It highlighted in particular the importance of the Internet as a vital tool in exercising the right to freedom of expression. Among other things, the Court found that the provisions of Russia's Information Act used to block the websites had produced excessive and arbitrary effects and had not provided proper safeguards against abuse.<sup>75</sup> The IBAHRI welcomes the series of positive judgements from the Court that demonstrate interference to the fundamental right of freedom of expression and the internet and internet sites tools in the exercising of this right.

## **Togo**

In a landmark judgement on 25 June 2020, the Court of Justice of the Economic Community of West Africa States ('the ECOWAS Court') ruled that Togo's decision to shut down the internet in the country on two occasions in 2017 was unlawful and contrary to international law. The court ordered the government of Togo to pay two million CAF to the plaintiffs as compensation, and to take all the necessary measures to guarantee the implementation of safeguards with respect to the right to freedom of expression of the Togolese people<sup>76</sup>. The ECOWAS Court ordered Togo to

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<sup>74</sup> Article 19, 'Russia: European Court judgment is victory for freedom of expression', 23 June 2020 <https://www.article19.org/resources/russia-european-court-judgment-is-victory-for-freedom-of-expression>

<sup>75</sup> ECHR Factsheet, 'Access to Internet and freedom to receive and impart information and ideas', June 2020 (PDF)

<sup>76</sup> AccessNow, 'ECOWAS Court upholds digital rights, rules 2017 internet shutdowns in Togo illegal', 25 June 2020 [www.accessnow.org/internet-shutdowns-in-togo-illegal](http://www.accessnow.org/internet-shutdowns-in-togo-illegal)

ensure no further shut down of the internet and to put in place a legal framework for the internet regulation that is consistent with its international human rights obligations. Can Yegnisu, member of the High Level Panel of Legal Experts on Media Freedom and Barrister at 4 New Square Chambers was part of the legal team who acted for the Committee to Protect Journalists, Article 19, Access Now and a number of other organisations making submissions before the Court.

As internet shutdowns are becoming recognised internationally as a disproportionate tool for repression, the IBAHRI welcomes this judgement of the ECOWAS court and hope this is a positive step globally to discourage the use implementation of shutdowns and towards restoring rights for individuals in Togo.