



DigitalRightsFoundation  
"KNOW YOUR RIGHTS"

## **Content Regulation in Pakistan's Digital Spaces: June 2018 Human Rights Council Report**

### **Civil Society Submission by: Digital Rights Foundation, Pakistan**

1. This report will delve into the impact that content regulation has on Pakistan's online spaces, and how it is connected with the larger issue of internet policy-making, particularly the extent to which private regulators in the country have a say in the regulation of online content.
2. The increased speed and access of internet in Pakistan has undoubtedly led to increased content regulation and has had an impact on the right to freedom of expression. It is, therefore, important to chalk out who the regulators are, and what measures they have adopted, if any, to mitigate the risks that internet policy-making might have created for the freedom of expression and privacy of internet users in Pakistan.
3. Before laying down the premise of private content regulation in Pakistan, the report explores the government's role in dictating how online content should be regulated, in particular the censorship imposed by the state and the impact of this on the media, telecommunications, private internet service providers and the civil society of Pakistan. The report keeps the prevailing security narrative in mind while assessing the government's control over internet activity in Pakistan, particularly in light of the National Action Plan and recently enacted Prevention of Electronic Crimes Act (PECA).
4. It is also important to observe whether there can be any transparency on part of private companies when it comes to sharing information with their customers regarding state demands and requests -- particularly censorship -- and if not, the role of the government in potentially exacerbating online abuses. Hence, the report also discusses the remedies or grievance mechanisms available for individuals in cases of shutdowns and censorship, if any, and whether internet users in Pakistan are even aware of existing content regulation policies by self-regulatory bodies and private companies. This will indicate the level of control and autonomy non-governmental entities have in shaping online content regulation in Pakistan, in order to shed light on the broader discussion regarding the future development of the country's internet policy.

#### **A. About Digital Rights Foundation**

5. Digital Rights Foundation (DRF) is a non-government non-profit organization registered legally in Pakistan in 2013 under the Societies Registration Act 1860. DRF focuses on ICTs to support human rights, inclusiveness, democratic processes and digital governance through advocacy, research and

direct services. The organization works on issues of privacy, surveillance, free speech, political participation, digital security, gender and tech, and online harassment.

## B. **Introduction**

6. The exponential increase in internet penetration<sup>1</sup> in Pakistan is correspondingly leading to increased regulation of online spaces, given the state's concerns over the participatory and borderless nature of the internet. The introduction of 3G and 4G, in particular, have ensured increased access to the internet in Pakistan<sup>2</sup>, along with an inevitably rapid increase in the internet market. The growth of cellular penetration and the regulatory changes that followed after the deregulation period also paved the way for broadband and telecommunications policies to be introduced within Pakistan to encourage growth within the ICT sector. At that time, telecom-related organizations played a significant role in internet policy-making in Pakistan<sup>3</sup>. However, the situation has changed drastically since the early 2000s, primarily because of the political situation in Pakistan.
7. Now, the Government of Pakistan imposes strict control over the internet citing security and terrorism concerns, in light of the National Action Plan<sup>4</sup> and the legislation that followed. As a result, internet freedom continues to shrink in Pakistan, causing the nation to be ranked -- as per Freedom House's annual Freedom on The Net report -- as fairly repressive<sup>5</sup>. Moreover, filtering<sup>6</sup> and censorship of content normally take place at the national level by government regulators, primarily the Pakistan Telecommunications Authority (PTA). The PTA also exerts significant control over the internet and mobile providers through a stringent bureaucratic process comprising high licensing fees. Besides this, the primarily state-owned Pakistan Telecommunication Company Limited (PTCL) controls 60 percent of the broadband market.
8. The role of corporate surveillance firms, usually based overseas, such as Hacking Team, reveals evidence regarding the state's collusion with private sector entities, however given the lack of transparency and information regarding such measures, this report assumes that the Pakistani government is the primary regulator of the country's online spaces and has the most control over online content in the country.

---

<sup>1</sup> Pakistan's internet penetration was 18% by mid-2016, "Percentage of Individuals Using the Internet, 2000-2015," *International Telecommunication Union*, [www.itu.int/en/ITU-D/Statistics/Pages/stat/default.aspx](http://www.itu.int/en/ITU-D/Statistics/Pages/stat/default.aspx). [Accessed 19 Dec. 2017]

<sup>2</sup> "These ISPs Offer the Fastest Internet in Pakistan." *ProPakistani*, [www.propakistani.pk/2017/09/07/isps-offer-fastest-internet-pakistan/](http://www.propakistani.pk/2017/09/07/isps-offer-fastest-internet-pakistan/). [Accessed 19 Dec. 2017]

<sup>3</sup> Khilji, Usama, and Saleha Zahid. "The Internet Policymaking Landscape in Pakistan." *Internet Policy Observatory*, July 2017, [globalnetpolicy.org/research/the-internet-policymaking-landscape-in-pakistan/](http://globalnetpolicy.org/research/the-internet-policymaking-landscape-in-pakistan/) [Accessed 19 Dec. 2017]

<sup>4</sup> The National Action Plan is an overarching plan of counter-terrorism action established in January 2015, in the wake of a terrorist attack on a military-run public school in Peshawar, Pakistan, in December 2014. <http://nation.com.pk/12-Jan-2015/the-national-action-plan>

<sup>5</sup> "Freedom on the Net 2016, Country Profile: Pakistan." *Freedom on the Net 2016*, Freedom House, 14 Nov. 2016, [www.freedomhouse.org/report/freedom-net/2016/pakistan](http://www.freedomhouse.org/report/freedom-net/2016/pakistan). [Accessed 18 Dec. 2017]

<sup>6</sup> Abbas, Anwer. "PTA, IT Ministry at odds over internet censorship system." *Pakistan Today*, 3 Jan. 2013, [www.pakistantoday.com.pk/2013/01/03/pta-it-ministry-at-odds-over-internet-censorship-system/](http://www.pakistantoday.com.pk/2013/01/03/pta-it-ministry-at-odds-over-internet-censorship-system/). [Accessed 19 Dec. 2017]

9. The state's increasing reliance on internet regulators and social media platforms overseas shows its intent to curb freedom of expression online under the national security narrative, with increased surveillance and interference with internet exchange points for shutdowns<sup>7</sup>. There are various examples of the way security considerations continuously intrude on internet and telecommunication services. Recently, social media websites and news outlets were blocked for a day during country-wide protests by religious hardliners in Pakistan<sup>8</sup> for 'security purposes' - this also includes mobile network shutdowns in North-Western Pakistan, only recently rescinded<sup>9</sup>. In recent years, the government suspended cellular services on various occasions<sup>10</sup>, particularly during national or religious holidays, on the grounds that terrorists could use the networks to commit acts of violence. However, this inversely puts citizens at increased risk, rather than protect them. Also, both the state and telecommunications companies have lost millions in revenue during such shutdowns<sup>11</sup>.
10. Such examples show that human rights concerns are largely ignored, which alters the experiences of internet users in terms of how they engage with online information and filtration of content. However, it is important to assess the extent to which state regulation curbs the role private sector could have in controlling content online in Pakistan.

### C. **Legislative Framework**

11. Existing policy challenges for the country's ICT sector can be seen by the fact that Pakistan's legislative system is lagging behind in terms of understanding the rapid progress technology is making, which is why the risk of misjudging technological advancements is high. Additionally, there are policy areas where either there is no governing policy at all or where policy is vague, unclear, and outdated. This shows that policy decisions in Pakistan are made on an ad-hoc, rather than a strategic, basis, thereby severely impacting the growth and innovation of the technology sector<sup>12</sup>.
12. Moreover, lack of transparency in ICT policy-making is quite evident, especially given the manner in which the Prevention of Electronic Crimes Act (PECA) was passed, without the input of civil society and other key stakeholders, contrary to reassurances given by the government. Therefore, a disconnect is visible between policy-makers and stakeholders in private spheres -- mainly the technology sector -- over content restriction and censorship.

---

<sup>7</sup> "How Pakistan blocked news outlets, social media sites, and IM apps amidst protests." *Open Observatory of Network Interference*, 29 Nov. 2017, [www.ooni.torproject.org/post/how-pakistan-blocked-social-media](http://www.ooni.torproject.org/post/how-pakistan-blocked-social-media).

<sup>8</sup>*ibid*

<sup>9</sup> Kamran, Hija. "The Internet Has Been Shut Down in Pakistan's Tribal Area for More Than a Year." *Slate Magazine*, 21 Aug. 2017, [www.slate.com/articles/technology/future\\_tense/2017/08/the\\_internet\\_has\\_been\\_shut\\_down\\_in\\_pakistan\\_s\\_fata\\_for\\_more\\_than\\_a\\_year.html](http://www.slate.com/articles/technology/future_tense/2017/08/the_internet_has_been_shut_down_in_pakistan_s_fata_for_more_than_a_year.html). [Accessed 19 Dec. 2017]

<sup>10</sup> "Pakistan Govt tender for an internet filtering and blocking system." *Business & Human Rights Resource Centre*, 3 July 2012, [www.business-humanrights.org/en/documents/pakistan-govt-tender-for-an-internet-filtering-and-blocking-system](http://www.business-humanrights.org/en/documents/pakistan-govt-tender-for-an-internet-filtering-and-blocking-system) [Accessed 19 Dec. 2017]

<sup>11</sup> "Security v Access: The Impact of Mobile Network Shutdowns, Case Study Telenor Pakistan." *CGCS Media Wire*, Center for Global Communication Studies, Sept. 2015, [www.global.asc.upenn.edu/publications/security-v-access-the-impact-of-mobile-network-shutdowns-case-study-telenor-pakistan/](http://www.global.asc.upenn.edu/publications/security-v-access-the-impact-of-mobile-network-shutdowns-case-study-telenor-pakistan/). [Accessed 19 Dec. 2017]

<sup>12</sup>Khilji, Usama, and Saleha Zahid. "The Internet Policymaking Landscape in Pakistan." *Internet Policy Observatory*, July 2017, [www.globalnetpolicy.org/research/the-internet-policymaking-landscape-in-pakistan/](http://www.globalnetpolicy.org/research/the-internet-policymaking-landscape-in-pakistan/) [Accessed 19 Dec. 2017]

13. This section provides a brief overview of the decision-making processes and regulatory bodies in charge of policies related to information technology and the telecommunications sector. Before delving into the role of the private sector in Pakistan, it is important to identify the actors and institutions involved in the ICT regulatory process, including state entities, as their role in regulating online content in Pakistan is primary. The central decision-making authorities are the Ministry of Information Technology and Telecommunication (MoITT) and the PTA, with other key players in the policy-making process being the Senate and National Assembly Standing Committees on Information Technology and Telecommunication, and the now disbanded Inter-Ministerial Committee for Evaluation of websites (IMCEW)<sup>13</sup>.

**a) Internet Filtering and Censorship**

14. The PECA was drafted in light of the counter-terrorism narrative and the National Action Plan aiming to eliminate hate speech and propaganda online by terrorists. Its passage has given even more unchecked power to authorities to regulate online content. Prior to the enactment of the law, requesting the blocking of a website, would require complainants to go through an inter-ministerial committee which would then direct the PTA to in turn tell internet service providers (ISPs) to block the relevant website. With the passage of the PECA, however, the PTA now has complete authority to directly block whatever it considers to be 'objectionable content'.

15. Overall, the PECA is drafted in overly broad and vague language which makes it vulnerable to abuse and misinterpretation against any individual or entity. It provides vague guidelines under the pretext of national security for administrative authorities such as the PTA by expanding their already considerable power to clamp down on online content and to initiate legal action against the accused, thereby presenting vaguely defined grounds for empowering administrative bodies and LEAs to use these powers.

16. Section 37 of the PECA, for instance, chalks out a list of restrictions allowing for the PTA to block, remove and censor online content, giving the PTA a virtual *carte blanche* to restrict access to "any" information if it considers it necessary to do so in the interest of integrity of Islam, morality, contempt of court and so forth<sup>14</sup>. Although, many of these aims are not legitimate and contrary to Article 19 of the International Covenant on Civil and Political Rights (ICCPR), there is no appeal mechanism or judicial review of such decisions, though Section 37 of the PECA does call for the creation of said mechanisms.

17. Further, Section 45 broadens the PTA's powers to issue directives and guidelines to ISPs "in the interest of preventing any offence", adding an extra layer of obligations and making it an offence to violate them. This explains the status quo, where over-regulation of online content by the government leaves no room for the private sector to adhere to regulation in a realistic manner that does not impact their businesses and customer base.

---

<sup>13</sup> Khan, A: "Interior Ministry to constitute a 'special committee' to deliberate on monitoring and blocking of online content." *Digital Rights Monitor*, 25 Oct. 2017, [digitalrightsmonitor.pk/interior-ministry-to-constitute-a-special-committee-to-deliberate-on-monitoring-and-blocking-of-online-content/](http://digitalrightsmonitor.pk/interior-ministry-to-constitute-a-special-committee-to-deliberate-on-monitoring-and-blocking-of-online-content/). [Accessed 19 Dec. 2017] <http://digitalrightsmonitor.pk/interior-ministry-to-constitute-a-special-committee-to-deliberate-on-monitoring-and-blocking-of-online-content/> [Accessed 19 Dec. 2017]

<sup>14</sup> "Free expression deteriorating in Pakistan ahead of UN review." *IFEX*, 30 Mar. 2017, [www.ifex.org/pakistan/2017/04/11/pakistan-submission-upr/](http://www.ifex.org/pakistan/2017/04/11/pakistan-submission-upr/). [Accessed 19 Dec. 2017]

18. Lack of oversight and procedural safeguards against censorship activities of the regulators also corroborate the absence of accountability and transparency acutely impacting citizens' right to express their religious and political expression online.
19. The PTA further exacerbates the situation by launching media campaigns such as public announcements encouraging people to exercise self-restraint in their online activities, reminding them of the penalties that are in place under legislation in Pakistan. This has the effective of chilling online speech around certain religious and political topics.
20. Unfortunately, there is no apparent appeal mechanism or a way to bring the arbitrary measures of the PTA under judicial review. Moreover, the PTA has only outlined ways in which consumers can lodge their complaints<sup>15</sup>, without providing any tangible method of recourse for ordinary internet users. Having said that, civil society actors and organizations have filed petitions questioning the PTA's unfettered powers in terms of blocking access to information online<sup>16</sup>.
21. It must be noted that the media landscape in Pakistan cannot be evaluated properly unless all the players -- large and small, visible and hidden -- are analysed without losing sight of the state security narrative that remains an overarching aspect of communication regulation. In countries such as Pakistan, the United States of America and others where national security is sacrosanct and is repeatedly used as an excuse to violate and undermine civil liberties, content regulation is largely controlled by state-owned regulators responsible for blocking 'objectionable' content, including criticism of the armed forces, blasphemy and legitimate dissent. Therefore, the current regulatory framework is being run without a cohesive legislative framework to guide it.

#### **b) State Regulation**

22. In Pakistan, internet regulation and governance largely falls under the Ministry of Information Technology and Telecom (MoIT) and its subordinate, the Pakistan Telecommunications Authority (PTA) which is the main telecom regulator vested with the power to devise effective mechanisms to manage online content. This includes generic blocking and filtering, DNS tampering, and directing ISPs such as private telecoms to make interventions, without judicial authorization or oversight.
23. The Pakistan Telecommunications Act 1996 vests overly broad powers in the PTA to carry out censorship and surveillance activities such as allowing them to shut down telecommunications entirely<sup>17</sup>.

---

<sup>15</sup> *Complaints, Pakistan Telecommunication Authority*, [www.pta.gov.pk/en/consumer-support/complaints/complaints](http://www.pta.gov.pk/en/consumer-support/complaints/complaints) [Accessed 19 Dec. 2017]

<sup>16</sup> Raza, Talal. "Advocate Umer Gilani on behalf of Media Matters for Democracy legally challenges PTA's move to shut down social media platforms on 25th November." *Digital Rights Monitor*, 18 Dec. 2017, [digitalrightsmonitor.pk/advocate-umer-gilani-on-behalf-of-media-matters-for-democracy-legally-challenges-ptas-move-to-shut-down-social-media-platforms-on-25th-november/](http://digitalrightsmonitor.pk/advocate-umer-gilani-on-behalf-of-media-matters-for-democracy-legally-challenges-ptas-move-to-shut-down-social-media-platforms-on-25th-november/). [Accessed 19 Dec. 2017].

<sup>17</sup> "Free expression deteriorating in Pakistan ahead of UN review." *IFEX*, 30 Mar. 2017, [www.ifex.org/pakistan/2017/04/11/pakistan-submission-upr/](http://www.ifex.org/pakistan/2017/04/11/pakistan-submission-upr/). [Accessed 19 Dec. 2017]

24. The suspension of mobile services and internet shutdowns have now become common occurrences<sup>18</sup>, particularly during political instability ostensibly related to national security. These grounds were used for a shutdown in Islamabad and Quetta for up to 12 hours during the Pakistan Day Parade.<sup>19</sup> Instant messaging applications such as Whatsapp and Viber are also suspended frequently in the pretext of national security<sup>20</sup>.
25. Additionally, the Ministry of the Interior is also involved, through the Federal Investigation Agency (FIA)'s National Response Centre for Cyber Crime, and has previously been involved in decisions regarding disconnections of communication networks, as well as at times the blocking of access to content.
26. Furthermore, the Ministry of Information and Broadcasting and various sections of the security establishment play an active part in the actual regulation of the internet in Pakistan.
27. It must be noted that even though it has been a year since the PECA was enacted, there are currently no rules following the act that have formally been issued for either FIA or PTA. This adds to the lack of transparency and coherence regarding the kind of content removal requests made, as well as the relevant body making such requests, and the procedure the request entails. Also, it is unclear as to what exactly happens when there has been compliance with a government request, particularly with regards to the personal and account information of internet users.
28. The Pakistan Electronic Media Regulatory Authority (PEMRA) was established to facilitate and regulate the private electronic media which includes censoring broadcast channels under its 2009 Rules, whereby it is under a legal obligation to remove content *inter alia* criticising the armed forces and any "anti-national or anti-state attitudes against basic cultural values, morality, and good manners." All suspensions are raised despite concerns regarding due process and proportionality, with several also not pursuing legitimate aims as required under Article 19(3) of the ICCPR.
29. Under its rules and code of conduct, PEMRA regularly issues directives to exercise excessive control over the media, undermining media independence and acutely impacting freedom of expression, as well as not giving broadcasters the space to regulate their own channels, who have to follow the same rules, as compliance is a licensing condition.
30. Channels or programmes have been banned over twenty times in the last four years<sup>21</sup>. In February 2016, television channels were directed by PEMRA to black out coverage of protests across Pakistan against the execution of Mumtaz Qadri, claiming coverage would "spread sectarianism", threaten public order, and glorify the actions of the convicted<sup>22</sup>.

---

<sup>18</sup> "\$70 million: the loss to Pakistan's economy from internet shutdowns." *Dawn*, 7 Oct. 2016, [www.dawn.com/news/1288608](http://www.dawn.com/news/1288608). [Accessed 19 Dec. 2017]

<sup>19</sup> *ibid.*

<sup>20</sup> "Sindh govt to block WhatsApp, Viber & other services for 3 months." *Dawn*, 4 Oct. 2013, [www.dawn.com/news/1047209](http://www.dawn.com/news/1047209). [Accessed 19 Dec. 2017]

<sup>21</sup> "Free expression deteriorating in Pakistan ahead of UN review." *IFEX*, 30 Mar. 2017, [www.ifex.org/pakistan/2017/04/11/pakistan-submission-upr/](http://www.ifex.org/pakistan/2017/04/11/pakistan-submission-upr/). [Accessed 19 Dec. 2017]

<sup>22</sup> *ibid.*

31. The PEMRA Code of Conduct provides inadequate procedural safeguards, with shutdowns authorized through irregular processes and disproportionate sanctions, often to deter unfavourable coverage of the government.
32. Finally, the local courts play a mixed role when it comes to defending freedom of expression in general and internet freedom, in particular. Most suspension orders blocking access to social media platforms have been issued by the courts including the 3-year Youtube ban starting in 2012.
33. Recently, however, the Islamabad High Court issued an order restraining the PTA from suspending cellular and internet services in the name of security “under all circumstances”<sup>23</sup>. This was in response to a petition filed in 2016 by citizens who felt aggrieved by the suspension of cellular services.
34. “Kill-switch” orders are also usually justified by citing Section 54 of the 1996 Pakistan Telecommunications Act, though this section is only meant to be applied during a state of emergency. The use of the law to support service suspension orders has been challenged in the Sindh High Court by entities such as Telenor Pakistan.
35. It can be construed that, albeit the appeal mechanism and room for judicial review for most administrative bodies is largely absent, as discussed earlier, the civil society has started calling arbitrary measures of authorities such as PTA, which only entertains consumer complaints, into question.

### **c) Other Institutional Responses to Content Regulation**

36. Pakistan’s request to social media companies for information and content removal is increasing at an alarming rate. This trend has been reflected in the Twitter Transparency report<sup>24</sup> which demonstrates more than a twofold increase in the first half of 2017, especially given the recent promulgation of the PECA.
37. Interestingly, Twitter declined all requests for account information and removal of accounts, and claimed that it did not remove any account or provide any data to the government, as opposed to a global trend which saw Twitter suspending more accounts than ever before.
38. Although the nature of the requests made by the Government of Pakistan are unclear, nonetheless none of the 24 removal requests made were legal requests or in the form of a court or legal order, thereby bringing into question the legitimacy of requests and potential abuse of power by LEAs.
39. This shows that the lack of transparency by the Government of Pakistan in relation to the process and selection criteria of requests demonstrated by the absence of judicial oversight could have potentially led to Twitter’s refusal.

---

<sup>23</sup> “Connection interrupted: Cellular services can only be suspended in 'emergency'.” The Express Tribune, 17 Jan. 2017, [tribune.com.pk/story/1298744/connection-interrupted-cellular-services-can-suspended-emergency/](http://tribune.com.pk/story/1298744/connection-interrupted-cellular-services-can-suspended-emergency/). [Accessed 19 Dec. 2017]

<sup>24</sup>“Transparency report 2017” *Twitter*, Twitter, [transparency.twitter.com/en.html](https://transparency.twitter.com/en.html). [Accessed 19 Dec. 2017]

40. According to the Facebook Transparency Report<sup>25</sup>, however, access to 177 pieces of content was restricted “based on legal requests from the PTA and FIA, that were alleged to violate local laws prohibiting blasphemy and condemnation of the country’s independence” and 63% of the time Facebook shared data with the LEAs. Facebook does not clarify what legal requests mean so it is unclear whether they responded to informal or formal requests of the Government.
41. Furthermore, particularly in relation to major telecom companies operating in Pakistan, there is a lack of transparency reports on government requests on the part of the private sector (as indicated under the Telecommunications section below), although according to Telenor Pakistan, citizens can ask for their own information, but it stays silent on government requests for citizens’ data.
42. This indicates how the government tries to regulate content indirectly by pressuring local telecom companies to comply with their guidelines and requests, which is a licensing condition, as well as requesting international companies like Facebook and Twitter to remove or block specific content beyond their technical expertise. There have been instances where due to the PTA’s lack of technical expertise to remove/ block a specific post or content it has ended up blocking whole websites<sup>26</sup>.
43. Similarly, the PTA banned Youtube completely -- from September 2012 until January 2016 -- when the latter did not block or remove a video reported to be blasphemous, i.e. “Innocence of Muslims”<sup>27</sup>.

**D. Processes Developed by Companies to Abide by Laws**

44. Existing private regulators in Pakistan, both foreign and local, would include licensed companies, search engines, social media platforms, listing sites, Voice Over IP (VOIPS), and any existing local Virtual Private Network (VPN) services, registered or otherwise. Because of increased state regulation of content in Pakistan, the ICT industry rarely interacts with the government on policy-making. Besides this, as seen earlier, because of the government’s unfamiliarity with policy-making, they resort to legislating on an ad-hoc, rather than a strategic, basis, thereby creating additional hurdles for the technology sector in terms of growth and innovation.
45. The opening up of the telecom sector to foreign investment has had a significant impact on the provision of information-related services in Pakistan. This goes to show that it is not possible for just the government to be the sole regulator of online content, and that the division between the state and the private sector is slowly becoming more delineated in Pakistan. This section explores the division between the government and self-regulatory entities/individual companies in terms of internet content regulation in Pakistan.

---

<sup>25</sup> “Facebook Transparency Report 2017.” *Facebook*, transparency.facebook.com [Accessed 19 Dec. 2017]

<sup>26</sup> “Toronto Sun website blocked in Pakistan: Report.” *The Express Tribune*, 9 Feb. 2013, tribune.com.pk/story/504566/toronto-sun-website-blocked-in-pakistan/. [Accessed 19 Dec. 2017]

<sup>27</sup> Wilkes, Tommy. “Pakistan lifts ban on YouTube after launch of local version.” *Reuters*, Thomson Reuters, 19 Jan. 2016, www.reuters.com/article/us-pakistan-youtube/pakistan-lifts-ban-on-youtube-after-launch-of-local-version-idUSKCN0UW1ER. [Accessed 19 Dec. 2017]



46. While Pakistan's development sector is slowly growing, the internet is rapidly becoming a commodity and vital part of the economy. However, the lack of net neutrality regulations in Pakistan<sup>28</sup>, coupled with adoption of zero-rated services by major telecoms operators operating in the country, has a significant impact on internet access.

#### **a) Internet Filtering and Censorship**

47. In 2012, the National ICT Research and Development Fund announced a request for proposals for a national URL filtering system. This move indicated the government's larger plans of setting up a centralized content filtration system that would operate as the country's designated firewall. The idea of a centralized filtration system was based on a set of recommendations from the PTA, and indicates deviating from the ISP-level blocking of Uniform Resource Locators (URL) to a uniform method of blocking URLs<sup>29</sup>.

48. The PTA also recommended industry experts and operators to be added to the inter-ministerial committee (IMCEW) to decide whether a website should be blocked or not, but there was no clarity over who these experts would be, how they would be selected, how they would be given powers, and what would determine their decisions. Hence, it became clear soon after that a mass level URL filtering system would not only affect citizens, but also impact academia, businesses, internet speed, as well as online privacy and security on a whole.

49. While these plans were eventually shelved by the government to prioritize cybercrime legislation, there are many ways in which content filtration is facilitated by proposed legislation. A report by Citizen Lab<sup>30</sup> revealed that the filtration software Netsweeper had been detected in Pakistan on PTCL servers. In 2014, the PTA denied conducting any surveillance, in response to a Right to Information (RTI) request filed by Bolo Bhi<sup>31</sup>. However, later in a freedom of information (FOI) hearing, the PTA officials verbally recalled the presence and usage of Netsweeper on PTCL servers in Pakistan<sup>32</sup>. Before this, the prevalence of Netsweeper's usage in Pakistan was not publicly known.

50. Even now, there is no transparency on how these filters are operated and who has the authority to operate them. There is also the aforementioned issue of a lack of coherent and well-informed legislation chalking out a clear framework for content takedowns and possible redress mechanisms. As of 2017, the filters are being used without any regard for public disclosure or judicial oversight.

---

<sup>28</sup> Kamran, Hija. "The FCC's Decision to Kill Net Neutrality Will Hurt People Abroad Too." *Slate Magazine*, 14 Dec. 2017 [www.slate.com/articles/technology/future\\_tense/2017/12/the\\_fcc\\_s\\_decision\\_to\\_kill\\_net\\_neutrality\\_will\\_hurt\\_people\\_abroad.html](http://www.slate.com/articles/technology/future_tense/2017/12/the_fcc_s_decision_to_kill_net_neutrality_will_hurt_people_abroad.html). [Accessed 18 Dec. 2017]

<sup>29</sup>In January, a Pakistan daily reported that the Pakistan Telecommunication Authority (PTA) and the Ministry of Information Technology (MoIT) were planning to install a regulatory system, reportedly imported from China, to monitor websites, online content and also internet filtration. Throughout the year, officials tried to systemize online content filtering mechanism, especially getting a boost after the YouTube fiasco. "2013: A deadly year for Pakistan's internet freedom." *Index on Censorship*, 10 Aug. 2017, [www.indexoncensorship.org/2014/01/2013-deadly-year-pakistans-internet-freedom/](http://www.indexoncensorship.org/2014/01/2013-deadly-year-pakistans-internet-freedom/). [Accessed 17 Dec. 2017]

<sup>30</sup>"O Pakistan, We Stand on Guard for Thee: An Analysis of Canada-Based Netsweeper's Role in Pakistan's Censorship Regime." *The Citizen Lab*, 8 July 2017, [www.citizenlab.ca/2013/06/o-pakistan/](http://www.citizenlab.ca/2013/06/o-pakistan/). [Accessed 16 December 2017]

<sup>31</sup> *Bolo Bhi Files RTI Request Seeking Disclosure On Filtering Equipment*, Bolo Bhi, Feb. 2014, [www.bolobhi.org/right-to-information-internet-pakistan/](http://www.bolobhi.org/right-to-information-internet-pakistan/) [Accessed 15 December 2017]

<sup>32</sup> Khilji, Usama, and Saleha Zahid. "The Internet Policymaking Landscape in Pakistan." *Internet Policy Observatory*, July 2017, [www.globalnetpolicy.org/research/the-internet-policymaking-landscape-in-pakistan/](http://www.globalnetpolicy.org/research/the-internet-policymaking-landscape-in-pakistan/) [Accessed 19 Dec. 2017]

51. As for URL blocking, in 2006, the PTA set up a complaint cell for the specific blocking of URLs in Pakistan, and in 2009, implemented a complaint management system. However, in 2010, it was reported that the PTA was developing an online complaint system for the management of blocking online content, and was guided in this endeavour by MoITT<sup>33</sup>. The PTA has similarly made blocking URLs a primary focus over time. In 2013, the PTA published an advertisement in newspapers informing the public that it was regularly directed by the inter-ministerial committee to block content, and encouraged citizens to email objectionable URLs to the PTA for blocking, even though, according to reports, taking decisions on blocking of content did not fall under the jurisdiction and mandate of PTA, as it was, at the time, the domain of IMCEW, which comprising different stakeholders including the intelligence agencies under the federal secretary of MoITT<sup>34</sup>.

#### **b) License conditions**

52. It is pertinent to mention here that the Government of Pakistan auctioned 3G and 4G licenses only recently, in 2014, doing so in the absence of a sound and consistent IT and e-commerce policy. Pakistan did not have a cybercrime law - the Prevention of Electronic Crimes Act - until 2016, meaning that the government was heavily reliant on the Pakistan Telecommunications Act of 1996 (amended in 2006) and the Electronic Transactions Ordinance (ETO) of 2002.

53. The PTA's Monitoring and Reconciliation of Telephony Traffic Regulations (MRTTR) (2010) requires that potential licensees for network provision must implement monitoring systems to "monitor, control, measure and record traffic in real-time", and to "provide such information as required by the Authority" i.e. the PTA. This potential for interventions by the PTA et al is also reinforced in the Telecommunications Policy (2015).

54. Sections of the Telecommunications Policy (2015) echo the Prevention of Electronic Crimes Act in regards to what it refers to as "content management": Section 9.8.3 in particular gives the PTA the ability to "*monitor and manage content including any blasphemous and pornographic material in conflict with the principles of Islamic way of life*", as well material "that is considered to be a direct incitement to commit a crime of a serious nature and detrimental to national security or any other category stipulated in any other law."<sup>35</sup>

#### **c) VPN Blocking and Encryption**

55. The government has sought to legislate the usage and proliferation of Virtual Private Networks (VPNs) and other encryption mechanisms, with negative consequences for Pakistani citizens and the country's growing private sector economy. In 2011, the PTA issued a directive to internet service providers ordering them to inform the government if "all such mechanisms including EVPNs [en-

---

<sup>33</sup> *ibid.*

<sup>34</sup> *ibid.*

<sup>35</sup> "Pak Telecom Policy 2015 – Another Step Forward For Censorship." *Digital Rights Foundation*, 12 Feb. 2016, [www.digitalrightsfoundation.pk/pak-telecom-policy-2015-another-step-forward-for-censorship/](http://www.digitalrightsfoundation.pk/pak-telecom-policy-2015-another-step-forward-for-censorship/) [Accessed 15 December 2017]

rypted virtual private networks] which conceal communication to the extent that prohibits monitoring” were being used by their customers<sup>36</sup>. This was followed by the ban in 2014 of VPN services such as Spotflux<sup>37</sup>. VPNs and other encryption mechanisms continue to be banned by the PTA under the MRTTR<sup>38</sup>, but there do not appear to be examples of concrete implementation of the directive post-2011, outside of the example given above. What the directive does highlight, however, is the continuation of repeated attempts by the government to block the use of VPNs and other encryption mechanisms<sup>39</sup> ostensibly “to stop militants from using secure internet connections to communicate with each other<sup>40</sup>”. Such moves are a clear violation to the right to privacy, as it impacts the public’s ability to connect through an encrypted network and protect their information.

56. Furthermore, in 2014, the PTA published a notification in newspapers announcing that unregistered VPNs would be banned in the country<sup>41</sup>, which paved the way for businesses to register their VPNs in order to use them legally. However, the ban on encryption remains.
57. Previous attempts to legalize the blocking of encryption and monitoring of grey traffic had also been part of anti-terrorism efforts under the larger security narrative, but browser add-ons such as HTTPS Everywhere -- which are also tools for encrypting communications on browsers to ensure that users are not susceptible to hacking attempts -- surprisingly remained in place. Such actions had a clear impact on businesses, such as the banking sector and e-commerce, that rely on a secure network and encrypted communications with consumers in order to protect sensitive private bank information.

#### **d) Telecommunications**

58. Telecommunications companies operating in Pakistan have over the past year made attempts to streamline and update the privacy policies that are available on their websites, gradually rectifying a lack of a coherent and proactive approach to customer data privacy in the past. However, these improvements still do not expand upon or elaborate as to what telecommunications companies will do in the event of a government request for user data, or if personal data has been stolen by hackers. For example, Telenor Pakistan’s parent company, the Norway-based Telenor Group, have listed on their website with clarity and detail the measures that they take to safeguard user data protection, as well as indicating what government requests entail. The website for Telenor Pakistan, their local subsidy, however, does not indicate what government requests for customer data would entail.

---

<sup>36</sup> “Pakistan to Ban Encryption Software”, The Guardian <https://www.theguardian.com/world/2011/aug/30/pakistan-bans-encryption-software> [Accessed 15 December 2017]

<sup>37</sup> “Creeping censorship: Spotflux claims its service is being 'actively blocked' in Pakistan.” *The Express Tribune*, 28 Jan. 2014, [www.tribune.com.pk/story/664341/creeping-censorship-spotflux-claims-its-service-is-being-actively-blocked-in-pakistan/](http://www.tribune.com.pk/story/664341/creeping-censorship-spotflux-claims-its-service-is-being-actively-blocked-in-pakistan/) [Accessed 15 December 2017].

<sup>38</sup> “Provision of Real-Time Lawful Interception Assistance: Pakistan.” *Telecommunications Industry Dialogue*, June 2015, [www.telecomindustrydialogue.org/resources/pakistan/](http://www.telecomindustrydialogue.org/resources/pakistan/). [Accessed 17 December 2017]

<sup>39</sup> *Ibid.*

<sup>40</sup> “Virtual Watchdog: Internet users banned from browsing privately for 'security reasons'.” *The Express Tribune*, 27 Aug. 2011, [www.tribune.com.pk/story/240736/virtual-watchdog-internet-users-banned-from-browsing-privately-for-security-reasons/](http://www.tribune.com.pk/story/240736/virtual-watchdog-internet-users-banned-from-browsing-privately-for-security-reasons/) [Accessed 17 December 2017]

<sup>41</sup> Arshad, Faisal. “PTA Issues Notice to Abandon Pakistan VPN Services.” *Bestvpn-service.com Blog*, [www.bestvpn-service.com/blog/pakistan-vpn-pta-notice/](http://www.bestvpn-service.com/blog/pakistan-vpn-pta-notice/). [Accessed 18 December 2017]

59. Telenor Pakistan and other telecoms operating in Pakistan have, as mentioned, updated their privacy policies, listing “the legal frameworks in which we operate”<sup>42</sup>, including the Prevention of Electronic Crimes Act 2016. The list of “legal frameworks”, however, does not make explicit reference to the MRTTR, mentioned above in “License conditions”, in particular its sections on the requirement of network operators to incorporate hardware and software that “monitor, control, measure and record traffic in real-time”<sup>43</sup>.
60. Other examples of self-regulation include publishing houses operating privately in Pakistan. Some news portals, such as DAWN, have robust policies in place. The Express Tribune is another example of an online publishing website that has a policy. Start-ups such as Mangobaaz, however, do not include any such policy on their website.
61. Recently, Khabaristan Times, a satire website, was blocked under the new law in January 2017. The Khabaristan Times’ CEO, Luavut Zahid stated that this was done without any official notification. This demonstrates of the weak and opaque procedural processes that have been established by PECA. The website was known for its criticism of the establishment and critique of religious extremism.

**e) Processes, content restrictions, takedowns, suspension of accounts**

62. Ad-hoc and reactionary measures on part of the government naturally affect Pakistan’s private sector. Such measures normally include blocking of entire domains without notification, censorship of political dissent, calls for filtering systems, and setting up unconstitutional bodies for censorship.
63. The PTA has issued guidelines for policing content that purportedly warrant such measures, particularly by blocking content that is critical of the country’s establishment, even though the government has, till date, denied the presence of targeted censorship policies.
64. Moreover, the alarming increase of content takedown requests the Pakistani government makes to social media platforms such as Facebook<sup>44</sup> indicates that negotiations between the Pakistan Government and Facebook are intensifying. Recently, Facebook management has also decided to send a delegation to Pakistan for investigating content which the government considers to be blasphemous.
65. Despite this, petitions continue to be filed against the social network for the prevalence of blasphemous material. In April 2017 the Lahore High Court issued a directive which gave the PTA the power to completely block information systems or social media websites if it is unable to rid them of blasphemous content. Given such broad powers of arbitration, the PTA is able to block complete access to platforms that criticise the government and military under the garb of an anti-blasphemy drive.
66. Despite the harsh penalties in the PECA and other legislation in regards to online freedom of expression, however, internet users in Pakistan are not generally made actively aware of censorship policies and procedures, usually until after a news report or word from others. What awareness that

---

<sup>42</sup> “Telenor Pakistan Privacy Policy.” *Telenor Pakistan*, [www.telenor.com.pk/privacy-policy](http://www.telenor.com.pk/privacy-policy). [Accessed 18 December 2017]

<sup>43</sup> “Statutory Notifications (S. R. O.)” *The Gazette of Pakistan*, 11th March 2010

<sup>44</sup> The July - December 2016 Government Request Report for Pakistan indicates that a total of 1,002 requests were made by the government. According to the Interior Ministry, Facebook has complied with 85 percent of requests for the removal of blasphemous material.

takes place or otherwise is usually undertaken by civil society organisations in English and Urdu formats, with the government at best publishing information about said laws in newspapers or journals of record. Information pertaining to account takedowns or suspensions on social media are not generally made transparent or clear to internet users in Pakistan - nor are their rights in the event of cybercrime et al made clear to them.

67. As with other Global South nations, there is an imbalance in regards to trust between the private sector, civil society and other relevant stakeholders and the government. What legislation is tabled or passed in Pakistan in regards to cybercrimes et al - in this case, the PECA – the government does not take onboard the concerns of constitutional lawyers, human rights defenders and the aforementioned stakeholders, and instead utilises the security narrative. The absence of trust and support from governments in the Global South makes interactions and productive discussion difficult, especially with ever increasing governmental hostility to meaningful multi-stakeholder dialogue.

#### E. **Private Regulation and Human Rights Concerns**

68. According to Article 19 of the Constitution of Pakistan, “Every citizen shall have the right to freedom of speech and expression, and there shall be freedom of the press, subject to any reasonable restrictions imposed by law in the interest of the glory of Islam or the integrity, security or defence of Pakistan or any part thereof friendly relations with foreign States, public order, decency or morality, or in relation to contempt of court, [commission of] or incitement to an offence.” The restrictions placed on the right to freedom of expression in the Constitution have translated into other areas of the law as well, including counter-terrorism and cybercrime. PTA guidelines in 2010, for instance, included analyzing for content that “promotes or supports sedition, terrorism, anarchy or violence in the country or brings contempt to the defense forces, police, air force or other institution of government” to gauge whether it should be blocked or not. Such vague language has enabled government authorities to remove content they deem to be unsuitable for the general public, based on the political sensibilities of the day.

69. This has resulted in a clear lack of transparency for internet users in Pakistan. One example that supported the removal of online content was directive No 5-1/2005-DFU that was issued to the PTA in 2012, allowing for the “effective monitoring and control of obnoxious content” online, i.e. content that is blasphemous or pornographic in nature. According to the directive, such content violated Article 19, and considered anything that hurts the glory of Islam to be objectionable, and also Article 31, which protects the Islamic way of life<sup>45</sup>.

---

<sup>45</sup> “The solution, according to the federal government, was to direct the PTA to establish a ‘unit’ specifically to take measures against websites containing such content. The PTA was to appropriate monetary and human resources for this unit, and this unit was mandated to objectively block websites displaying ‘obnoxious’ content. The IMCEW was also mentioned in this directive, which highlighted the fact that a body already existed for the evaluation of websites, and would continue to do so, even after the creation of this new ‘unit’.” Khilji, Usama, and Saleha Zahid. “The Internet Policymaking Landscape in Pakistan.” *Internet Policy Observatory*, July 2017, [www.globalnetpolicy.org/research/the-internet-policy-making-landscape-in-pakistan](http://www.globalnetpolicy.org/research/the-internet-policy-making-landscape-in-pakistan) / [Accessed 19 Dec. 2017]

70. Blasphemy has been a favourite topic of myriad internet policy-makers, particularly the PTA<sup>46</sup>. This trend is indicative of the loose, unaccountable processes that have come forth with the new cyber-crime law as well. Mechanisms to verify complaints of blasphemy are flimsy and inadequate. Moreover, there are no clauses that can account for a fair trial or lead to any punishment for false accusers. Following the IHC's ruling on blasphemous content on social media, the FIA released a public message asking people to look out for 'blasphemers' on Facebook and other social networking sites and report them to the agency. The PTA has also sent mass text messages asking people to report blasphemy online. Leveling such accusations has become another method for the government to stifle political dissent, especially that coming from more progressive activists in the country.
71. The national framework regarding the right to freedom of expression needs to correlate with the rights enshrined in international human rights law, particularly Article 19 of the International Covenant on Civil and Political Rights, and Article 19 of the Universal Declaration of Human Rights. This is the only way that the government can simultaneously set a precedent for private companies to follow as well, as the current measures are evidently inconsistent with public international law.
72. Moreover, the enactment of the PECA marks an escalation of the clampdown by Law Enforcement Agencies (LEAs) on individuals and organizations, which until now was largely practiced without legitimization. It is not only aimed at targeting criminals but it equally affects all citizens, as political and religious dissent are largely censored by unconstitutional bodies. Further, entire domains are blocked without notification and the government continuously calls for adoption of mechanisms blocking URL and filtering systems. PECA's enactment has exposed the lack of legal and operational transparency on part of the state, with erratic and discretionary measures being taken by the government to control access to content on the internet.
73. Such practices have inculcated fear and terror in human rights activists, organisations and the general public of their expression being construed as "objectionable or offensive to the State, who use the internet to express their freedom and religious expression through networking and blogging.
74. This has also resulted in losses to IT businesses in the country, with ad hoc measures having a negative impact beyond the original intent. For instance, the government's move to block YouTube affected other Google tools necessary for business causing clients abroad who use these tools to be less likely to do business with Pakistani companies. Moreover, many Pakistani IT business owners who have clients abroad also suffer when their clients cannot reach them over the phone when the government blocks mobile phone signals as an added security measure.
75. Since the start of 2017, Pakistan has been witnessing an open, planned crackdown against social media activists, political workers and bloggers. The high-handedness on part of the Pakistani establishment to derail the human rights movement has manifested in a rampant culture of impunity. The abduction of bloggers earlier this year<sup>47</sup>, and now Raza Khan<sup>48</sup>, are a few examples of this. After the release of the activists who went missing earlier this year, the activists and their families adversely

---

<sup>46</sup>"Report Blasphemous URL" (*sic*) Pakistan Telecommunication Authority, [www.pta.gov.pk/en/report-blasphemous-url](http://www.pta.gov.pk/en/report-blasphemous-url). [Accessed 18 Dec. 2017]

<sup>47</sup>Rumi, Raza. "Opinion: Bring Pakistan's Missing Bloggers Home." *The New York Times*, The New York Times, 20 Jan. 2017, [www.nytimes.com/2017/01/20/opinion/bring-pakistans-missing-bloggers-home.html](http://www.nytimes.com/2017/01/20/opinion/bring-pakistans-missing-bloggers-home.html). [Accessed 16 Dec. 2017]

<sup>48</sup>-Pakistani activist Raza Khan reported missing, Al Jazeera, 6 Dec. 2017, [www.aljazeera.com/news/2017/12/pakistani-activist-raza-khan-reported-missing-171206091156178.html](http://www.aljazeera.com/news/2017/12/pakistani-activist-raza-khan-reported-missing-171206091156178.html). [Accessed 15 December 2017]

suffered an online smear campaign that associated them with controversial and religiously sensitive content on social media pages. This is one of many examples that effectively portrays how such censorship and surveillance affects certain individuals more on the basis of their marginality and positionality in Pakistan. The effect is even more severe in the Global South, where the government is actively negotiating with companies overseas without any context of the situation in the country where the request is being made from. This makes it clear that ICT companies should disclose the nature and content of requests regarding content regulation, and whether they meet their standards clearly.

## F. **Conclusion**

76. The failure on the part of internet policy-makers to acknowledge the contribution that online spaces have made to strengthening Pakistan's civil society and amplifying their voices raising human rights concerns is glaringly evident. An end to the implicit, overly broad censorship policy is necessary to uphold public interest over broad national security concerns that threaten fundamental human rights in the country.
77. The need for stringent, progressive data protection legislation in Pakistan is crucial to uphold the right to privacy of ordinary internet users and citizens. There need to be checks and balances that strictly govern any data copied by State authorities or private companies, to ensure the protection of the personal data of Pakistani citizens.
78. In Pakistan, private companies are clearly regulating content in the shadow of censorship imposed by the government and internationally-based social media platforms. The government is setting a troubling precedent by requesting social media platforms based overseas to remove content without any regard for due process or transparency. Checks and balances in the form of progressive internet policies need to be chalked out, for the state machinery to follow first, but also to ensure that the only way companies' standards of moderating online content are rooted in the right to freedom of expression and Article 19.
79. Requests and actions by the Government Pakistan in regards to freedom of expression online highlights the failings and disparity international social media platforms in regards to reporting mechanisms. Facebook et al assert that the latter are implemented equally across the globe - the reality, as can be seen in Pakistan, is that the more robust the legal regime in a country is, the more obligated social media platforms are to comply with local laws, even if there is a negative impact on civil liberties. This is a situation faced by civil society and other stakeholders across the Global South.
80. Criticism of blanket, indiscriminate content regulation should provide a basis for assessing why online content is taken down, and helps in contextualizing internet policy-making in Pakistan adequately, as stringent control of the internet will inevitably lead to challenges.
81. Hence, the rights of the general internet user must be kept in mind while involving all possible stakeholders in the overall internet policy-making process. Existing policy-makers need to rethink their approach to online content regulation over the long term and keep the right to freedom of expression in mind for increased transparency and accountability on online platforms in Pakistan.