

THE ISLAMIC REPUBLIC OF PAKISTAN

ARTICLE 19 and BoloBhi's Submission to the UN Universal Periodic Review

For consideration at the fourteenth session of the UPR Working Group, October-November 2012

Executive Summary

1. ARTICLE 19: Global Campaign for Free Expression (ARTICLE 19) is an international, freedom of expression organization with an observer status with ECOSOC. ARTICLE 19 has a regional office for South Asia based in Bangladesh and has been actively engaged in issues relating to freedom of expression and information in Pakistan for over 12 years. BoloBhi is a not-for-profit organization that was set up to focus on the areas of Advocacy, Policy and Research and has been speaking up for Internet freedom, human rights, women's rights, women's empowerment and against gender based violence.
2. During the first UPR review of Pakistan, numerous countries raised freedom of expression-related issues including on the use of the blasphemy laws and impunity relating to the murders and disappearances of journalists and human rights defenders. Pakistan accepted recommendations to “combat impunity for attacks on human rights defenders by effectively investigating allegations and by prosecuting those responsible” to “review laws and measures to ensure that restrictions imposed on freedom of expression are in conformity with the ICCPR to which Pakistan is signatory”, to effectively address repressing antiterrorism legislation on the work of human rights defenders, and to consider establishing national system of human rights defenders protection.
3. Given the expertise of ARTICLE 19 and BoloBhi this submission focuses on the progress on these issues and also outlines further concerns on Pakistan’s compliance with its international human rights obligations in respect of freedom of expression and freedom of information, in particular **violence against journalists and human rights defenders** and failure to adequately investigate and punish those responsible; continued **misuse of blasphemy laws**, especially against religious minorities; **excessive restrictions on online speech**; overly broad **broadcasting regulations** resulting in the arbitrary shutdown of many broadcasters and cable stations and the banning of content; lack of progress in developing **effective legislation on freedom of information** and limits on **communications privacy**.
4. We welcome that in June 2010, Pakistan ratified the ICCPR. In addition, Pakistan should also be recognized for the amendments to Article 19 of the Constitution, which provides the right of citizens to information “on all matters of public importance subject to regulation and reasonable restrictions imposed by law” and the current efforts to create a new National Human Rights Commission.

Violence against journalists and human rights defenders and impunity for violations

5. The commitment of the Pakistan Government to take action against the impunity for violence against human rights defenders has not been met. In the intervening four years, there remains a grave problem with attacks on human rights defenders and journalists and little systematic action by the government in resolving it, both regarding non-state and government actors. Numerous journalists have been murdered or have disappeared both in conflict zones and in other parts of the country, including the federal capital. This includes the murders of Saleem Shahzad, Mukkaram Khan Atif, Faisal Qureshi, Murtaza Razvi Nasrullah Afridi, Abdost Rind, Ilyas Nizzar, Muhammad Khan Sasoli, Abdul

Wahab, Altaf Chandio, Pervez Khan, Abdul Hameed Hayatan Hayatan, Mujeebur Rehman, Misri Khan Orakzai, Ejazul Haq, Ghulam Rasool Birhamani, Ashiq Ali Mangi and Muneer Shakir, among many others. There are credible reports that some involve the intelligence services or police personnel. There are also many credible accounts of security services personnel being involved in threatening, torturing and kidnapping media workers.

6. The legal structure is often used to facilitate harassment and as intimidation. In March, a private group petitioned the Supreme Court demanding the imposition of the death penalty for journalist associated with the journalist organization South Asian Free Media Association (SAFMA) accusing them of high treason. The petition and their public statements including web postings and Facebook pages are highly inflammatory and appear to be intended to incite attacks on SAFMA. There has been no response from the government to reduce the threats. This type of accusation and the ability of private groups to use the legal system to harass media organisations are highly dangerous, especially given the current atmosphere towards journalists.
7. Furthermore, many of the crimes are unresolved. At least 19 cases remain where the individuals who murdered journalists have not been identified. The appointment of the Judicial Commission led by the Chief Justice of the Federal Shariah Court to investigate Saleem Shahzad murder is welcomed but we note that the commission failed to identify his murderers and its recommendations are not adequate to address the larger issue of impunity.
8. Similarly, the commitments to protect human rights defenders and to investigate and prosecute their attackers have not been met by the Government. These include:
 - In March 2011, Naeem Sabir of the Human Rights Commission of Pakistan, who was providing the Supreme Court with lists of missing persons in Khuzdar district was found murdered outside his house.
 - In April 2011, Siddique Eido, of the Human Rights Commission and Yousaf Nazar of the Baloch Students Organization were abducted and found tortured and murdered in Balochistan by persons appearing to be members of the Frontier Corp operating a roadblock. Their police escort was beaten.
 - In December 2011, Zarteef Afridi, the coordinator in Khyber Agency of the Human Rights Commission of Pakistan was shot to death in Sangary.
9. The attacks are particularly endemic in Balochistan, Khyber Pakhtunkhwa and FATA (Federally Administered Tribal Areas) with many credible accounts identifying members of the Frontier Corps as the persons who frequently engage in abductions. The Commission of Inquiry for Missing Persons has identified over 300 persons who have disappeared and in a number of cases, recovered their bodies or forced their release from custody. At the same time, it is appreciated that the judiciary has made consistent efforts in setting timelines for recovery of the missing persons and for successfully recovering some of them, in particular, the efforts made by the Supreme Court and some local courts, such as Peshawar High Court. Also, the Senate's unanimous resolution against illegal detention is a positive step forward.

Blasphemy

10. There remain serious problems with the provisions on blasphemy in Pakistan Penal Code and their implementation; the Government has taken no action to address the related issues. It is noted that the provisions on blasphemy are fundamentally incompatible with international standards on freedom of expression and protection of human rights; in particular, they fail to meet the required international tests of clarity, necessity and proportionality as required by law. They give broad discretion to officials (often junior in

practice) to make determinations of a serious nature with little guidance or limits and subject to public pressure. The Penal Code also calls for the death penalty to be imposed for the crime of blasphemy, again on often-arbitrary claims.

11. As a matter of practice, the provisions are used to target ethnic and religious minorities and to limit freedom of expression in an arbitrary and discriminatory manner. There are numerous reported cases violating international obligations on fair trial including lacking due process, long pre-trial imprisonment, and external pressures on counsel and judges. Many of the cases appear to be brought with little evidence or rationale, based on minor disputes between children, businessmen, co-workers or neighbours which are intensified into major cases when baseless claims of blasphemy are made. Some of the particularly extreme cases involve Aasia Bibi, a farmworker who had a dispute with her co-workers; Faryal Tauseef Bhatti and Sami Ullah, students; and Naushad Valiyani, arrested for throwing a business card away. Blasphemy has also been used to justify mass censorship of internet social media sites. Moreover, authorities have routinely called for public participation in reporting blasphemous material online, whereas distribution of material that might amount to incitement to discrimination, hatred or violence against minorities remains freely available on the internet as well in other forms and is often distributed in educational institutes.
12. The authorities have further compounded the problems of the law by not taking decisive actions to prevent the inciting of mobs to attack those accused of blasphemy, which has resulted in numerous deaths, many of which are not subsequently adequately investigated or prosecuted. A common trend reported in cases of mob attacks is the use of mosque loudspeakers to incite violence against a certain group. In many cases, it is the victims of the attacks who are charged instead. Many of those freed after being charged have lost their homes and have fled the country for fear of their lives. Few officials have been punished for their failure to act.
13. Furthermore, the Government has continued to fail to act after those that championed reform of the law and were murdered, such as Governor Salmaan Taseer and Minority Affairs Minister Shahbaz Bhatti. Former Minister Sherry Rehman has been threatened for proposing modest reforms. Meanwhile, the Prime Minister announced following the murders that the government had dropped plans to reform the law. However, the courts decision to charge Salmaan Taseer's assassin Mumtaz Qadri is a step in the right direction, but however the state needs to indict those who instigated Taseer's murder.

Limits on Information and Communications Technologies (ICTs) content

14. In the past four years, there has been a growing pressure on internet service providers to limit access to content on the internet and other new technologies. These demands are often done without proper legal process or done in a manner that fails to meet international standards in this area.
15. In particular, Internet Service providers are often ordered to limit access to non-domestic websites in an overbroad manner or without legal justification. For example, US Magazine Rolling Stone was blocked July 2011 after it published an article critical of the Army spending. The Lahore High Court in May 2010 ordered the Pakistan Telecommunication Authority to block over 1,000 websites with millions of pages, including the social networks website YouTube and Facebook and hundreds of other pages. It also affected other common sites including Google, Wikipedia, and BBC News. The PTA had also ordered filtering of content with little justification. In November 2011, it issued Decree CPD-2(101)/11-PTA on "Implementation - Content Filtering Through SMS" which requires that telecommunications providers filter hundreds of words in English and Urdu, which includes many common words, names of celebrities and other

- clearly non-obscene materials. The plan was shelved after public reaction, but the notification highlights the authorities urge to muscle in more control and surveillance.
16. There are currently plans to expand these restrictions further. The Ministry of Information Technology (MoIT) announced in February 2012 that it planned to implement a filtering system, which would block up to 50 million URLs to block “blasphemous, un-Islamic, offensive, objectionable, unethical, and immoral material.” However, after a multi-stake holder campaign, the Ministry of IT made verbal commitments to Member National Assembly, Bushra Gohar that the plan had been shelved. No official statement exists thus far. The issue is pending with the PTA.
 17. National law allows for authorities to shut off access to telecommunications. The Telecommunications (Re-organisation) Act, 1996 allows for the shutdown of communications both individually with warning, and in broader cases, based on a decree by the government of potentially the entire telecommunications networks. The PTA suspended mobile phone services across Balochistan province on Pakistan Day on March 23, 2012 for “security reasons”. In a recent case, communication services were suspended in Gilgit amid a wave of sectarian violence, as a method of riot control. It is noted that PTA often acts in clear violation of Telecommunications Act 1996, which clearly states that suspension, if needed, should be done with due process that involves giving the affected party a fair chance of hearing. However, authorities often proceed with ad hoc blocking and suspension in the name of “national interest.”
 18. The Telecommunications Act also criminalises vague and broad offenses, banning the dissemination of “false” or fabricated” information, as well as indecent materials and causing “mischief.”

Broadcasting

19. We welcome development that the number of stations has expanded dramatically over the past few years. However, the restrictions on content set out in regulations remain problematic. The Rules 2009 of the Pakistan Electronic Media Regulatory Authority (PEMRA) limit broadcasting of foreign stations without the PEMRA’s permission. The Rules contain a broad code of conduct that prohibits among other things criticism of the armed forces, “promotes anti-national or anti-state attitudes”, is “against basic cultural values, morality and good manners “, or “brings into contempt Pakistan”. A new Code of Conduct is currently being considered which limits coverage of crime and violence and prohibits coverage of material which “contains aspersions against or ridicules the organs of the State” among other vague restrictions set out above.
20. In practice, the regulations have been used in an arbitrary manner to punish those who broadcast materials that the government does not like. In 2009, dozens of providers were shut down. Since then channels operators broadcasting "anti-Pakistan" materials were banned by cable providers on the pressure from the government and content such as the incident of the person throwing a shoe at the prime minister were banned. This includes the blocking on BBC World News in 2011.

Freedom of information

21. Pakistan made an important advance with the 2010 amendments to the Constitution (Article 19A) to include a specific right of citizens to access to information. This places Pakistan in a group of nearly 100 countries that have done so and is an important first step forward in ensuring a right to information in the country.
22. However, the actual legal framework for ensuring the right remains weak. The Freedom of Information Ordinance, No. XCVI of 2002, the only national legislation providing for a right of access to information held by government bodies, is highly inadequate. It

provides a limited right of access and redress and has been poorly implemented. Furthermore, the Official Secrets Act, based on the original 1911 act, which places strong restrictions on the disclosure of information deemed by the state to be sensitive remains in place.

Surveillance and limits on communications privacy

23. We also continue to be concerned about the provisions of the Telecommunications (Re-organisation) Act, 1996 that allow for the monitoring of telecommunications without prior judicial authorization “in the interest of national security or in the apprehension of any offense”. This violates both the Article 17 of the ICCPR obligations and previous Supreme Court case on interception of communications.
24. The Act also gives the government power to limit the availability of encryption services. In July 2011, the Pakistan Telecommunications Authority (PTA) issued a legal directive to all internet service providers in the country requiring that they implement an earlier regulation banning all internet encryption in the name of anti-terrorism. This limits the right of all individuals to have private communications.

Recommendations

In response to these concerns, ARTICLE 19 calls on the UN Human Rights Council to make the following recommendations to the Pakistan Government:

- Address violence and impunity against journalists and human rights defenders. Specifically, ensure that new National Human Rights Commission currently under consideration is empowered and given a primary objective to fully, effectively and speedily investigate all crimes against journalists and human rights defenders and to create new mechanisms to protect those under threat
- Ensure that all security forces, especially the ISI and Frontier Corps are subject to full oversight by external bodies including the Supreme Court, Ombudsman, National Human Rights Commission, and the Parliament.
- Address misuse of blasphemy law, support public discourse on the misuse of the law and take comprehensive measures to prevent speech that amounts incitement to discrimination, hatred and violence against minorities. Commit to amendment and subsequent repeal of the provisions of the Penal Code that penalize blasphemy with death. At the same time, suspend enforcement of all investigations and prosecutions and release all persons investigated, prosecuted or convicted for blasphemy and investigate crimes taken by mobs against those accused or blasphemy and failures of authorities to prevent violence;
- Prioritize access to internet as a fundamental right and abolish censorship of media including internet and ICTs.
- Ensure that all limits on access, blocking, filtering and takedowns of internet materials are judicially authorized and based on recognized international freedom of expression exemptions;
- Amend PEMRA regulations and code of code and replace with one that does not limit context and limits powers of Authority to take arbitrary measures against broadcasters.
- Amend Telecommunications Act to limit use of surveillance to only when it is judicially authorities based on a major case;
- Repeal regulations limiting use of encryption systems.
- Adopt comprehensive legislation on freedom of information in compliance with international standards.