
**WHITE PAPER ON
POLICY EFFORTS
TO REGULATE
ONLINE MEDIA**

**CIVIL SOCIETY FOR INDEPENDENT
MEDIA AND EXPRESSION (CIME)**

WHITE PAPER ON POLICY EFFORTS TO REGULATE ONLINE MEDIA

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EXECUTIVE SUMMARY

The regulatory efforts and policy measures undertaken by the government regarding online media during the past two years have raised serious questions about the protections for press freedom and freedom of expression on the Internet in Pakistan. From half-baked attempts to introduce regulatory reforms to the secretive manner in which rules for online regulation were prepared, the government has on several occasions brought the ire of journalists, lawyers, human rights defenders, and even ordinary social media users.

The tendency to control online media, especially independent and critical expression, is detrimental to the interests of democracy and a violation of the fundamental freedoms guaranteed for the citizens by the Constitution of Pakistan. Therefore, it is important to view the recent policy efforts to regulate online media from a human rights perspective. This white paper analyses some of the policies and regulations that affected online media and Internet content during the past few years. It offers the following recommendations:

1. **Withdraw the rules for online regulation:** The rules have failed to provide checks and balance on the powers of the regulator to control online content and media sources. Instead, the rules exceed the scope of the cybercrimes law and create adverse circumstances for freedom of expression, right to privacy, and growth of the digital economy. It is recommended that the rules be withdrawn and an inclusive, transparent, and multistakeholder consultative process be started to prescribe the procedures for online content regulation in line with constitutional protections and international human rights law.
2. **Review Section 37 of PECA:** Section 37 of PECA is the root cause of the problems related to online media regulation and without addressing it first, it is nearly impossible to develop checks on the regulator's unfettered powers and arbitrary use of these powers. The government and opposition political parties in Parliament should immediately review Section 37 and repeal or amend it to pave the way for a better Internet governance policy framework for the country that serves the public interest and supports industry development.
3. **Ensure transparency and accountability of regulatory agencies:** In order to make the online regulator dispense with its duties in an open and transparent manner, statutory obligations need to be introduced either through legal amendments in PECA or

updated rules of business to ensure that the regulator provides the right to appeal and detailed reasoning for its enforcement actions regarding its online regulation decisions. Parliamentary committees on information technology must play an active role in bringing about a culture of transparency and accountability in the practices of the regulator.

4. **Define the public interest objectives for online content regulation:** The government should focus on defining the public interest objectives for online media and content regulation in consultation with civil society, media, and technology industry stakeholders. The public interest objectives could guide the government and the regulators toward clear, reasonable, and proportionate mechanisms to protect citizens from undue harm during their online activity. These mechanisms may not have to exclusively rely on content removal and blocking and could take on a variety of educational and support initiatives.
5. **Convergence review for regulatory reforms:** The policymakers should encourage an independent and external review of the flaws in the existing media regulations. The recommendations of this review could advise how to proceed regarding media regulatory reforms in Pakistan's context. The report could rely on broad and inclusive consultations with media stakeholders to address their concerns and overcome their distrust of government steps in this regard.

It is hoped that the recommendations will prove useful to advocate for a progressive digital rights and Internet governance structure in the country.

INTRODUCTION

The Pakistan Tehreek-e Insaf (PTI) government has had a turbulent relationship with the press since the political party came to power after the 2018 general elections. While the PTI-led federal government has claimed it believes in press freedom and its human rights ministry prepared a draft bill for journalists' safety, the government's actions have hinted at a media policy of control. A major portion of this policy attention is on the online media, including social networks which have become the predominant avenues of political expression, independent journalism, and critical social commentary in Pakistan.

The federal government has made several attempts during the past two years to police online content through regulation. Initially it shared a proposal to introduce a converged media regulator but later those plans were sidelined. The private broadcast media regulator, which is apparently heavily influenced by government policy, also proposed a licensing and regulatory regime for online streaming services in 2019 but the proposal was shot down by a Senate committee.

Separately the federal cabinet approved rules for the enforcement of online content takedowns under the Prevention of Electronic Crimes Act, but then suspended the rules under public pressure only to launch a much-criticised consultative process. In November, the government finally revealed an updated and renamed version of the rules disregarding the feedback from stakeholders and began its enforcement despite concerns about the impact of the rules on freedom of expression, privacy, and the digital economy.

Furthermore, reports about the deployment of a web monitoring system that could ostensibly conduct widespread surveillance of Pakistani Internet users also add to the concerns about the use of social media monitoring and its chilling effect on online speech. These and other similar policy measures merit a detailed look at the kind of vision the government wants to impose in the country regarding the Internet.

The white paper examines these recent policy-based and regulatory attempts by the federal government and the relevant regulators to manage online media. The paper offers a study of the potential risks of these policies and regulations on online freedom of expression and other related digital rights, such as access to online information. It presents a discussion on the contours of the policy vision hinted at by these recent attempts and offers recommendations for policymakers and other stakeholders to consider for safeguarding fundamental freedoms while trying to regulate online media and expression.

POLICY ANALYSIS AND DISCUSSION

This section examines the proposed policies and currently enforced regulations that affect online media in Pakistan and offers a discussion of the strengths and flaws of these measures in the context of the fundamental rights of citizens.

ONE REGULATOR TO RULE THEM ALL?

Less than two weeks after assuming office, the federal information minister Fawad Chaudhry¹ announced plans for a unified media regulatory agency². Mr. Chaudhry told a Senate committee on information in October 2018 that the proposed new regulator, labelled Pakistan Media Regulatory Authority (PMRA), would replace the existing broadcast, print, and Internet regulators and this would require the merger of all media-related laws currently enforced in the country³.

By the end of that year, the information ministry had shared a concept note and a draft bill with media stakeholders⁴. Both documents were deplorable; The concept note, which was littered with spelling mistakes, plagiarised text, illogical arguments, and contradictory statements, would have received an F grade as a college term paper and does not deserve a serious appraisal⁵.

The language of the draft bill⁶ was largely borrowed from the Pakistan Electronic Media Regulatory Authority (PEMRA) Ordinance, with insertions in some places to reflect that “digital/social media” would now also be licensed and regulated by the new proposed regulatory structure. This is where the problems in the draft bill started. The proposed bill did not define the terms “digital/social media”, creating uncertainty about whether the government only wanted to start licensing and regulating the content to all digital news websites (and why?) or all user-generated content sources across social networks. Either case was problematic, as print and digital media sources do not require a license to operate in most countries around the world; licensing is mostly only used for broadcast media because the scarcity-of-resource principle applies to the frequency spectrum used for broadcasting. The draft bill did not acknowledge the practical challenges associated with these approaches (for example, the number of digital sources and volume of content it would have to deal with) and showed no realisation of the way this heavy regulatory regime would impact the freedom of expression and right to information of citizens on the Internet. In the absence of any semblance of clarity in how the new regulator

¹ Fawad Chaudhry was transferred to the Science and Technology ministry in cabinet reshuffle in April 2019. His successor, Firdous Ashiq Awan, was removed from her post in April 2020. PTI Senator Shibli Faraz now serves as the federal information minister.

² See ‘Govt plans to merge regulatory bodies: Fawad’ in Dawn, 30 Aug 2018: <https://www.dawn.com/news/print/1429877>

³ See ‘Govt plans new body to regulate media: Fawad’ in Dawn, 19 Oct 2018: <https://www.dawn.com/news/print/1429877>

⁴ See Media Matters for Democracy’s response, 26 Jan 2019: <http://bit.ly/2L9m0dC>

⁵ For concept note, see: <https://mediamatters.pk/wp-content/uploads/2019/01/Concept-Note-PMRA.pdf>

⁶ For draft bill, see <https://mediamatters.pk/wp-content/uploads/2019/01/Draft-Bill-PMRA.pdf>

would deal with online media, the draft bill led to more questions than answers⁷ and led some to the opinion that the government only intended to exert control over social media to silence online criticism against itself⁸.

There were more issues in the draft. Where the amended PEMRA law on which the draft was based has 40 sections dealing with different aspects of the regulator's role and regulatory activities, the draft bill contained only 15. The truncation and text revisions led to many more concerns, confusions, and ambiguities. For example, the sections about categories of licence and consultation with provinces in the original PEMRA law were framed in the context of the territorial nature of spectrum allocation and broadcast of TV and radio services, but the draft removed these qualifications to extend these provisions to digital media without realising that the borderless nature of the Internet defies limitations inherent to the broadcasting systems. Similarly, even though the draft proposed that the composition of the regulator's board should have no ex-officio members, the text was not cleaned to remove all references to ex-officio members, which form a part of the PEMRA board. The draft also took away the independence of the proposed regulator by stating that its members would be appointed by the federal government.

The draft bill also suggested that the new regulator would devise a code of conduct or an ethical code of practice for all media types, including digital media, while paying lip service to freedom of expression. However, instead of following the best practice of industry stakeholders to develop the codes in consultation with the government, it was mentioned that the government would include a code of ethical practice in the law and the authority would create a code of conduct as well. This created the sense that the code would be imposed by the government on the media content and developed concerns about government-imposed censorship. Ideally the law only provides statutory cover for a code of practice to be developed by independent oversight bodies so that its co-regulatory compliance could be legal. However, the draft bill left all control for the government and the regulator. No additional comments were made about the code and whether it would be platform neutral and how its enforcement would be carried out.

The draft bill perhaps inadvertently reverted to an older and now-amended section of the PEMRA law about media ownership. In 2007, the Parliament had removed cross-ownership

⁷ *Ibid.*, footnote 4 for questions raised by the draft bill.

⁸ See 'Dictatorial approach to media regulation' in The Express Tribune, 2 Feb 2019: <https://tribune.com.pk/story/1901857/dictatorial-approach-media-regulation>

restrictions from the law⁹. But the language in the draft bill reinstated prohibition of undue concentration of media ownership in any city, town or area and the country as a whole albeit again without clarifying if this would only be for broadcast or for print and digital as well.

For redress of public complaints about the media, the draft bill copied the same council of complaints system in force at PEMRA without conducting an audit of the performance of the PEMRA councils in achieving their stated objectives over the past decade. In an addendum, the draft bill presented an outline for the print media division in the new proposed regulator. The only innovations of this outline were to centralise the registration procedure and digitise the process to apply for licences, which could presumably be achieved in the currently enforced print regulation system and does not have to be the chief rationale for regulatory convergence given other more pressing concerns about technology disruptions and content consumption practices.

Overall, then, the draft bill was a poor, imprecise, and incomplete document that would never have stood up to legislative scrutiny. It showed a lack of planning and seriousness by the government. The entire process relied on the flawed logic of using a draft bill to solicit stakeholder feedback rather than conducting a comprehensive multi-stakeholder consultative process as the starting point of legislative drafting.

The document almost seemed to give the impression that it was the first draft of an internal memo that had been hastily floated as a public proposal for the converged regulator. One section at the end of the document tellingly gave away the lack of government planning. In this section, the draft's author(s) had discussed issues that needed to be addressed before media regulatory reforms could take place. The last paragraph of this section is being reproduced here, as it honestly confesses to the authoritarian overtures of the proposed policy and foreshadows the criticism the PMRA proposal was about to receive (emphasis from original): “**3 — To avoid authoritarianism:** Decentralised media regulating bodies is a form of democratization. Creating centralized structures working under a single command is against the spirit of democracy. The media may raise voice against centralization. The facilitation processes should be brought under one window but the regulation and accountability processes should work under the boards of stake holders (sic) with sufficient autonomy within the new authority.”¹⁰

⁹ See ‘Regulatory Safeguards: Media Ownership Concentration’ in Media Ownership Monitor Pakistan: <https://pakistan.mom-rsf.org/en/findings/findings/>

¹⁰ *Ibid.*, footnote 6, page 11.

In late January 2019, the federal cabinet approved the proposal¹¹ without considering any feedback from the media organisations, journalists or other stakeholders. Criticism from the press was fast and fierce; the representative bodies of media owners and editors saw it as a move to systematically impose curbs on the print media and the news websites run by newspapers¹². The Pakistan Federal Union of Journalists rejected the proposal and termed it “draconian”¹³. Press freedom and digital rights advocates also feared that the government might use this new regulator to selectively and arbitrarily impose censorship and restrictions on journalists and social media users¹⁴. Independent observers found the provisions of the draft bill to contradict international law principles for media regulation and the government was advised to first address flaws in existing media regulatory framework before creating a new regulator¹⁵. Nearly two months later, a National Assembly standing committee asked the information ministry for clarification about the proposed merger of regulatory bodies and a revised concept paper¹⁶. Since then, the government has not approached the matter of the converged regulatory body. However, the year 2020 saw two separate attempts to regulate online content with completely different results.

THE STREAMING CONTENT DILEMMA

Pakistani citizens now have access to streaming content services, such as Netflix and Amazon Prime Video. More recently, an Indian on-demand service also gained popularity in the country after it ran a show created in Pakistan. The urban popularity of content streaming services has led to a few regulatory disruptions in the entertainment content sector: (1) Pakistan’s broadcast regulations do not allow wholly foreign-operated content providers but the major streaming services are owned and operated by foreign companies, (2) Indian content is banned in Pakistan but the streaming services offer shows and films produced in India, and (3) the local entertainment companies and their products and services are taxed but it is unclear if the

¹¹ See ‘Cabinet approves merger of all media regulatory bodies’ in Dawn, 25 Jan 2019: <https://www.dawn.com/news/1459636>

¹² See ‘APNS, CPNE assail move to form new media body’ in Dawn, 26 Jan 2019: <https://www.dawn.com/news/1459855>

¹³ See ‘PMRA draconian, not acceptable’ in The News International, 27 Jan 2019: <https://www.thenews.com.pk/print/423981-pmra-draconian-not-acceptable-says-pfuj>

¹⁴ See ‘Dial ‘PMRA’ for a muzzled media’ in Newslines, Jan 2019: <https://newslinemagazine.com/magazine/dial-pmra-for-a-muzzled-media/>

¹⁵ See the analysis and recommendations by IRADA and the Centre for Law and Democracy here: <https://irada.org.pk/wp-content/uploads/2019/10/Pakistan-Note-on-the-Proposed-Mandate-and-Scope.pdf>

¹⁶ See ‘PMRA Act: Revised concept paper on proposed legislation sought’ in Business Recorder, 13 Mar 2019: <https://fp.brecorder.com/2019/03/20190313454928/>

content streaming services are paying any special taxes even though they have payment collection agreements with companies such as PTCL and Telenor Pakistan.

In January 2020, Pakistan's broadcast regulator PEMRA invited public comments on a consultation paper regarding the regulation of 'Web TV' and Over the Top TV (OTT) services¹⁷. The paper offered a licensing, registration, and content regulation scheme for the above-mentioned on-demand services that typically use the Internet for distribution.

The scheme proposed by PEMRA had several issues. The definitions and use of the terms Web TV and OTT in the paper had overlaps and did not provide sufficient clarity of which services and platforms will be licensed and which would be exempt. The international models cited in the paper also did not support the licensing and regulation regime that was presented afterward in the same document.

Media development expert Asad Baig pointed out that OTT licensing could support local OTT platforms and digital video content creators in Pakistan by providing copyright protections for their content, helping them build a subscription-based revenue stream, and opening the local digital content market for investment and development¹⁸. However, he noted that PEMRA's consultation paper went beyond licensing to include content regulation of OTT services based on the existing broadcast code of conduct. He stated that this could lead to undue restrictions on artistic freedom for on-demand content whose consumption is fundamentally different from linear TV content. Instead of attracting investment, this measure would most likely lead to the flight of international platforms and their potential investments in the local market, he said. Moreover, the content regulation could be exploited to impose political censorship on independent news analysis offered by journalists on video-sharing platforms, as PEMRA might use its description of content "competing with linear TV" to argue that the journalistic content was in competition with TV news networks and therefore subject to strict content restrictions.

Mr. Baig also questioned PEMRA's argument that the licensing and regulation of Web TV and OTT services were being considered to provide a level-playing field to broadcasters because PEMRA's jurisdiction also does not extend to state broadcasters, which compete with private media, and PEMRA has not successfully facilitated the broadcast sector to digitise completely and explore a subscription-based revenue model.

¹⁷ PEMRA consultation paper: https://pemra.gov.pk/uploads/cp/Regulating_the_Web_TV_OTT_CP.pdf

¹⁸ For Mr. Baig's analysis, please see:

<http://www.digitalrightsmonitor.pk/op-ed-everything-you-need-to-know-about-pemras-policy-to-license-regulate-ott-web-tv/>

Civil society groups also rejected the PEMRA proposal, who saw it as an extension of the failed PMRA proposal and other measures in the works to control online content and felt that it would violate freedom of expression and right to information protections for the citizens¹⁹. Digital rights activist Usama Khilji wrote that the draft was “part of the continued onslaught on the fundamental rights of freedom of speech, press freedom, and the right to information as guaranteed by Article 19 and 19-A of the Pakistani Constitution²⁰.” He highlighted that the heavy licensing fees proposed by PEMRA for Web TV and OTT services would create a barrier to entry in the market for local content creators, including independent commentators and freelance journalists, and will have the effect of censorship of critical voices.

Finally and perhaps most importantly, activists pointed out that PEMRA’s remit is limited by specific services mentioned in the law, which did not include new specialised services such as Web TV and OTT. In fact, PEMRA had itself mentioned in the consultation paper that it would seek the support of the Pakistan Telecommunication Authority (PTA) to carry out enforcement actions against licensed Web TV and OTT services found in violation of the regulation, if the proposed policy materialised²¹. PTA regulates online content in Pakistan under the cybercrimes law. This created a jurisdictional overlap issue for the broadcast regulator, which was noticed by a Senate committee that reviewed PEMRA’s proposal in the context of fundamental human rights. The committee declared that PEMRA was only mandated to regulate private broadcast media and it had no jurisdiction over Web TV and OTT services. “PEMRA’s proposal of regulation (for Web TV and OTT) is tantamount to going beyond its mandate and in contravention of Article 19 (of the Constitution that pertains to freedom of speech and press),” the committee stated in its decision²².

When the PEMRA consultation paper was being discussed in January 2020, civil society groups had also accused the government of another draft regulation about digital content that was being shared by the PTA privately within the government and had not been made public²³. It was claimed that this parallel draft also had several regressive provisions that would undermine free

¹⁹ See ‘Civil society, media activists reject Pemra draft on regulating web TV’ in The News International, 29 Jan 2020: <https://www.thenews.com.pk/print/605705-civil-society-media-activists-reject-pemra-draft-on-regulating-web-tv>

²⁰ For Mr. Khilji’s analysis, please see: <https://www.dawn.com/news/1532007>

²¹ *Ibid.*, footnote 17, see page 16 of the consultation paper.

²² See ‘PEMRA cannot regulate Web TV & OTT: Senate Human Rights Committee’ in Digital Rights Monitor, 10 Feb 2020: <http://www.digitalrightsmonitor.pk/pemra-ott-senate-human-rights/>

²³ *Ibid.*, footnote 19

expression in the country. It is likely that this draft was actually the rules for online content regulation, whose details became public in February.

SOCIAL MEDIA CONTROL

The Prevention of Electronic Crimes Act (PECA) was enacted in 2016 and it gave PTA the powers to remove and block unlawful online content in Pakistan. Under the law, the PTA was required to formulate rules to ensure that it used these powers reasonably, transparently, and with adequate safeguards for the protection of citizens' rights. However, PTA failed to develop its rules for over three years until the Islamabad High Court gave it a three-month deadline²⁴ in September 2019 to enact the rules. In February 2020, reports emerged that the cabinet had approved these rules under the title of Citizen Protection (Against Online Harm) Rules 2020²⁵.

The discovery of the content of the rules resulted in an immediate outcry from the civil society. In the rules, PTA had gone beyond the limitations set in PECA to designate a new centralised position for content regulation; it had also violated the intermediate liability limitation in the law to prescribe penalties for social media companies found in violation of PTA's orders²⁶.

In fact, the rules were primarily focussed on social media, and included troubling obligations about upload filters that hinted at prior restraint and decrypted data-sharing that raised concerns about privacy of personal user data. The civil society members, including journalists, lawyers, and human rights defenders, called for an immediate de-notification of the rules. The Asia Internet Coalition also raised concerns about the rules²⁷, and the United Nations Special Rapporteurs wrote to the government to highlight issues in the rules that contravened Pakistan's commitments to international human rights law²⁸. The protests led the government to suspend the rules and create a consultative committee composed only of officials to get stakeholder

²⁴ See 'IHC directs PTA...' in Digital Rights Monitor, 25 Sep 2019: <http://www.digitalrightsmonitor.pk/ihc-directs-pta-to-provide-opportunity-of-hearing-before-blocking-online-content/>

²⁵ See 'Social media companies instructed to establish local presence...' in Digital Rights Monitor, 13 Feb 2020:

<http://www.digitalrightsmonitor.pk/social-media-companies-instructed-to-establish-local-presence-provide-government-with-unencrypted-user-data-and-block-access-to-reported-content-within-24-hours/>

²⁶ See 'Civil society bodies declare...' in Digital Rights Monitor, 13 Feb 2020:

<http://www.digitalrightsmonitor.pk/civil-society-bodies-declare-the-rules-for-protection-against-online-harm-a-political-move-to-silence-critics-demand-immediate-de-notification/>

²⁷ See 'AIC submits response to Pakistan's Citizens Protection Rules (Against Online Harm)' in AIC Asia, 16 Feb 2020:

<https://aicasia.org/2020/02/16/aic-submits-response-to-pakistans-citizens-protection-rules-against-online-harm-feb-2020/>

²⁸ See the UN advocates' letter to the government:

https://www.ohchr.org/Documents/Issues/Opinion/Legislation/OL_PAK.pdf

feedback, but the local civil society boycotted the consultative process and demanded that the rules be withdrawn before consultation could commence²⁹.

Between August and October, the PTA extended its content restrictions to blocking and banning smartphone applications on the charges of violent, indecent or immoral content. These decisions again brought judicial scrutiny upon the PTA about its failure to publish rules of business for content regulation under PECA³⁰. Two weeks later, the ministry of information technology made the new version of the rules public with the title of Removal and Blocking of Unlawful Online Content Rules 2020³¹.

But the new rules showed that the government had disregarded feedback from local, international and multilateral experts to keep most of the provisions of the February version intact. Where the government had removed the national coordinator's position, it had made online criticism of government and officials illegal. It had also retained sections that violated the PECA section on intermediate liability and created concerns about free speech and privacy of citizens. Later, the government admitted its incompetence and claimed that an incorrect version of the rules had been published. The corrected document, shared by the ministry of information technology, removed the reference to online criticism of the government³². But many of the same problems remained.

In their current form, the rules for online content regulation still violate PECA sections and have privatised content moderation to the social networks rather than developing judicial oversight in the interest of freedom of expression. The rules also impose localisation requirements on the Internet companies without addressing concerns about the impact on the country's digital economy if the companies leave instead of complying with the imposed obligations. The decrypted data provision requirement in the rules jeopardises the right to privacy of users in the absence of a strong data protection law. PECA already provides for certain procedures and safeguards regarding data acquisition by law enforcement for the investigation of cyber offences,

²⁹ See 'Pakistan social media rules...' in Business Recorder, 3 Mar 2020:
<https://www.brecorder.com/news/576634>

³⁰ See 'DRM Exclusive: PTA asked to present published Rules' in Digital Rights Monitor, 2 Nov 2020:
<http://www.digitalrightsmonitor.pk/drm-exclusive-pta-asked-to-present-published-rules-under-s-37-to-court-under-a-tiktok-ban-petition/>

³¹ See 'PTA empowered to block online speech...' in Digital Rights Monitor, 18 Nov 2020:
<http://www.digitalrightsmonitor.pk/pta-empowered-to-block-online-speech-critical-of-government-gets-power-to-block-entire-online-systems/>

³² See 'Corrected' version of Rules appears...' in Digital Rights Monitor, 1 Dec 2020:
<http://www.digitalrightsmonitor.pk/corrected-version-of-rules-appears-criticism-of-government-unlawful-no-more/>

and even the Federal Investigation Agency's record of compliance with these procedures and safeguards is questionable³³.

In its analysis of the rules³⁴, Media Matters for Democracy found that the rules define a social media company as "any person" that runs a social media system. This could lead to persecution of individuals who fall foul of the prevailing government policies and introduce a legal liability for employees of a company instead of the company itself. Furthermore, the rules rely on penal code provisions to impose online restrictions on the grounds of decency and morality. These penal code provisions deal with obscenity, a nebulous concept which is undefined in law and whose application to the Internet would invariably lead to arbitrary blocking and removal of content.

The analysis also found that section 4(2) might not lead to compliance as international companies are not likely to Pakistani regulations over their community guidelines; section 6 does not specify protocols for data retention; section 7 mentions how soon companies must remove or block content on PTA's orders, but the rules do not provide any checks or transparency in what actual process PTA officials will follow to determine whether restrictions should be imposed on a piece of content or not and how will they make their reasoned orders public.

Section 8 (blocking of an online system) and 9 (obligations of social media companies) are against PECA because they hold the service providers and companies liable for the content they supply in contradiction of Section 38 of PECA. Furthermore, the analysis indicated that blocking an entire platform also raises concerns about the extended scope of censorship that would be legalised by the rules. A blanket ban on a service or platform is likely to be an unreasonable and disproportionate measure, and during the hearing of a case regarding the ban on the TikTok video-sharing application, the Islamabad High Court had also admonished PTA for imposing complete bans³⁵.

Digital rights organisation Bolo Bhi found that section 5(1) of the rules allows ministry, divisions, attached departments, subordinate offices, provincial or local departments of offices, law enforcement agencies or intelligence agencies and companies owned or controlled by the

³³ See 'Above the law' in Dawn, 27 Sep 2019: <https://www.dawn.com/news/1507604>

³⁴ For the analysis, please see:

<https://mediamatters.pk/media-matters-for-democracy-conducts-an-initial-analysis-of-the-new-social-media-rules-and-their-potential-impact-on-digital-rights-and-economy-in-pakistan/>

³⁵ See 'IHC disapproves trend to ban social media sites' in The Express Tribune, 2 Nov 2020: <https://tribune.com.pk/story/2270762/ihc-disapproves-trend-to-ban-social-media-sites>

Government could also file complaints with PTA to get online content removed or blocked and under section 5(5) of the rules PTA will keep the complainant's identity confidential³⁶. This stipulation creates a problem of transparency in the case where the complainant is a government body whose actions should be subject to disclosure and public scrutiny under the right to information laws. Similarly, Bolo Bhi noted that PTA is allowed to suo motu powers to take stock of allegedly unlawful online content and conduct enforcement actions. In this manner, the rules expand PTA's powers of discretion further instead of developing a checks-and-balance system for the regulator.

The Bolo Bhi analysis also highlighted that the procedures for disposal of complaints and the communication of orders to social media companies as well as the obligations with respect to blocking or removal of content in sections 6 and 7 are not thorough or detailed enough, assume false parity among different types of companies in terms of capacity to respond to PTA requests, and unnecessarily extends the obligations to users. These sections will lead to confusion about the enforcement of actions and create further challenges for users if systems are blocked and they are denied access to avenues of information and expression on the Internet.

Both Media Matters for Democracy and Bolo Bhi found that the Removal and Blocking of Unlawful Online Content Rules 2020 exceed the scope of PECA and were therefore illegal and unconstitutional and should be withdrawn. Both organisations also stated that Section 37 of PECA, which allows for online content regulation and under which the rules were framed, must be reviewed and repealed or amended to address the root cause of human rights concerns linked with online content regulation in the country.

The rules are currently in force, and during the last week of December, PTA issued notices to Google and Wikipedia under the rules to remove sacrilegious content from their platforms to avoid legal action³⁷. But for the rules to remain enforced, PTA must first withstand several pending legal challenges of its own³⁸. These writ petitions are likely to be decided in 2021.

³⁶ For the analysis, please see:

https://bolobhi.org/wp-content/uploads/2020/11/Analysis_-_Removal-and-Blocking-of-Unlawful-Online-Content-Protection-Oversight-and-Safeguards-Rules-2020-.pdf

³⁷ See 'PTA issues notices to Google, Wikipedia' in Dawn, 25 Dec 2020:

<https://www.dawn.com/news/1597761>

³⁸ For details of the petitions, please see news stories at

<http://www.digitalrightsmonitor.pk/?s=petition+rules>

(IN)DECENT APPS

PTA's app ban spree of 2020 started on 1 July with an order against a mobile game, PUBG (or PlayerUnknown'sBattleGrounds), which had gained tremendous popularity among Pakistani youth during the past two years³⁹. The regulator's reasons for temporarily suspending the app was that it was detrimental to the physical and psychological health of children and was leading to addiction, self-harm, and time wastage, even though at that time it had no research to back these claims and had only formed its opinion based on an undisclosed number of complaints, "recent media reports", and a decision by the Lahore High Court for PTA to look into the potential adverse impact of the game.

Alongwith the suspension, PTA called a public hearing on July 9 and also invited public feedback through email. Within a couple of days, fans of the game had flooded social media feeds with calls to lift the ban⁴⁰. By July 7, the ban had been challenged in the Islamabad High Court and the court directed PTA to file a reply⁴¹. The PTA consultative meeting of 9 July was attended by citizens, the legal counsel of PUBG, petitioner(s) and their counsels in favour of and against the ban, a representative of a Gujrat-based rehab centre, and a representative of Lahore police who all presented their viewpoints⁴². After the meeting, the game's legal counsel returned to the high court⁴³, which heard his and the PTA lawyer's plea and reserved its verdict. On July 23, PTA decided it would retain the ban on PUBG and shared its reasoning in a written decision, which was perhaps one of the first of its kind enforcement decisions released by the authority regarding content blocking⁴⁴.

The PTA's decision is a masterclass in obfuscation and justifies its action with obstinacy but without sufficient evidence.

At one place in the order, PTA claims that "for opinion, it does not require any concrete evidence or proof". At another place, PTA suggests it came across "various studies, papers and reports containing national and international publications regarding the impact of internet games

³⁹ PTA temporarily suspends PUBG game, PTA, 1 Jul 2020:

<https://www.pta.gov.pk/en/media-center/single-media/pta-temporarily-suspends-pubg-game-010720>

⁴⁰ See '#UnbanPUBGinPakistan trends...' in Pro Pakistani, 3 Jul 2020:

<https://propakistani.pk/2020/07/03/unbanpubginpakistan-trends-as-twitterati-rally-to-lift-pubg-ban/>

⁴¹ 'PTA to make final decision on banning PUBG: Islamabad court' in Samaa, 6 Jul 2020:

<https://www.samaa.tv/news/pakistan/2020/07/pta-to-make-final-decision-on-banning-pubg-islamabad-court/>

⁴² PTA enforcement order: https://www.pta.gov.pk/assets/media/enf_order_pubg_case_23072020.pdf

⁴³ "IHC reserves verdict..." in Dawn, 15 Jul 2020: <https://www.dawn.com/news/1569008>

⁴⁴ *Ibid.*, footnote 42

specifically PUBG on the mental as well as physical health of the players”. But it cites only one source: a Letter to the Editor published in the Ayub Medical College Abbottabad’s medical journal in 2020 written by two Saudis and one Pakistani author⁴⁵ who provide absolutely no primary research data about the adverse impact of PUBG use and, in fact, base their core argument against PUBG on two incidents of violence in India and a 2019 Letter to the Editor published in Dawn by a Peshawar resident named Intikhab Uddin Shinwari, who also does not provide any evidence for his claims against PUBG use⁴⁶.

This commentary is neither to contest that online or video games may have negative effects on the well-being of players nor to deny the suffering of those who have been affected. It is simply to reveal what process was actually followed by PTA when it claimed to have followed a process. It is clear that the level of research done by PTA to support its arguments was abysmal and embarrassing, but it did not stop PTA from associating nine negative qualities with playing PUBG and other games in its decision.

More fascinating is the PTA legal wing’s discussion on how it decided PTA’s jurisdiction to suspend PUBG under PECA. In the decision, PTA admitted that the types of restrictions on expression listed in Section 37 of PECA were general in nature and the law did not provide any definitions for them. So PTA derived its authority from the phrase “considers it necessary”, as in if the PTA *considers it necessary* in the interest of any restriction spelled out in the law (such as the glory of Islam), it may block the content being reviewed. As mentioned earlier, PTA interpreted the word ‘considers’ to be a matter of opinion that does not require evidence or proof; it only allowed for itself the requirement of such “reasonable materials” as the request from Lahore police to take action against PUBG to protect citizens from harm.

To determine the necessity of a legitimate restriction on expression, international human rights law advises authorities to look for alternatives to offer the protection and to ensure that the restriction should be based on a pressing social need for which tests of pluralism, broadmindedness, and tolerance need to be applied⁴⁷. Instead PTA relied on synonyms of the word ‘necessary’ to justify its jurisdiction. PTA’s discussion on the word ‘necessary’ is being reproduced here due to its absurdity and nearly unintelligible quality:

⁴⁵ See the letter to the editor: <https://jamc.ayubmed.edu.pk/index.php/jamc/article/view/7158/2864>

⁴⁶ See letter to the editor in Dawn: <https://www.dawn.com/news/1482420>

⁴⁷ See, for example, Guidance on Article 10 of the European Convention https://www.echr.coe.int/Documents/Guide_Art_10_ENG.pdf and guidance on Article 19 of the ICCPR: <https://www2.ohchr.org/english/bodies/hrc/docs/gc34.pdf>

“On the other hand, the expression of word “necessary” has its importance and relevance to analyze in light of judgment passed by Apex Court. The various shades of the meaning of the word “necessary” would indicate that a thing can be regarded as necessary only when there is an element in the situation which compels a particular thing to be regarded as being essential or unavoidable. The word “necessary” must be considered in the connection in which it is used, as it is word (sic) susceptible of various meaning. According to Black Law Dictionary, it may import absolute physical necessity of inevitability, or it may import that which is only convenient, useful, appropriate, suitable proper (sic), or conducive to the end sought. It is an adjective expressing degree, and may express mere convenience or that which is indispensable or essential or an absolute physical necessity (PLD 1977 Kar. 466).”⁴⁸

During PTA’s July 9 hearing, the PUBG legal counsel also brought up the matter that PTA had itself stated in a letter on 9 January 2020 that “since PUBG does not fall within the attributes as prescribed in section 37 of the PECA thus suspension order is against the law”⁴⁹. PTA negated its earlier position by simply stating that now circumstances had changed.

Finally, PTA also brought morality into the equation and claimed that it had found that PUBG was leading to moral turpitude among Pakistani players. Soon after PTA’s decision was made public, the Islamabad High Court ordered PTA to unban the app⁵⁰, and on July 30 PTA lifted the ban despite its earlier empty justifications⁵¹.

PUBG was restored to Pakistani gamers, but the argument from morality and decency became a constant refrain in the PTA’s enforcement actions for the rest of the year.

Between July 20 and 30, PTA suspended the Bigo Live app and issued a warning to TikTok for containing “immoral, obscene and vulgar content”⁵²; it sent a notice to YouTube on August 27 to immediately block “vulgar, indecent, immoral, nude and hate speech content” from its platform⁵³; On September 1, it banned five dating apps including Tinder in view of the

⁴⁸ *Ibid.*, footnote 42, page 6-7.

⁴⁹ *Ibid.*, footnote 42, page 3.

⁵⁰ See ‘IHC directs PTA to ‘immediately’ remove ban on PUBG’ in Dawn, 24 Jul 2020:

<https://www.dawn.com/news/1570877>

⁵¹ See ‘PTA lifts ban on PUBG’ in The Nation, 30 Jul 2020:

<https://nation.com.pk/30-Jul-2020/pta-lifts-ban-on-pubg>

⁵² See PTA press release:

<https://www.pta.gov.pk/en/media-center/single-media/pta-issues-final-warning-to-tik-tok-and-blocks-bigo-app-210720>

⁵³ See PTA press release:

<https://www.pta.gov.pk/en/media-center/single-media/pta-asks-youtube-to-block-indecent-content-280820>

“immoral/indecent content streaming” on these apps⁵⁴, and it suspended the popular TikTok app between October 9 and 19 for hosting “immoral/indecent content”⁵⁵.

These bans and suspensions on online content and digital platforms on the basis of vague concepts of morality and decency happened in parallel with similar efforts in 2020 by the broadcast regulator whose enforcement actions reprimanded TV dramas⁵⁶ and directed TV channels to bring shows in line with sociocultural and religious values⁵⁷.

The regulatory actions show that Pakistan’s media policy vision is now becoming tied to conservative cultural values and religious norms. Efforts to regulate media are predicted to focus increasingly on the alignment of content with a nation-building ethos and domestic codes of honour and piety, and will most probably result in more curbs on the expression of women. This media policy vision is also more likely to be applied to online media, as is indicated by another PTA directive from July.

SHOOT THE MESSENGER

On 21 July, PTA wrote a letter to service providers in which it directed them to ensure that they do not make immoral or illegal content available to users⁵⁸. PTA claimed that a large volume of such content was delivered through Content Delivery Networks (or CDNs) and urged the providers to ensure that the said types of content are not served to the users. It also requested for a compliance report in 10 days.

According to a Dawn news report, there are four important CDNs in Pakistan, YouTube, Facebook, Akamai, and Netflix, which are established at the servers of local Internet service providers and telecom companies⁵⁹. The CDNs store cached copies of content and reduce loading times when users query that content. The letter, therefore, assigned the responsibility of the content control to the service providers and Internet operators.

⁵⁴ See PTA press release:
<https://www.pta.gov.pk/en/media-center/single-media/pta-blocks-five-datinglive-streaming-applications-010920>

⁵⁵ See PTA press release:
<https://www.pta.gov.pk/en/media-center/single-media/pta-blocks-tiktok-in-pakistan-091020>

⁵⁶ See PEMRA order: <https://twitter.com/reportpemra/status/1301820758637842432>

⁵⁷ See PEMRA advisory: <https://twitter.com/reportpemra/status/1299310795847864322>

⁵⁸ See ‘PTA asks operators to ensure ‘immoral’ content is inaccessible to users’, Dawn, 25 Jul 2020:
<https://www.dawn.com/news/1570913>

⁵⁹ See ‘ISPs, PTA at odds over procedure to contain ‘indecent’ content’ in Dawn, 3 Sep 2020:
<https://www.dawn.com/news/1577659/isps-pta-at-odds-over-procedure-to-contain-indecent-content>

The Internet service providers resisted this move by PTA and stated that if CDNs are throttled, it would mean reducing the traffic and speed of the local Internet, which would also create affordability of the web; they reportedly also said PTA should use its web monitoring system to filter immoral content⁶⁰.

The Internet service providers have a point because the PTA has itself previously admitted that its web monitoring system will also facilitate Internet content management under PECA⁶¹.

PTA deployed the web monitoring system in February 2020 presumably to curb grey traffic⁶². The system was the subject of controversy because of the company contracted to build the system that will use deep-packet inspection to monitor digital communication and because PTA kept the agreement under wraps⁶³.

Critics have also expressed concerns about PTA's alleged involvement in the disruption in Amazon Web Services in July⁶⁴ and its drive to register Virtual Private Networks⁶⁵.

Another dimension of the current government's media policy is its antagonism toward critical news reporting and independent journalists, who are often accused by government officials to be peddlers of so-called 'fake news'. This attitude has led to several risks for local journalists and some policy efforts by the government.

Pakistani journalists have been targeted with coordinated online attacks to discredit their work and malign their reputation in response to their news reporting. These campaigns have included malicious hashtags⁶⁶ and smear campaigns⁶⁷. During the Covid-19 pandemic, these attacks targeted journalists reporting on the government's coronavirus response and especially attacked

⁶⁰ *Ibid.*, footnote 59.

⁶¹ See PTA clarification about the web monitoring system:
<https://twitter.com/PTAofficialpk/status/1187964312003977217>

⁶² See 'Pakistan launches nationwide web-monitoring system' in Coda Story, 14 Feb 2020:
<https://www.codastory.com/authoritarian-tech/pakistan-web-monitoring-surveillance/>

⁶³ See 'Pakistan moves to install nationwide 'web monitoring system' in Coda Story, 24 Oct 2019:
<https://www.codastory.com/authoritarian-tech/surveillance/pakistan-nationwide-web-monitoring/>

⁶⁴ See 'What happened to the Internet in Pakistan on 24th July 2020?' in Digital Rights Monitor, 25 Jul 2020:
<http://www.digitalrightsmonitor.pk/op-ed-what-happened-to-the-internet-in-pakistan-on-24th-july-2020/>

⁶⁵ See 'PTA asks Internet users to register VPNs to avoid ban after June 30' in Dawn, 16 Jun 2020:
<https://www.dawn.com/news/1563843>

⁶⁶ See 'DRM investigates: Twitter accounts behind the hashtag #ArrestAntiPakJournalists' in Digital Rights Monitor, 5 Jul 2019:
<http://www.digitalrightsmonitor.pk/drm-investigates-twitter-accounts-behind-the-hashtag-arrestantipakjournalists/>

⁶⁷ See 'Journalists targeted with coordinated smear campaigns online' in Dawn, 27 Apr 2019:
<https://www.dawn.com/news/1478644>

women journalists⁶⁸. While the government has denied involvement in these attacks, it has also done little to educate its supporters and followers to respect press freedom.

On the other hand, the government's information ministry launched a Twitter account in October 2018 to expose 'fake news' and disinformation on the Internet⁶⁹. The account has issued just over a hundred tweets in over two years. It sometimes shares screenshots of online media reports with the label 'fake news' digitally pasted on the images to indicate a news report was allegedly false. However, the account seldom provides how the news reports it identified were false and also does not offer what it thinks the accurate information might be instead.

Much like the rest of the world, Pakistan was also affected by the spread of Covid-related disinformation during the pandemic. In July, the government's central coronavirus response centre formed a committee under the leadership of the interior minister to develop regulations to stem the flow of online viral disinformation about the virus⁷⁰.

The committee reportedly prepared a framework to monitor media sources for Covid-19 false information and vowed to take strict action against violators⁷¹. The framework consisted of flagging online and mainstream media content about Covid-19 that was potentially false and forwarding it to the health ministry for review. Based on the health ministry's judgement, the violators would be asked to remove content or be penalised under PECA or PEMRA law. The committee suggested that online users who did not comply with the directives will be charged with cyberterrorism.

It is unclear whether or not any action was taken against any social media users or broadcast network based on the policy. The interior minister was transferred to the post of narcotics control minister in December⁷² and there was no indication if he still headed the anti-disinformation committee or not.

⁶⁸ See 'Pakistani government-orchestrated cyber-harassment of women journalists' in Reporters without Borders, 19 Aug 2020:

<https://rsf.org/en/news/pakistani-government-orchestrated-cyber-harassment-women-journalists>

⁶⁹ See 'Govt launches 'Fake News Buster' account to expose false reports' in Dawn, 1 Oct 2018:

<https://www.dawn.com/news/1436167>

⁷⁰ See 'Pakistan interior minister orders 'strict' action against spread of Covid-19 'fake news'' in Arab News, 16 Jul 2020: <https://www.arabnews.pk/node/1705581/pakistan>

⁷¹ See 'Govt finalises policy to check Covid-19 disinformation' in Dawn, 17 Jul 2020:

<https://www.dawn.com/news/1569442>

⁷² See 'Rashid gets interior ministry in surprise reshuffle' in Dawn, 12 Dec 2020:

<https://www.dawn.com/news/1595253>

POLICY RECOMMENDATIONS

The analysis of recent policy efforts to regulate online media reveals the need for changes in policies and regulations to ensure that the fundamental rights of citizens are protected and their access to online media and information sources is not disrupted in arbitrary and unreasonable ways. The following recommendations are being made to improve the policy framework for online media regulation in Pakistan.

- 6. **Withdraw the rules for online regulation:** It is clear that the rules formulated by the government for online content regulation exceed the scope of the parent law and create adverse circumstances for freedom of expression, right to privacy, and growth of the digital economy. The government should withdraw these rules and restart a multistakeholder consultative process to seek feedback from industry and civil society to resolve the issues highlighted in the current version of the rule. The consultative process should have clear objectives, transparent procedures, well-defined deadlines, opportunities to review and comment on changes, and precise guidelines about how the government will follow up on the feedback provided to it.

- 7. **Review Section 37 of PECA:** The concerns about freedom of expression and online media freedom posed by the current content regulation policies and practices can be traced back to Section 37 of PECA, which affords the PTA sweeping powers to remove and block online content. The government and opposition political parties in Parliament should immediately review Section 37 and repeal or amend it to provide a remedy for the systemic issue of arbitrary and disproportionate content blocking. A break from Section 37 may allow the country to revisit its Internet governance policy framework and develop a better regulatory approach that protects the public interest and supports industry development.

- 8. **Ensure transparency and accountability of regulatory agencies:** Courts have tried to force the PTA to be more transparent in its enforcement actions. However, as was clear from the delays in making the rules for content regulation public in 2020, the current regulatory system is loath to transparency and accountability. In order to make it

more responsible to the dispensation of its public duties in an open and transparent manner, statutory obligations may need to be introduced either through legal amendments in PECA or updated rules of business to ensure that PTA provides the right to appeal and detailed reasoning for its enforcement actions regarding its content regulation decisions. Parliamentary committees on information technology must play an active role in bringing about a culture of transparency and accountability in the practices of the regulator.

9. **Define the public interest objectives for online content regulation:** The decisions to block, ban, and suspend online media sources, platforms, and content on the basis of morality and decency will remain a polarising and arbitrary practice as was shown by the reactions to suspend PUBG and TikTok in 2020. Instead the government should focus on defining the public interest objectives for online content regulation in consultation with civil society, media, and technology industry stakeholders. The public interest objectives could guide the government and the regulators in clear, reasonable, and proportionate mechanisms to protect citizens from undue harm during their online activity. These mechanisms may not have to exclusively rely on content removal and blocking and could take on a variety of educational and support initiatives, for example digital media literacy programmes and helplines to support individuals who have experienced cyberbullying.

10. **Convergence review for regulatory reforms:** While the government's attempt to introduce a converged media regulatory body was extremely poorly planned and terribly executed, the idea to explore the potential for regulatory convergence in the context of technological changes to the media industry is not altogether bad. The policymakers should encourage an independent and external review of the flaws in the existing media regulations and prepare a report to recommend how to go about media regulatory reforms in Pakistan's context. The report could rely on broad and inclusive consultations with media stakeholders and its findings can be used for further deliberations with the stakeholders before a cohesive policy vision is formed about the reforming online and traditional media regulations in the country.

These recommendations are provided to help policymakers, lawyers, journalists, and media development professionals to discuss the need for changes to the current regulatory framework for online media in Pakistan and work toward improving it in the future.

ABOUT MEDIA MATTERS FOR DEMOCRACY

Media Matters for Democracy works to defend freedom of expression and digital rights in Pakistan. We undertake various initiatives including research, policy advocacy, training, and strategic litigation to work towards a future with an inclusive and independent media and cyberspace in Pakistan where citizens and journalists can express themselves and share news and information without fear of harm.

