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**Promotion and protection of all human rights, civil,
political, economic, social and cultural rights,
including the right to development**

Written statement* submitted by the Association for Progressive Communications (APC), non-governmental organization in general consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[30 May 2016]

* This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

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State of the Internet Rights in India, Malaysia and Pakistan

With the increasing use of the internet for the exercise of freedom of expression and exchange of opinion globally, governments must fulfil their obligation to promote and protect human rights online.¹ However, in India, Malaysia and Pakistan many of the restrictions imposed on freedom of expression, assembly and association and on the right to privacy are being extended and sometimes heightened in online spaces.

Access

In India, Malaysia and Pakistan significant gaps in access to the internet and related technology persist, especially for marginalised communities and other disadvantaged groups. The internet is rapidly evolving into a necessity and access to the internet is essential for the exercise of a wide range of human rights. The imbalance between rural and urban users as well as the gender gap in these countries requires urgent attention to ensure that all sections of society are able to fully exercise their rights online. In India, only 9% per cent of the rural population has access to mobile internet.² In Pakistan, internet penetration is around 14% and limited, although mobile internet access is increasing with the recent launch of faster 3G and 4G services in the country, with the majority of users in urban areas.³ In Malaysia, penetration in rural area remains low, with rural inhabitants accounting for only 32.8% of internet users reported in the year 2014.⁴ It is imperative for states to improve the affordability and coverage of both fixed and mobile services, along with technical and human capacity. Further, marginalised groups including women and religious minorities and the economically disadvantaged continue to face challenges online which are similar to those they face in offline spaces. To ensure progress, justice and equality, states must take urgent and proactive steps for meaningful inclusion of these groups in online spaces.

Criminalisation of expression online

Challenges to freedom of expression offline extend to online spaces in India, Malaysia and Pakistan. There are numerous instances of arrests and threats of legal consequences against individuals who use the internet to express their opinion.

In Malaysia,⁵ political activist Khalid Ismath was charged with 11 counts under the Communications and Multimedia Act 1998 and three counts under the Sedition Act for allegedly “offensive” statements towards the authorities made on social media in October 2015.⁶ Three editors and two executives from an online news portal, The Malaysian Insider, were arrested in March 2015 for an article published online.⁷ Similarly, cartoonist Zunar was charged with nine counts under the Sedition Act for a series of social media postings on the judiciary in April 2015.⁸

In India, there have been numerous arrests for the exercise of free speech. A 19-year-old boy was charged with damaging and inflammatory content for creating a post on social media that was critical of a minister in a provincial

1 See: HRC /RES/20/8 and HRC/RES/26/13

2 <http://timesofindia.indiatimes.com/tech/tech-news/Only-9-of-rural-India-has-access-to-mobile-internet-Report/articleshow/50840296.cms>

3 <https://freedomhouse.org/report/freedom-net/2015/pakistan>

4 <http://www.skmm.gov.my/skmmgovmy/media/General/pdf/Internet-Users-Survey-2014.pdf>

5 Research conducted by EMPOWER Malaysia recorded a total of 44 cases of violation of freedom of expression from January 2014 to March 2015 - <http://empowermalaysia.org/isi/uploads/sites/3/EMPOWER-FOE-Malaysia-Country-Report-2015.pdf>

6 <https://www.malaysiakini.com/news/316341>

7 <http://www.nytimes.com/2015/04/01/world/asia/malaysian-insider-arrests.html>

8 <http://www.wsj.com/articles/malaysian-cartoonist-zunar-charged-with-nine-counts-of-sedition-1428040017>

government.⁹ The central government has taken aggressive actions against many persons who create social media content that is critical of the government. Recently five students were arrested¹⁰ and a young professional who was critical of the prime minister was threatened with jail time.¹¹ Kovan, a popular folk singer, was arrested for videos that were uploaded criticising a state government and for portraying the chief minister in a supposedly defamatory manner.¹²

In Pakistan, blasphemy-related provisions in legislation¹³ remain the greatest threat to free expression in online spaces despite repeated calls by the international community to repeal these provisions. Recently, Usman Liaqat, a Christian, was arrested for allegedly posting content on Facebook that was regarded as “blasphemous” by state authorities.¹⁴ The Federal Investigation Agency, through its Cyber Crime Wing, arrested a young member of the social media team of Pakistan Tehreek-i-Insaf, an opposition political party, for his post on Twitter.¹⁵ Hate speech provisions are also used to crack down on expression by minorities, as was the case with the arrest of a Shia Muslim in Lahore under the state’s notorious anti-terrorism law.¹⁶

Blocking and removing content on the internet

Information and content in these countries remain heavily regulated by the state. Legislative and executive actions are often used to block and remove content, and judicial recourse is seldom available. Online communication and content that are deemed to be obscene, indecent, false, menacing or offensive, especially on religious, political or social issues, are often blocked or removed. For instance, in Malaysia, the website of electoral reform group Bersih,¹⁷ The Malaysian Insider,¹⁸ Sarawak Report¹⁹ and the entire blogging platform Medium²⁰ (for carrying Sarawak Report’s content) were blocked by the regulatory body, the Malaysian Communications and Multimedia Commission (MCMC) on unjustifiable grounds.

Many websites of religious and ethnic minorities such as the Shia, Hazara and Ahmadiyya have been banned by the government in Pakistan. A recent example is the banning of a watchdog website that was monitoring the killing of Shia Muslims.²¹ Similarly, the state is also clamping down on free expression of sexual minorities; a website discussing LGBT and SOGI issues has been blocked on the grounds of it being “un-Islamic”.²² In early 2016 the government ordered the blocking of over 400,000 sites supposedly carrying pornographic content which resulted in sites that did not host such content also being blocked.²³ Although the block on YouTube has been lifted, the content currently available is heavily regulated and the processes for such regulation are unclear.²⁴

In India, the government has blocked access to websites in sweeping content blocks in the name of obscenity and inflammatory content control. The most recent case involved the blocking of over 800 websites for hosting

9 <http://www.ndtv.com/india-news/outrage-over-arrest-of-class-11-student-for-facebook-post-attributed-to-up-minister-azam-khan-747755?pfrom=video-read>

10 <http://tech.firstpost.com/news-analysis/facebook-youth-arrested-anti-modi-message-whatsapp-224422.html>

11 <http://tech.firstpost.com/news-analysis/in-go-a-facebook-user-faces-jail-threat-for-anti-modi-holocaust-post-224327.html>

12 <http://www.dnaindia.com/india/report-court-grants-bail-to-kovan-who-is-facing-sedition-charge-2145869>

13 <https://content.bytesforall.pk/sites/default/files/ExpressionRestricted.pdf>

14 <http://christiannews.net/2016/05/28/pakistani-police-arrest-christian-beaten-accused-of-blasphemy/>

15 <http://www.thenews.com.pk/print/70153-fia-arrests-ptis-social-media-member-over-cyber-laws-violation>

16 <http://www.dawn.com/news/1221725>

17 <http://www.bbc.com/news/world-asia-34070655>

18 <https://www.malaysiakini.com/news/331711>

19 <http://www.theguardian.com/world/2015/jul/20/sarawak-report-whistleblowing-website-blocked-by-malaysia-over-pm-allegations>

20 <https://www.digitalnewsasia.com/spurned-medium-mcmc-strikes-back-users-suffer>

21 <http://tribune.com.pk/story/408359/shia-killing-watchdog-site-apparently-banned/>

22 <http://www.hrc.org/blog/government-of-pakistan-shuts-down-countrys-only-lgbt-website;>
<http://scroll.in/article/808769/on-pakistans-absurd-list-of-over-400000-porn-sites-to-ban-disney-cartoons-and-spice-girls>

23 [http://www.dawn.com/news/1235554;](http://www.dawn.com/news/1235554)

24 <https://content.bytesforall.pk/node/188>

“pornographic content”.²⁵ In 2014, 32 websites that supposedly contained information for recruitment into the ISIL were blocked.²⁶ Inadvertently, major resource websites like GitHub and PasteBin were also blocked.²⁷ At least 40 web pages with supposed inflammatory content²⁸ were blocked in 2015.

Freedoms of assembly and association on the internet

Civil society is increasingly using information and communications technologies for social and political causes. As a result of this, governments have also taken keen interest in regulating the internet to impose restrictions.

In India and Pakistan, mobile network shutdowns are an alarmingly common occurrence. Since 2013, network shutdowns in India have increased drastically, affecting not only freedom of association and freedom of assembly but also freedom of expression. Recently, a state government blocked all internet and mobile data services in the state for 48 hours to block the circulation of a video of the lynching of an individual accused of rape.²⁹ Most of these orders for shutdown are given under Section 144 of the Code of Criminal Procedure, which authorises the state government to take action to prohibit unlawful assemblies or to prevent apprehended danger. Since 2015 there have been internet and mobile shutdowns in Jharkhand,³⁰ Gujarat,³¹ Jammu and Kashmir,³² Nagaland,³³ Manipur³⁴ and Rajasthan.³⁵ Common reasons cited for shutdowns are usually related to national security and public order. However, the states are now citing preventing cheating in an examination, apprehension of violence, etc., as reasons too.

Mobile network shutdowns in Pakistan are also frequent and increasing. In the capital city of Islamabad and neighbouring city of Rawalpindi these shutdowns are more frequent in the name of national security. In recent months, networks remained blocked in these cities for several hours during military parades and rehearsals to observe Independence Day.³⁶

In Malaysia, internet service providers are directed to take down content and receive blocking orders issued by the MCMC. The electoral reform group Bersih had its website blocked days ahead of a major rally in 2015. Further, participants in Malaysia’s Bersih 4 rally have encountered false or misleading information spread by fake accounts, causing confusion to the public, with most of it attributed to state-supported “cybertroopers”.³⁷

Mass surveillance

Citizens in India and Pakistan continue to face an environment where surveillance by the state, especially through digital platforms, is a norm. Recently the government of Pakistan implemented the Safe City Project in Islamabad, under which over 1,800 high resolution cameras³⁸ have been installed throughout the city. Movements of citizens are being recorded which allows the state to track them with or without reason. The data collected through these means are

25 <http://indiatoday.intoday.in/story/its-official-government-has-banned-these-857-porn-sites/1/455899.html>

26 <https://www.techdirt.com/articles/20141231/02075529554/indian-government-orders-32-web-sites-blocked-including-github-archiveorg-pastebin-dailymotion-vimeo.shtml>

27 <http://thenextweb.com/in/2014/12/31/vimeo-github-30-sites-blocked-india-content-isis/>

28 <http://timesofindia.indiatimes.com/tech/tech-news/Government-orders-ISPs-to-block-websites-with-inflammatory-content/articleshow/48223714.cms>

29 <http://timesofindia.indiatimes.com/india/Nagaland-blocks-internet-services-imposes-curfew-in-tense-Dimapur/articleshow/46497164.cms>

30 <http://www.medianama.com/2016/04/223-mobile-internet-ban-gujarat-bokaro/>

31 *ibid.*

32 <http://www.hindustantimes.com/india/handwara-firing-mobile-internet-services-suspended-in-kashmir/story-iPQHs3vdmWx7w0uCGK8NJ.html>; <http://www.medianama.com/2015/09/223-jammu-and-kashmir-internet-ban/>

33 http://www.huffingtonpost.in/2015/03/09/nagaland-lynching_n_6828442.html

34 <http://scroll.in/article/753108/why-a-blanket-ban-on-the-internet-in-troubled-manipur-is-not-a-good-idea>

35 <http://www.medianama.com/2015/12/223-rajasthan-internet-block/>

36 <https://content.bytesforall.pk/node/67>

37 https://www.apc.org/en/system/files/Impact_Digital.pdf

38 <http://www.dawn.com/news/1248566>

not stored through secure means and thus are at risk of being accessed by any party. In India, several new intelligence gathering bodies have been formed during the last four years and their powers are exercised without judicial or legislative oversight.³⁹ This has led to the increasing collection of data about citizens in the name of eliminating threats to national security, without concomitant privacy protections.

In India, the Central Monitoring System is a telecommunications interception system that enables government agencies to intercept communications without requiring them to liaise with telecom service providers.⁴⁰ The NATGRID⁴¹ provides for centralising 21 databases to give a full profile of suspects to security agencies who seek it. No information about the checks and balances are available. Such unchecked intelligence sharing is in conflict with the principles of necessity and proportionality. The state has also announced the creation of the National Media Analytics Centre for continuous monitoring of television stations, blogs and social media platforms for negative content.⁴² The agency would use software to generate relevant tags to highlight “belligerent” comments or social media chats and thus profile users.⁴³

In Malaysia, social media users are constantly reminded that the content that they post or share is monitored by the police and the MCMC, and that social media abuse will not be tolerated.⁴⁴ In January 2016, Inspector-General of Police Khalid Abu Bakar stated to the media that the police would monitor messaging applications like WhatsApp.⁴⁵ Following that announcement, the Police Cyber Investigation Response Centre (PCIRC) was formed with the Twitter handle @OfficialPCIRC. The unit tags Twitter users who have posted something deemed sensitive, and warns them that they are being watched or that the police are coming after them. The most well-known warning was against the Twitter handler @Kuasiswa, managed by activist Fahmi Reza, who was subsequently investigated under the CMA and the penal code.⁴⁶

Emerging policies and legislation restricting freedoms

Penal and broadcasting legislations are used in tandem to regulate, penalise and prevent content on the internet in India, Malaysia and Pakistan. Worryingly, new legislations and amendments are being proposed in all three countries which will most likely have a chilling effect on freedoms on the internet.

In Pakistan, the National Assembly recently passed the draft Prevention of Electronic Crimes Bill 2016 which contains several vague provisions vesting the state with blanket authority to block, restrict and criminalise expression online.⁴⁷ This Bill also legitimises surveillance and permits the state to collect, store and share data about users which violates the right to privacy.

Amendments to the Communication and Multimedia Act in Malaysia also contain provisions that authorise censorship and require bloggers to register, which impedes their freedom of expression.⁴⁸ These changes in legislation are currently being discussed by the legislative bodies in both countries and have been severely criticised by numerous sectors of society.

39 <https://internetdemocracy.in/watchtower/>

40 <http://www.thehindu.com/business/central-monitoring-system-to-be-ready-by-end-of-fiscal-year/article7941946.ece>

41 <http://indiatoday.intoday.in/story/natgrid-gets-green-nod-but-hurdles-remain/1/543087.html>

42 <http://indianexpress.com/article/india/india-news-india/nov-govt-cyber-cell-to-counter-negative-news/>

43 *ibid*

44 <https://www.malaysiakini.com/news/331059>; <http://www.nst.com.my/news/2016/02/127907/practice-self-censorship-netizens-urged>;

45 <http://www.freemalaysiatoday.com/category/nation/2016/01/12/police-to-crackdown-on-immature-social-media-users/>

46 <https://www.malaysiakini.com/news/328868>; <http://www.freemalaysiatoday.com/category/nation/2016/02/23/fahmi-reza-under-police-investigation/>

47 http://www.na.gov.pk/uploads/documents/1421399434_340.pdf

48 <https://www.apc.org/en/pubs/malaysian-parliament-should-heed-civil-society-cal>

Similarly, the government in India developed a draft encryption policy⁴⁹ which required all application service providers to deposit with the government a key which would help law enforcement and other authorised parties to circumvent encryption. This policy was withdrawn following public outcry. Although these provisions have been rolled back, the state is currently drafting new policies and provisions to replace these which are feared to be violative of rights as well.

Another piece of legislation in India which is a cause for concern is the Aadhaar (Targeted Delivery of Financial and Other Subsidies, Benefits and Services) Bill, 2016, which was enacted without proper dialogue in the legislature.⁵⁰ While this Act purports to aid delivering welfare measures more efficiently, the Unique Identity Authority of India is authorised to collect, store and share information about citizens with state agencies. This is likely to violate the right to privacy of individuals, especially since there are no redress mechanisms and it may result in the surveillance of individuals and their information.

Bytes for All (B4A) Digital Empowerment Foundation (DEF) EMPOWER NGO(s) without consultative status, also share the views expressed in this statement.

49 <http://www.livemint.com/Politics/RZtAGhM6IjDBWujiK6ysEP/What-was-the-encryption-policy-and-why-it-was-withdrawn.html>

50 <http://thewire.in/2016/04/24/the-aadhaar-act-is-not-a-money-bill-31297/>