



**IBAHRI Freedom of Expression Bulletin**

**For Release: 9 September 2020**

In response to growing human rights violations committed by authorities in Belarus during peaceful protests to demand the resignation of long time authoritarian leader, Alexander Lukashenko, **Director and Senior Media Lawyer at Mass Media Defence Centre in Russia, former IBA Human Rights Award winner (2016) and Member of the High Level Panel of Legal Experts on Media Freedom, Galina Arapova** remarked:

*'The vehement crackdown on free expression by authorities in response to the mass protests in arising out of the official result of the recent election in Belarus continue to be of grave and immediate concern to human rights experts and organisations across the globe. We are particularly troubled by the excessive and unlawful use of force, mass arbitrary detentions and strong evidence of torture and ill treatment, as well as the complete disregard for legal and due process rights of individuals detained. All violations of rights must be independently and fully investigated, possibly with support of international organisations, including the OSCE. Further, evidence suggests serious attacks on the right to access information at this time and media freedoms by Belarusian authorities, including internet restrictions and revoking the accreditation of multiple journalists from foreign media outlets on the basis of national security in attempts to stifle criticism and independent journalism. State authorities and institutions must respect and ensure full enjoyment of rights, including the rights of freedom of assembly and expression, to Belarusian people.'*

### **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>1</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>1</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.

### Australia

Due to Covid-19, a state of emergency was declared initially on 16 March 2020 in the state of Victoria. This has been renewed six times already in one-month increments. On 24 August 2020, The Premier of Victoria, Daniel Andrews, stated that he would ask the parliament to extend the state of emergency in Victoria by 12 months, with the possibility of further renewal. This action would therefore mean that Victoria would remain in a state of emergency until at least September 2021.<sup>2</sup> The Victorian Parliament passed the relevant bill on 2 September 2020, though only allowing six months of the state of emergency without a parliamentary vote.<sup>3</sup>

While acknowledging that the Covid-19 crisis is not ending soon and governments may need to enact emergency measures as is necessary to the protection of citizens and public health in the country, the IBAHRI reminds the government of the State of Victoria the principle of proportionality and urges it to adhere to the least intrusive measures when interfering with human rights, should further extension of the emergency be required. In this regard, IBAHRI welcomes the Victorian Parliament's decision to extend the state of emergency for six months instead of 12 months. However, IBAHRI remains sceptical whether the six-month extension is the most limited option of interference.

### Cambodia

In the last issue of this Bulletin, IBAHRI reported on a draft 'Law on Public Order', which is aimed at regulating public spaces and behaviour, including 'aesthetics, sanitation, cleanliness, noise, and social values', to maintain 'public order', presented by the Royal Government of Cambodia. The draft law, which claims to create 'a more civilized society', criminalises the ordinary everyday

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<sup>2</sup> The Guardian, 'Victorian plan to extend state of emergency by 12 months prompts human rights concerns', 24 August 2020, [www.theguardian.com/australia-news/2020/aug/24/victorian-plan-to-extend-state-of-emergency-by-12-months-prompts-human-rights-concerns](http://www.theguardian.com/australia-news/2020/aug/24/victorian-plan-to-extend-state-of-emergency-by-12-months-prompts-human-rights-concerns)

<sup>3</sup> 9 News, 'Coronavirus: Victorian parliament votes to extend state of emergency by six months', 2 September 2020, [www.9news.com.au/national/coronavirus-victorian-parliament-votes-to-extend-state-of-emergency-covid19/58c2357b-a634-4152-9c5a-90913fb448eb](http://www.9news.com.au/national/coronavirus-victorian-parliament-votes-to-extend-state-of-emergency-covid19/58c2357b-a634-4152-9c5a-90913fb448eb)

activities of citizens within the realm of government action<sup>4</sup>. For this purpose, the law 'endeavours to set out specific activities that are prohibited, lists a range of penalties that may be imposed for breaches, and grants unfettered enforcement powers to authorities across all levels of government'.<sup>5</sup> Ministry Secretary of State at the Interior Ministry, Ouk Kim Lek, who has led the formation of the draft law and shared the bill with Minister of Interior in July,<sup>6</sup> initially stated that, while the Ministry welcomes input from civil society groups, there is no intention for the legislation to be discarded.<sup>7</sup>

Numerous national and international human rights organisations continue to call on the Cambodian Government to immediately abandon the draft Law on Public Order, which applies extremely broad, illegitimate and discriminatory restrictions on individuals, particularly on women and their fundamental rights, including the right to peaceful assembly and free expression, under the guise of maintaining public order. The state should follow through with full and proper consultation with civil society to identify issues within the current bill and ensure full respect for and compliance of its national and international commitments.

Article 41 of the Cambodian Constitution states: 'Khmer citizens shall have the freedom to express their personal opinions, the freedom of press, of publication and of assembly'. Article 31 of the Constitution states that 'The Kingdom of Cambodia recognizes and respects human rights as enshrined in the United Nations Charter, the Universal Declaration of Human rights and all the treaties and conventions related to human rights, women's rights and children's rights'. As such, the Cambodian authorities must guarantee the right to freedom of expression as a fundamental human right enshrined in the Universal Declaration of Human Rights (Article 19). Cambodia also ratified the International Covenant on Civil and Political Rights in 1992, which protects the freedom of expression (Article 19), freedom of assembly (Article 21) and freedom of association (Article 22). Cambodia is also a signatory of the ASEAN Human Rights Declaration, which protects the freedom of expression in Article 23.

## **Tanzania**

On 31 August 2020, Article 19, a global free speech organisation, published a report analysing Tanzania's new Electronic and Postal Communications Regulations (Online Content Regulations), originally published by the Tanzanian Government in July 2020,<sup>8</sup> adding to the enforcement of

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<sup>4</sup> Human Rights Watch, 'Civil Society Organizations Call for the Draft Law on Public Order to be Immediately Discarded', 13 August 2020, [www.hrw.org/news/2020/08/13/civil-society-organizations-call-draft-law-public-order-be-immediately-discarded](http://www.hrw.org/news/2020/08/13/civil-society-organizations-call-draft-law-public-order-be-immediately-discarded)

<sup>5</sup> Human Rights Watch, n.4

<sup>6</sup> Amnesty International, 'Cambodia: Repressive draft public order law targets the most vulnerable in society', 13 August 2020, [www.amnesty.org/en/latest/news/2020/08/cambodia-repressive-draft-public-order-law-targets-the-most-vulnerable-in-society/](http://www.amnesty.org/en/latest/news/2020/08/cambodia-repressive-draft-public-order-law-targets-the-most-vulnerable-in-society/)

<sup>7</sup> Business & Human Rights Resource Centre, 'Cambodia: Civil society groups express serious concerns over rights violations & restrictions posed by draft Law on Public Order', 4 September 2020, [www.business-humanrights.org/en/latest-news/cambodia-civil-society-groups-express-serious-concerns-over-rights-violations-restrictions-posed-by-draft-law-on-public-order/](http://www.business-humanrights.org/en/latest-news/cambodia-civil-society-groups-express-serious-concerns-over-rights-violations-restrictions-posed-by-draft-law-on-public-order/)

<sup>8</sup> Article 19, 'Tanzania: New Content Regulations Criminalise Free Speech Online', 31 August 2020, [www.article19.org/resources/tanzania-regulations-criminalise-free-speech/](http://www.article19.org/resources/tanzania-regulations-criminalise-free-speech/)

restrictive laws by the current government that silence dissent and crack down on the media and civic space.

The extent of prohibited content stipulated in the Online Content Regulation is alarming. The list includes content about homosexuality, public demonstrations, deadly or contagious diseases, military affairs and content that violates public order. It is evident that this piece of legislation aims to curtail the public watchdog function of the press and control the free flow of information on public matters. Other issues in the Online Content Regulations include vaguely formulated provisions and overly broad definitions, vast powers given to the Tanzania Communications Regulatory Authority that leave room for arbitrariness, and insufficient protection of personal data that lacks necessity and proportional safeguards.<sup>9</sup>

Over the last few months, many organisations have reported on the increased repression ahead of the country's general elections, due to take place in October. Multiple restrictions have been placed on the media, including revoking the licence of the opposition-leaning newspaper, *Tanzania Daima*, following alleged violations of journalistic ethics and laws including spreading false information,<sup>10</sup> due to their reporting on Covid-19. Other editors have said that officials had informally told them not to publish material that the government would not like.<sup>11</sup> Since mid-June, *Human Rights Watch* has reported that the government has arrested at least 17 opposition party members and critics of the government, suspended a rights group and cancelled the license of another and blocked other major rights groups from observing the upcoming elections.<sup>12</sup> Further, in an attempt to control and limit NGOs, the National Electoral Commission issued lists in July of the organisations approved to act as election observers and to conduct voter education, excluding major organisations that have historically coordinated election monitoring in the country.

The IBAHRI is deeply concerned about the consequences of the Online Content Regulations since it neither complies with the Tanzanian Constitution, nor international human rights law. We strongly urge the Tanzanian Government to amend the regulations in line with international human rights law standards. Furthermore, we call on the government to respect and allow the practice of an independent media and journalists, as well as rich civil society to act without hindrance or threat of persecution in the run up to the elections.

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<sup>9</sup> Article 19, n. 8

<sup>10</sup> Reuters, 'Tanzania arrests opposition party leader, revokes newspaper licence', 23 June 2020, [www.reuters.com/article/us-tanzania-politics/tanzania-arrests-opposition-party-leader-revokes-newspaper-licence-idUSKBN23U319](https://www.reuters.com/article/us-tanzania-politics/tanzania-arrests-opposition-party-leader-revokes-newspaper-licence-idUSKBN23U319)

<sup>11</sup> Human Rights Watch, 'Tanzania: Freedoms Threatened Ahead of Elections', 2 September 2020, [www.hrw.org/news/2020/09/02/tanzania-freedoms-threatened-ahead-elections](https://www.hrw.org/news/2020/09/02/tanzania-freedoms-threatened-ahead-elections)

<sup>12</sup> Human Rights Watch, n.11

## 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>13</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.

### **India**

In multiple issues of this Bulletin, IBAHRI has raised serious privacy rights concerns about India's Covid-19 contact tracing app, Aarogya Setu. On 5 July 2020, the app was updated to allow external third-party apps to access the health data of users via Aarogya Setu.<sup>14</sup>

Following this update, on 18 August 2020, a petition at Kerala High Court was filed by Mr Jackson Mathew, owner of a small manufacturing business. The petitioner was represented by the Internet Freedom Foundation, along with two advocates. The Internet Freedom Foundation stated that

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<sup>13</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](http://www.amnesty.org/download/Documents/POL3020812020ENGLISH.pdf)

<sup>14</sup> Financial Express, 'Aarogya Setu adds three big features for users including delete account option', 7 July 2020, [www.financialexpress.com/industry/technology/aarogya-setu-adds-three-big-features-for-users-including-delete-account-option-all-you-need-to-know/2015886/](http://www.financialexpress.com/industry/technology/aarogya-setu-adds-three-big-features-for-users-including-delete-account-option-all-you-need-to-know/2015886/)

the petition seeks to restrain the government from sharing any personal data of users collected by the Aarogya Setu app with third parties. It also requests the government give wide publicity to the voluntary nature of the app.<sup>15</sup>

The Single Judge Bench of the Kerala High Court held the hearing regarding Mr Mathew's petition on 24 August 2020. It ruled that the petition should be listed before a Division Bench along with the previous petition of Mr Mathew filed in May 2020 after the use of Aarogya Setu was made mandatory for all public and private sector employees. According to the Internet Freedom Foundation, both petitions are likely to be listed before a Division Bench of the Kerala High Court in September 2020.<sup>16</sup> The IBAHRI will continue to closely monitor the ongoing proceedings and once again, urges the Indian Government to withdraw all updates to the Aarogya Setu app that violate the privacy rights of its users.

### **United States**

In a landmark judgment on 2 September 2020, the US Court of Appeals for the Ninth Circuit ruled that the National Security Agency's (NSA) secret programme on the bulk collection of US citizens' telephone records was unlawful and violated the Foreign Intelligence Surveillance Act.<sup>17</sup>

The judgment comes seven years after former NSA contractor Edward Snowden exposed the secret surveillance programmes of the NSA and the UK and the judgment repeatedly cited the disclosures of the whistle blower. The US is seeking to extradite him from Moscow, where he is currently in exile. The US Department of Justice has charged him with violating the Espionage Act for his part in exposing global mass surveillance programmes. If found guilty, Mr Snowden faces up to 30 years in prison.

Before Mr Snowden's revelations, the NSA insisted that its programmes never knowingly collected data on US citizens. After the revelations, US officials fell back on the argument that the NSA programme in question played a crucial role in fighting terrorism.<sup>18</sup>

The IBAHRI welcomes the judgment by the US Court of Appeals for the Ninth Circuit and considers it a victory for privacy rights and free expression in the United States, while urging the authorities to focus on upholding the privacy rights of US citizens through close inspection of intelligence activities.

Elsewhere in the United States, non-profit privacy rights groups, including Electronic Frontier Foundation and the American Civil Liberties Union (ACLU) California, have published an open

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<sup>15</sup> Internet Freedom Foundation, 'Kerala HC to hear Aarogya Setu petitions in September 2020', 26 August 2020, [//internetfreedom.in/kerala-hc-aarogya-setu/](https://internetfreedom.in/kerala-hc-aarogya-setu/)

<sup>16</sup> Internet Freedom Foundation, n.15

<sup>17</sup> Reuters, 'U.S. court: Mass surveillance program exposed by Snowden was illegal', 3 September 2020, [www.reuters.com/article/us-usa-nsa-spying/u-s-court-mass-surveillance-program-exposed-by-snowden-was-illegal-idUSKBN25T3CK](https://www.reuters.com/article/us-usa-nsa-spying/u-s-court-mass-surveillance-program-exposed-by-snowden-was-illegal-idUSKBN25T3CK)

<sup>18</sup> The New Yorker, 'The Whole Haystack', 19 January 2015, [www.newyorker.com/magazine/2015/01/26/whole-haystack](https://www.newyorker.com/magazine/2015/01/26/whole-haystack)



letter to the Governor and Legislature of California urging them to uphold the privacy rights of Californians who participate in the Covid-19 contact-tracing app, California Connected.<sup>19</sup>

The letter emphasises that privacy rights are vital even in unprecedented times, such as the Covid-19 crisis, and that privacy rights do not stand in opposition of public health. While they may be well-intentioned, such crises leave room for flawed judgments and quick decision-making, which may result in severe violations of fundamental rights and may not always be in the public interest. Therefore, the letter identifies a number of minimum safeguards for the Californian authorities to provide in the legislation regulating the contact tracing app.<sup>20</sup>

The first safeguard identified by the authors is data minimisation, which equates to collecting only the necessary information from the users of the contact tracing app, proportionate to the legitimate aim of protecting public health. Data that is not relevant to fighting the pandemic, such as the religious and political associations of users, should not be collected or retained. The applicable legislation should require public entities to be especially vigilant when contracting with a private entity for the purpose of contact tracing, since there is an inherent risk that private entities may seek to monetise this sensitive data.

Second, the open letter stresses that the contact tracing programmes should not discriminate against individuals based on participating in the use of contact tracing apps. In this regard, nobody should be restricted access to public spaces on the basis that they decline to use the contact tracing app or participate in questionnaires by contact tracers. The authors of the open letter point out that mandatory participation may risk the quality of data as people may lie to a contact tracer about their contacts or leave their phone at home to avoid sharing accurate information with the contact tracing app.

Lastly, the Electronic Frontier Foundation and its partners advocate for a strong requirement to purge stale data. Retaining data for a long period of time is a security risk and makes the contact tracing programmes appealing targets for data thieves. Therefore, the data should be purged when it is not used, ideally after 30 days from the retention of the data. The IBAHRI supports the privacy rights groups in their effort to have the Californian contact tracing app in line with privacy rights and urges the legislative organs to pass the relevant bills, namely A.B. 1782 and A.B. 660. Finally, the IBAHRI encourages legislative organs in all states in the US to draft similar bills that protect the privacy rights of individuals.

### **Technology companies: Google and Apple**

In previous issues of this Bulletin, the IBAHRI has recognised and commended Google and Apple's efforts to develop a decentralised, privacy-preserving contact tracing app, while still expressing concern over persisting privacy issues. It was recently reported that the two tech giants are working on the release of phase two of their Covid-19 contact-tracing system. This will allow

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<sup>19</sup> Electronic Frontier Foundation, 'EFF Calls on California Gov. Newsom To Mandate Data Privacy Protections for Californians Who Participate in COVID-19 Contact Tracing Programs', 20 August 2020, [www.eff.org/press/releases/eff-calls-california-gov-newsom-mandate-data-privacy-protections-californians-who](http://www.eff.org/press/releases/eff-calls-california-gov-newsom-mandate-data-privacy-protections-californians-who)

<sup>20</sup> Electronic Frontier Foundation, 'Coalition Letter to Governor/Legislature on Contact Tracing and Privacy', [www.eff.org/document/2020-08-coalition-letter-governorlegislature-contact-tracing-and-privacy](http://www.eff.org/document/2020-08-coalition-letter-governorlegislature-contact-tracing-and-privacy)



users to receive notifications about their exposure to Covid-19 positive people without the need to install a specific app on their devices.<sup>21</sup>

This new exposure notification system will be ready for use once the latest iOS and Android updates are made available, which is expected in the next two weeks. However, the new exposure notification system will still require an app recognised by public authorities for individuals to mark themselves as Covid-19 positive. This means that the Covid-19 contact tracing system by Apple and Google will not be the one-stop solution in countries that have not released a recognised contact tracing app.

The IBAHRI supports the ongoing efforts and diligence of Google and Apple to reach the broader public through the new exposure notification system, given that the privacy of users sits at the core of the system. However, as the new exposure notification system requires a recognised contact tracing app in each country to fully function, this puts extra pressure on governments to release their contact tracing apps in a very short span of time. The IBAHRI urges governments not to rush their contact tracing apps without giving due regard to the privacy rights of users and the principles of legality, necessity and proportionality.

### **Technology companies: Apple**

Apple published a new human rights policy committing to freedom of expression and information, as well as the privacy of its users. Apple based its new commitment on the UN Guiding Principles on Business and Human Rights 2011 (UNGPs).

According to the *Financial Times*, this commitment comes after years of criticism of Apple's consistent practice of following Chinese censorship laws.<sup>22</sup> The IBAHRI welcomes Apple's commitment to human rights and its acknowledgment of the UNGPs. However, we remain sceptical that such a commitment would bring any tangible change to Apple's practice of following censorship laws, since the policy document published by Apple also states that Apple is 'required to comply with local laws, and at times there are complex issues about which we may disagree with governments and other stakeholders on the right path forward'.<sup>23</sup>

Although a step in the right direction of respecting human rights, Apple's policy commitment falls short of the expected conduct of businesses under international human rights law. The IBAHRI calls on Apple to implement policies that would require the company to choose the right to information, free speech and privacy of users over any censorship law

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<sup>21</sup> The Guardian, 'Google and Apple to roll out phase two of contact-tracing system', 27 August 2020, [www.theguardian.com/technology/2020/aug/27/google-and-apple-to-roll-out-phase-two-of-contact-tracing-system](https://www.theguardian.com/technology/2020/aug/27/google-and-apple-to-roll-out-phase-two-of-contact-tracing-system)

<sup>22</sup> Financial Times, 'Apple commits to freedom of speech after criticism of China censorship', 4 September 2020, <https://www.ft.com/content/a88f5d3d-0102-4616-8b3f-cb0661ba305d>

<sup>23</sup> Apple Inc., 'Human Rights Policy', August 2020, [https://s2.q4cdn.com/470004039/files/doc\\_downloads/gov\\_docs/Apple-Human-Rights-Policy.pdf](https://s2.q4cdn.com/470004039/files/doc_downloads/gov_docs/Apple-Human-Rights-Policy.pdf)

### 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 24 August 2020, Abdelkrim Zeghileche, an Algerian journalist and former radio presenter, was sentenced to two years in prison and fined 100,000 dinars over Facebook posts that criticised the Algerian government. According to his lawyer, he called the Algerian president 'a fraud who was brought in by the military' and called for the creation of a new political party. He was charged for insulting Abdelmadjid Tebboune the President of Algeria and allegedly, 'undermining national unity', respectively. Mr Zeghileche is an activist and the director of Radio Sarbacane, an independent radio station.<sup>24</sup>

Mr Zeghileche's conviction occurred only two weeks after the sentencing of Khaled Drareni, a reporter for global press freedom group, Reporters without Borders, and co-founder of the news website, Casbah Tribune. As reported in the previous issue of this Bulletin, Mr Drareni was sentenced to three years' imprisonment and fined 50,000 dinars (£294) for 'provoking an unarmed rally' and 'undermining national unity'. This is not the first time Mr Zeghileche has been sentenced for exercising his right to free expression – in 2018, he was detained for 49 days 'for operating his online radio show, Sabarcane, without a license, and for allegedly insulting the president on the show's website'.<sup>25</sup>

Media freedom and the rights to free assembly and expression continue to deteriorate in the country. With the pretext of Covid-19, numbers of independent journalists have been detained for reporting on the pandemic and contradicting the officially authorised statistics. In April 2020, the government approved the enactment of a new law where journalists and reporters can be easily criminalised for reporting on the pandemic and for disseminating false news. The overly broad and vague provision does not distinguish between news reports, the use of social media or

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<sup>24</sup> Amnesty International, 'Algeria: Journalists sentenced to harsh prison terms amid growing crackdown', 27 August 2020, [www.amnesty.org/en/latest/news/2020/08/algeria-journalists-sentenced-to-harsh-prison-terms-amid-growing-crackdown/](https://www.amnesty.org/en/latest/news/2020/08/algeria-journalists-sentenced-to-harsh-prison-terms-amid-growing-crackdown/)

<sup>25</sup> CPJ, 'With colleagues sentenced to prison, Algerian journalists fear their new president's attitude toward the press', 26 August 2020 [//cpj.org/2020/08/with-colleagues-sentenced-to-prison-algerian-journalists-fear-their-new-presidents-attitude-toward-the-press/](https://cpj.org/2020/08/with-colleagues-sentenced-to-prison-algerian-journalists-fear-their-new-presidents-attitude-toward-the-press/)

news websites and violating the law can result in prison terms of two to five years and fines of 100,000 to 500,000 dinars.<sup>26</sup>

The IBAHRI condemns the enduring clampdown on journalists and attack on the independent media freedom in Algeria as authorities continue to violate rights that are guaranteed in its constitution, as well as the international commitments that Algeria has ratified. We urge authorities to guarantee the exercise of these fundamental rights and cease the systematic harassment of journalists and media workers.

## **Belarus**

Mass protests continue in Belarus following the announcement of results from recent presidential elections on 9 August 2020. Several organisations, including the European Union and the Council of Europe, claimed that the elections were neither free nor fair, many have condemned the ongoing unlawful use of force, arrests and harassment of citizens, recording outright violations of fundamental human rights, online and offline, with particular concern as to the rights to peaceful assembly, right to information and freedom of expression.

Across Belarus, major harassment of, and crackdown against, media outlets and journalists covering peaceful protests continues. Reporters without Borders (RSF) reported that on the eve of a major demonstration, which took place on 30 August, where protestors were calling for new elections, the Belarusian Foreign Ministry withdrew the press accreditations of 19 journalists working for foreign media outlets including Agence France-Presse, the Associated Press, Reuters, the BBC, the German public broadcaster ARD and Prague-based Radio Free Europe/Radio Liberty (RFE/RL).<sup>27</sup> Hundreds of journalists and media workers, both from independent and international outlets, have reported efforts by authorities to intimidate and harass them by confiscating equipment and violence, as well as arbitrary arrests and initiation of criminal proceedings against others. Some have also reported ill-treatment in detention, suffering serious injuries.<sup>28</sup> Under Belarusian law, if charged and convicted with participating in an illegal rally, the journalists could face up to 15 days of administrative arrest.<sup>29</sup> Scores of individuals, including journalists, remain in custody.

Approaching almost a month following the elections, the IBAHRI again appeals to the Republic of Belarus to end the unnecessary prevention of journalistic activities in the country and to promote, enable and respect the role of the independent media reporting on matters of public interest at this time. In addition, we call for all claims of violence and torture to be thoroughly and independently investigated. We also call on the Belarusian authorities to immediately end its

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<sup>26</sup> CPJ, n.25

<sup>27</sup> RSF, 'Belarus: Many journalists arrested, foreign media stripped of accreditation', 1 September 2020, [https://rsf.org/en/news/belarus-many-journalists-arrested-foreign-media-stripped-accreditation#:~:text=Reporters%20Without%20Borders%20\(RSF\),journalists%20and%20gag%20the%20media](https://rsf.org/en/news/belarus-many-journalists-arrested-foreign-media-stripped-accreditation#:~:text=Reporters%20Without%20Borders%20(RSF),journalists%20and%20gag%20the%20media).

<sup>28</sup> Committee to Protect Journalists (CPJ), 'Belarusian police continue beating and detaining journalists', 13 August 2020, <https://cpj.org/2020/08/belarusian-police-continue-beating-and-detaining-journalists/>

<sup>29</sup> CPJ, 'At least 10 journalists detained covering protest in Belarus, 6 remain in custody', 2 September 2020, <https://cpj.org/2020/09/at-least-10-journalists-detained-covering-protest-in-belarus-6-remain-in-custody/>

interference and disruption to internet access in the country, which has led to the restriction of content online and increased censorship.

### **Jordan**

On 26 August 2020, Emad Al-Hajjaj, a prominent Jordanian-Palestinian cartoonist was arrested in Amman for a cartoon he created, which was published a day prior to his arrest. He is currently held in pre-trial detention called Salt Prison in the northwest of Amman. The cartoon criticised a recent peace agreement between the Israel–United Arab Emirates (UAE) governments, in which he allegedly mocked Emirati Crown Prince Sheikh Mohammed Bin Zayed. The cartoon, which was published on Al-Araby Al-Jadeed news site, a Qatari-funded news website, depicts the Crown Prince being spat on by a dove of peace displaying the flag of Israel.<sup>30</sup>

He has been charged under the country's cybercrimes law for allegedly insulting the UAE and damaging Jordan's relations. It is not the first time Mr Al-Hajjaj has been subjected to persecution for his work. In 2017, he received death threats over a cartoon he published about a land deal between Israeli settlers and the Greek Orthodox Church.<sup>31</sup>

Media freedom and free expression in Jordan has come under grave threat from the government. As part of its efforts to limit the spread of Covid-19, the government declared a state of emergency in March 2020, introducing a 1992 Defence Law that gave authorities sweeping powers to impose curfews, close businesses and gag the press.<sup>32</sup> The IBAHRI demands Jordanian authorities drop all charges against Emad Al-Hajjaj and release him immediately. Further, we echo concerns from human rights organisations who have condemned the arrest of cartoonists, like Mr Al-Hajjaj, and restate Article 19 (2) of the International Covenant on Civil and Political Rights (ICCPR), that 'everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice'.

### **Libya**

On 23 August, Sami Al-Sharif, a Libyan radio journalist and the director of local broadcaster Al-Jawhara Radio, was arrested while he was covering an anti-government protest in Tripoli. According to reports, members of the Special Operations Force of the Nawasi Battalion, a group affiliated with the Government of National Accord, arrested Mr Al-Sharif and took him to Bu Laila, a military compound that also houses detainees. However, the Government of National Accord denied both the arrest and detention of Mr Al-Sharif.<sup>33</sup>

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<sup>30</sup> Middle East Monitor, 'Jordan cartoonist detained for 'offensive' drawing of UAE ruler', 27 August 2020, [www.middleeastmonitor.com/20200827-jordan-cartoonist-detained-for-offensive-drawing-of-uae-ruler/](http://www.middleeastmonitor.com/20200827-jordan-cartoonist-detained-for-offensive-drawing-of-uae-ruler/)

<sup>31</sup> CPJ, 'Jordanian security forces arrest cartoonist Emad Hajjaj over criticism of Israel-UAE deal', 27 August 2020, [//cpj.org/2020/08/jordanian-security-forces-arrest-cartoonist-emad-hajjaj-over-criticism-of-israel-uae-deal/](http://cpj.org/2020/08/jordanian-security-forces-arrest-cartoonist-emad-hajjaj-over-criticism-of-israel-uae-deal/)

<sup>32</sup> International Press Institute, 'Cartoonist arrested in Jordan over UAE-Israel cartoon', 27 August 2020, [//ipi.media/cartoonist-arrested-in-jordan-over-uae-israel-cartoon/](http://ipi.media/cartoonist-arrested-in-jordan-over-uae-israel-cartoon/)

<sup>33</sup> CPJ, 'Libyan radio journalist Sami al-Sharif detained while covering protests', 27 August 2020, [cpj.org/2020/08/libyan-radio-journalist-sami-al-sharif-detained-while-covering-protests/](http://cpj.org/2020/08/libyan-radio-journalist-sami-al-sharif-detained-while-covering-protests/)

Anti-government protests erupted in Tripoli and other western provinces over corruption, deteriorating economic conditions and 'the backdrop of international efforts to bring an end to Libya's civil war' in the past week, which lasted for several days. The militia affiliated to the government opened fire at peaceful protestors, wounded dozen and kidnapped at least six.<sup>34</sup>

Libya's Government of National Accord has temporarily suspended Fathi Bashagha, the Interior Minister, over his handling of the recent protest in Tripoli and use of excessive force, for which he is facing an inquiry.<sup>35</sup> The IBAHRI expressed grave concern for the safety of Sami Al-Sharif and demands his immediate release.

## **Zimbabwe**

On 2 September 2020, Hopewell Chin'ono, the Zimbabwean investigative journalist who had been held in Chikurubi Maximum Security prison in Harare for almost six weeks pending trial on charges of inciting violence was released on bail<sup>36</sup> following a bail payment of 10,000 Zimbabwean dollars (US\$120). Mr Chin'ono was arrested on 20 July 2020 on charges of incitement to participate in public violence for sharing posts on his social media account at the time. In a series of documents, Mr Chin'ono raised concerns that powerful individuals were profiting from multi-million dollar deals of essential supplies to fight the Covid-19 pandemic. His bail conditions included the requirement to surrender his passport, to report to the Highlands police station in Harare every Monday and Friday, to reside at his given address in the city and to surrender title deeds for a property he owns.<sup>37</sup>

While the IBAHRI welcome Mr Chin'ono's release, we continue call on the authorities to immediately drop the baseless charges against him.

In addition, his lead lawyer Beatrice Mtetwa, and the Zimbabwean Lawyers for Human Rights have endured harassment by Zimbabwean authorities for carrying out their professional duties. On 18 August 2020, Magistrate Nduna ordered Ms Mtetwa to step down from representing her client Mr Chin'ono. Magistrate Nduna ruled that Ms Mtetwa had posted comments on social media that denigrated the courts and was thus in contempt of court. Ms Mtetwa will appeal these charges. The referenced Facebook page, 'Beatrice Mtetwa and the Rule of Law', is a website created and run by an American documentarist, who made a film with the same title on the importance of the rule of law. Magistrate Nduna has also ordered the Prosecutor-General of Zimbabwe to consider instituting contempt of court proceedings against Ms Mtetwa and has called on the Law Society of Zimbabwe to revoke her licence to practise. The IBAHRI issued a

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<sup>34</sup> The New York Times, 'Media Watchdog Urges Libyan Gov't to Release Reporter', 28 August 2020 <https://www.nytimes.com/aponline/2020/08/28/world/middleeast/ap-ml-libya.html>

<sup>35</sup> Al Arabiya, 'Suspended Libyan GNA Interior Minister Fathi Bashagha arrives in Tripoli', 29 August 2020 <https://english.alarabiya.net/en/News/north-africa/2020/08/29/Suspended-Libyan-GNA-Interior-Minister-Fathi-Bashagha-arrives-in-Tripoli-Sources>

<sup>36</sup> The Guardian, 'Zimbabwean journalist Hopewell Chin'ono is freed on bail', 2 September 2020, [www.theguardian.com/world/2020/sep/02/zimbabwean-journalist-hopewell-chinono-is-freed-on-bail](http://www.theguardian.com/world/2020/sep/02/zimbabwean-journalist-hopewell-chinono-is-freed-on-bail)

<sup>37</sup> CPJ, 'Journalist Hopewell Chin'ono released on bail, with restrictions, in Zimbabwe', 2 September 2020, [//cpj.org/2020/09/journalist-hopewell-chinono-released-on-bail-with-restrictions-in-zimbabwe/](http://cpj.org/2020/09/journalist-hopewell-chinono-released-on-bail-with-restrictions-in-zimbabwe/)

statement<sup>38</sup> expressing grave concern at how judicial independence continues to be under assault in the country and reminding the Zimbabwean authorities that it is the responsibility of the state to ensure the security of lawyers. On 3 September 2020, the Clooney Foundation for Justice, via its TrialWatch initiative, and the IBAHRI called on the Magistrates Court to revoke its decision, or for the decision against Ms Mtetwa to be reversed on appeal, so that she may continue, without impediment, to represent Mr Chin'ono<sup>39</sup>. As the crackdown in Zimbabwe by authorities and law enforcement intensifies, we will continue to monitor this situation closely.

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<sup>38</sup> IBAHRI, IBA and IBAHRI condemn Zimbabwe court's barring of Beatrice Mtetwa from defending Hopewell Chin'ono, 19 August 2020, [www.ibanet.org/Article/NewDetail.aspx?ArticleUid=628473cd-4062-497c-8750-255bc3c46a8a](http://www.ibanet.org/Article/NewDetail.aspx?ArticleUid=628473cd-4062-497c-8750-255bc3c46a8a)

<sup>39</sup> IBAHRI, 'Comment on the call for the prosecution and disqualification of Beatrice Mtetwa in Zimbabwe', 3 September 2020, [www.ibanet.org/Article/NewDetail.aspx?ArticleUid=341f01c7-30b5-41c1-8a34-d22f89441922](http://www.ibanet.org/Article/NewDetail.aspx?ArticleUid=341f01c7-30b5-41c1-8a34-d22f89441922)

#### 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.

##### **India**

On 2 September 2020, Facebook India was summoned before a Parliamentary Committee over alleged failure to take action against anti-Muslim hate speech on the social media platform.<sup>40</sup> Facebook has been accused of going easy on the supporters and politicians from the Bharatiya Janata Party (BJP) and allowing anti-Muslim rhetoric, which violates the company's hate speech policy as well as international human rights norms. Reports suggest that Facebook's head of public policy in the country, Ankhi Das, stated that punishing violations by politicians from Prime Minister Narendra Modi's party could hurt the company's business interests in the country.<sup>41</sup>

Mr T Raja Singh, a member of the BJP party, used Facebook to post remarks including that Rohingya Muslim immigrants should be shot, calling Muslims traitors and threatening to destroy mosques. Following pressures on Facebook, the platform banned Mr Singh's account on the platform.<sup>42</sup> In previous issues of this Bulletin<sup>43</sup>, the IBAHRI reported on how Indian Muslims had been accused of deliberately spreading the virus and subjected to attacks and threats, both on and offline. Government officials endorsed the campaign of hate surrounding the attacks. In April, the General Secretariat of the Organization of Islamic Cooperation (OIC) released a statement expressing deep concern following media accounts portraying anti-Muslim sentiment within political and media circles, as well as on mainstream and social media platforms, with the UN Special Rapporteur on freedom of religion or belief, Ahmed Shaheed, warning against religious hatred and intolerance during Covid-19 outbreak, noting his alarm at the upsurge in incitement to hatred.

As pressures mounts on Facebook to review and enact a solid policy and procedure to tackle hate speech on the platform, the IBAHRI urges Facebook to start considering consistent application without endorsing discriminatory agendas of political movements. We urge the social media company to launch an investigation into the allegations and implement internal procedures to prevent any future instances.

##### **Thailand**

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<sup>40</sup> BBC, 'Facebook caught in India political storm', 3 September 2020, <https://www.bbc.com/news/world-asia-india-53995717>

<sup>41</sup> The Wall Street Journal, 'Facebook, Under Pressure in India, Bans Politician for Hate Speech', 3 September 2020, <https://www.wsj.com/articles/facebook-under-pressure-in-india-bans-politician-for-hate-speech-11599105042>

<sup>42</sup> The Wall Street Journal, n.39

<sup>43</sup> IBAHRI Freedom of Expression Bulletin, Issue 3, 5 May 2020, [www.ibanet.org/Human\\_Rights\\_Institute/Freedom-of-Expression.aspx](http://www.ibanet.org/Human_Rights_Institute/Freedom-of-Expression.aspx)



In previous issues of this Bulletin, the IBAHRI reported on the police crackdown in Thailand against protesters and called for the Thai Government to release those arrested, including the prominent human rights lawyer Arnon Nampa.

Arnon Nampa was released on bail in August. However, on 3 September 2020, a Thai Court agreed with a police request to revoke his bail as Mr Nampa refused to stop his public political activities.<sup>44</sup> The IBAHRI reminds the Thai Government of its international human rights obligations under Article 21 of the International Covenant on Civil and Political Rights (ICCPR), which recognises the right of peaceful assembly. The Thai authorities must stop the harassment of human rights activists, lawyers, journalists and protestors and we strongly urge the Thai authorities to immediately and unconditionally release Arnon Nampa and other protestors.

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<sup>44</sup> South China Morning Post, 'Thailand jails persistent activists Arnon Nampa and Panupong Jadnok over bail terms breach', 3 September 2020, [www.scmp.com/news/asia/southeast-asia/article/3100124/thailand-jail-persistent-activists-arnon-nampa-and](http://www.scmp.com/news/asia/southeast-asia/article/3100124/thailand-jail-persistent-activists-arnon-nampa-and)

## 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.

### **Belarus**

On 13 August 2020, the IBAHRI issued a statement condemning the detention of the media, the use of force against protestors in Belarus, as well as disruptions to the internet over the election period and directly after. However, reports suggest that since 12 August, there have been repeated internet disruptions, in response to the larger protests and law enforcement engagement.<sup>45</sup> According to *Human Rights Watch*, one occurrence of disruption took place on 23 August, when more than 100,000 protestors gathered in Minsk. Mobile internet services were disrupted for over three hours as protestors moved toward the presidential palace and three days later, cellular internet was restricted in Minsk again for about an hour, coinciding with arrests at a protest in the city centre. Ahead of the disruptions, the privately-owned internet service provider A1 notified its users that there would be temporary bandwidth restrictions of the company's 3G networks due to 'requests by the authorities related to ensuring national security'.<sup>46</sup> The authorities have also blocked websites that covered the presidential election, nationwide protests and police brutality.<sup>47</sup> Dozens of sites had been blocked for access by journalists and media outlets and authorities appeared to be blocking censorship circumvention services such as virtual private networks (VPNs), used by millions in Belarus to access the blocked websites.<sup>48</sup>

Digital rights organisation, Access Now, recently issued a statement asserting that private, multinational companies played a direct role in enabling the internet disruptions and censorship in the country.<sup>49</sup> Reports suggest that deep packet inspection (DPI) technology, which enables both invasive privacy breaches and mass censorship, 'was produced by the Canadian company Sandvine, owned by infamous US private equity firm Francisco Partners, and supplied to Belarus as part of a \$2.5 million contract with the Russian technology supplier Jet Infosystems'.<sup>50</sup>

The IBAHRI is concerned to learn of the circumstances and human rights violations in the possible technology used in Belarus at a time when it is both in the public interest and safety for access to reliable, fact-checked information to be readily available. We join with AccessNow and

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<sup>45</sup> Human Rights Watch, 'Belarus: Internet Disruptions, Online Censorship', 28 August 2020, [www.hrw.org/news/2020/08/28/belarus-internet-disruptions-online-censorship](http://www.hrw.org/news/2020/08/28/belarus-internet-disruptions-online-censorship)

<sup>46</sup> Human Rights Watch, n.45

<sup>47</sup> Human Rights Watch, n.45

<sup>48</sup> Human Rights Watch, n.45

<sup>49</sup> AccessNow, 'Francisco Partners-owned Sandvine profits from shutdowns and oppression in Belarus', 3 September 2020, [www.accessnow.org/francisco-partners-owned-sandvine-profits-from-shutdowns-and-oppression-in-belarus/](http://www.accessnow.org/francisco-partners-owned-sandvine-profits-from-shutdowns-and-oppression-in-belarus/)

<sup>50</sup> AccessNow, n.49

other organisations to request an urgent investigation into process and due diligence, if any, undertaken for the technology tools provided by Sandvine for present use in Belarus.