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No.Pol/SP.Pro/2016

15 January 2016

My dear Special Procedure,

I am writing with regard to your communication No. OL PAK 13/2015 and statement of 14 December 2015 concerning Pakistan's draft Cybercrime Bill (Prevention of Electronic Crime Bill, hereinafter referred to as PEC Bill).

2. I would like to underscore that the democratically elected Government of Pakistan is fully committed to the promotion and protection of all rights and fundamental freedoms of all its citizens, including their right to freedom of expression.

3. I would like to clarify that the draft Cybercrime Bill is still under consideration by the Parliament of Pakistan. On 12 December 2015 the draft bill was opened for debate in the National Assembly.

4. Your Communication and the Statement were shared with the concerned departments. With regard to your general concerns and concerns on specific provisions of the draft bill the following is stated:

- i. Right to freedom of opinion and expression is a hard fought right for which the people of Pakistan have made immense sacrifices. It is recognized in Pakistan that the Freedom of Expression comes with responsibilities. This right could be put to reasonable and proportionate restrictions permissible under domestic law and international human rights obligations. The abuse of freedom of expression through any medium can result in the infringement of other fundamental rights and freedoms. All human rights are interdependent, interrelated and indivisible. Therefore, a balance needs to be struck between the freedom of expression and protection of other fundamental freedoms and rights of people.
- ii. The Government's strong commitment to the promotion and protection of freedom of expression and opinion is demonstrated by the fact that more than 100 media channels and hundreds of newspapers enjoy complete freedom. They highlight political, social and human rights issues and lead the national debate on issues of public importance. More than often, they have been critical of Government policies but have never faced any restrictions or censorship.
- iii. Like many other countries, Pakistan is presently confronted by terrorism. Terrorists are using internet for insidious purposes. It is unfortunate that internet including social media has become a particularly troubling conduit for extremist ideas which is fuelling

terrorism and extremism. Hence, there is a broad consensus to criminalize activities of terrorists through the PEC Bill.

- iv. In this regard, we would like to draw the attention of the Special Rapporteur to United Nations Security Council's resolution 2178 which took note of the increased use of Information Technology by various terrorists groups across the globe. It unanimously expressed "concern over the increased use by terrorists and their supporters of communications technology for the purpose of radicalizing to terrorism, recruiting and inciting others to commit terrorist acts, including through the internet".
- v. Pakistan is committed to fighting terrorism in all its forms and manifestations by taking necessary action against terrorists and the means and methods employed by them. To this end, the Government of Pakistan devised a National Action Plan (NAP) to combat terrorism which among others steps to counter hate speech and extremist materials.
- vi. The proposed Cybercrime Bill complements the efforts of the law enforcement agencies to combat terrorism.
- vii. Information Technology and legal experts are of the view that laws are needed to govern cyberspace. Therefore, the proposed draft bill is required. The proposed legislation will allow only targeted surveillance of digital information and cyber data, which is essential for enhancing internal security with the view to timely thwarting terrorist activities.
- viii. Governments have different rules regarding use of digital information with the view to combat terrorism. Several western countries gather the largest haystacks of data to trace terrorists and criminals. Conscious of their responsibilities as representatives of the people our Parliamentarians would do their best to protect the rights of the people enshrined in the constitution, including freedom of expression and right to privacy.
- ix. The Government remains fully committed to safeguard the right to privacy of its citizens, including women. In recent years, the misuse and abuse of Information and Communication Technology (ICTs) have made women vulnerable to physical and psychological harassment and abuse. A report recently released by the United Nations Broadband Commission on Cyber Violence Against Women and Girls reveals that almost three quarters of women online have been subjected to some form of cyber violence. It urges governments and industry to work harder and more effectively to protect the growing number of women and girls who are victims of online threats and harassment. The draft PEC Bill also aims to provide women (50% of Pakistan's population) a secure cyberspace where they can benefit from ICTs.

- x. On the consultation process of the PEC Bill, it may be noted that the Bill is the outcome of broad-based consultations with all stakeholders. The civil society, general public and various stakeholders were consulted in a transparent manner during the formulation of the PEC Bill.
- xi. The PEC Bill 2015 was prepared by the Ministry of Information Technology of Pakistan after a long consultative exercise with all the stakeholders including representative associations of Telecom and IT sectors as well as civil society, before introducing it in the National Assembly on January 16, 2015. A copy of the draft bill was also made available on Ministry of IT's website with the notice to the general public to provide their comments on the bill.
- xii. The scope and extent of consultations can be gauged from the fact that the Government consulted stakeholders, civil society and general public while drafting PEC Bill. Later, the National Assembly Standing Committee for IT also consulted all the stakeholders. The National Assembly referred the PEC Bill to the National Assembly Standing Committee for IT. As part of the Parliamentary process, a Committee including members of the opposition parties, was set up to review the PEC Bill. The PEC Bill was reviewed in light of the Constitution of Pakistan, Convention on Cybercrimes (Budapest Convention) and other national laws, and the draft was finalized.
- xiii. Reservations were again expressed by certain quarters on some of the suggested amendments. In order to hear these concerns, the Standing Committee conducted a public hearing in which stakeholders as well as members of Non-Governmental Organizations (NGOs) participated. They were asked to provide their comments in writing, however, no substantive written proposals were provided by them. Vague and generalized objections were made on the proposed amendments in the PEC Bill.
- xiv. In order to provide another opportunity to stakeholders and NGOs, the Standing Committee formulated yet another bi-partisan sub-committee which considered input/comments received from the general public through media or directly and to give its recommendations on it.
- xv. The Sub-Committee gathered inputs/comments from all quarters including some proposed amendments in the PEC Bill made by a Joint Action Committee comprising of a group of NGOs and some stakeholders. In its meetings, the Sub-Committee also heard the lawyer representing the stakeholders. The Sub-Committee reviewed the PEC Bill clause-by-clause in light of inputs received from various quarters and recommended a number of amendments in the PEC Bill besides proposing insertion of some new sections.

- xvi. The report of the Sub-Committee analyzing inputs received from all stakeholders was presented to the Standing Committee. The Standing Committee was apprised about the recommendations of the Sub-committee by its convener and after detailed deliberations thereon, the recommendations of the Sub-Committee with certain changes proposed by one Member of the opposition, were approved on 17 September 2015. The Standing Committee also directed the Ministry of IT to make available a copy of the modified PEC Bill on its website which was done. Representatives of NGOs, media, internet service providers and other stakeholders were therefore consulted extensively.
- xvii. Terminology used in the PEC Bill is well defined within Pakistan's legal framework. Section 2 of the Bill defines most of the terms used in it. In order to maintain consistency between the PEC Bill and other criminal legislations in Pakistan, Section 2 also states that the terms used in the PEC Bill which are not defined shall have the same meaning assigned to them in Pakistan Penal Code (PPC), Criminal Procedure Code (CR.PC), and Qanon-e-Shahadat Order (QSO). The PEC Bill draws upon existing terminology and does not use "overbroad" terms.
- xviii. While, it has been commented that punishments provided under the PEC Bill do not meet the proportionality requirement of Article 19 (3) of ICCPR, the fact is that there has been criticism of the Bill by some stakeholders that the punishments provided them are lenient and therefore do not provide appropriate deterrence. The Government is of the view that the punishments under the PEC Bill are rational. The Bill provides discretion to courts to either impose pecuniary penalties, or imprisonment, or both. In some offences, the first violation does not entail any imprisonment at all.

Sections 3 and 4 on Authorized Access to Information Systems and on Copying and Transmitting Data

- xix. The definition of "authorization" provided in section 2 (1) (e) of the Bill clearly states that access to, or transmission of, all such systems or data that are available for open access e.g. websites, shall be considered authorized. The provision is in line with Articles 2, 4, 5 of the Budapest Convention. The assertion that any person accessing or visiting a website in a way that is not expressly authorized by the Bill may be committing a crime, is incorrect.

Section 9 on Glorifying an Offence and Hate Speech

- xx. Section 9 is in line with Article 20 of ICCPR. The Government is of the view that glorification of offenses and hate speech which leads to imminent violence should be criminalized. Hate speech have been criminalized in many parts of the world. We firmly believe that for combating extremism, any advocacy of national, racial or

religious hatred that constitutes incitement to discrimination, hostility or violence, should be prohibited by law.

Section 10 on Cyber-Terrorism

- xxi. With regard to the interpretation of Section 10 of the Bill, according to the definition of "critical infrastructure", an infrastructure shall be treated as critical infrastructure only when the Government has, in advance, designated it as such in accordance with prescribed rules. This provision is essential for ensuring that infrastructure of public importance owned/managed by government or private sector can be protected.
- xxii. These provisions of section 3, 4 and 10 of the Bill are carefully drafted. Access to public information is expressly excluded from purview of the sections. Clubbing section 10 with sections 3 and 4 is not correct as section 10 specifically relates to cyber terrorism and comes into force only when "hacking of a critical information system is committed with the intent to coerce, intimidate, overawe or create a sense of fear, panic or insecurity in the Government or the public or a section of the public or community or sect, or create a sense of fear or insecurity in society, or advance religious, ethnic or sectarian discord."
- xxiii. These particular provisions are necessary components to implement the National Action Plan, agreed by all political parties. These provide support to the on-going fight against terrorism. Moreover, the definition of authorization provided under section 2 of the Bill covers authorization by law. Thus, if a whistle blower reveals any information of public importance that he was obliged to reveal by law, such activity shall not fall within the purview of Sections 3,4 and 10.

Section 18 Relating to Offences against a Person's Dignity

- xiv. Section 18 is in line with Article 19 (3) of ICCPR. It is meant to safeguard and respect the rights and dignity of others, national security, public order or public health or morals. Besides, this provision only relates to "false information" and fair criticism, opinion or true assertions do not fall within the purview of this Section. Therefore, it could not have any impact on investigative work/journalism.

Section 22 on Spamming

- xxv "Unsolicited information does not include:
 - i. Marketing authorized under the law; or
 - ii. Information which has not been specifically unsubscribed by the recipient.
- xxvi. It is made clear that unless specifically unsubscribed, transmission of such information shall not be considered spamming. This

provision in any manner does not restrict civil and political rights of any individual. It aims at protecting privacy of an individual in line with Article 17 of ICCPR.

Section 23 on Spoofing

xxvii. For an act to be termed an “offence” under this provision, the following requirements need to be fulfilled:

- i. Dishonest intention;
- ii. Sending of information or establishing a website;
- iii. Counterfeit source; and
- iv. Intention to make the recipient or visitor believe that it is from an authentic source. Any definition of satire lacks all these ingredients and does not fall within the purview of this provision.

Section 29 on Retention of Traffic Data

xxviii. Retention of traffic data is essential for various reasons which include consumer protection and investigation of offences, particularly relating to terrorism. The telecom operators in Pakistan, like in many other countries, are already obliged to retain traffic data for a period of one year under their license terms and conditions. In order to safeguard right to privacy, it is ensured that an authorized officer cannot have access to data or information system without obtaining warrants from the Court as provided under Section 30 of the PEC Bill.

xxix. Furthermore, the powers of the authorized officer provided under Section 32 of the PEC Bill are subject to other provisions of the PEC Bill i.e., an authorized officer cannot exercise these powers without obtaining warrants or fulfilling other legal requirements provided in the Bill. The powers of the authorized officer are, therefore, kept under strict judicial and administrative scrutiny.

Section 34 on the Power to Manage Online Information

xxx. It may be underlined that the draft Bill as approved by the Standing Committee on 17 September 2015 (available on the website of MoIT at www.moit.govt.pk) does not give any such powers to an authorized officer of the Pakistan Telecommunication Authority (PTA). The provision in this Section is in line with Article 19 of the Constitution of Pakistan which assures the right to freedom of speech and expression and freedom of the press. This provision further ensures that the PTA develops the proper legal framework for performing this function strictly in accordance with the Constitution. Political comments or criticism of the government cannot be blocked under this provision.

xxxi. In the Bill, the power to block/remove any terrorism related propaganda, hate speech etc. is given to a statutory regulatory

body that performs its functions under strict judicial scrutiny. Moreover, if any person is aggrieved by any order of PTA, he/she can file an appeal in the High Court or a tribunal constituted under Pakistan Telecommunication (Re-organization) Act, 1996. An aggrieved person may also file a writ petition under Article 199 of the Constitution before the High Court against any order passed by PTA (under Section 34 of the PEC Bill). Similar powers are provided to the central government and law enforcement agencies in other countries as well which may exercise such powers without any judicial scrutiny.

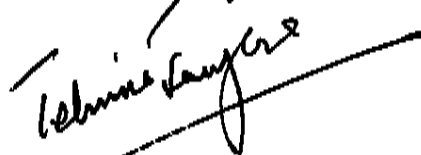
xxxii. The Supreme Court of Pakistan has also directed PTA to check unlawful content on the internet. The Islamabad High Court (IHC) vide its order dated 20 January 2015 has also directed PTA to undertake actions in respect of objectionable material accessible through internet. Section 34 of the PEC Bill aims at streamlining the powers of PTA and ensuring their exercise in a judicious and fair manner.

5. In view of the foregoing response to the general as well as specific concerns raised, I would like to reiterate that in Pakistan, democracy is thriving and freedom of expression and of media is safeguarded, and therefore, laws that are in accordance with the aspirations of people are only adopted by the National Parliament.

6. The draft PEC Bill is undergoing Parliamentary Review before it is passed by the Parliament. Concerns about the proposed Bill continue to be debated and resolved through parliamentary processes.

7. We hope that the above clarifications will help in addressing the concerns expressed by you.

Yours sincerely



(Tehmina Janjua)

Ambassador and Permanent Representative

Mr. David Kaye,
Special Rapporteur on the Right to
Promotion and Protection of Freedom
of Opinion and Expression
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