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IBAHRI Freedom of Expression Bulletin

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In response to the arrests of pro-democracy campaigners arrested under the new Hong Kong National Security Law on Monday 10 August, Baroness Francoise Tulkens, Former Vice-President of the European Court of Human Rights and Member of the High-Level Panel of Legal Experts on Media Freedom remarked:

'The arrests of ten pro-democracy campaigners in Hong Kong, including media tycoon, Jimmy Lai, demonstrates another brazen assault on the freedom of expression and the independent media in Hong Kong. It is gravely concerning that the arrests of the activists coincided with the raid of the headquarters at Apple Daily, an independent news outlet, by two hundred police officers. It is important to understand the justification for such use of force, or indeed of the supposed threat posed. It is further disconcerting that the charges the individuals are accused of fall within the realm of the dangerously vague and broad National Security Law. Under this new law, which allows for arbitrary action against dissident voices, "secession", "subversion", "terrorism" and "collusion with foreign forces" incur maximum penalties and these individuals are now facing the possibility of life imprisonment. This action sets a troubling precedent and must be strongly condemned by the international community. The Hong Kong authorities must immediately and unconditionally release all individuals and stop using the law as a tool to encroach on fundamental human rights and the rule of law. Moreover, the authorities must promote, protect and respect the role of a free, independent and pluralistic media in the region and the right to freedom of expression, which is guaranteed for all under international law.'

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.

Brazil

On 24 July 2020, the Brazilian senate passed an amended version of the proposed 'Fake News Law Project', formally known as the Brazilian Law on Internet Freedom, Responsibility and Transparency' (Draft Law No. 2.630/2020).² The bill, which aims to control and limit the spread of 'fake news' and misinformation in the country, is set to be voted on by the Brazilian Chamber of Deputies before being sent to President Jair Bolsonaro.³

In previous issues of this Bulletin, we reported on the bill awaiting to go before the Brazilian senate after two postponements.⁴ The bill contains measures such as the creation of a system of massive surveillance of internet users and disproportionate penalties that directly threaten freedom of expression and opinion as well as respect for online privacy.⁵ The version that was adopted on 24 July contains certain amendments to the original bill.

Under the original bill, messaging service providers were required to store records for at least one year detailing who devised and forwarded every message on their platform.⁶ The adopted amendment reduces the scope of messages to which this applies. Only messages that have been sent by more than five users and reach at least 1,000 users are targeted, and the relevant information is to be stored for three months.⁷ Although this amendment reduces the scope of the traceability requirements, the clause remains problematic for human rights.

The most important amendment, however, concerns user and subscriber registration data. Article 5 of the original bill required all social media and messaging app users to provide a national ID card, a cellphone number registered in Brazil and a passport in the case of foreign phones.⁸ This applied to all content, without any discrimination of the legality, or lack thereof, of

² Center for Democracy and Technology, 'Update on Brazil's Fake News Bill: The Draft Approved by the Senate Continues to Jeopardize Users' Rights', 24 July 2020, cdt.org/insights/update-on-brazils-fake-news-bill-the-draft-approved-by-the-senate-continues-to-jeopardize-users-rights

³ Centre for Democracy and Technology, n.3

⁴ IBAHRI Freedom of Expression Bulletin, Issue 7, 30 June 2020, www.ibanet.org/Document/Default.aspx?DocumentUid=837033bf-bc14-45b0-ab7f-586263e58231

⁵ IBAHRI, n.5

⁶ IBAHRI, n.5

⁷ Center for Democracy and Technology, n.2

⁸ IBAHRI, n.4

the content of the messages.⁹ Under the Senate-approved bill, it is no longer necessary for users to provide their ID card. Instead, the bill provides that messaging platforms and companies 'may' require users to confirm their identity if there are reports of non-compliance with the law, cases of automated or inauthentic accounts, or upon court order.¹⁰ The practical application of this amendment is unclear and ambiguous, leaving room for interpretation and abuse. Media workers, government dissidents and human rights defenders will be disproportionately affected and will see their online privacy jeopardised by the mass surveillance mechanism set out by this bill.¹¹ Journalists, for example, greatly rely on encrypted messaging to communicate with their sources safely and the bill is set to endanger that safe channel.¹²

The text of the draft bill has caused grave concern among international organisations and experts who have collectively joined to call on Brazil to refrain from adopting legal frameworks in dealing with misinformation and disinformation that contravenes freedoms provided by international law.¹³ The IBAHRI joins these organisations to call on Brazil to reject the draft law and invoke a multi-stakeholder approach to inform the creation of a bill that will uphold and respect Brazil's existing obligations to international human rights standards.

Hong Kong

On 6 August 2020, 24 people in Hong Kong were charged for taking part in the annual candlelight vigil remembering the victims of the 1989 Tiananmen Square protests.¹⁴ Pro-democracy activist Joshua Wong was among those charged with 'taking part in an unauthorised assembly'.¹⁵ The event, which has taken place every year on 4 June, was banned this year because of the coronavirus pandemic.¹⁶ To many, the ban also signalled the end of civil liberties in the territory, as it came weeks before the adoption of a new national security law by mainland China, which could see dissidents sent there for trial.¹⁷ Despite the ban, thousands of people gathered to commemorate the massacre, as they believed this could be the last year they could do so. The 24 people who were charged were democracy advocates, including journalists and pro-democracy lawmakers.¹⁸

Thailand

⁹ IBAHRI, n.4

¹⁰ Center for Democracy and Technology, n.2

¹¹ IBAHRI, n.4

¹² IBAHRI, n.4

¹³ IBAHRI, n.4

¹⁴ The New York Times, 'Dozens Charged in Hong Kong for Taking Part in Tiananmen Protest', 6 August 2020, www.nytimes.com/2020/08/06/world/asia/hong-kong-tiananmen-protest.html

¹⁵ BBC, Hong Kong: Joshua Wong among 24 charged over Tiananmen vigil, 7 August 2020, <https://www.bbc.co.uk/news/world-asia-china-53689265>

¹⁶ The New York Times, n.14

¹⁷ The New York Times, n.14

¹⁸ The New York Times, n.14

Police authorities are said to be targeting dozens of protestors including lawyers, pro-democracy activists and students in relation to their involvement in protests, including the 'Free Youth' rally which took place in the country's capital, Bangkok on 18 July 2020.¹⁹ On 5 August 2020, police in Bangkok summoned five organisers of the student-led anti-government protests for questioning.²⁰ The five organisers, including high-profile human rights lawyer Arnon Nampa, were accused of violating the coronavirus emergency decree that has been in place since March.²¹ On 7 August 2020, police arrested Arnon and charged him with eight violations under multiple laws and emergency measures enacted in response to the Covid-19 pandemic.²² The most serious charge he is accused of is sedition, which carries a maximum seven year prison term, alongside assembly with intention to cause violence, violating the ban on public gatherings, and other criminal offenses. The next day, police received approval from the Bangkok Criminal Court to place Arnon in pre-trial detention at the Bangkok Remand Prison.²³

The protests, which have swept the country since mid-July, demand political reform, including the resignation of the country's Prime Minister, Prayuth Chan-ocha, and constitutional reforms that were drafted by the military and maintain the army's influence on the political system.²⁴ The rallies have spread all over the country and have been taking place in a near-daily fashion.²⁵

Growing criticism against the government's use of the coronavirus emergency decree alleges it is used to silence political dissent. In response, the government said last month that it would only be used as a measure against the pandemic and that, from August onwards, it would not be used to prevent political rallies.²⁶ Last month, however, six protest leaders and political activists in two regions were summoned by the police and accused of breaching the decree.²⁷ The IBAHRI is concerned that the Thai Government and authorities have repeatedly used the Covid-19 pandemic as a pretext for harassing and taking criminal action against demonstrators who participate in peaceful rallies and to ban anti-government gatherings. The use of emergency measures to contain the coronavirus should be implemented in line with international human rights standards, including the International Covenant on Civil and Political Rights (ICCPR) that Thailand ratified in 1996, which protects the rights to freedom of expression and peaceful assembly and with full consideration for the principles of legality, necessity and proportionality as provided for in the Siracusa Principles. Considering that Thailand has not recorded a

¹⁹ Human Rights Watch, 'Thailand: Drop Charges, Release Democracy Activists', 8 August 2020, www.hrw.org/news/2020/08/08/thailand-drop-charges-release-democracy-activists

²⁰ Reuters UK, 'Thai police summon protest leaders for breaching coronavirus emergency law', 5 August 2020 uk.reuters.com/article/uk-thailand-protests/thai-police-summon-protest-leaders-for-breaching-coronavirus-emergency-law-idUKKCN2511PN

²¹ Reuters, n.20

²² Article 19, Thailand: Government escalates crackdown on peaceful protesters, 7 August 2020, www.article19.org/resources/thailand-government-escalates-crackdown-on-peaceful-protesters/

²³ Human Rights Watch, n.19

²⁴ Reuters, n.20

²⁵ Reuters, n.20

²⁶ Reuters, n.20

²⁷ Reuters n.20

domestically transmitted case of Covid-19 in more than two months,²⁸ the derogations of the state's human rights obligations to prevent the spread of Covid-19 are not proportionate and should be limited to those strictly required by the exigencies of the situation. The IBAHRI calls for the immediate and unconditional release of those arrested, including prominent human rights lawyer Arnon Nampha, and will continue to monitor this situation closely.

Turkey

In the last issue of this Bulletin, the IBAHRI reported on a draft bill proposed to the Turkish parliament with the aim of strengthening state control of social media platforms, expressing concern at the contents of the bill, which aims to control and further restrict rights to free expression as well as calling for the draft bill to be rejected and consider that any such bill will require compliance with international human rights standards.

On 29 July 2020 the Turkish parliament adopted the Law on the Arrangement of Internet Publication and Combating Crimes Committed Through These Publications, which will regulate those social media platforms with over one million daily users, including Facebook, Twitter and YouTube. At present, the law expected to take effect on 1 October 2020, requires foreign social media companies to establish a legal representative in the country and store data on local servers. These local representatives and servers are much more vulnerable to state surveillance and coercion. Companies that do not comply face five stages of escalating penalties, including fines, advertising bans and bandwidth limitations of up to 90 per cent. The law also outlines a new legal process for removing content that violates Turkish law, which contains several provisions that defy international human rights norms regarding freedom of expression. Companies that do not remove content deemed 'offensive' within 48 hours can face fines exceeding \$700,000.²⁹

Ruling party AKP legislator chair Ozlem Zengin said the bill aimed to balance freedoms and obligations. 'Our first priority is never the closure of social media providers. We aim to end insults, bad language and harassment on social media.'³⁰ The IBAHRI remains concerned at successful attempts by the Turkish government to censor spaces, both online and offline, crushing dissent and presenting another route for the arbitrary targeting of individuals.

²⁸ Article 19, n.22

²⁹ Freedom House, Turkey: Passage of Social Media Law Curtails Human Rights Online, 30 July 2020, freedomhouse.org/article/turkey-passage-social-media-law-curtails-human-rights-online

³⁰ Reuters, Factbox: Turkey's new rules for social media platforms, 29 July 2020, uk.reuters.com/article/uk-turkey-security-socialmedia-factbox/factbox-turkeys-new-rules-for-social-media-platforms-idUKKCN24U21D

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.³¹ 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.

Canada

On 31 July 2020, Canada launched their voluntary 'Covid Alert' contact tracing app in efforts to slow the spread of the coronavirus. The app is designed to track the location of phones relative to each other, without collecting personal data centrally and using digital identifications unique to each device. Users will be notified if their phones have recently been near the phone of a person who later volunteers that they have tested positive for Covid-19. Once a diagnosed person signs into the app, a notification is sent to anyone with the app installed who has been within two

³¹ 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

metres of the ill person for more than 15 minutes within the previous two weeks. The app will then encourage users to call their provincial health services for advice on what to do, once a user gets a notification that someone nearby has tested positive for Covid-19.³²

The IBAHRI is encouraged that the app incorporates privacy by design and that Federal and Ontario privacy commissioners have assessed privacy concerns associated with the app. Following their review, commissioners shared that the app meets all of their recommendations and they support its use. Daniel Therrien, Privacy Commissioner of Canada said that ‘Canadians can opt to use this technology knowing it includes very significant privacy protections’.³³

However, the IBAHRI is concerned to learn that the Canadian government stores users’ IP addresses for a period of three months to two years, in what it says is a standard protocol for protecting against cyber-attacks. As reported in the last issue of this Bulletin, Android users must turn on location services to use the Bluetooth function, which is also applicable here. We welcome reports that Canadian Government officials have been in contact with Google about the potential to turn off location services in order to use the Android app.³⁴

The IBAHRI applauds the efforts taken by the Canadian government to protect the privacy and rights of individuals in the creation of their contact tracing app. Nevertheless, we urge the government to go take steps to further ensure and commit to only storing users IP addresses for a limited time while efforts to fight the virus are ongoing and include a sunset clause to ensure the app will be dismantled once such efforts are no longer necessary. The IBAHRI reminds governments that all efforts in the fight against the virus must be taken in line with international human rights laws and commitments and any derogations should be necessary, proportionate and time limited.

Northern Ireland

On 31 July 2020, Northern Ireland launched their Covid-19 contact tracing app, ‘StopCovid NI’. By 5 August 2020, the Democratic Unionist Party (DUP) reported that the app has been downloaded 170,000, meaning almost 20 per cent of the adult population in Northern Ireland had downloaded the app.³⁵ The app runs alongside a phone-based contact tracing programme already in place and identifies those at risk of infection. After a positive Covid-19 test result, a person will receive a unique code by text message. That message will invite the person to enter the code if they use the app. Entering the code will trigger a Bluetooth handshake, allowing the app to notify any other user who has been nearby for long enough to be at risk of infection.³⁶

As reported in the last issue of this Bulletin, we are encouraged that the governments of Northern Ireland and Ireland worked together and used the same software development company to

³² National Post, ‘Completely voluntary’ COVID-19 contact tracing app ready for Canadians to download’, 31 July 2020, <https://nationalpost.com/health/canadians-can-now-download-new-covid-19-exposure-alert-smartphone-app>

³³ CTV News, ‘Canadian privacy watchdogs support COVID-19 exposure app’, 3 August 2020, www.ctvnews.ca/health/coronavirus/canadian-privacy-watchdogs-support-covid-19-exposure-app-1.5049847

³⁴ National Post, n.32

³⁵ BBC, ‘Coronavirus: Number of Covid-19 cases in NI passes 6,000’, 5 August 2020, www.bbc.co.uk/news/uk-northern-ireland-53668615

³⁶ BBC, ‘Covid-19: Tracing app is released for NI’, 30 July 2020, www.bbc.co.uk/news/uk-northern-ireland-53599514

ensure their contact tracing apps work across their borders, which is essential to guarantee their effectiveness. The IBAHRI is further encouraged that the developers of the app assert that they understand it is essential to explain privacy to users. They highlighted that it is clear in the set-up stages of the app what data is stored: the number of app users, the number of people who enter their HSCresult code and the number of people in Northern Ireland that have been exposed to Covid-19.³⁷

While the IBAHRI commends the government of Northern Ireland in their efforts to create a secure and effective contact tracing app to halt the spread of the Covid-19 virus, we are concerned that apps leave out vulnerable sections of society and that the effectiveness of contact tracing apps is yet to be proven. Therefore, we urge all governments to not only invest and grant resources to contact tracing apps, but to also do so in manual tracing, ensuring individuals have access to independent, fact-checked information in order to protect themselves and others, as well as ensuring their health systems are adequately resourced to support individuals who become ill with the virus.

United States

Virginia is the first state in the United States to release a state-wide Covid-19 tracing app, 'CovidWise', using the decentralised technology developed by Google and Apple. It relies on Bluetooth technology that notifies users if they have been exposed to someone with the coronavirus. State officials emphasised that the app is an 'exposure notification' app, not an app for direct contact tracing and it allows users to voluntarily and anonymously report positive Covid-19 test results, as well as alert other app users who have been near them, rather than tracking users' identity and location. The Bluetooth technology creates anonymous 'tokens', or random sequences of numbers, and exchanges them with other nearby users. The app uses that information to inform users if they have been near someone who has reported a positive test. The Virginia Department of Health shared that officials chose to use the Bluetooth-based app, rather than location-based contact tracing technology some other states have opted for, to ensure the trust of their citizens in response to privacy and data concerns.³⁸

The IBAHRI applauds the State of Virginia for creating an app with considering privacy in design and using a decentralised model, which is favoured by privacy campaigners. These efforts demonstrate that state officials understand public trust is essential for contact tracing apps to be effective.

However, the IBAHRI are concerned that the lack of national standards in the United States for testing and contact tracing and the lack of coordinated approach across the United States may hamper efforts made by the State of Virginia. We join the National Academy for State Health Policy in calls for the federal government to produce guidelines on Covid-19 testing, to coordinate

³⁷ Design Week, 'Northern Ireland's contact tracing app lets people "take control"', 5 August 2020, <https://www.designweek.co.uk/issues/3-9-august-2020/northern-ireland-contact-tracing-app/>

³⁸ NPR, 'Virginia Unveils App To Aid Contact Tracing', 05 August 2020, <https://www.npr.org/sections/coronavirus-live-updates/2020/08/05/899414953/virginia-unveils-app-to-aid-contact-tracing>

national testing efforts enhance the efforts made by states.³⁹ As reported in the previous issues of this Bulletin, governments must ensure contact tracing apps work across frequently crossed borders, for them to be effective. Therefore, we urge the State of Virginia to work in collaboration with local States and lobby the federal government to create a coordinated national tracing programme for Covid-19.

Technology companies – Google

Following on from our report in the last issue of this Bulletin regarding the discovery of a fault in Google's Android operating system that may allow them to determine the locations of app users, we are further alarmed by the privacy concerns highlighted by a team of researchers at Trinity College. The researchers found a surprising amount of data was being communicated from Android systems in the background. The issue, the researchers said, is not the apps themselves, rather that the data gathered by the Android operating system was problematic. Google Play Services, which is an integral part of the underlying Android platform, connects everything together.⁴⁰

Google Play Services requires extensive permissions to access the sensors on users' phones, from body sensors, location and physical activity data to call logs, calendar and storage. Google Play Services needs access to them all to allow smartphones to work as expected. If users want to download an app from the Google Play Store, they need Google Play Services to do so. Google Play Services gathers data in the background and sends information to Google at regular intervals. The data gathered includes the phone's IP address, WiFi MAC address, IMEI number, SIM serial number, phone number and Gmail address. It can also pick up other data from apps on users' phones, such as banking, dating or health apps.⁴¹

The researchers looked into the data Google processes for all apps and what can be inferred from it. Daragh O'Brien, the Founder and Director of Castlebridge Associates, one of Ireland's leading Data Protection and Data Governance training and consulting firms said: 'What this is exposing is the way Google does business with the Android operating system, and the type of data they get. The key question is how transparent that is, and are people aware of the level of data that is exchanged with Google using Android'.⁴²

Industry experts say that gathering such data is standard for ensuring users have the most up-to-date software on their devices and Google says it anonymises data it takes from phones, so users cannot be identified. However, the researchers explained that if users download the app and disable Google Play Services, it would fundamentally undermine the purpose of contact tracing apps, rendering them ineffective. One of the authors of the report, Professor Doug Leith, suggested Google build in a 'quiet' button that would allow users to pause the data being

³⁹ The National Academy for State Health Policy, 'COVID-19 Testing Is Critical, but Lacks Federal Guidelines and Protocols', 29 June 2020, <https://www.nashp.org/covid-19-testing-is-critical-but-lacks-federal-guidelines-and-protocols/>

⁴⁰ The Irish Times, 'Covid Tracker app throws spotlight on Google data harvesting', 30 July 2020, <https://www.irishtimes.com/business/technology/covid-tracker-app-throws-spotlight-on-google-data-harvesting-1.4315739>

⁴¹ The Irish Times, n.40

⁴² The Irish Times, n.40

communicated with Google's services. That would solve one issue for users, and allow them to use Covid-19 contact tracing apps without worrying about what data was being gathered by their phone.⁴³

The IBAHRI calls on Google to respond to the researchers' discoveries and work to improve the Google Play operating system to ensure users have greater control over the collection of their data while still enabling them the option of using contact tracing apps that are part of governments' efforts to slow the spread of the Covid-19 virus.

⁴³ The Irish Times, n.40

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 3 August 2020, an Algerian journalist, Khaled Drareni, was tried at the Sidi M'hamed court in Algiers alongside two Hirak leaders on charges of 'provoking an unarmed rally' and 'undermining national unity'. Samir Belarbi and Slimane Hamitouche were present at the court while Drareni testified via video conference from Kolea prison. The public prosecutor sentenced him to four years in prison and 100,000 dinars (665 euros) in fines.⁴⁴ Khaled Drareni was arrested from his home on 27 March 2020 and was held in police custody for two days before he was brought in front of a judge.

Prior to these events, on 7 March 2020, police arrested Drareni, Hamitouche and Belarbi at a demonstration in Algiers, and three days later they were brought before the state prosecutor. Mr Drareni was released and forced to sign a statement in which he was banned to cover anti-government protests while two other activists remained detained. Despite the ban, Mr Drareni continued to report on protests, which later led to his second arrest.⁴⁵

Drareni has been working for TV5Monde, a French television network and served as a correspondent for Reporters Without Borders (RSF). He also served as the editor of a local news outlet, the Casbah Tribuneas. His trial was held behind closed doors in the pretext of the pandemic.

Since the Hirak movement in 2019, attacks on media freedom and freedom of speech have increased in Algeria. Journalists and media workers who cover the protests often face lengthy prison terms. RSF ranked Algeria 146 in the 2020 World Press Freedom Index.⁴⁶

⁴⁴ Inter-Lignes, Tribunal de Sidi M'hamed: le Procureur requiert 4 ans de prison ferme contre Drareni, Hamitouche et Belarbi, 3 August 2020, www.inter-lignes.com/tribunal-de-sidi-mhamed-le-procureur-requiert-4-ans-de-prison-ferme-contre-drareni-hamitouche-et-belarbi/

⁴⁵ Reporters without Borders, Journalist and RSF correspondent Khaled Drareni imprisoned in Algeria, 29 March 2020, <https://cpi.org/2020/03/rsf-correspondent-khaled-drareni-sentenced-to-inde/>

⁴⁶ Reporters without Borders, <https://rsf.org/en/algeria>

The IBAHRI is dismayed by the ill-treatment of journalists and other media workers in Algeria and joins RSF in calling on the Algerian authorities to drop all charges against Khaled Drareni and demand his immediate release, while urging the Algerian government to stop the crackdown on independent journalists and respect the independence and freedom of the media.

Colombia

On 2 June 2020, Colombian Vice President Marta Lucia Ramirez filed a criminal defamation suit against journalist Jeremy McDermott.⁴⁷ Jermeiy McDermott is a British national who works as co-director and legal representative of the InSight Crime, a Medellín-based news organisation that publishes investigative stories about organised crime in Colombia and Latin America.⁴⁸

In March 2020, an article was published by the news outlet where Mr McDermott links the Vice President's husband, Alvaro Rincon, to a suspected drug trafficker.⁴⁹ In an interview in the article, Rincon admitted that he had worked with the suspected drug trafficker, however said he was not aware of the allegations against him at the time.⁵⁰ During his investigation for the article, McDermott interviewed Vice President Ramirez but did not make any allegations of illegal activity implicating her.⁵¹

McDermott was notified of the pending suit by the Colombian attorney general's office on 24 July 2020. The lawsuit accuses the journalist of damaging the 'moral integrity, good name, dignity and honor' of Vice President Ramirez.⁵² If convicted, McDermott could face '16 to 54 months in prison and a fine of up to about \$375,000, according to Article 220 of Colombia's penal code'.⁵³ A lawyer for the Vice President, Victor Mosquera Marin, made the announcement on 29 July 2020 via Twitter that: 'By precise instructions from Marta Lucía Ramírez and given the clarification made by Jeremy McDermott in the media and on Twitter today, we consider the controversy to be over and we immediately move to withdraw the criminal complaint'. Vice President Ramírez confirmed that she would be withdrawing the criminal complaint on her on Twitter account⁵⁴.

Hong Kong

On 10 August 2020, media tycoon Jimmy Lai was arrested by Hong Kong authorities in a raid on Apple Daily, Hong Kong's largest pro-democracy daily newspaper.⁵⁵ Lai, an outspoken funder of

⁴⁷ Committee to Protect Journalists, 'Colombian vice president files criminal defamation suit against journalist', 28 July 2020 <https://cpj.org/2020/07/colombian-vice-president-files-criminal-defamation-suit-against-journalist>

⁴⁸ Committee to Protect Journalists, n.44

⁴⁹ Committee to Protect Journalists, n.44

⁵⁰ Committee to Protect Journalists, n.44

⁵¹ Committee to Protect Journalists, n.44

⁵² Committee to Protect Journalists, n.44

⁵³ Committee to Protect Journalists, n.44

⁵⁴ InSight Crime, Colombia VP Drops Criminal Complaint Against InSight Crime, 29 July 2020, www.insightcrime.org/news/brief/colombia-vice-president-drops-lawsuit

⁵⁵ The Guardian, 'Hong Kong media tycoon Jimmy Lai arrested under new national security law', 10 August 2020 www.theguardian.com/world/2020/aug/10/hong-kong-media-tycoon-jimmy-lai-arrested-over-alleged-foreign-collusion

the pro-democracy movement, was arrested alongside six others on suspicion of ‘collusion with foreign forces’ and conspiracy to commit fraud.⁵⁶ Reports claimed that the raid was undertaken by more than 100 police officers at the headquarters of his media group⁵⁷. On what has been called ‘the day press freedom officially died’ in Hong Kong, police handcuffed Mr Lai and marched into Apple Daily’s offices, confiscating documents and searching through journalists’ desks.⁵⁸ Later that day, the city’s authorities held a press conference about the search but banned various news outlets from attending: Reuters, Agence France-Presse, the Associated Press, and RTHK.⁵⁹

Mr. Lai’s arrest comes after Mainland China imposed a national security law outlawing sedition and secessionist activities, and strongly restricting freedom of speech in the city.⁶⁰ The IBAHRI has reported on the law in previous issues, which further criminalises dissent and cracks down on free speech and punishes anything it deems to be ‘terrorism’, ‘secession’, ‘subversion’ or ‘collusion with foreign forces’. This is the first time the new law is used against the media.⁶¹ Mr Lai faces three to ten years’ imprisonment or up to life imprisonment if the offence is found to be ‘of a grave nature’.⁶² It is also possible for the trial to take place in China, which could have Mr Lai face the death penalty.⁶³ As one of the city’s most respected and involved pro-democracy advocates, Mr Lai is already facing charges over his involvement in last year’s pro-democracy protests and for attending the Tiananmen Square massacre vigil.⁶⁴ The IBAHRI condemns these arrests and calls for all defendants to be released immediately.

India

In recent months, over 50 journalists have been arrested, received police complaints or have been physically assaulted in what has been a conscious effort by the Indian government to clamp down on free press.⁶⁵ The majority of those facing prosecution are independent journalists reporting from rural India.⁶⁶

India, which struggles with being one of the countries dealing with a major outbreak of coronavirus in the world, has been a particularly hostile environment for journalists and media

⁵⁶ The Guardian, n.52

⁵⁷ Hong Kong Watch, Patten: Arrest of Jimmy Lai “most outrageous assault yet” on Hong Kong’s free press, 10 August 2020, www.hongkongwatch.org/all-posts/2020/8/10/patten-arrest-of-jimmy-lai-most-outrageous-assault-yet-on-hong-kongs-free-press

⁵⁸ The Guardian, n.52

⁵⁹ The Guardian , n.52

⁶⁰ The Guardian, n.52

⁶¹ The Guardian , n.52

⁶² The Guardian, n.52

⁶³ Reporters without Borders, Hong Kong: RSF denounces arrest of Apple Daily founder, who risks life imprisonment under National Security Law, 10 August 2020, rsf.org/en/news/hong-kong-rsf-denounces-arrest-apple-daily-founder-who-risks-life-imprisonment-under-national

⁶⁴ The Guardian, n.52

⁶⁵ The Guardian, ‘India arrests dozens of journalists in clampdown on critics of Covid-19 response’, 31 July 2020 www.theguardian.com/global-development/2020/jul/31/india-arrests-50-journalists-in-clampdown-on-critics-of-covid-19-response?CMP=Share_iOSApp_Other

⁶⁶ The Guardian, n.62

workers. Predominantly, the Indian government's attempts at curtailing media freedom target media coverage critical of the handling of the Covid-19 pandemic. Om Sharma, a journalist working with a Hindi daily newspaper, faces charges of spreading false news after broadcasting a Facebook live that showed stranded workers in need of food during the country's lockdown.⁶⁷ The charges against Mr Sharma and five other journalists are set to be dropped after the Committee to Protect Journalists wrote to the Himachal Pradesh government earlier this month.⁶⁸

In Jammu and Kashmir, journalists have alleged physical assault by the police.⁶⁹ Mushtaq Ahmed Ganai, a reporter with the Kashmir Observer, was slapped and beaten with sticks by the police on 11 April. The police then arrested him and charged him with disobedience under the Epidemic Diseases Act.⁷⁰ In addition to the oppression media workers are experiencing, they have had their access to lawyers limited and their hearings before court postponed because of the lockdown.⁷¹

Iran

On 29 July 2020, Gholamhossein Ismaili, a spokesperson for Iranian judiciary announced in a news conference that journalist Ruhollah Zam has launched his appeal against his sentence to the death penalty to the Iranian Supreme Court where judges will issue the final verdict.⁷²

In the previous issue of this Bulletin, IBAHRI reported that on 30 June 2020, Ruhollah Zam, an Iranian journalist and government dissident, was convicted of 'corruption on earth' and sentenced to death by infamous Judge Abolqasem Salevati at the 15th branch of Tehran's Revolution Court. The IBAHRI continues to monitor this case closely.

Libya

On 4 August 2020, the Committee to Protect Journalists reported that Ismail Abuzreiba al-Zway, a freelance photojournalist had been sentenced to 15 years in jail by a secret Military Court in Benghazi. Mr Al-Zway was reportedly not allowed to contact his lawyer during the secret trial or notify his family about the occurrence of the trial, as ordered by the court.⁷³

Ismail Abuzreiba al-Zway started his career as a photojournalist during the 2011 uprising. He has published numbers of articles and reports on Ajdabiya's media channel and is currently the chairman of the Libyan Club for Culture and Dialogue.⁷⁴ Al-Zway has been held in Al-Kwayfiya prison, in the suburbs of Benghazi, since he was detained on 20 December 2018. Al-Zway was detained for allegedly working for Al-Nabaa, a privately owned Libyan news channel broadcast

⁶⁷ The Guardian, n.62

⁶⁸ The Guardian, n.62

⁶⁹ The Guardian, n.62

⁷⁰ The Guardian, n.62

⁷¹ The Guardian, n.62

⁷² Journalism is Not a Crime, Zam's appeal sent to Supreme Court, 29 July 2020 <https://www.journalismisnotacrime.com/fa/news/3933/>

⁷³ Cairo Institute for Human Rights, Libya: Photojournalist Ismail Al-Zoui sentenced to 15 years of prison after unfair Trial, 3 August 2020, [https://cihrs.org/libya-photojournalist-ismail-al-zoui-sentenced-to-15-years-of-prison-after-unfair-trail/?lang=en&fbclid=IwAR2VPf_KPjcd9TawdWJD3Er4N9X0PVxt9dSCiWjvqvK3e6VyaY2d6bgMKU](https://cihrs.org/libya-photojournalist-ismail-al-zoui-sentenced-to-15-years-of-prison-after-unfair-trial/?lang=en&fbclid=IwAR2VPf_KPjcd9TawdWJD3Er4N9X0PVxt9dSCiWjvqvK3e6VyaY2d6bgMKU)

⁷⁴ Cairo Institute for Human Rights, n.73

from Turkey that supports terrorism. Although Al-Zway's trial took place in May 2020, his sentence was only communicated a week ago.

The IBAHRI strongly condemns the sentencing of Al-Zway and demand for his immediate release. The arbitrary detention and consequently unjust sentencing amount to serious rights violations of the right to a fair trial protected under Article 14 of the International Covenant on Civil and Political Rights (ICCPR), and General Comment No. 13 of the UN Human Rights Committee,⁷⁵ notably with regards to the establishment of a military court or other special judicial bodies, in addition to violating Article 7 (right to a fair trial) and Article 26 (Duty to Guarantee Independence of Courts) of the African Charter on Human and Peoples' Rights.

Malaysia

On 4 August 2020, Malaysian police raided Al-Jazeera's Kuala Lumpur office and seized two computers in an ongoing case following the broadcast of a documentary reporting on the situation of migrant workers in Kuala Lumpur during the Covid-19 pandemic.⁷⁶ In previous issues of this Bulletin, the IBAHRI reported that Malaysian authorities had interrogated the six journalists who were behind the documentary, titled 'Locked Up in Malaysia's Lockdown', and later accused them of sedition, defamation and violation of the country's Communication and Multimedia Act.⁷⁷ We also reported on the arrest and pending deportation of Mohammed Rayham Kabir, the Bangladeshi worker who had appeared in the documentary.⁷⁸ The recent raid and seizure is seen as a 'troubling escalation' of the case by Al-Jazeera, who urges Malaysian authorities to end the investigations.⁷⁹

The measures taken by the Malaysian authorities greatly jeopardise the existence of a free press and stifle freedom of expression in the country. These freedoms, which are fundamental human rights, are protected by the Federal Constitution of Malaysia, the ASEAN Human Rights Declaration, the International Covenant on Civil and Political Rights, and the Universal Declaration of Human Rights.

Mexico

On 2 August 2020, Mexican reporter Pablo Morrugares was shot and killed in Iguala.⁸⁰ Mr. Morrugares, who was the founder and editor of the website PM Noticias, was shot over 50 times

⁷⁵ General Comment No. 13: Equality before the courts and the right to a fair and public hearing by an independent court established by law (Art. 14), UN Human Rights Committee, 13 April 1984, www.legislationline.org/download/id/4093/file/UN_Equality_before_courts_General_Comment_13_1984.pdf

⁷⁶ Committee to Protect Journalists, 'Malaysian police raid Al-Jazeera's office, seize computers in escalating legal harassment', 4 August 2020 <https://cpj.org/2020/08/malaysian-police-raid-al-jazeeras-office-seize-computers-in-escalating-legal-harassment>

⁷⁷ IBAHRI Freedom of Expression Bulletin, 28 July 2020, www.ibanet.org/Document/Default.aspx?DocumentUid=629677e9-274b-4dd9-92e7-e35ddc418170

⁷⁸ IBAHRI, n.77

⁷⁹ Committee to Protect Journalists, n.76

⁸⁰ Committee to Protect Journalists, 'Mexican journalist Pablo Morrugares killed in Iguala', 4 August 2020, <https://cpj.org/2020/08/mexican-journalist-pablo-morrugares-killed-in-iguala>

by two armed men who entered the restaurant where he was on the night of 2 August 2020.⁸¹ The gunmen left the scene immediately after the attack that instantly killed Morrugares and the police officer who was assigned to him for protection. Mr Morrugares was murdered while enrolled in a federal protection programme for journalists.⁸² He was enrolled in the program in 2016 after he and his wife were targets of a similar attack in Iguala.⁸³ PM Noticias generally covered local and regional politics as well as crime in Iguala and in the whole state of Guerrero.⁸⁴ Mr Morrugares had allegedly been threatened two months before the attack by a criminal gang in a Facebook video and, last month, had been threatened on a 'narcomanta', a banner used to symbolise threats by criminal gangs.⁸⁵ The other two journalists to be murdered this year in Mexico were María Elena Ferral Hernández, who was gunned down in the eastern state of Veracruz on 30 March, and Jorge Miguel Armenta Ávalos, gunned down in the northwestern state of Sonora on 16 May. Armenta was also receiving police protection⁸⁶. Mexico is ranked 143rd out of 180 countries and territories in RSF's 2020 World Press Freedom Index⁸⁷.

The IBAHRI joins CPJ and RSF in requesting that the murder of Pablo Morrugares be thoroughly investigated and will continue to monitor this situation.

Morocco

Previously, the IBAHRI reported on illegal surveillance conducted by Moroccan authorities against journalist, Omar Radi. On 29 July 2020, the National Brigade of Judicial Police arrested Mr Radi and transferred him to Casablanca Court of Appeal on charges undermining state security by receiving funding from foreign countries and aiding foreign spies under Articles 191 and 206 of the Moroccan penal code⁸⁸ which carries a fine of 1,000 to 10,000 dirhams (\$107 to \$1,071) and one to five years in prison. Mr Radi was also charged with rape and if convicted of sexual assault under Articles 485 and 486, he could face up to ten years in prison.

Moroccan authorities have a history of harassment against journalists and critics, which extends to fabrication of baseless charges. In a similar case in 2018, Taoufik Bouachrine, publisher of the independent newspaper Akhbar al-Youm, was arrested and detained for alleged 'sexual assault, trafficking, and rape charges'. It was widely believed those charges were linked to his criticism of the government⁸⁹ and Afaf Bernani, who was named as one of Bouachrine's victims, was imprisoned in April 2018 after she denied the allegations and accused Moroccan authorities of

⁸¹ Committee to Protect Journalists, n.80

⁸² Committee to Protect Journalists, n.80

⁸³ Committee to Protect Journalists, n.80

⁸⁴ Committee to Protect Journalists, n.80

⁸⁵ Committee to Protect Journalists, n.80

⁸⁶ Reporters without Borders, Journalist and bodyguard gunned down in southern Mexico, 3 August 2020, <https://rsf.org/en/news/journalist-and-bodyguard-gunned-down-southern-mexico>

⁸⁷ Reporters without Borders, <https://rsf.org/en/mexico>

⁸⁸ Moroccan Penal Code, www.refworld.org/docid/54294d164.html

⁸⁹ Committee to Protect Journalists, Journalist Omar Radi arrested, charged in Morocco, 29 July 2020, cpi.org/2020/07/journalist-omar-radi-arrested-charged-in-morocco

falsifying her testimony.⁹⁰ Mr.Radi's lawyers have denied all allegations against him. He is being held in Casablanca prison, and his trial is set to begin on 22 September 2020. This is the tenth time since 24 June 2020 that Radi has been summoned and detained by Moroccan authorities as he has been frequently detained for various allegations including 'foreign interference, public intoxication, insult, and filming without permission'.⁹¹

All new accusations against Omar Radi have surfaced a month after the damning Amnesty International investigatory report, which accused the Moroccan government of implementing illegal surveillance measures against Omar Radi, and other human rights defenders, was published. Omar Radi is a human rights defender and an award-winning investigative journalist who is recognised for his public criticism of Morocco's human rights violations.

The IBAHRI urges Moroccan authorities to immediately release Omar Radi and stop the campaign of criminalisation against journalists, media workers and government dissenters and concerningly could create a chilling effect on those who have undertaken investigative reporting.

⁹⁰ Committee to Protect Journalists, n.89

⁹¹ Committee to Protect Journalists, n.89

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.

Benin

On 7 July 2020, Benin's High Authority for Broadcasting and Communication issued an order stipulating that all online outlets 'without authorisation' immediately stop publication or face sanctions.⁹² This blanket ban on online media and news websites without authorisation amounts to censorship, in what is a big attack to the free press in the country.

The order alleges that publication without authorisation is in breach of the country's 2015 Information and Communication Code.⁹³ Article 252 of the Code states that 'a website providing audiovisual communication and print media services intended for the public is subject to the authorization' of the regulator.⁹⁴ The High Authority previously issued a similar order in 2017.⁹⁵

The order has left journalists and media workers puzzled as to how to move forward with their work, as the process for authorising online media began in May but was halted by the High Authority.⁹⁶ The IBAHRI notes that this move is especially worrying ahead of the presidential elections scheduled for early 2021.⁹⁷

⁹² Committee to Protect Journalists, 'Benin regulator orders online media 'without authorization' to halt publication', 4 August 2020 <https://cpi.org/2020/08/benin-regulator-orders-online-media-without-authorization-to-halt-publication>

⁹³ Committee to Protect Journalists, n.92

⁹⁴ Committee to Protect Journalists, n.92

⁹⁵ Committee to Protect Journalists, n.92

⁹⁶ Committee to Protect Journalists, n.92

⁹⁷ Committee to Protect Journalists, n.92

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.

Ethiopia

On 16 July 2020, AccessNow reported that the government of Ethiopia, on 14 July 2020, restored partial internet access to the country, after digitally cutting it off for two weeks following protests demanding justice for the killing of Oromo musician, Haacaaluu Hundeessaa. In issue one of this Bulletin, the IBAHRI reported how earlier this year, a communication ban during the Covid-19 pandemic had been imposed in Ethiopia, a clear contravention of the country's obligations under international human rights law and in the last issue, we expressed concern at the partial shutdown imposed in response to protests. Joining with AccessNow, the IBAHRI reiterates that the Ethiopian government must figure out sustainable and just solutions to the factors that cause recurrent and generational violence and trauma in the country, especially during the Covid-19 pandemic.

Jammu and Kashmir

5 August 2020 marked one year since the decision to abrogate Article 370 of the Indian Constitution, revoking the constitutional status of Jammu and Kashmir. The past year has been turbulent for the region, resulting in an increase of human rights violations and removal of basic rights of citizens. Thousands of political activists, journalists, lawyers and human rights defenders were taken into custody during this time, with some still being detained a year later. On 3 August 2020, an order was issued by the New Delhi government to impose a full curfew for two days throughout the territory ahead of the anniversary to avoid protests and unrest. The Covid-19 pandemic has made access to the internet crucial for information and has been known to disproportionately impact citizens who do not have access to up to date, fact checked information from accurate sources. However, the authorities have only barely complied with Supreme Court orders in January 2020 to treat access to the internet as a fundamental right, permitting only slow-speed 2G mobile internet services.⁹⁸ In a statement released on 4 August 2020, a group of UN experts condemned the alarming human rights situation in the region noting particular concern 'that during the Covid-19 pandemic, many protestors are still in detention and internet restrictions remain in place'⁹⁹ and requesting urgent action. Reporters without Borders noted how the removal of digital rights and right to information during this time has had a damning impact on the region noting: "Drastic controls on information, obstructing the dissemination of

⁹⁸ Human Rights Watch, India: Abuses Persist in Jammu and Kashmir, 4 August 2020, www.hrw.org/news/2020/08/04/india-abuses-persist-jammu-and-kashmir

⁹⁹ OHCHR, UN experts call for urgent action to remedy "alarming" human rights situation in Jammu and Kashmir, 4 August 2020, <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=26148&LangID=E>

articles and videos, intimidation by the security forces in the field, every kind of judicial harassment and violation of the confidentiality of sources – the list of press freedom violations by the Indian authorities in Kashmir is unworthy of a democracy. If Narendra Modi's government maintains these policies, it will go down in history as the one that deprived eight million citizens of reliable news and information in mid-pandemic'.¹⁰⁰

The IBAHRI joins experts in expressing the need for urgent resolution in the region and calls on the Government of India to end the crackdown on freedom of expression, access to information and peaceful protests in the state, ensuring that citizens are supported and rights are respected during action to contain the virus in the country.

¹⁰⁰ Reporters without Borders, India: A year of throttling journalism in Kashmir, 5 August 2020, <https://rsf.org/en/news/india-year-throttling-journalism-kashmir-0>