Joint Statement from ARTICLE 19, Association for Progressive Communications, Digital Rights Foundation, Human Rights Watch, Privacy International, and others on the Prevention of Electronic Crimes Bill 2015 Pakistan.

ARTICLE 19, Association for Progressive Communications, Digital Rights Foundation, Human Rights Watch, Privacy International, and other organisations remain seriously concerned by the proposed Prevention of Electronic Crimes Bill in Pakistan. Regrettably, despite negotiations and revisions in the last six months through a hard won multi-stakeholder consultation process, the Bill still contains provisions that pose a grave risk to freedom of expression, the right to privacy, and of access to information in Pakistan. We urge members of the National Assembly of Pakistan to take a stand against the Bill by voting against it in its current form. The Bill in its current form should be scrapped and the process of drafting a new bill, ensuring full compliance with international human rights standards, should begin with the inclusion of civil society, industry and public consultation at the earliest possible stage.

The process by which the Prevention of Electronic Crime Bill has reached the National Assembly is deeply concerning. Forcing the bill through committee, without consensus having been reached, and with on-going vocal criticisms by members of the committee show that this bill is not ready to be considered to be passed into law. Furthermore, we remain very concerned that the Bill contains several provisions which pose a threat to the respect and protection of the rights of privacy and freedom of expression. The amendments that have been made in the September 2015 version of the bill are cosmetic at best and none of the concerns raised by committee members, civil society, industry, or technologists have been adequately addressed.

Section 34 of the Bill is still overly broad and fails to include adequate safeguards for the protection of the rights to privacy and freedom of expression, in breach of Pakistan's obligations under international human rights law. Even after calls from stakeholders to remove the section entirely, this power remains in the Bill before the National Assembly. It empowers the Pakistan Telecommunication Authority to order service providers to remove or block access to any speech, sound, data, writing, image, or video, without any approval from a court. By omitting judicial oversight, the

Bill, if passed, would write a blank cheque for abuse and overreach of blocking powers. Although the Bill provides for the possibility of a complaints procedure, it does not require such a procedure to be put in place, nor is there any requirement that this procedure involve a right of appeal to an independent tribunal. Even a right of appeal will be inadequate given the sheer breadth of the blocking powers contained in section 34. Such a broad power should not return in any capacity in a future draft of the Bill.

The amended Bill continues to raise significant concerns about unchecked intelligence sharing with foreign governments, along with related human rights abuses. If adopted, the Bill will still allow the Federal Government to unilaterally share intelligence gathered from investigations with foreign intelligence agencies like the US National Security Agency, without any independent oversight. Given the role of intelligence in US drone strikes in Pakistan, without significantly stronger safeguards, this puts the security and privacy of ordinary Pakistanis at risk. Cooperation between intelligence agencies needs to be governed by specific laws, which should be clear and accessible, and overseen by an independent oversight body capable of conducting due diligence to ensure intelligence is not shared when it puts human rights at risk, or results in violations. As the former UN High Commissioner for Human Rights stated last year in her report on the right to privacy in the digital age, intelligence sharing arrangements that lack clear limitations risk violating human rights law. The Bill's provisions do not come close to achieving this.

The amended version of the Bill continues to mandate that service providers retain data about Pakistanis' telephone and email communications for a minimum of one year. This requirement drastically expands the surveillance powers of the Pakistan government. The European Union Court of Justice and UN human rights experts found laws mandating the blanket collection and retention of data to be an unlawful and disproportionate interference with the right to privacy, and as a result many other countries are rolling back their data retention legislation. Pakistan's reluctance to drop this proposal to expand data retention is a regressive move that undermines the privacy rights of all Pakistani people

The new Bill continues to use overly broad terms that lack sufficiently clear definitions. The law empowers the government to "seize" programs or data, defining seizing as to "make and retain a copy of the data", but does not specify the procedures through the seized data is retained, stored, deleted or further copied. By leaving the creation of a procedure for the seizure of data to the discretion of the Federal Government, the law is critically lacking in setting out clear and accessible rules in line with international human rights law. This, along with many sections of the Bill, endangers the ability for journalists in Pakistan to work freely without the risk of having their work seized, undermining press freedom and freedom of expression.

The former UN High Commissioner for Human Rights has stressed "a clear and pressing need for vigilance in ensuring compliance of any surveillance policy or practice with international human rights law". The Prevention of Electronic Crimes Bill in Pakistan does not provide that opportunity for vigilance from independent stakeholders. As a result its provisions are dangerously threatening to the rights of freedom of expression and privacy of everyone across Pakistan.

The Bill currently before the National Assembly has failed to address the serious concerns expressed by civil society. As such, the Bill, if adopted as currently drafted, could result in serious violations of human rights, such as the right to privacy and freedom of expression. The debate on the floor of the National Assembly should be an opportunity to point out the flaws of this bill and to reiterate the bill is not fit for purpose. The slate needs to be wiped clean and a new bill worked on bringing it into line with fundamental rights found in Pakistan's constitution and international human rights treaties. As it stands, these rights are being casually brushed aside.

Signatories

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