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IBAHRI Freedom of Expression Bulletin

For Release: 21 October 2020

In response to the ongoing crackdown on peaceful protestors and the harassment of media outlets following peaceful demonstrations, **IBAHRI Director** and **Member of the High Level Panel of Legal Experts on Media Freedom**, Baroness Helena Kennedy QC remarked:

'The emergency decree has enabled security forces to commit rights abuses with impunity. The extreme state response to demonstrations reflecting the fears of peaceful protestors which started the ardent protests in the first place. These measures have been used as a pretext to curb media freedom and the right to freedom of expression and assembly, all of which act as a bulwark against the descent into authoritarianism. Journalists should be allowed to do their jobs without fear of reprisals. Thai authorities must uphold media freedom and refrain from restricting information at this time.'

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.

Armenia

Amid the conflict in the contested region of Nagorno-Karabakh, Armenia declared martial law on 27 September 2020. On 8 October, authorities decided to amend the martial law to include a provision which prohibits the publication of media reports criticising the actions of the government, officials and local bodies. The draconian law gives extensive powers to the police to fine, freeze assets and request removal of content from media outlets.²

The President of the Union of Journalists of Armenia, Satik Seyranyan, criticised amendments, stating that *'(the amendments) not only obstruct the activities of the mass media, but also disproportionately restrict freedom of expression and deprive citizens of the right to express opinions and receive information on national security issues that are of great public interest'*.³

The crackdown on media outlets started while the amendments were still to be voted on in Yerevan. Today's office, a local media outlet, was visited by three police officers on 10 October 2020. *Yerevan Today* received a fine of AMD 700,000 (€1,200) for publishing an article which was considered a threat to the security of the state.⁴

On 14 October 2020, the IBAHRI issued a statement⁵ condemning the indiscriminate attacks perpetrated with heavy artillery and airborne missiles on and around Nagorno-Karabakh, calling for Armenian and Azerbaijani forces to observe the ceasefire. We further urge Armenia to cease its crackdown of dissenting opinions in the media regarding the ongoing conflict and withdraw the amendments to the martial law. The IBAHRI further reminds Armenian and Azerbaijani authorities that safety of journalists must be guaranteed and press freedoms must be upheld even in the time of armed conflicts.

² European Federation of Journalists, 'Armenia: new amendments to the martial law seriously undermine media freedom', 13 October 2020, <https://europeanjournalists.org/blog/2020/10/13/armenia-new-amendments-to-the-martial-law-seriously-undermine-media-freedom/>

³ European Federation of Journalists, n.2

⁴ Panaroma.Am, 'Yerevan.Today: Our work has become impossible due to fines', 12 October 2020, www.panorama.am/en/news/2020/10/12/Yerevan-Today/2379913

⁵ IBAHRI, 'IBAHRI condemns Nagorno-Karabakh conflict civilian attacks', 14 October 2020, www.ibanet.org/Article/NewDetail.aspx?ArticleUid=aa55d62e-e9cd-4060-a8b8-e25531477ca1

Gulf Cooperation Council (GCC)

On 15 October 2020, human rights NGO, Amnesty International issued a statement on the use of Covid-19 as a pretext in Gulf countries such as Bahrain, Kuwait, Oman, Saudi Arabia, and the United Arab Emirates (UAE) to suppress the freedom of expression.⁶

According to the statement, GCC states failed to justify how their Covid-19 measures are necessary and proportionate for the protection of public health. In addition to this, these states are silencing any discussion of the Covid-19 measures online, which constitutes a clear violation of the right to freedom of expression in relation to events that are of public interest.

In previous issues of this Bulletin, the IBAHRI has reported on the emergency measures enacted by states to deal with the impact of Covid-19 and urged states to respect the legal parameters in response to the crisis. The IBAHRI reminds GCC states that misinformation about the Covid-19 pandemic cannot be prevented through undue restrictions on freedom of expression. In order to deal with misinformation, GCC states should establish reliable channels of spreading accurate and transparent information about the Covid-19 pandemic that leads to the trust of the public, instead of impeding on the rights of the independent media and media workers.

In this regard, the IBAHRI calls on GCC states cease all undue restrictions to freedom of expression and harassment of journalists in execution of their professional duties and other individuals for simply engaging in public discourse, online or offline in regards to the pandemic.

Tanzania

Ahead of Tanzania's general elections on 28 October 2020, Amnesty International published an extensive report documenting how the government has weaponised the law and details concerns ahead of the elections. According to the report, which relies on interviews, review of audio-visual material, official statements, court cases and media reports, Tanzanian laws have been systematically used to silence the opposition, the media and the civil society. The crackdown includes arresting of opposition politicians for holding meetings, suspension of media outlets, criminalisation of online free speech and legal barriers to tie the hands of NGOs.⁷ In July, three UN Experts, Clément Voule, Special Rapporteur on the rights of peaceful assembly and association, Mary Lawlor, Special Rapporteur on the situation of human rights defenders and David Kaye, former Special Rapporteur on the promotion and protection of the right to freedom of expression, urged Tanzania to drop legislative and other measures introduced under the guise of responding to the spread of Covid-19 that further curb the civic space and limit the independent media, electronic communication and public use of statistics by introducing heavy fines and suspensions. The experts stated that the measures 'further compounded pre-existing human rights concerns, notably regarding the right to freedom of expression, including freedom to seek, receive and impart information'.⁸

⁶ Amnesty International, 'Covid-19 is New Pretext for Old Tactics of Repression in GCC', 15 October 2020, www.amnesty.org/download/Documents/MDE0431362020ENGLISH.pdf

⁷ Amnesty International, 'Lawfare: Repression by Law Ahead of Tanzania's General Elections', 12 October 2020, www.amnesty.org/download/Documents/AFR5630512020ENGLISH.PDF

⁸ OHCHR, 'Rights experts call on Tanzania to end 'crackdown' on civic space', 22 July 2020, www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=26117&LangID=E

The Amnesty report provides examples of the crackdown including seven members of the main opposition party Chadema's youth wing who were arrested on 7 July 2020 for 'ridiculing the national anthem and flag', because they sang the national anthem while hoisting the Chadema party flag. On 23 June 2020, an opposition leader, Zitto Kabwe, was arrested along with seven party officials for holding an 'illegal assembly' because they had attended an internal party meeting. Another political arrest took place on 14 August 2020 as Joseph Mbilinyi, a candidate with Chadema, was arrested due to organising an 'unauthorised demonstration'.

The recent crackdown also affects media freedom in Tanzania, especially towards foreign journalists. New rules introduced in August 2020 require foreign journalists to be chaperoned by a government official. The new rules also require Tanzanian broadcasters to seek permission to air content produced by foreign media outlets. Moreover, *Tanzania Daima* newspaper, affiliated with the main opposition party, was banned under the pretext of spreading fake news regarding Covid-19.

The pre-election crackdown also aims to stifle the civil society in Tanzania. In June 2020, human rights NGOs were banned from undertaking election-related activities, including conducting voter education.

The IBAHRI is deeply concerned about the pre-election atmosphere in Tanzania which aims to weaken opposition parties, civil society and curb the rights to information, freedom of expression and assembly in the country. Recalling that Tanzania has acceded to the International Covenant on Civil and Political Rights in 1976 which guarantees the free expression of the will of the electors in elections, the IBAHRI reminds Tanzanian authorities that holding free and fair elections is the backbone of a sustainable democratic society. In this respect, the IBAHRI calls on Tanzanian authorities to uphold its international human rights obligations and cease all attacks and harassments on the opposition, media and civil society.

Thailand

On 15 October 2020, Thailand's Prime Minister declared a state of emergency in Bangkok in what appears to be an effort to curb pro-democracy protests in the capital. The Emergency Decree on Public Administration in Emergency Situation provides authorities with broad powers to arrest individuals without charge and detain them in informal places of detention. Charges include unlawful protests that caused disturbances, undermined measures to curtail Covid-19, harmed national security and public safety and disrupted the Queen's motorcade on 14 October.

The emergency decree gives the Thai government unchecked powers to suppress the ongoing peaceful protests. The emergency decree bans any public gathering of five or more people in Bangkok and also aims to curb freedom of expression and media freedom. International news reporting, such as by BBC World Service, has been blocked on Thailand's main cable TV network. Voice TV, a TV channel critical of the government, is also under pressure and faces an imminent threat of censorship.⁹

The country has seen widespread pro-democracy protests since 18 July 2020 which the Thai government harshly opposes. The demands of the youth-led protests include resignation of the government, the drafting of a new constitution, limiting the powers afforded to the King and an

⁹ Human Rights Watch, n.9

end to the government's tight grip on freedom of expression. The recent emergency decree implemented by the Thai government demonstrates the lack of intent to engage in dialogue with the protestors, let alone consider their demands.

The IBAHRI condemns the declaration of state of emergency which uses, *inter alia*, Covid-19 as a pretext to crackdown on peaceful protests against the government. The IBAHRI reminds the Thai authorities that Thailand acceded to the International Covenant on Civil and Political Rights in 1996 which guarantees the right to peaceful protests, freedom of expression and press freedom. In this respect, the IBAHRI calls on the Thai government to uphold its international human rights law obligations and end the current state of emergency in Bangkok.

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.¹⁰ 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.

European Union

On 6 October, the Court of Justice of the European Union (CJEU) passed a ground-breaking judgement on indiscriminate government mass surveillance regimes. The court confirmed that EU laws preclude national legislation requiring a provider of electronic communications services to carry out the general and indiscriminate transmission or retention of traffic data and location

¹⁰ 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

data for the purpose of combatting crime in general or of safeguarding national security.¹¹ The proceedings were brought against mass surveillance legislation in the UK, France and Belgium concerning the lawfulness of legislation that created obligations on internet and electronic service providers to forward users' traffic and location data to security or intelligence agencies, or to retain the data in a general and indiscriminate way. This includes its use as a preventative measure.¹²

The court reiterated that such retention unduly infringes on the right to freedom of expression, data protection and privacy, particularly member states' obligation to ensure the confidentiality of communications and traffic data. Furthermore, it violates Article 23(1) of the General Data Protection Regulation which protects against such general data retention. However, it did hold that in accordance with the general EU law principle of proportionality, derogations from this rule can occur if:

- (a) a pressing national security threat exists that can justify such bulk collection of data if the threat is proven to be genuine and present or foreseeable;
- (b) its scope is limited and temporary to what is strictly necessary; and
- (c) there is effective review by a court or an independent administrative body whose decisions are binding.¹³

Moreover, the decision does not preclude the use of real-time collection and surveillance, including technology such as facial recognition, but that collection must be limited to specific persons with a valid reason to suspect their involvement in terrorist activities and is subject to prior review by a court or independent body.¹⁴

Although member states have a margin of appreciation in dealing with matters of national security and crime prevention, it cannot do so in what constitutes serious interference with EU fundamental rights, particularly when there is no link between the conduct of the persons whose data is collected, and the objective pursued by the legislation. This ruling will ripple through other states that are implementing mass surveillance programmes, such as in the Netherlands and Russia (as discussed in the previous Bulletin), in order to combat crime and terrorism or crack down on political opposition and journalists.

The IBAHRI welcomes this judgment as a strong deterrent on state surveillance and calls on governments to cease the imposition of such programmes, like the 'Sensing Project'¹⁵, that rely on unregulated and indiscriminate facial recognition software and prejudicial algorithms in

¹¹ CJEU, Press Release No. 123/20, 06 October 2020, <https://curia.europa.eu/jcms/upload/docs/application/pdf/2020-10/cp200123en.pdf>

¹² CJEU, n.12

¹³ Tech Crunch, Europe's top court confirms no mass surveillance without limits, 06 October 2020, <https://techcrunch.com/2020/10/06/europes-top-court-confirms-no-mass-surveillance-without-legal-limits/>

¹⁴ EDRI, Press release: The data retention regimes of France, United Kingdom and Belgium are illegal says CJEU, 06 October 2020, <https://edri.org/our-work/press-release-the-data-retention-regimes-of-france-united-kingdom-and-belgium-are-illegal-says-cjeu/>

¹⁵ See Issue 14 of the IBAHRI Freedom of Expression Bulletin for more information- www.ibanet.org/Document/Default.aspx?DocumentUid=0C757A73-122C-412A-843C-0D35C887F026

tracking groups and individuals. The cases will now return to each individual country's courts for implementation of the judgment.

Russia

As raised in the previous issue of this Bulletin, Russia has been implementing a mass surveillance programme with the use of real-time facial recognition software into Moscow's CCTV systems, which contain over 100,000 cameras, which is a rapid expansion. Under the guise of national security and Covid-19 measures, the programme has largely been used to stifle political protests and target journalists and human rights activists. The pervasiveness of surveillance has expanded further where Moscow officials have now ordered employers to collect and send the data of their employees to authorities or face sanctions.¹⁶

In response to the second wave of Covid-19, Mayor of Moscow, Sergey Sobyenin had ordered that at least 30 per cent of employees work from home, and on 6 October he ordered employers to file weekly updates with city officials on their employees including phone numbers, vehicle registration information and metro pass numbers. Failure to do so would result in fines of up to RUB 200,000 (\$2,600) and even license suspensions.¹⁷ Critics have argued that this contravenes Article 88 of the Labour Code of the Russian Federation which prohibits employers from disclosing the personal data of their employees to third parties, without the employee's consent.¹⁸

The Moscow IT department justified the move by claiming that the requested data will only be used to assess the effectiveness of the city's preventive measures aimed at containing the virus's spread.¹⁹ However, this can result in the government cracking down on civil society as authorities will be able to ascertain sensitive data including identity, location tracking, behaviour and associations, with Russian authorities having previously used this information to target and harass journalists, critics and political opposition.

Additionally, Moscow authorities have blocked the social cards of pensioners and schoolchildren, rendering these demographic groups unable to access public transport, in order to ensure that they remain home.²⁰ The data collected on employees' social cards could now have the same result in systematically restricting the movement of people in accordance to city ordinances. Such

¹⁶ Human Rights Watch, Moscow Government Collects Employees Data without Consent, 13 October 2020, <https://www.hrw.org/news/2020/10/13/moscow-government-collects-employees-data-without-consent>

¹⁷ Roscomsvoboda, Sobyenin Intensifies Surveillance over Muscovites, 06 October 2020, <https://roscomsvoboda.org/64836>

¹⁸ Labor Code of the Russian Federation, N197-FZ, Article 88. Transfer of Employee Personal Data, 30 December 2001, https://www.consultant.ru/document/cons_doc_LAW_34683/693c16ad10f7f494a958cb007737bd678c221d4c

¹⁹ Human Rights Watch, Moscow Government Collects Employees Data Without Consent, 13 October 2020, <https://www.hrw.org/news/2020/10/13/moscow-government-collects-employees-data-without-consent>

²⁰ Teller Report, Schoolchildren and pensioners in Moscow will suspend the validity of social cards, 06 October 2020, <https://www.tellerreport.com/news/2020-10-06-schoolchildren-and-pensioners-in-moscow-will-suspend-the-validity-of-social-cards.Sy-KWTK8D.html>

measures are disproportionate and unnecessary for the exigencies of the situation and creates a dangerous precedent for the government's further encroachment on privacy rights and freedom of movement, particularly if such measures outlive the pandemic. The IBAHRI deplors these measures and calls on Moscow authorities to enact measures that are legal, necessary and proportionate, whilst ensuring that personal data that's collected be exclusively used for Covid-19-related reasons and subject to full and transparent oversight and regulation.

United States

While protesters in the US were demonstrating against police brutality and murder with impunity, particularly targeted at minorities, the San Francisco Police Department (SFPD) had illegally gathered intelligence on tens of thousands of activists. The Electronic Frontier Foundation (EFF) had revealed that the SFPD had conducted mass surveillance operations in June by using data dumps and real-time feeds of private cameras to spy on demonstrators.²¹ The SFPD homeland Security Unit requested and received live, remote access to a private network of over 400 CCTV cameras to use facial recognition technology on the 10,000 strong demonstration.²²

This is in contravention of the historic 'Stop Secret Surveillance' Ordinance which was passed by the city's board of supervisors in 2019, becoming the first major city in the US to ban the use of facial recognition by the government.²³ In response, the EFF had filed a lawsuit against the SFPD for violating the surveillance ordinance, which is not the only time the department had contravened legislation. In late September, the SFPD had worked in tangent with the Northern California Regional Intelligence Center (NCRIC) in using facial recognition to identify suspects caught on camera, bypassing and contravening the city's ban on the technology.²⁴

The SFPD has a history of unlawful mass surveillance and selective enforcement, targeting communities based on religion, race, gender identity, sexual preference and political activism.²⁵ Throughout the 20th century, the SFPD spied and conducted raids on establishments frequented by the LGBTIQ+ community, including bars and bathhouses. By 1975, the SFPD's Intelligence Unit had collected more than 100,000 files on San Franciscans, including civil rights demonstrators, labour union members, anti-war activists and students. In 1993, an SFPD inspector was caught selling intelligence information obtained through surveillance of South African apartheid activists

²¹ Electronic Frontier Foundation, San Francisco Supervisors must Rein in SFPD's Abuse of Surveillance Cameras, 13 October 2020, <https://www.eff.org/deeplinks/2020/10/san-francisco-supervisors-must-reign-sfpds-abuse-surveillance-cameras>

²² Electronic Frontier Foundation, San Francisco Police Accessed Business District Camera Network to Spy on Protestors, 27 July 2020, <https://www.eff.org/deeplinks/2020/07/san-francisco-police-accessed-business-district-camera-network-spy-protestors>

²³ CNN, San Francisco just banned facial-recognition technology, 14 May 2019, <https://edition.cnn.com/2019/05/14/tech/san-francisco-facial-recognition-ban/index.html>

²⁴ Governing, San Francisco Police Use Banned Tech to Build Gun Case, 25 September 2020, <https://www.governing.com/security/San-Francisco-Police-Use-Banned-Tech-to-Build-Gun-Case.html>

²⁵ ACLU, San Francisco is a Hotbed of Illegal Race-Based Policing, 4 October 2018, <https://www.aclu.org/blog/criminal-law-reform/reforming-police/san-francisco-hotbed-illegal-race-based-policing>

and Arab American groups.²⁶ This is pivoted by the modern day disproportionate targeting of racial minorities in the city who experience greater use of deadly force by police and harsher court sentences than their white counterparts.

Facial recognition is especially dangerous when used by law enforcement due to the drastic difference in its capability of recognising white faces and misrecognising non-white faces, as well as its high rate of misidentifying women, especially those of colour, further embedding racial prejudice by police officers into artificial intelligence. Such use of the banned technology could also go against the Civil Rights Act of 1964 and the Equal Protection Clause of the Fourteenth Amendment, which the US Supreme Court has previously reiterated that any intentional racially motivated discrimination in a stop and search is prohibited as it goes against the requirements of reasonableness in the Fourteenth Amendment.²⁷ In the context of digitalised racial profiling by algorithms, the rate of misrecognition makes the largely unregulated policing software inherently discriminatory and racist, which has been previously echoed by the UN Human Rights Committee.²⁸ The IBAHRI urges the SFPD to act in accordance with the Stop Secret Surveillance ordinance and discontinue their unlawful use of facial recognition in their policing methods, especially when it comes to individuals expressing their civil and political rights.

Global Internet freedom

A report by Freedom House has assessed 64 countries, who account for 87 per cent of internet users worldwide, and concluded that the trend of digital repression has catalysed under the coronavirus pandemic. It has spurred governments to expand online surveillance, data collection, censorship of political speech and build new technologic systems of social control, particularly through the use of Artificial Intelligence (AI) and biometric surveillance. 54 of those countries have implemented contact tracing and/or quarantine compliance apps, with the vast majority lacking adequate safeguards for privacy and rule of law, expiry dates and independent oversight, which could lead to the surveillance technologies being easily repurposed to further intrude into the private lives of citizens and repress political dissent.²⁹

The report concluded that out of the 64 countries, internet freedom had declined in 26 countries, while 22 strengthened online protection, with the largest declines being in Ecuador, India, Kyrgyzstan, Myanmar and Nigeria, for the period between June 2019 and May 2020.

On the issue of privacy, the report found that there is a growing trend and rapid expansion of mass surveillance. In at least 30 countries, governments, together with telecommunication companies and other tech companies, have extensively violated the right to privacy through

²⁶ Electronic Frontier Foundation, San Francisco Supervisors must Rein in SFPD's Abuse of Surveillance Cameras, 13 October 2020, www.eff.org/deeplinks/2020/10/san-francisco-supervisors-must-reign-sfpds-abuse-surveillance-cameras

²⁷ Upenn, Law Enforcement by Stereotypes and Serendipity: Racial Profiling and Stops and Searches Without Cause, February 2001, <https://scholarship.law.upenn.edu/cgi/viewcontent.cgi?article=1419&context=jcl>

²⁸ UN Human Rights Committee, General Comments No. 37, 17 September 2020, https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2fGC%2f37&Lang=en

²⁹ Freedom House, Report: Global Internet Freedom Declines in Shadow of Pandemic, 14 October 2020, <https://freedomhouse.org/article/report-global-internet-freedom-declines-shadow-pandemic>

surveillance using Covid-19 as a pretext. However, what has instead happened is the deliberate targeting of journalists, protestors and anti-government activists, paving the way for mass surveillance systems with the introduction of contact tracing apps, big-data tools and facial recognition, with little to no regulations, transparency, oversight and redress avenues for victims. Additionally, the public health crisis has opened the door to the digitisation, collection and analysis of people's most intimate data on a massive scale without adequate protections against abuses. It has led to police misuse and lays the groundwork for mass surveillance beyond the pandemic's counter-measures.

The assessment states that the 'practices raise the prospect of a dystopian future in which private companies, security agencies and cybercriminals enjoy easy access not only to sensitive information about the places we visit and the items we purchase, but also to our medical histories, facial and voice patterns, and even our genetic codes.'³⁰

³⁰ Freedom House, 'The Pandemic's Digital Shadow', 14 October 2020, <https://freedomhouse.org/report/freedom-net/2020/pandemics-digital-shadow>

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.

Bangladesh

It has been two years since the draconian Digital Security Act (DSA) was introduced in Bangladesh. The vague and broad provisions of the DSA have turned it into a weapon to silence critics of the government and any dissenting voices.³¹

The law was widely criticised when it came into effect amid the concerns that it would become a tool at the hand of the authorities to stifle freedom of expression. Such concerns have become a reality over the two years as nearly 2,000 cases have been filed under the DSA since its enactment, with many of Bangladesh's most prominent editors and journalists being increasingly targeted.

The DSA imposes heavily disproportionate penalties for expression that are supposed to be protected under the right to freedom of expression as stipulated under Article 39 of the Bangladeshi Constitution and Article 19 of the International Covenant on Civil and Political Rights of which Bangladesh is a signatory. The penalties in the DSA include up to ten years' imprisonment for 'spreading propaganda' using digital devices against Bangladesh's Liberation War, the national anthem and national flag. Repeated offenders face life imprisonment.

In 2020 alone, at least ten editors of media outlets have faced charges under the DSA. On 10 March, Shafiqul Islam Kajol, the editor of a local news outlet, was forcibly disappeared in Dhaka, a day after an official of the Bangladesh's ruling political party, Awami League, filed a case against Kajol under the DSA for sharing a Facebook post criticising him. Others who shared the Facebook post were also accused in the same case. Mr Kajol was only seen 53 days after his enforced disappearance and is currently in pre-trial detention facing two further charges under the DSA.³² On 1 October, the Committee to Protect Journalists (CPJ) addressed a letter³³ to Prime Minister Sheikh Hasina calling for the immediate and unconditional release of Mr Kajol, on the basis that

³¹ Amnesty International, 'Bangladesh: Escalating attacks on the media must stop', 8 October 2020, www.amnesty.org/en/latest/news/2020/10/bangladesh-escalating-attacks-on-the-media-must-stop/

³² Amnesty International, n. 32

³³ Committee to Protect Journalists, 'CPJ calls on Bangladeshi prime minister to arrange for release of journalist Shafiqul Islam Kajol', 1 October 2020, <https://cpj.org/2020/10/cpj-calls-on-bangladeshi-prime-minister-to-arrange-for-release-of-journalist-shafiqul-islam-kajol/>

pre-existing health conditions make him vulnerable to contracting Covid-19 and could result in dire consequences.

On 19 April, two editors of online media outlets were sued by a ruling party leader under the DSA for publishing reports on his corruption. Both editors were granted bail from the court and are awaiting trial. On 1 May, editors and journalists were arrested over a news report on a death under police custody. Later that month, on 22 May, another news editor was arrested under a DSA charge for publishing a report on the alleged corruption of a leader of the ruling party. On 27 June, the editor of a daily newspaper was sued under the DSA for publishing a story about an advisor to the prime minister.

The DSA is incompatible with the human rights obligations of Bangladesh and we call on Bangladeshi authorities to urgently reform the DSA and consult with civil society actors during this process. Further, we urge Bangladesh to immediately drop all the charges arbitrary under the DSA against journalists and media workers, including Shafiqul Islam Kajol and unconditionally release the detained.

Egypt

Since September 2020, Egypt has seen an increasing crackdown on media freedom as at least five journalists have been arrested while dozens are still behind bars for their journalistic work, according to Amnesty International.³⁴ Egypt is ranked 166 out of 180 countries in RSF's 2020 World Press Freedom Index³⁵ and is recognised as the third worst jailer of journalists globally, after China and Turkey.³⁶

On 20 September, Kamal El-Balshy, brother of prominent independent media outlet Darb News Editor-in-Chief, Khaled El-Balshy, was arrested. It is understood that when authorities learnt that Kamal El-Balshy was the brother of journalist Khaled, they refused to release him. Khaled El-Balshy has faced serious reprisal as a result of his journalism and activism, including serving a prison sentence in 2016 and a widespread media smear campaigns. Prior to targeting his family, the websites and news outlets Khaled has founded or been involved with, including Albedaiah, Katib and Darb News, were blocked by authorities in April 2020.³⁷ In addition to the arbitrary detention of two reporter colleagues: Shima Samy, who was arrested in May after writing an article for Darb News about Alaa Abdel Fattah, a blogger who has been held since the September 2019 protests and Darb News reporter, Islam Al-Kalhy who was arrested on 9 September while covering protests that broke out after security forces shot dead a young man in Giza. On 5 October,

³⁴ Middle East Monitor, 'Amnesty International concerned about Egypt's crackdown on press freedom', 8 October 2020, www.middleeastmonitor.com/20201008-amnesty-international-concerned-about-egypts-crackdown-on-press-freedom/

³⁵ RSF, <https://rsf.org/en/taxonomy/term/156>

³⁶ Committee to Protect Journalists, 'China, Turkey, Saudi Arabia, Egypt are world's worst jailers of journalists', 11 December 2019, <https://cpi.org/?p=36107>

³⁷ RSF, 'Egyptian authorities pressure editor by jailing his brother, colleagues', 14 October 2020, <https://rsf.org/en/news/egyptian-authorities-pressure-editor-jailing-his-brother-colleagues>

the detention of Mr Al-Kalhy was extended for 15 days.³⁸ Both Ms Samy and Mr Al-Kalhy were charged with membership of a banned group and spreading false news.³⁹

For the period following his arrest, Kamal El-Balshy's family and lawyers lost all communication with him and with his location unknown, rendered him forcibly disappeared. On 1 October, he was brought to the Supreme State Security Prosecution and charged with illegal protesting, belonging to an illegal organisation, spreading false news and misusing social media. He was ordered into pretrial detention for 15 days per Case No. 880/2020. His family did not learn of the pretrial detention order until 10 October. Following the detention order, Kamal was transferred to Tora Prison, where he remains.

The IBAHRI is deeply worried about the deteriorating state of press freedom in Egypt, particularly in relation to arbitrary arrests of journalist for carrying out their professional work. The IBAHRI urges Egypt to uphold its international obligations of freedom of expression and assembly, enshrined under the International Covenant on Civil and Political Rights, which Egypt ratified in 1982, and calls for the immediate and unconditional release of all journalists who have been arbitrarily jailed for conducting journalistic work.

Iran

On 18 October 2020, Saeed Dehghan, the lawyer representing Alireza Alinejad, brother of journalist and women's rights activist Masih Alinejad, confirmed on Twitter that Branch 36 of the Tehran Court of Appeals dismissed his appeal and therefore confirmed his eight year prison sentence set by Branch 28 of the Islamic Revolutionary Court of Tehran. In former issues of this Bulletin, we have reported on the arrest and detention of Mr Alinejad and on the statement issued by Masih Alinejad on her brother's arrest stating that his 'only crime is that he's related to me ... He is subjected to this cruel punishment just to keep me silent'. Masih Alinejad, who has launched several campaigns against forced hijab in Iran, believes her brother is innocent and has been taken hostage by the Islamic Republic of Iran in a bid to punish him for her activities. Other members of Masih Alinejad's family members have reported repeated harassment and interrogation as a result of her journalism and activism.

Pressuring Iranian journalists and human rights activists living outside of Iran by targeting their family members is considered part of a systematic campaign to silence and punish dissent. Iranian authorities and intelligence services have a long history of harassing and intimidating family members of journalists who work for Persian speaking media outlets outside of Iran. In some cases, family members held in degrading conditions and detained aiming to control and pressure Iranian journalist working abroad.

The IBAHRI urges the Iranian judiciary to act independently and impartially and condemns the threats and harassment of relatives of foreign-based Iranian media workers.

³⁸ Middle East Monitor, n.35

³⁹ RSF, n.38

Iraq

On 7 October 2020, Sherwan Amin Sherwani, an independent Kurdish freelance journalist was arrested in a raid at his home in the outskirts of Erbil. Four plainclothes officers took his personal belongings and equipment at gunpoint. Since his arrest, his whereabouts remain unknown and the authorities have not disclosed the charges against him.

Rahman Gharib, the General Coordinator for the Metro Center for Journalists' Rights and Advocacy, a local press freedom group, believed that Sherwani could be charged under the Law on Misuse of Communication Devices or with defamation under the Iraqi Penal Code. He could face up to five years' imprisonment and five million Iraqi Dinars (£3,223). Defamation under Article 433 of Iraq's Penal Code is punishable by a fine and a prison term.

Within a week of his arrest, Mr Sherwani criticised Masrour Barzani, KRG prime minister in a Facebook post and called for holding the Prime Minister accountable for killings of journalists and human rights activists in the region. Shortly after his arrest, the post was taken down.

Four days after his arrest, in a statement, Kurdistan Regional Government (KRG) Advocacy Coordinator, Dindar Zebari, accused Mr Sherwani of receiving foreign funds 'intending to destabilise the country, defame social and political figures, promote vandalism during peaceful protests, and threaten judges' and stated that Mr Sherwani allegedly confessed to these charges. He added that Mr Sherwani had been arrested under Article 156 of the Iraqi Penal Code, 'which states that any person who violates the independence, unity, or security of the country can be punished with life imprisonment'. According to Reporters without Borders (RSF), Mr Sherwani confessed under pressure and torture.

As part of his work, Mr Sherwani often reports on human rights issues in the region for an independent news outlet, Kiwan, and frequently posts on political affairs on his personal Facebook account. Mr Sherwani has faced criminal proceedings for his work in the past.⁴⁰ In 2012, he was arrested on defamation charges for reporting on corruption and in 2019 he was detained for 42 days on charges of obstructing national security. During the Kurdistan referendum in 2017, he received death threats for supporting 'No to Referendum', which forced him to go to hiding.⁴¹

In a recent assault on media freedom, Nalia Radio and Television (NRT), the Kurdish news outlet was shut down and remains closed⁴². As reported in the last issue of this Bulletin, KRG suspended NRT in August; NRT staff were held without a warrant and their equipment was confiscated.

NRT was founded in 2010 by Shaswar Abdulwahid, a leader of the opposition party, New Generation Movement and authorities have targeted the station in recent years. The New Generation Movement is the fourth-largest party in the Iraqi Kurdistan region, which occupied eight seats in the parliament. NRT is one of the main dissent media outlets and frequently covers protests, controversial issues, government corruption and critiques leading parties while the majority of news outlets in the region are linked to major political parties. Consequently, journalists affiliated to NRT are often subjected to arrests and harassment. The Iraqi legal system

⁴⁰ CPJ, 'Iraqi Kurdish police arrest journalist Sherwan Amin Sherwani', 14 October 2020, <https://cpj.org/2020/10/iraqi-kurdish-police-arrest-journalist-sherwan-amin-sherwani/>

⁴¹ RSF 'Iraq : Concern about Iraqi Kurdish journalist's fate', 14 October 2020, <https://rsf.org/en/news/iraq-concern-about-iraqi-kurdish-journalists-fate>

⁴² Al-Monitor, 'Kurdish news outlet linked to opposition party remains closed in Iraq', 14 October 2020, www.al-monitor.com/pulse/originals/2020/10/kurdish-journalists-iraq-arrests-closed-nrt-office-kr.html#ixzz6bQXkfjCe

provides protection to freedom of speech and journalists, but authorities and security forces do not adhere to such provisions.

From the outset of the pandemic, the KRG imposed emergency restriction measures, which had negative impacts on the regional economy and led to several protests. The KRG accused NRT of provoking people by spreading propaganda and encouraged them to undermine lockdown measures. The Ministry of Youth and Culture international spokesperson, Dindar Zebari, shared with Al-Monitor that the ministry regulations 'allow suspensions and license revocations for media that 'encourages public disturbance and harms social harmony'. He added that several warnings were sent to NRT in order to change its tune before the suspension was taking place. Media freedom rights groups believe the KRG action was not lawful and only impose further infringes on the right to freedom of expression. They remain concerned that KRG is arbitrarily targeting dissenting voices and free media. Independent media outlets and journalists are increasingly under attack and face various type of harassment and threats.⁴³

The IBAHRI is extremely concerned about the disappearance of Mr Sherwani and urges KRG authorities to undertake an immediate investigation into his whereabouts, as well as to ensure that he should be able to exercise his fair trial rights. Further, we call on KRG to overturn the decision to shut down the NRT Erbil and Dohak offices and respect the right to freedom of expression and right to information, particularly at time of protest. Furthermore, we call on the Iraqi Central Government to direct all regional governments and security forces to stop obscuring journalists and media workers from exercising their rights.

Malta

Three years have passed since the assassination of journalist Daphne Caruana Galizia and it remains to be seen if justice will be served. The perpetrators who planned and carried out the assassination have not yet been brought to trial and the Prime Minister of Malta, Robert Abela, failed to take concrete steps towards the anticipated press freedom reform in his first year in office.⁴⁴

Only after sustained international pressure was a public inquiry into Caruana Galizia's assassination established in 2019. However, Maltese Prime Minister, Robert Abela attempted to interfere with the public inquiry by stating that the inquiry would be extended for one time only, which puts immense pressure on the board of inquiry and threatens its independence and impartiality.

Also, there has not been meaningful progress in the Maltese court case into Caruana Galizia's assassination. Accused hitmen Alfred Degiorgio, George Degiorgio and Vincent Muscat have been detained since December 2017, but have not been brought to trial. Self-confessed middleman and key witness Melvin Theuma was hospitalised with severe injuries attributed to self-harm, while the evidence against the alleged mastermind Yorgen Fenech is yet to be compiled.

⁴³ Al-Monitor, 'Kurdish news outlet linked to opposition party remains closed in Iraq', 14 October 2020, www.al-monitor.com/pulse/originals/2020/10/kurdish-journalists-iraq-arrests-closed-nrt-office-kr.html#ixzz6bJfHwYTa

⁴⁴ Reporters Without Borders, 'Malta: Three years on, pursuit of justice for Daphne Caruana Galizia stalled by constant obstacles and lack of press freedom reform', 16 October 2020, <https://rsf.org/en/news/malta-three-years-pursuit-justice-daphne-caruana-galizia-stalled-constant-obstacles-and-lack-press>

The IBAHRI regrets the lack of meaningful progress in the investigation into Caruana Galizia's assassination and fears that this lack of progress will result in 'a wider chilling effect which is felt in the society where those attacks and killings take place'.⁴⁵ The IBAHRI reminds Maltese authorities of their obligations under Article 2 of the European Convention on Human Rights to fully and effectively investigate Caruana Galizia's death. Moreover, the IBAHRI calls on Malta to implement media freedom reform in line with international recommendations and address the systemic problems that led to this heinous attack.

Vietnam

On 6 October 2020, Vietnamese authorities arrested journalist Pham Doan Trang, an independent writer, journalist, and a leading human rights defender. She was arrested the same day Vietnam and the US held their 24th annual human rights dialogue, which touched upon various issues including the right to freedom of expression. Vietnamese authorities confirmed the next day that Trang is charged with 'making, storing, distributing or disseminating information, documents and items' that aim to oppose the state, a charge that carries a sentence of up to 20 years' imprisonment.⁴⁶

Trang has authored many books that focus on human rights – from women's rights and LGBTQI+ issues to environmental rights. In 2019, she was awarded a Press Freedom Prize by Reporters without Borders for her work. Most recently, Trang spoke up about a sensitive issue related to land rights in Dong Tam Village in which one villager and three policemen lost their lives.

Observers state that Trang's arrest is part of an ongoing process of silencing dissenting voices when it comes to sensitive, social issues in the country. The arrest is said to be related to the upcoming national party congress, Vietnam's most important political event, which will be held in January 2021.

The IBAHRI condemns the arrest of Pham Doan Trang and fears that others who oppose the Vietnamese government also face threats of arrest. The IBAHRI reminds Vietnam that the right to freedom of expression is enshrined in Vietnam's recently adopted constitution. Moreover, Vietnam acceded to the International Covenant on Civil and Political Rights in 1982, which prohibits arbitrary deprivations of liberty and guarantees freedom of expression and opinion. In this regard, the IBAHRI urges Vietnam to immediately and unconditionally release Pham Doan Trang and cease all attacks on the freedom of expression, especially the ones targeted towards journalists.

⁴⁵ Centre for Freedom of the Media, 'BREAKING DOWN THE WALL OF SILENCE ABOUT VIOLENCE AGAINST JOURNALISTS IN EUROPE', 19 October 2020, www.cfom.org.uk/2020/10/19/breaking-down-the-wall-of-silence-about-violence-against-journalists-in-europe/

⁴⁶ The Guardian, 'Vietnam arrests prominent journalist as state cracks down on free speech online' 8 October 2020, www.theguardian.com/global-development/2020/oct/08/vietnam-arrests-prominent-journalist-as-state-cracks-down-on-free-speech-online

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.

Thailand

Shortly after the announcement of the state of emergency in Bangkok on 15 October, the police arrested a number of activists, including several protest leaders.⁴⁷ Water cannons⁴⁸ have been used to disperse mass protests, with tens of thousands gathering to defy the crackdown⁴⁹ against the pro-democracy movement in the country and call for reforms to the monarchy and the constitution. In accordance with UN guidance on less-lethal weapons used by law enforcement (2020), water cannons 'should only be used in situations of serious public disorder where there is a significant likelihood of loss of life, serious injury or the widespread destruction of property.' In addition, water cannons should 'not target a jet of water at an individual or group of persons at short range owing to the risk of causing permanent blindness or secondary injuries if persons are propelled energetically by the water jet.'⁵⁰ To further prevent the peaceful assemblies, the Thai authorities set up roadblocks and closed 77 Bangkok train stations⁵¹.

Despite the emergency decree endeavouring to terminate the crowds by introducing an emergency decree that bans gatherings of five or more people in Bangkok, at least 82 protestors have been arrested for their involvement in the protests between 13 and 18 October⁵², according to Thai Lawyers for Human Rights. Many individuals face charges such as sedition, which carries a maximum sentence of seven years in prison. Arrest warrants were also issued for two protesters under Section 110 of the criminal code – the protestors are accused of attempted violence against the Queen after they screamed chants at her motorcade. The charges carry a possible death sentence. Among those arrested include human rights lawyer Anon Nampa, journalist, Kitti Pantapak, activist Prasit Krutharote and the prominent student leaders Parit Chiwarak, Panusaya Sithijirawattanakul, known as Rung, and Nathchanon Pairoj. Prasit, Panusaya and Nathchanon

⁴⁷ Human Rights Watch, 'Thailand: Emergency Decree Pretext for Crackdown', 15 October 2020, www.hrw.org/news/2020/10/15/thailand-emergency-decree-pretext-crackdown

⁴⁸ The Guardian, 'Thai police fire water cannon at Bangkok monarchy protesters', 16 October 2020, www.theguardian.com/world/2020/oct/16/thai-police-fire-water-cannon-as-thousands-protest-in-bangkok

⁴⁹ The Guardian, 'Thousands of Thais defy crackdown on protests in Bangkok', 17 October 2020, www.theguardian.com/world/2020/oct/17/thousands-of-thais-defy-crackdown-on-protests-in-bangkok

⁵⁰ Human Rights Watch, 'Thailand: Water Cannon Used Against Peaceful Activists', 17 October 2020, www.hrw.org/news/2020/10/17/thailand-water-cannon-used-against-peaceful-activists

⁵¹ DW, 'Thailand: Bangkok shuts public transport as protests persist', 17 October 2020, www.dw.com/en/thailand-bangkok-shuts-public-transport-as-protests-persist/a-55308905

⁵² Prachai English, 'At least 81 arrested during mass protests 13-18 Oct', 19 October 2020, <https://prachatai.com/english/node/8852>

have been denied bail and will be taken to prison, according to Thai media. Anon said on Facebook he was being forced to board a helicopter to the northern city of Chiang Mai⁵³.

The IBAHRI remains gravely concerned about the ongoing situation in Thailand and implores the Thai authorities to respect and uphold the fundamental rights to free expression and peaceful assembly as protected in international human rights law. We continue to monitor the situation closely.

⁵³ The Guardian, 'Tens of thousands defy ban to join pro-democracy protest in Thailand', 15 October 2020, www.theguardian.com/world/2020/oct/15/thailand-uses-emergency-decree-to-ban-gatherings-after-bangkok-protests

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.

Azerbaijan

During the ongoing conflict in the Nagorno-Karabakh region, Azerbaijani officials began rolling out restrictions on the Internet from 27 September 2020, making it difficult for Internet users to access and share content. The Internet Observatory confirmed through metric tracking of bandwidth speeds in the central Asian country that social media sites, including WhatsApp, Facebook, Instagram, Zoom, Skype, LinkedIn and YouTube, were completely disconnected.⁵⁴ The Minister of Transport, Communications and Technology declared that the restrictions were implemented as a security measure to 'prevent large scale provocations from Armenia' as both nations have mobilised their national armed forces, while Azerbaijan has declared martial law.

Some of these services are still accessible through masking one's IP address with the use of a Virtual Private Network (VPN), thus bypassing restrictions. However, news agencies and Internet Service Providers connected to the state have discouraged users from accessing VPNs calling them 'dangerous' with rumours spreading that VPN users could be fined.⁵⁵ This is exceptionally worrying as VPNs are among the most effective tools in civil society's retention of digital rights in the face of online censorship. The sole purpose of VPNs is to protect users' identity, so the government warning that it is dangerous is an explicit attempt to strip away digital rights, data protection and online anonymity.

Additionally, following up from the previous Bulletin, Sandvine Inc., recognised for enabling internet shutdowns in Belarus before cancelling its agreement in September citing human rights concerns, as well as supplying to several dozen other countries, has been equipping the Azerbaijani government with censorship technology. It is rumoured that this tech has enabled the widespread network blockage, posing a serious threat to the lives, health and economic rights of civilians in the volatile region who are especially reliant on the internet in the highly digitalised context of Covid-19.

The use of internet shutdowns and bandwidth throttling are an indiscriminate, disproportionate and unnecessary measure that violates a myriad of human rights and international standards. Effects include disabling real-time reporting and covering up human rights atrocities. It will increase the spread of coronavirus as the Internet is a central component to enable contact tracing, thus disconnecting society in the conflict region and rendering remote learning or working impractical.

⁵⁴ NetBlocks, 'Social media restricted in Azerbaijan amid clashes with Armenia over Nagorno-Karabakh', 27 September 2020, <https://netblocks.org/reports/social-media-restricted-in-azerbaijan-amid-clashes-with-armenia-over-nagorno-karabakh->

⁵⁵ AZ-Netwatch, Country-wide Internet Disruptions Reported in Azerbaijan, 27 September 2020, www.az-netwatch.org/news/country-wide-internet-disruptions-reported-in-azerbaijan/

Additionally, considering that the Internet shutdown is occurring in a conflict zone, this specific shutdown fulfils the definition of collective punishment, which was first classified as such by the former UN Special Rapporteur on the promotion and protection of the right to freedom of expression, David Kaye. The Azerbaijani state could be the perpetrator of a war crime, while Sandvine Inc. and the Internet Service Providers of the country have engaged in corporate complicity.

The IBAHRI reminds the Azerbaijani government that access to the Internet is a basic human right and access must be maintained at all times, as declared by the UN Human Rights Council in 2016 in Resolution A/HRC/32/L.20.⁵⁶ This condemns measures to intentionally prevent or disrupt access to, or dissemination of, information online in violation of international human rights law, even during a state of emergency, including war. Internet restrictions can only be lawful in terms of international law if the three-part test laid out in Article 19(3) of the ICCPR is met. This includes meeting proportionality and necessity criteria: if it serves a specific purpose, is necessary to achieve that purpose, is the least restrictive measure and is provided for in domestic law. However, a total internet shutdown is never lawful.⁵⁷

Guinea

Amid a contentious election in the West African state, government officials have opted to cut the Internet across the Republic of Guinea ahead of the presidential elections. This has been a recurrent issue in the country where internet shutdowns were enacted during the parliamentary elections of March 2020. The stakes are particularly concerning in this election. In March, a referendum was boycotted by political opposition parties and civil society organisations, which allowed incumbent President Alpha Condé to run for a third term, placing him in power for another 12 years.⁵⁸ In response to the president's bid to run for a third term, demonstrations broke out across the country and invoked a brutal response from security forces, killing 92 protestors,⁵⁹ with Amnesty International reporting over 200 injuries and the detention of 70 others.⁶⁰

In response to the network disruption, Access Now and 33 other organisations have sent an open letter appealing to the government to ensure that the Internet, including social media and other digital communication platforms, remains open, accessible and secure. In order to publicly assure

⁵⁶ UN General Assembly, Human Rights Council, *The Promotion, Protection, and Enjoyment Human Rights on the Internet*, 27 June 2016, A/HRC/32/L.20, http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/RES/32/13

⁵⁷ Micek, P, 2015. *Internet Kill Switches are a Violation of Human Rights Law, Declare Major UN and Rights Experts - Access Now*. [online] Access Now. <<https://www.accessnow.org/internet-kill-switches-are-a-violation-of-human-rights-law-declare-major-un/>>

⁵⁸ Al Jazeera, *Guineans Set to Vote in Tense Presidential Elections*, 17 October 2020, www.aljazeera.com/news/2020/10/17/guinea-polls

⁵⁹ France 24, *Scores killed in protests against Guinea's President Alpha Condé, says opposition group*, 13 October 2020, www.france24.com/en/20201013-over-90-killed-in-protests-against-guinea-s-president-alpha-conde-says-opposition-group

⁶⁰ Amnesty International, *Guinea: At least 50 People Killed with Impunity during Protests in Less than a Year*, 01 October 2020, www.amnesty.org/en/latest/news/2020/10/guinee-au-moins-personnes-tues-en-toute-impunite-dans-des-manifestations/

the people of the Republic of Guinea that the internet and all social media platforms will be on, and to notify the public of any disruptions. The letter also orders internet service providers to provide quality, secure, free and open Internet throughout the elections.⁶¹

Studies have shown that preventative shutdowns, which have become increasingly common, are used in anticipation of elections or contentious decisions by the executive branch,⁶² not to protect public order or national security, as per the ICCPR, but rather to press through executive decisions and suppress political opposition through undemocratic and repressive means. Additionally, internet shutdowns are used to subvert and undermine human rights reporting so government officials escape accountability for atrocities committed and prevent assemblies.

As the Internet is one of civil society's most efficient tools in mobilising demonstrators through instantaneous communication, as well as holding human rights violators accountable through the access of information and truth, governments believe that Internet shutdowns will prevent upheaval and organisation from the population. However, studies have shown that they are an entirely disproportionate and unnecessary measure that instead exacerbates the situation and leads to further human rights abuse.⁶³ The underlying cause for demonstrations is not access to information, but rather underlying societal and political issues that the state is unwilling to remedy.

Additionally this year a pivotal decision was issued in the case of *Amnesty International Togo v The Togolese Republic*,⁶⁴ at the Economic Community of West African States' (ECOWAS) Court of Justice, to which Guinea is a state member. The court rejected the blanket justification of national security to enact an Internet shutdown and held that disruptions violated Article 9(1) and (2) of the African Charter on Human and Peoples' Rights, which guaranteed the right to freedom of expression. The court also reaffirmed that the Internet constitutes a basic human right, that states are under an international obligation to protect that right and that any interference must be provided for by law, which specifies the grounds. This decision is binding in Guinea as it is a state party member. Hence, an Internet shutdown would violate both international and regional law. The IBAHRI condemns the Internet shutdown and urges President Condé and Guinean authorities to immediately cease the disruption and re-enable access to the Internet to allow the right of freedom of expression and assembly, and to better inform and secure the political rights of citizens.

⁶¹ Access Now, air elections in Guinea? Keep the internet open, 15 October 2020, www.accessnow.org/fair-elections-in-guinea-keep-the-internet-open/

⁶² Global Network Initiative Report, 'Disconnected: A Human Rights Based Approach to Network Disruptions' (2018) <https://globalnetworkinitiative.org/wp-content/uploads/2018/06/Disconnected-Report-Network-Disruptions.pdf>

⁶³ Global Network Initiative Report, n.57

⁶⁴ ECOWAS, *Amnesty International Togo and Others v The Togolese Republic* (2020) ECW/CCJ/JUD/09/20, <https://globalfreedomofexpression.columbia.edu/wp-content/uploads/2020/07/JUD-ECW-CCJ-JUD-09-20-AMNESTY-INTERNATIONAL-TOGO-7-ORS-V.-REPUBLIC-OF-TOGO-of-6-july-2020.pdf>

Thailand

With pro-democracy mass protests sweeping the Thai capital of Bangkok, news reporting by international outlets, including the BBC World Service, has been blocked on the country's main cable TV network, True Visions. Thai authorities have also pressed satellite service providers to block the broadcast of Voice TV, a station which broadcasts on satellite TV, a website, Facebook and YouTube, widely known for its critical coverage of the government.⁶⁵ On 20 October, the Criminal Court found that the media outlet had spread false information in violation of the computer crime law and ordered the blockage of some VoiceTV content from all its online channels as requested by the Digital Economy Ministry.⁶⁶ The court has not yet issued order for three other news outlets the ministry sought to block: Prachatai, The Reporters and The Standard. According to Human Rights Watch, on 16 October, the police reportedly issued several warnings against news reports and social media commentary critical of the monarchy, the government and political situation in the country.

The IBAHRI is deeply concerned about the blocking/filtering of online content in Thailand during this period of mass protest and the consequent interference with the right to freedom of expression. Bangkok Criminal Court's order to block some content for VoiceTV may not be in line with international standards on free expression and therefore can have a detrimental impact on the right, as well encouraging an atmosphere of self-censorship. We will continue to monitor the situation closely.

⁶⁵ Human Rights Watch, n.50

⁶⁶ Bangkok Post, 'Court orders ban on some VoiceTV content', 20 October 2020, www.bangkokpost.com/thailand/politics/2005251/court-orders-ban-on-some-voicetv-content