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**Suggestions for internet-related human rights questions to be included in the list of issues on Pakistan, Human Rights Committee 120th session, June-July 2017**

Association for Progressive Communications, Bytes for All Pakistan, and Media Matters for Democracy

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## 1. Introduction

With the increasing use of the internet in various aspects of daily life as well as for the exercise of fundamental freedoms, it is critical that governments fulfil their obligation to promote and protect human rights online.<sup>1</sup> However, in Pakistan, many of the restrictions imposed on rights enshrined in the International Covenant on Civil and Political Rights (ICCPR), such as freedom of expression, freedom of assembly and association, the right to privacy, as well as other rights, are being extended and sometimes heightened in online spaces. This joint submission made by Bytes for All, Pakistan, Media Matters for Democracy, and the Association for Progressive Communications<sup>2</sup> encourages the Committee to seek information from the government of Pakistan concerning the exercise of human rights online. This submission focuses in particular on Article 17 (the right to privacy), Article 18 (freedom of religion or belief), Article 19 (freedom of opinion and expression), and Articles 21 and 22 (freedoms of assembly and association).

## 2. Article 17: Right to privacy

Article 17 of the ICCPR provides for the right of every person to be protected against arbitrary or unlawful interference with his or her privacy, family, home or correspondence as well as against unlawful attacks on his or her honour or reputation. Any interference with the right to privacy can only be justified if it is in accordance with the law, has a legitimate objective and is conducted in a manner that is necessary and proportionate. Rapid advances in technology have posed significant challenges to the enjoyment of the right to privacy, yet nonetheless, governments are required to protect and promote this right in the digital age.<sup>3</sup>

### 2.1. Inadequate safeguards to protect the right to privacy of correspondence

Article 14 clause 1 of the Constitution of Pakistan<sup>4</sup> provides for the inviolability of the privacy of the home, subject to law. However, the Constitution does not expressly protect privacy of communications, digital or otherwise. Moreover, Article 14 does not provide any limitations for laws that restrict the right to privacy to ensure that they are not arbitrary and that they comply with the principles of necessity and proportionality. In the absence of such safeguards against arbitrary and unlawful interference with the right to privacy in Pakistan, which includes lack of judicial oversight or effective redressal mechanisms, state institutions and actors have been carrying out surveillance on digital communications of individuals, groups and organisations. The state appears to be using the 2002 Electronic Transaction Ordinance to

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<sup>1</sup>See HRC/RES/20/8, The promotion, protection and enjoyment of human rights on the Internet, and HRC/RES/26/13, The promotion, protection and enjoyment of human rights on the Internet.

<sup>2</sup>Bytes for All, Pakistan (B4A) is a human rights organisation and a research think tank with a focus on information and communication technologies (<https://content.bytesforall.pk>); Media Matters for Democracy (MMfD) is a media and human rights organisation working towards a digitally advanced, sustainable and empowered media in Pakistan ([mediamatters.pk](http://mediamatters.pk)). The Association for Progressive Communications (APC) is an international network and non-profit organisation founded in 1990 that wants everyone to have access to a free and open internet to improve lives and create a more just world (<https://www.apc.org>). B4A and MMfD are APC members in Pakistan.

<sup>3</sup>See A/HRC/27/37, Report by the UN High Commissioner for Human Rights on the right to privacy in the digital age; A/RES/68/167, "Right to Privacy in the Digital Age"; A/RES 69/166, "Right to Privacy in the Digital Age"; and International Principles on the Application of Human Rights to Communications Surveillance, available at: <https://necessaryandproportionate.org>

<sup>4</sup>[www.pakistani.org/pakistan/constitution/part2.ch1.html](http://www.pakistani.org/pakistan/constitution/part2.ch1.html)

conduct surveillance to collect data, and the Investigation for Fair Trial Act 2013 and the Pakistan Telecommunications (Re-organization) Act 1996 to collect privileged communication and conduct broad surveillance.<sup>5</sup>

## 2.2. Domestic surveillance

In Pakistan, the right to privacy is routinely violated through mass surveillance, tapping of personal communications, and unsafe collection and use of biometric data. National security, prevention of terrorism, and public order are the most commonly cited excuses for violating the right to privacy. The government of Pakistan has moved towards greater surveillance of users and networks through technological and legislative means in recent years.

There is increasing concern that local law enforcement agencies (LEAs) and intelligence agencies have the ability to intrude into a range of devices to capture data, encrypted or otherwise. Following guidelines set out by the government, courts and Ministry of Information Technology, the Pakistan Telecommunication Authority (PTA)<sup>6</sup> and multiple security agencies are able to conduct online surveillance and lawfully intercept and monitor data. LEAs and intelligence agencies either do so independently or turn to the Federal Investigation Agency (FIA)<sup>7</sup> or PTA for assistance.

Phone calls are tapped in a routine manner, which was admitted by the state intelligence agencies before the Supreme Court in 2015, when they stated that they were monitoring over 7,000 phone lines every month.<sup>8</sup> In addition, the government of Pakistan has implemented a mass digital surveillance programme under the guise of securing the capital of the country.<sup>9</sup> Over 1,800 high-powered cameras have been installed all over the capital city of Islamabad to monitor the movement and activities of passersby. These high-definition cameras are technologically advanced and their facial recognition feature links to the national biometric database, the National Database and Registration Authority (NADRA).<sup>10</sup>

The government of Pakistan has been using intrusive technology such as FinFisher that surveils private communications. FinFisher offers different intrusive modules that silently sit in the recipient's computer and enable remote surveillance such as key logging, webcam/microphone access, password gathering, and others.<sup>11</sup> FinFisher products also include FinFisher USB Suite, Remote Hacking Kit, FinSpy, FinFly, FinAudit, etc., all of which are used for targeted surveillance, as was found in a study conducted by The

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<sup>5</sup>Bytes for All, Pakistan. (2016). Internet Landscape of Pakistan 2016. <https://content.bytesforall.pk/node/195>

<sup>6</sup>Established in January 1997 under the Telecom Reorganization Act 1996, the PTA is the main regulatory and licence issuing body overseeing the internet and telecom industry in Pakistan. Since 2013, the PTA has taken on the role of the Interministerial Committee for the Evaluation of Websites (IMCEW) which in previous years had determined which websites would be blocked in Pakistan.

<sup>7</sup>Established in 1974, the FIA is an autonomous federal institution that investigates and undertakes operations against terrorism, federal crimes, smuggling, as well as copyright infringement and other specific crimes. The FIA's National Response Centre for Cyber Crimes (NR3C) wing is responsible for taking action against crimes committed on the internet, and accordingly, the agency is greatly involved in online surveillance.

<sup>8</sup>Dawn. (2015, 4 June). Nearly 7,000 phones tapped in May, ISI tells SC. *Dawn*. [www.dawn.com/news/1186013/nearly-7000-phones-tapped-in-may-isi-tells-scutm\\_source=feedburner&utm\\_medium=feed&utm\\_campaign=Feed%3A+dawn-news+\(Dawn+News\)](http://www.dawn.com/news/1186013/nearly-7000-phones-tapped-in-may-isi-tells-scutm_source=feedburner&utm_medium=feed&utm_campaign=Feed%3A+dawn-news+(Dawn+News))

<sup>9</sup>AidData. (2010). Loan for "Safe City Islamabad" project. [china.aiddata.org/projects/37016](http://china.aiddata.org/projects/37016)

<sup>10</sup>Bytes for All Pakistan and APC. (2015, 17 November). Safe City Project or Mass Digital Surveillance? <https://content.bytesforall.pk/node/181>

<sup>11</sup>Elaman German Security Solutions. FinFisher IT Intrusion Products. [https://wikileaks.org/spyfiles/files/0/310\\_ELAMAN-IT\\_INTRUSION\\_FINFISHER\\_INTRODUCTION\\_V02-08.pdf](https://wikileaks.org/spyfiles/files/0/310_ELAMAN-IT_INTRUSION_FINFISHER_INTRODUCTION_V02-08.pdf)

Citizen Lab.<sup>12</sup> In addition, Pakistan also contacted the Hacking Team for a similar type of intrusion malware suites.<sup>13</sup>

### 2.3. Foreign surveillance

The government of Pakistan is also failing to protect its citizens from surveillance by foreign entities. The government is collaborating with foreign governments in intelligence-sharing arrangements, which violate the right to privacy of Pakistani citizens. As revealed by *Tipping the scales: Surveillance and security in Pakistan*,<sup>14</sup> a report by Privacy International, there is an understanding of cooperation between Pakistan and the US National Security Agency (NSA), the UK Government Communications Headquarters (GCHQ) and the NSA's approved third party Signal Intelligence (SIGINT). The report also revealed that the NSA maintains a special collection service at the US embassy and consulates in Pakistan.

Such surveillance by foreign bodies is likely to be legitimised by the proposed framework of the Prevention of Electronic Crimes Bill (PECB) 2016<sup>15</sup> under Section 39, which permits cooperation with foreign governments, agencies and organisations and sharing data of Pakistani citizens without seeking permission from courts.

PECB, which was passed by the National Assembly's Standing Committee on Information Technology and Telecommunication on 13 April 2016 and by the Senate (with amendments) on 29 July 2016 relates to internet governance and cyber crimes.<sup>16</sup> PECB was primarily proposed to counter the use of the internet for cyber crimes and terrorism as agreed in the national action plan to counter terrorism (NAP).<sup>17</sup> The proposed legislation poses a serious threat to the right to privacy as it permits the PTA and the investigation agency to access traffic data of telecommunication subscribers and confiscate netizens' data and devices without prior warrants from the court under Section 28. Section 32 permits decryption of information, making it impossible for persons to use anonymity. Encryption and anonymity, and the security concepts behind them, provide the privacy and security necessary for the exercise of the right to freedom of opinion and expression in the digital age.<sup>18</sup> In addition, Section 29 requires internet service providers (ISPs) to retain the specified traffic data of users for a period of one year, which is against international practices and increases the risks of misuse of citizens' data in the absence of data retention laws.<sup>19</sup>

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<sup>12</sup>Citizen Lab. (2013). *For Their Eyes Only: The Commercialization of Digital Spying*. <https://citizenlab.org/2013/04/for-their-eyes-only-2>

<sup>13</sup>WikiLeaks. (2015). Email communication between Hacking Team and their Pakistani agent. <https://wikileaks.org/hackingteam/emails/emailid/616153>

<sup>14</sup>Privacy International. (2015). *Tipping the Scales: Security and surveillance in Pakistan*. [https://www.privacyinternational.org/sites/default/files/PAKISTAN%20REPORT%20HIGH%20RES%2020150721\\_0.pdf](https://www.privacyinternational.org/sites/default/files/PAKISTAN%20REPORT%20HIGH%20RES%2020150721_0.pdf)

<sup>15</sup>[na.gov.pk/uploads/documents/1462252100\\_756.pdf](http://na.gov.pk/uploads/documents/1462252100_756.pdf)

<sup>16</sup>PECB will need to be approved by the full National Assembly before passing into law.

<sup>17</sup>[nacta.gov.pk/NAPPoints20.htm](http://nacta.gov.pk/NAPPoints20.htm)

<sup>18</sup>Kaye, D. (2015). Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression. A/HRC/29/32. <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G15/095/85/PDF/G1509585.pdf?OpenElement>

<sup>19</sup>Baloch, H. (2016). *Internet Rights and Legislation in Pakistan: A Critique on Cyber Crime Bill 2016*. [www.netfreedom.pk/wp-content/uploads/2016/06/CSO-criticism-on-PECB-2016\\_IssuePaper.pdf](http://www.netfreedom.pk/wp-content/uploads/2016/06/CSO-criticism-on-PECB-2016_IssuePaper.pdf)

### 3. Article 18: Freedom of religion or belief

Article 18 of the ICCPR, which guarantees freedom of thought, conscience and religion, protects theistic, non-theistic and atheistic beliefs, as well as the right not to profess any religion or belief. The terms "belief" and "religion" are to be broadly construed. Article 18 is not limited in its application to traditional religions or to religions and beliefs with institutional characteristics or practices analogous to those of traditional religions.<sup>20</sup>

Article 2 of the Constitution of Pakistan<sup>21</sup> recognises Islam as the official state religion, Article 20 guarantees freedom of religion for all, including sects, and Article 22 states that no person shall be forced to receive religious educational instruction other than their own, and all shall have the right to impart educational instruction to their own community. While primarily concerned with freedom of expression, Article 19 provides for restrictions on grounds that include the interest of the glory of Islam. The 1974 amendment to the Constitution resulted in Articles 106 and 260, which excluded Ahmadis and Qadianis, terming them non-Muslims.

In addition to the Constitution the following laws impact the exercise of the right to freedom of religion. The Pakistan Penal Code<sup>22</sup> in Section 295 sets out offences against religion. Section 295(A) penalises acts done to outrage religious feelings. Sections 295(B) and 295(C) have severe provisions for blasphemy, defilement of the Quran or insulting the Prophet Muhammad, including life imprisonment and the death penalty. And Section 298 specifically deals with words uttered that wound religious feelings. Section 298(A) penalises any insults to any wife or family member of the Prophet Muhammad. Sections 298(B) and 298(C) target Ahmadis, Qadianis and other groups, penalising them for posing as Muslims or for preaching or propagating their faith. Section 153(A) of the Penal Code deals with incitement of disharmony or enmity. Section 505(2) prohibits publications of such nature.

#### 3.1. Religious freedoms under attack

In Pakistan, growing discourse on defamation of religion, alongside blasphemy laws to combat dissent and criticism of religions or beliefs, are proving to be serious threats to the fundamental rights to freedom of expression and religion as well. Laws on blasphemy or hurting religious sentiments have a stifling effect on dissent and freedom of expression and prohibit the free exchange of ideas and views on political, social, legal and academic issues that may touch upon religion.

Persons belonging to different religious minorities, primarily Christians, Hindus and Ahmadis, as well as followers of different sects of majoritarian Sunni Islam and the Shia sect are targeted through blasphemy laws.<sup>23</sup> While a large number of those charged under these laws are Muslims, the number of those

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<sup>20</sup>Human Rights Committee. (1993). General Comment No. 22. General Comment No. 22 also specifies that "the right to freedom of thought, conscience and religion (which includes the freedom to hold beliefs) [...] is far-reaching and profound; it encompasses freedom of thought on all matters, personal conviction and the commitment to religion or belief, whether manifested individually or in community with others."

<sup>21</sup>[www.pakistani.org/pakistan/constitution](http://www.pakistani.org/pakistan/constitution)

<sup>22</sup>[www.pakistani.org/pakistan/legislation/1860/actXLVof1860.html](http://www.pakistani.org/pakistan/legislation/1860/actXLVof1860.html)

<sup>23</sup>Members of religious minorities, such as Christians, Hindus, Sikhs, Parsis, Ahmadis, Muslim minority sect Shias as well as the Shia sub-sects Ismailis and Bohris; atheists; secular Muslims from the mainstream sects with progressive religious values; lawyers defending victims of blasphemy charges or those advocating for religious freedoms; and academics, journalists and media personnel writing about religion are all affected by violations pertaining to religion in online spaces. Perpetrators of such violations include state and non-state actors. State actors include government regulatory bodies such as the PTA and Pakistan Electronic Media Regulatory Authority, while non-state actors include

accused from minority communities is alarmingly high given their demographic proportions. In most cases those accused of blasphemy are not afforded fair trial, and even if acquitted they come under threat from extrajudicial sectors. The individual themselves, their families and sometimes the entire community comes under violent attack.<sup>24</sup>

It has become a challenge for human rights defenders,<sup>25</sup> academics, lawyers<sup>26</sup> and politicians<sup>27</sup> to debate or introduce changes in laws, when these touch upon religious issues. Fatwas are issued by clerics against those debating religion.<sup>28</sup> These often call for violence and mob “justice”. Sometimes they even announce monetary rewards for attacking individuals.<sup>29</sup> Such attacks result in large-scale displacement of people, affecting their livelihood and right to life and liberty. Due to threats of violence and brutal attacks by terrorist outfits and extremist groups, journalists and media houses are forced into self-censorship on issues relating to religion or religious sentiments.

### 3.2. Freedom of religion desecrated online

The stifling effect of laws on blasphemy or hurting religious sentiments is equally applicable to online spaces as well. The Telegraph and Publication Act, along with many regulations, are used to target books and other writings on religion. The Pakistan Electronic Media Regulatory Authority (PEMRA) is also reported to control media and journalists in covering news and discussions relating to religion.

Social media and other websites are blocked and filtered in Pakistan on grounds of them hurting religious sentiments. In a well-known case, the government banned access to the entire YouTube platform in the country in September 2012 in response to YouTube’s non-compliance with its request to remove the “Innocence of Muslims” video, a film insulting Islam, which sparked large-scale violence. In January 2016, Google (which owns YouTube) launched a country-specific homepage for YouTube in Pakistan, and the PTA issued a notification to all ISPs in the country informing them that the three-year-old ban on YouTube was to be lifted, as it had reached some form of agreement with Google regarding censorship of content on the new Pakistan-specific homepage.<sup>30</sup>

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religious clerics, extremist and militant groups, and members of the mainstream media.

<sup>24</sup>Bytes for All, Pakistan. (2016). Summary of Information. Mid-Term Universal Periodic Review: Pakistan. [www.netfreedom.pk/wp-content/uploads/2016/06/NationalUPRConsultations.pdf](http://www.netfreedom.pk/wp-content/uploads/2016/06/NationalUPRConsultations.pdf)

<sup>25</sup>Sabeen Mahmud, an activist, arts advocate and founder of a café that encouraged community interaction, was gunned down in Karachi in April 2015. Ali, N. S., & Zaman, F. (2016, 12 May). Anatomy of a Murder. *Herald*. [www.herald.dawn.com/news/1153209](http://www.herald.dawn.com/news/1153209)

<sup>26</sup>Rashid Rehman, a lawyer who was defending a university lecturer accused of blasphemy, was killed in 2014. Dawn. (2014, 8 May). Rights advocate Rashid Rehman Khan gunned down in Multan. *Dawn*. [www.dawn.com/news/1104788](http://www.dawn.com/news/1104788)

<sup>27</sup>In January 2011, the then governor of Punjab province, Salmaan Taseer, was gunned down by his official guard due to his public advocacy about a Christian woman jailed on blasphemy charges (see: [www.bbc.co.uk/news/world-south-asia-12111831](http://www.bbc.co.uk/news/world-south-asia-12111831)). Federal Minister for Religious Minorities Shahbaz Bhatti, a Christian, was killed by militants in March 2011 (see: [www.theguardian.com/world/2011/mar/02/pakistan-minister-shot-dead-islamabad](http://www.theguardian.com/world/2011/mar/02/pakistan-minister-shot-dead-islamabad)). Both were vocal defenders of religious tolerance and critical of oppressive blasphemy laws. In 2013, a case was filed against Senator Sherry Rehman for committing blasphemy because she had submitted a bill to the National Assembly seeking the removal of the death sentence for blasphemy from the Penal Code (see: [www.dawn.com/news/787651/blasphemy-case-registered-against-sherry-rehman-report](http://www.dawn.com/news/787651/blasphemy-case-registered-against-sherry-rehman-report)).

<sup>28</sup>NDTV. (2011, 10 January). Pak cleric declares Sherry Rehman 'fit to be killed'. *NDTV*. [www.ndtv.com/world-news/pak-cleric-declares-sherry-rehman-fit-to-be-killed-444484](http://www.ndtv.com/world-news/pak-cleric-declares-sherry-rehman-fit-to-be-killed-444484)

<sup>29</sup>Shah, N. (2012, 29 September). Bilour to offer bounties for future blasphemers. *Express Tribune*. [tribune.com.pk/story/444255/bilour-to-offer-bounties-for-future-blasphemers](http://tribune.com.pk/story/444255/bilour-to-offer-bounties-for-future-blasphemers)

<sup>30</sup>Bytes for All, Pakistan & APC. (2016, 20 January). Call for clarity on terms of lifting of YouTube ban in Pakistan. *APCNews*. <https://www.apc.org/en/node/21474>

Religious intolerance is being used to block legitimate expression, including online content from religious and sexual minorities. For example, the government banned a watchdog website that was monitoring the killing of Shia Muslims<sup>31</sup> as well as a website discussing LGBT and SOGI issues on the grounds of it being “un-Islamic”.<sup>32</sup> In early 2016 the government of Pakistan ordered the blocking of over 400,000 sites supposedly carrying pornographic and other “offensive” content.<sup>33</sup> The removal of websites and pages on such broad terms severely impinges on the freedom of religion, expression, assembly and association of individuals whose identities or beliefs are considered offensive. However, many websites and social media accounts and pages operated by religious extremist groups and militant outfits are easily accessible.

Online and offline violence motivated by religious intolerance are interrelated in Pakistan, with expression online relating to religion having serious offline consequences. In 2016, Khurram Zaki, a Shia rights activist and blogger, was shot dead in Karachi.<sup>34</sup> In 2014, two girls from the same family were killed in an arson attack over a scuffle relating to an allegedly blasphemous Facebook post by an Ahmadi youth.<sup>35</sup> Usman Liaqat, a Christian, was arrested for allegedly posting content on Facebook that was regarded as “blasphemous” by state authorities in Pakistan using the penal law and constitutional provisions.<sup>36</sup>

The proposed Prevention of Electronic Crimes Bill, 2016 poses a serious challenge as Section 34 broadly prohibits insults to Islam and can require removal of such content. Section 10 punishes advancing interfaith, sectarian or ethnic hatred with imprisonment that may extend up to 14 years and/or a fine of up to 50 million Pakistani rupees (roughly USD 480,000).

#### **4. Article 19: Freedom of opinion and expression**

Article 19 of the ICCPR guarantees everyone the right to hold opinions without interference, and the right to freedom of expression, including the freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers. Limitations to freedom of expression must be provided by law, pursuant to a legitimate aim, and necessary to achieve such aim, in accordance with paragraph 3 of the article.<sup>37</sup> As the Human Rights Committee elaborated with General Comment No. 34, Article 19 applies to online communications, and “[a]ny restrictions on the operation of websites, blogs or any other internet-based, electronic or other such information dissemination system, including systems to support such communication, such as internet service providers or search engines, are only permissible to the extent that they are compatible with Paragraph 3.”<sup>38</sup>

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<sup>31</sup>Express Tribune. (2012, 14 July). Shia killing watchdog website apparently banned. *Express Tribune*. [tribune.com.pk/story/408359/shia-killing-watchdog-site-apparently-banned](http://tribune.com.pk/story/408359/shia-killing-watchdog-site-apparently-banned)

<sup>32</sup>Abbasi, I. (2013, 23 September). Pakistan blocks first gay website Queerpk.com. *BBC*. [www.bbc.com/news/world-asia-24276142](http://www.bbc.com/news/world-asia-24276142)

<sup>33</sup>Haque, J. (2016, 25 May). Pakistan’s impossible attempt to block 400,000 porn sites continues. *Dawn*. [www.dawn.com/news/1260452](http://www.dawn.com/news/1260452)

<sup>34</sup>Ali, I. (2016, 8 May). Rights activist Khurram Zaki killed in Karachi gun attack. *Dawn*. [www.dawn.com/news/1256995](http://www.dawn.com/news/1256995)

<sup>35</sup>Mirza, I. (2014, 28 July). Mob attack over alleged blasphemy: Three Ahmadis killed in Gujranwala. *Dawn*. [www.dawn.com/news/1122143](http://www.dawn.com/news/1122143)

<sup>36</sup>Saeed, N. (2016, 27 May). Pakistan blasphemy case against Christian man, Usman Liaqat, makes three this month, a dangerous growing trend. *The Global Dispatch*. [www.theglobaldispatch.com/pakistan-blasphemy-case-against-christian-man-usman-liaqat-makes-three-this-month-a-dangerous-growing-trend-98503](http://www.theglobaldispatch.com/pakistan-blasphemy-case-against-christian-man-usman-liaqat-makes-three-this-month-a-dangerous-growing-trend-98503)

<sup>37</sup>As per Article 19 paragraph 3, legitimate aims may include (a) for respect of the rights or reputations of others, and (b) for the protection of national security or of public order (ordre public), or of public health or morals.

In Pakistan, the right to freedom of expression is translated in national law with Article 19 of the Constitution, which states: "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." This article is not consistent with international human rights standards as it contains several subjective terms which are open to interpretation, such as the glory of Islam, the integrity of Pakistan, friendly relations with foreign States, decency or morality, and contempt of court. These restrictions are not only in addition to those prescribed in the ICCPR but also restrict legitimate forms of expression such as criticising the judiciary and friendly states and debating Islam.

#### **4.1. Disproportionate restrictions to freedom of expression online**

Given the challenges faced in offline spaces for free expression in Pakistan, many have taken to online platforms to express themselves. Information and communications technologies (ICTs) have facilitated the exchange of ideas and information in dramatic ways, but have also led to more blunt techniques to violate the right to freedom of expression. The government is extending restrictions to freedom of expression in the online environment, by criminalising legitimate speech and creating hurdles to unrestricted free internet access, often with more severe consequences.

Bytes for All's in depth report, *Expression Restricted: An Account of Online Expression in Pakistan*, examines the state of freedom of expression online in Pakistan against international standards.<sup>39</sup> The report found that starting with a constitutional stipulation, Article 19, and continuing through various laws of the Pakistan Penal Code, freedom of expression faces various legalised restrictions. Most of these are against the spirit of the ICCPR, which puts Pakistan's compliance with its international obligations in doubt. The non-availability of legal mechanisms to protect the right to freedom of expression online shows that there is a need to increase protections.

As noted above and detailed in *Expression Restricted*, the PTA has blocked hundreds of thousands of websites, often belonging to members of religious minorities such as the Ahmadiyya and Shia communities or ethnic and marginalised groups such as the Baloch and LGBT communities, as well as those with content critical of government policies and practices. The most politically charged issue that continues to face blocks online is the Balochistan issue. Balochistan is not only an armed conflict area, but is also facing volatile separatist nationalist movements. The province is also home to some of the worst human rights atrocities in the country, including forced disappearances and extrajudicial killings. Another political issue that continues to face censorship is alternate discourse on the Frontier Crimes Regulations (FCR).<sup>40</sup> It appears that political censorship is usually limited to issues that are linked to both political structure and security threats. So, while critique on the general workings of the politicians and

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<sup>38</sup>United Nations. (2011). General Comment No. 34. International Covenant on Civil and Political Rights. Human rights Committee: CCPR/C/GC/34. [www2.ohchr.org/english/bodies/hrc/docs/gc34.pdf](http://www2.ohchr.org/english/bodies/hrc/docs/gc34.pdf)

<sup>39</sup>Baig, A., & Khan, S. (2015). *Expression Restricted: An Account of Online Expression in Pakistan*. <https://content.bytesforall.pk/sites/default/files/ExpressionRestricted.pdf>

<sup>40</sup>The FCR is a colonial law enacted in 1901 that allots a discriminatory status to the Federally Administered Tribal Areas (FATA), a semi-autonomous tribal region in northwestern Pakistan. The FCR excludes the region from the judicial and legislative system prevalent in the rest of Pakistan.

the governments are generally allowed online, if the matter under discussion is seen to be of a greater magnitude, content is blocked.<sup>41</sup>

Mobile network shutdowns are another blunt tool that the government of Pakistan uses to deny access to online spaces in Pakistan. There have been at least 21 instances of network shutdowns reported in Pakistan between August 2012 and August 2015.<sup>42</sup> While the government argues that network shutdowns help in preventing potential violent activities, this measure is neither a necessary nor proportionate response to counter such threats. During network shutdowns, citizens are denied the right to access information, including health and emergency services, and to communicate with authorities should they need to. The Human Rights Council recently unequivocally condemned such measures to intentionally prevent or disrupt access to or dissemination of information online as a violation of international human rights law and called on all states to refrain from and cease such measures.<sup>43</sup>

#### **4.2. Attacks on journalists and bloggers: A deadly threat to freedom of expression**

The targeting and harassment of journalists and increasingly bloggers is commonplace in Pakistan. There is a limited number of instances where journalists and bloggers have been issued legal notices; however, there is a much larger number being targeted through extra-legal means. The Committee to Protect Journalists reported that at least 81 journalists, including media workers, had been silenced over confirmed or unconfirmed motives between 1994 and 2014.<sup>44</sup> In the period between 2008 and 2014 alone, at least 51 journalists were assassinated. Incidents of journalists and their families being threatened, kidnapping and torture have also been reported in this period.<sup>45</sup> As noted above, if expression is of a religious nature, accusations of blasphemy and death threats are also likely.

While the perpetrators are largely non-state actors, the state's role is to offer protection against such harassment to create an environment conducive to freedom of expression. The electronic and print media regulators, PEMRA and the Press Council of Pakistan (PCP), respectively, are the concerned regulators dealing with technology and all forms of media in Pakistan, and by law, their mandates assure their role as independent regulators to act as buffers between the government and citizens. But in reality they are not independent of government control. A culture of impunity and violence against journalists and bloggers prevails in Pakistan. According to Amnesty International, it investigated 73 incidents of harassment or abuse of journalists in 2014, and of the 73 perpetrators, only two have been convicted by state authorities, while court proceedings were brought against the alleged perpetrators in six incidents. Police or other law enforcement agencies carried out initial investigations in merely 36 cases.<sup>46</sup>

<sup>41</sup>Baig, A., & Khan, S. (2015). Op. cit.

<sup>42</sup>Institute for Human Rights and Business. (2015). *Security v Access: The impact of mobile network shutdowns. Case study: Telenor Pakistan*. <https://content.bytesforall.pk/sites/default/files/2015-09-Telenor-Pakistan-Case-Study.pdf>

<sup>43</sup>Human Rights Council. (2016). The promotion, protection and enjoyment of human rights on the Internet. HRC/RES/32/13. <https://documents-dds-ny.un.org/doc/UNDOC/LTD/G16/131/89/PDF/G1613189.pdf?OpenElement>

<sup>44</sup>Ashraf, G. (2014, 23 December). In the line of fire: Another violence filled year for journalists in Pakistan. *Express Tribune*. [tribune.com.pk/story/811163/in-the-line-of-fire-another-violence-filled-year-for-journalists-in-pakistan](http://tribune.com.pk/story/811163/in-the-line-of-fire-another-violence-filled-year-for-journalists-in-pakistan)

<sup>45</sup>Ibid.

<sup>46</sup>Amnesty International. (2014). "A bullet has been chosen for you": *Attacks on journalists in Pakistan*. <https://www.amnesty.org/en/documents/asa33/005/2014/en>. The killings of Syed Saleem Shahzad, Wali Babar, Irshad Mastoi, Aftab Alam, Hafeez ur Rehman, Muhammad Zaman Mehmood, Arshad Ali Jafri and Abdul Azam Shinwari are among prominent examples of journalists' assassinations in Pakistan in recent years. In April 2014, an assassination attempt was made on Hamid Mir, Pakistan's most famous TV journalist. Both state and non-state actors

Because of an ongoing war-like situation on the country's western borders, journalists and media persons have been sandwiched between state and non-state actors. Proscribed organisations are continuously trying to pressure journalists to promote their agenda, therefore dictating their own code for the media. On the other hand, state authorities do not allow media to freely access and report from conflict zones, including the Federally Administered Tribal Areas (FATA) and Balochistan. Journalists reporting from conflict areas then have to face a backlash if anything is published or broadcast that is contrary to the agenda of any of the actors engaged in the conflict.

## **5. Articles 21 and 22: The rights to peaceful assembly and association**

Articles 21 and 22 of the ICCPR guarantee the rights to peaceful assembly and of association, respectively. Restrictions to the rights are permissible provided that they are prescribed by law and are necessary in a democratic society, such as on grounds of national security or public safety, public order and the protection of public health or morals, or in order to protect the rights and freedoms of others. These should be exceptions and only used in the last resort.<sup>47</sup>

The freedoms of assembly and of association are enshrined in Pakistan's Constitution, with Articles 16 and 17.<sup>48</sup> However, the provisions for limiting these rights are more broad, allowing for "reasonable restrictions", and include other factors, like the interest of the sovereignty or integrity of Pakistan, which are subjective and open to interpretation and abuse.

The Penal Code of Pakistan prohibits religious minorities, especially Ahmadi Muslims who are not allowed to identify themselves as Muslims, from gathering for prayers or using any references to Islam, the Prophet or the Adzan (call for prayers), among others. This prohibition was introduced in 1984 under Sections 298B and 298C of the Penal Code.<sup>49</sup>

### **5.1. Suppressing peaceful associations through regulations**

Under the NAP, the government of Pakistan has moved to suppress human rights organisations and aid workers in Pakistan. In particular, international NGOs (INGOs) have been directed by the Ministry of Interior to re-register themselves with the government of Pakistan.<sup>50</sup> In a country-wide crackdown against NGOs/INGOs, the Securities and Exchange Commission of Pakistan (SECP) cancelled the registration of 23 INGOs in August 2015.<sup>51</sup> Meanwhile, the Ministry of Interior ordered Save the Children to shut down its operations. Moreover, the registration requests of nine INGOs were also turned down by

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have allegedly been involved in such actions. This environment on a larger scale encourages self-censorship, which is the worst form of censorship.

<sup>47</sup>UN Human Rights Council. (2010). The rights to freedom of peaceful assembly and of association. HRC/RES/15/21. [ap.ohchr.org/documents/dpage\\_e.aspx?si=A/HRC/RES/15/21](http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/RES/15/21)

<sup>48</sup>[www.pakistani.org/pakistan/constitution/part2.ch1.html](http://www.pakistani.org/pakistan/constitution/part2.ch1.html)

<sup>49</sup>The two other relevant Pakistan Penal Code provisions are: Section 144: Whoever, being armed with any deadly weapon, or with anything which, used as a weapon of offense, is likely to cause death, is a member of an unlawful assembly/shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both; and Section 145: Whoever joins or continues in an unlawful assembly, knowing that such unlawful assembly has been commanded in the manner prescribed by law to disperse, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

<sup>50</sup>Ghumman, K. (2015, 17 June). INGOs get three months to re-register themselves. *Dawn*. [www.dawn.com/news/1188668](http://www.dawn.com/news/1188668)

<sup>51</sup>Dunya News. (2015, 7 August). Registration of 23 foreign NGOs canceled. *Dunya News*. [dunyanews.tv/en/Pakistan/292334-Registration-of-23-foreign-NGOs-canceled](http://dunyanews.tv/en/Pakistan/292334-Registration-of-23-foreign-NGOs-canceled)

the government.<sup>52</sup> A new draft legislation, the Foreign Contribution Act 2014, is also under consideration, with the stated goal of streamlining foreign funding and functioning of NGOs/INGOs in Pakistan.

## 5.2. Limitations on freedom of assembly and association online

Freedom of assembly and association online refers to when the exercise of freedom assembly and association is carried out online such as online petitions and protests – including virtual protests and “hacktivism”<sup>53</sup> – and when technology is used to enable freedom of assembly and association online and offline.

As documented in the APC report *Freedom of assembly and association online in India, Malaysia and Pakistan: Trends, challenges and recommendations*,<sup>54</sup> there are numerous examples of how groups and individuals have used the internet to mobilise and to come together on specific issues or interests where physical gatherings were impossible or dangerous. However, in different instances, the right to freedom of assembly and association, both offline and online, has been trampled upon by the state and non-state actors, often in the guise of national security, public order, or morality. In Pakistan, the government’s arbitrary shutdown of mobile services,<sup>55</sup> banning of websites and blogs,<sup>56</sup> and implementation of other laws such as section 144 and 145 of the Pakistan Penal Code<sup>57</sup> are a few examples of how the rights to freedom of peaceful assembly and association are being violated.

As noted above, the frequent imposition of network shutdowns presents a serious violation of the exercise of human rights in Pakistan, including freedom of assembly and association. Network shutdowns prevent the usage of popular applications like WhatsApp, which are commonly used by activists, organisations and ordinary individuals alike. In addition, shutdowns prevent access to social media platforms like Twitter and Facebook, which are often used to organise peaceful assemblies. In the capital city of Islamabad and neighbouring city of Rawalpindi these shutdowns are more frequent, and in recent months, networks remained blocked in these cities for several hours during military parades and rehearsals to observe Independence Day.<sup>58</sup>

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<sup>52</sup>Including the US-based Catholic Relief Services, World Vision International and iMMAP; UK-based International Alert; the Norwegian Refugee Council, the Danish Refugee Council, ZOA International of the Netherlands and the Bangladesh-based Dhaka Ahsania.

<sup>53</sup>ARTICLE 19 defines hacktivism as “collective action of technologically-skilled individuals through the use of digital technologies to protest without gathering in person.” Most techniques are considered a form of electronic civil disobedience due to related violation of the law. The organisation argues that international law allows for consideration of these actions as forms of freedom of expression and assembly. See ARTICLE 19’s background paper on right to protest: <https://right-to-protest.org/wp-content/uploads/2015/06/Right-to-Protest-Background-paper-EN.pdf>

<sup>54</sup>Venkiteswaran, G. (2016). *Freedom of assembly and association online in India, Malaysia and Pakistan: Trends, challenges and recommendations*. APC. <https://www.apc.org/en/pubs/freedom-assembly-and-association-online-india-mala>

<sup>55</sup>Pakistan Today. (2016, 21 March). Mobile phone service suspended in Islamabad for Pakistan Day parade rehearsal. *Pakistan Today*. [www.pakistantoday.com.pk/2016/03/21/city/islamabad/mobile-phone-service-suspended-in-islamabad-for-pakistan-day-parade-rehearsal](http://www.pakistantoday.com.pk/2016/03/21/city/islamabad/mobile-phone-service-suspended-in-islamabad-for-pakistan-day-parade-rehearsal)

<sup>56</sup>Iqbal, A. (2013, 28 September). ‘Don’t hate us, know us’, but PTA disagrees: Pakistan’s first gay website banned. *Express Tribune*. [blogs.tribune.com.pk/story/19033/dont-hate-us-know-us-but-pta-disagrees-pakistans-first-gay-website-banned](http://blogs.tribune.com.pk/story/19033/dont-hate-us-know-us-but-pta-disagrees-pakistans-first-gay-website-banned)

<sup>57</sup>The Nation. (2014, 1 September). Section 144 enforced in Punjab. *The Nation*. [nation.com.pk/laure/01-Sep-2014/section-144-enforced-in-punjab](http://nation.com.pk/laure/01-Sep-2014/section-144-enforced-in-punjab)

<sup>58</sup>Bytes for All, Pakistan. (2015, 13 August). Islamabad to Celebrate Independence Day by Shutting Down Communication Channels. <https://content.bytesforall.pk/node/175>

## 6. List of issues

Based on the above information, APC, Bytes for All, Pakistan and Media Matters for Democracy propose the following questions for the list of issues on Pakistan:

1. What safeguards is the government of Pakistan taking to ensure that its surveillance practices comply with international human rights standards, namely the principles of legality, necessity and proportionality?
2. What measures is the government taking to ensure that its citizens are not subject to unlawful and arbitrary surveillance by foreign governments?
3. What form of judicial oversight is available for violations of the right to privacy?
4. What steps has the government taken to repeal blasphemy laws, in line with international norms in this area?
5. What protections has the government afforded to those accused of blasphemy against mob violence?
6. Has the government taken any steps to prevent application of blasphemy laws to online expression?
7. What steps has the government taken to ensure the protection of journalists and bloggers from attacks by non-state actors and to end impunity for such attacks?
8. What measures is the government taking to ensure that restrictions to online content are consistent with Article 19, paragraph 3, and that the least restrictive means are employed?
9. How will the government ensure that the proposed PECB meets international guarantees on freedom of expression, privacy, assembly and association?
10. What measures has the government taken to ensure that network shutdowns imposed in the name of national security meet standards set out in Articles 19, 21 and 22 of the ICCPR?