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

ARTICLE 19, Association for Progressive Communications, Human Rights Watch, Privacy International, Digital Rights Foundation, and others are seriously concerned by the proposed Prevention of Electronic Crimes (PEC) Bill in Pakistan. The bill introduces a series of new provisions that pose a grave risk to freedom of expression and privacy in Pakistan. We urge members of the Senate of Pakistan to take a stand against the bill and call on the Pakistani legislature to ensure that any new cybercrime legislation is fully compliant with international human rights standards.

We have serious misgivings about the process by which the PEC bill was drafted and revised. By excluding civil society and the private sector from consultation on the bill, the government prevented genuine public scrutiny of the bill prior to the vote in the National Assembly. The result is not only that the democratic process in Pakistan is undermined, but that the bill contains several provisions that are potentially damaging to privacy and freedom of expression.

Section 34 of the bill is 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. It empowers the government 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 removing the oversight of the judiciary, the bill writes a blank check 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. In any event, even an ex post facto right of appeal is likely to be inadequate given the sheer breadth of the blocking powers contained in section 34.

If adopted, the bill will allow the Federal Government to unilaterally share intelligence gathered from investigations with foreign spy agencies like the United States National Security Agency, without any independent oversight. Given the role of intelligence in US

drone strikes in Pakistan, this puts the security and privacy of ordinary Pakistanis at risk. Cooperation between intelligence agencies must be governed by specific laws and overseen by an independent oversight body capable of ensuring intelligence is not shared when it puts human rights at risk. As the 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.

By mandating service providers to retain data about Pakistanis' telephone and email communications for a minimum of one year, the bill drastically expands the surveillance powers of the Pakistan government. The European Court of Justice recently found laws mandating the blanket collection and retention of data to be a serious interference with the right to privacy, and many other countries are rolling back their data retention legislation. Pakistan's proposal to expand data retention is a regressive move that undermines the privacy rights of ordinary Pakistani people.

The bill uses 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.

The UN High Commissioner 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 never provided that opportunity for vigilance from stakeholders. As a result its provisions are dangerously threatening to the rights of freedom of expression and privacy of everyone throughout Pakistan.

Signatories

ARTICLE 19

Association for Progressive Communications

Bolobhi

Bytes for All

Digital Rights Foundation

Human Rights Watch

Pakistan for All

Privacy International