Section 20 of Pakistan's Prevention of Electronic Crimes Act: Urgent Reforms Needed

September 2023

TRIALWATCH FAIRNESS REPORT

A CLOONEY FOUNDATION FOR JUSTICE INITIATIVE

ABOUT THE AUTHOR

TrialWatch is an initiative of **Clooney Foundation for Justice**. Its mission is to expose injustice, help to free those unjustly detained and promote the rule of law around the world. TrialWatch monitors criminal trials globally against those who are most vulnerable — including journalists, protesters, women, LGBTQ+ persons and minorities — and advocates for the rights of the unfairly convicted. Over time, TrialWatch will use the data it gathers to publish a Global Justice Index evaluating countries' justice systems.

The TrialWatch Initiative drafted this report, in view of online sources available for public use and consultation with local partners who obtained and analyzed the underlying case information and provided advice on Pakistani law.

EXECUTIVE SUMMARY

The government of former Prime Minister Imran Khan used the Prevention of Electronic Crimes Act, 2016 (**"PECA"**) to suppress and deter critical speech online, including by journalists. Despite statements last year from the incoming government that it would not contest an order finding part of PECA unconstitutional,[1] since then, the government has continued to weaponize the law against journalists and critics. This short report analyzes several First Information Reports and summonses in cases against journalists under PECA's defamation provision to show how the law has been abused.

One journalist had to go to court to get a case against him struck because, while supposedly based on a complaint by a private person, the complaint alleged that the journalist had defamed government institutions—yet PECA does not cover the government. In other cases, journalists who had spoken critically of the authorities were sent notices to appear over WhatsApp, or even just on social media. This effort to use PECA to try to insulate the authorities from criticism is also reflected in the Imran Khan government's attempt to formally amend the law to define the 'natural persons' the law is meant to protect to include institutions.

As Absar Alam, one of the journalists targeted under PECA and who was subsequently shot after tweeting critically about a senior intelligence officer, explained:

> They want me to become an example and for that, they will use FIA, they will use police, they will file fake cases against me.

Last year, the Islamabad High Court struck down parts of PECA as inconsistent with the right to freedom of expression (while also rejecting the efforts to amend PECA to cover institutions). More recently, the Supreme Court of Pakistan requested briefing on the compatibility of PECA with the right to freedom of expression. At the same time, the pattern of using PECA against journalists has continued. For instance, journalist Fawad Ali Shah is under investigation under PECA for allegedly uploading "false, frivolous and fake information . . . against the Officers / Officials of Government of Pakistan."[2]

The government should concede that the law is unconstitutional and contrary to Pakistan's international human rights obligations, and reform it accordingly.

---

[1] Rizwan Shehzad, Backlash 'Forces Govt to U-turn' on PECA Plea, Express Tribune, May 7, 2022, *available at* https://tribune.com.pk/story/2355578/backlash-forces-govt-to-u-turn-on-peca-plea.
[2] FIR No. 06/2022 dated Jan. 5, 2022 registered under sections 186, 500, 506 of the Pakistan Penal Code, 1806 and sections 20, 24 of Prevention of Electronic Crimes Act, 2016.

BACKGROUND INFORMATION

A. HISTORY OF PECA

The Prevention of Electronic Crimes Act (**"PECA"**) was adopted in 2016 in part as a response to the terrorist attack on the Army Public School in Peshawar in 2014, when nearly 150 people, mostly school-going children, were killed.[3] The government (then, of Prime Minister Nawaz Sharif) adopted a 20-point response, which included several elements regarding online speech.[4] According to observers, a draft version of PECA that had been under consideration prior to the attack was swiftly amended to become more draconian.[5] Several Members of the Parliament opposed the Bill as ultimately adopted, with one stating for instance that "I am today embarrassed to be a part of this Parliament. If I go out today I will say I am ashamed of being in the Parliament that passes such a law in a democratic environment and claiming that we are a democratic country."[6]

In particular, PECA as adopted empowered the Federal Investigation Agency (the **"FIA"**) to investigate a wide range of online offenses. The FIA, however, has a dubious history. "For example, in October 2008, the FIA stated that it would hunt down the 'antidemocratic' forces circulating YouTube videos and text messages aimed at discrediting the majority party's politicians."[7]

As one commentator has explained, "[a]s time progressed, the intent behind the law began to reveal itself . . . Political activists and journalists were issued summonses to appear . . . for an investigation into 'anti-state' activity. They were asked to appear with their electronic devices. In some cases, these were seized and searched."[8] For instance, in 2021 a report asserted that over the last two years, 23 Pakistani journalists had been

---

[3] *See* BBC, Peshawar School Massacre: What We Know, Dec. 17, 2014, *available at* https://www.bbc.com/news/world-asia-30488503.

[4] *See* Anup Kaphle, Pakistan Announces a National Plan to Fight Terrorism, Says Terrorists' Days Are Numbered, Wash. Post, Dec. 24, 2014, *available at* https://www.washingtonpost.com/news/worldviews/wp/2014/12/24/pakistan-announces-a-national-plan-to-fight-terrorism-says-terrorists-days-are-numbered/.*Cf.* Farieha Aziz, Pakistan's Cybercrime Law: Boon or Bane?, Heinrich Böll Stiftung, Feb. 14, 2018 ("The justification for these sections was the need to bring all legislative efforts in line with the . . . National Action Plan"), *available at* https://www.boell.de/en/2018/02/07/pakistans-cybercrime-law-boon-or-bane.

[5] Furqan Mohammed, PECA 2015: A Critical Analysis of Pakistan's Proposed Cybercrime Bill, 15 UCLA J. Islamic & Near E.L. 71, 72 (2016) ("The Bill started on the right track . . . . In the aftermath of the Peshawar attack—and consistent with the aforementioned desire for unfettered power to monitor alleged terrorists—the Standing Committee . . . remov[ed] the privacy safeguards, and then added provisions that made the Bill overbroad and subject to misuse.").

[6] National Assembly of Pakistan, Assembly Details, Aug. 10, 2016, pp. 93-94, *available at* https://na.gov.pk/uploads/documents/1472024501_449.pdf.

[7] Furqan Mohammed, *supra* note 5, at 75.

[8] Aziz, *supra* note 4.

targeted under PECA.[9] And a recent three-part series in *Dawn* entitled 'Project Peca' said that it had become "an effective weapon in the hands of the state, to harass, intimidate and silence critics."[10]

B. DEFAMATION IN PAKISTAN AND SECTION 20 OF PECA

The UN Human Rights Committee[11] and the Inter-American Court of Human Rights[12] have highlighted the danger that criminal defamation laws pose to the right to freedom of expression.[13] Further, around the world states have begun to repeal their criminal defamation laws—or courts have struck them down.[14]

Members of Pakistan's Parliament have also been aware that criminal defamation laws could be misused. In fact, they omitted the word 'defamation' from Article 19 of the Constitution of Pakistan in 1975, replacing it with the word 'commission of' an offense in a list of permissible reasons to restrict the right to freedom of expression.[15]

---

[9] *See* Asad Hashim, 'Chilling Pattern': Pakistani Journalists 'Targeted' by Cyber Law, Al Jazeera, Nov. 2, 2021, *available at* https://www.aljazeera.com/news/2021/11/2/pakistan-journalists-targeted-cyber-crime-law-press-freedom.

[10] *See* Farieha Aziz, Project PECA, Dawn, *available at* https://www.dawn.com/news/1725805/project-peca-i-how-to-silence-a-nation; https://www.dawn.com/news/1725979/project-peca-ii-a-weapon-of-mass-intimidation; https://www.dawn.com/news/1726162.

[11] UN Human Rights Committee, General Comment No. 34, Article 19: Freedoms of Opinion and Expression, U.N. Doc. CCPR/C/GC/34, Sept. 12, 2011, ¶ 47 (urging the decriminalization of defamation).

[12] Justice Manuel José Cepeda Espinosa and Dario Milo, The Beginning of the End for Criminal Defamation in the Americas? The *El Universo* Case, Just Security, May 3, 2022 (discussing a recent decision that advised that Ecuador must "prevent public officials from bringing suits for defamation and libel with the aim to silence criticism of their actions in the public sphere"), *available at* https://www.justsecurity.org/81339/the-beginning-of-the-end-for-criminal-defamation-in-the-americas-the-el-universo-case/.

[13] *See also infra* for additional discussion of international standards on criminal defamation.

[14] This includes countries from the United Kingdom to Zimbabwe to Sri Lanka. *See* Coroners and Justice Act (2009); Sebastian Mhofu, Zimbabwe Court Strikes Down Criminal Defamation Law, VOA, Feb. 3, 2016, *available at* https://www.voanews.com/a/zimbabwe-court-strikes-down-criminal-defamation-law/3174897.html; Celia W. Dugger, World Briefing | Asia: Sri Lanka: Strict Defamation Law Repealed, N.Y. Times, June 20, 2002, *available at* https://www.nytimes.com/2002/06/20/world/world-briefing-asia-sri-lanka-strict-defamation-law-repealed.html.

[15] *See* Constitution of the Islamic Republic of Pakistan, 1973, Art. 19.Article 19 had previously read, "[e]very citizen shall have the right to freedom of speech and expression, and there shall be freedom of the press, subject to any reasonable restrictions imposed by law in the interest of the glory of Islam or the integrity, security or defence of Pakistan or any part thereof, friendly relations with foreign States, public order, decency or morality, or in relation to contempt of court, *defamation*, or incitement to an offence" (emphasis added). After the amendment in 1975, it read, "[e]very citizen shall have the right to freedom of speech and expression, and there shall be freedom of the press, subject to any reasonable restrictions imposed by law in the interest of the glory of Islam or the integrity, security or defence of Pakistan or any part thereof, friendly relations with foreign States, public order, decency or morality, or in relation to contempt of court, *commission of* or incitement to an offence" (emphasis added).This alteration was considered significant, with one court explaining that the "change widened the scope of freedom of press so that it could serve its purpose without a Sword of Damocles permanently hanging on its head." *Majid Nazami and another vs. Sheikh Muhammad Rashid* ¶ 21 (PLD 1996 Lahore 410).

Nevertheless, Pakistan's Penal Code ("**PPC**") has long criminalized defamation in its Section 499.[16] Yet despite its infirmity under international human rights law, Section 499 at least includes a variety of explanations and exemptions.[17] A few of them are as follows:

> (1) It is not defamation to impute anything which is true concerning any person, if it be for the public good that the imputation should be made or published;
>
> (2) It is not defamation to express in good faith any opinion whatever respecting the conduct of a public servant in the discharge of his public functions; and
>
> (3) It is not defamation to express in good faith any opinion whatever respecting the conduct of any person touching any public question and respecting his character, so far as his character appears in that conduct.[18]

Along with potential penal liability under Section 499, the Defamation Ordinance of 2002 creates civil liability for those who defame others.[19]

It was against the backdrop of these existing laws that in 2016, PECA created a new 'cyber defamation' offense. In particular, Section 20 defines 'offenses against the dignity of a natural person' to include "intentionally and publicly" displaying, transmitting or exhibiting "any information . . . which [the person] knows to be false" and which "intimidates or harms the reputation or privacy of a natural person," via information system(s).[20]

While some initially heralded PECA as potentially helpful to victims of cyber harassment, especially women who had previously had little recourse,[21] the flaws in the law were soon noted, with Human Rights Watch for instance stating that PECA contained "vague and

---

[16] This provision too is subject to a pending legal challenge before the Islamabad High Court. *See, e.g.*, Centre for Law and Democracy, Pakistan: Amicus Brief Challenging Criminal Defamation, Mar. 20, 2023, *available at* https://www.law-democracy.org/live/pakistan-amicus-brief-challenging-criminal-defamation/.The provision has also previously been criticized by the UN Human Rights Committee. Concluding Observations on the Initial Report of Pakistan, UN Human Rights Committee, CCPR/C/PAK/CO/1, Aug. 23, 2017, ¶ 38 ("The State party should decriminalize defamation, and ensure that imprisonment is never a punishment for defamation and that criminal laws are not improperly used against journalists and dissenting voices.") [hereinafter HRC Concluding Observations].

[17] For an analysis of these explanations and exemptions, see Centre for Law and Democracy, Pakistan: Amicus Brief Challenging Criminal Defamation, *supra* note 16.

[18] *See* Pakistan Penal Code 1860, Section 499.

[19] Defamation Ordinance, 2002 (LVI of 2002).

[20] *See* PECA 2016, Section 20.

[21] Farieha Aziz, Rethinking the Prevention of Electronic Crimes Act: How Cybercrime Laws Are Weaponized Against Women p. 2 (Human Rights Commission of Pakistan January 2022).

overly broad offenses."[22] Indeed, unlike Section 499 of the PPC, Section 20 of PECA offers no defences or exemptions to the alleged accused person. Further, while withholding such limiting language, it imposes greater penalties (three versus two years in prison).[23]

Section 20 also uses vague terms such as 'information,' 'intimidates,' and others. Recently, the Lahore High Court confirmed that, "the phraseology of section 20 is broad enough to cover not only defamation but also the use of offensive and derisive language."[24]

As a result, Section 20 has been used to target individuals critical of the authorities. Although there are no publicly-available statistics confirming the number of cases registered under Section 20, a recent op-ed explained that "[w]hile the FIA has not revealed the exact number of cases that have been initiated under Section 20 of PECA, the cases that have been made public by the accused appear to focus largely on journalists and civil society actors."[25] The same has also been noted by the courts and in the case of *Rana Muhammad Arshad v. Federation of Pakistan*,[26] the Islamabad High Court advised the authorities that it expected the FIA to "consider prescribing special guidelines regarding proceedings against persons engaged in the profession of journalism on account of the profound effect on the freedom of press and independence of a journalist when the coercive powers are abused."[27]

---

[22] Human Rights Watch, Pakistan: Repeal Amendment to Draconian Cyber Law, Feb. 28, 2022, *available at* https://www.hrw.org/news/2022/02/28/pakistan-repeal-amendment-draconian-cyber-law.
[23] While the Lahore High Court has held that "[s]o far as defamation is concerned, the Explanations and the Exceptions set out in section 499 PPC would be read into section 20 of the PECA by virtue of sections 28 and 50 of this Act," *see* Meera Shafi et al v. Federation of Pakistan et al, Writ Petition No. 24397/2021, Judgment, Lahore High Court, ¶ 45 [hereinafter Shafi Writ Judgment], it is not clear that the explanations and exceptions would also apply to prosecutions for 'intimidation' or other forms of alleged harm to privacy.
[24] Shafi Writ Judgment at ¶ 35.
[25] Sadaf Khan, PECA, the Powerful, and the Petty, The News, Feb. 22, 2022, *available at* https://www.thenews.com.pk/print/935630-peca-the-powerful-and-the-petty.
[26] Rana Muhammad Arshad v. Federation of Pakistan, Writ Petition No. 2939/2020, Order sheet dated Nov. 3, 2020, Islamabad High Court [hereinafter Arshad Writ Judgment].
[27] *Id*. ¶ 11.

C. RECENT LEGAL DEVELOPMENTS

Pakistan's High Courts have split on the issue of whether Section 20 is constitutional at all. Without addressing its vagueness, the Lahore High Court, in March 2022, found that Section 20 could survive constitutional scrutiny because defamation may be prohibited to protect "the dignity of a natural person."[28] By contrast, one month later in April 2022, the Islamabad High Court struck down the expression "or harms the reputation" from Section 20 for being "unconstitutional, invalid beyond reasonable doubt."[29] The Supreme Court of Pakistan further identified this split in June 2022 and requested briefing on the constitutionality of Section 20 of PECA.[30]

While Section 20 of PECA by its terms applies to speech regarding 'natural persons,' on February 18, 2022, the then-government adopted an Ordinance that purported to amend PECA to cover defamation of the authorities, including the military. It did so by redefining "person" to mean "any company, association or body of persons whether incorporated or not, institution, organization, authority or any other body established by the Government under any law or otherwise" and by deleting the word "natural."[31] It also sought to make the penalty under Section 20 more severe by lengthening the potential sentence from three years to five years.[32] Finally, it explicitly authorized members of the public to act as 'aggrieved persons' on behalf of public figures or holders of public office[33] and made Section 20 offenses non-bailable.[34]

The Law Minister at the time justified the amendments as necessary to curb the spread of 'fake news.'[35] Observers, however, stressed that these amendments were intended to insulate public institutions and officials from criticism. For instance, the Pakistan Human Rights Commission said the amendments were "undemocratic and will inevitably be used to clamp down on dissenters and critics of the government and state institutions."[36]

This Ordinance was however declared to be unconstitutional by the Islamabad High Court in the judgment on Section 20 of PECA discussed above. Furthermore, the Court directed

---

[28] Shafi Writ Judgment at ¶ 36.
[29] *See* Pakistan Federal Union of Journalists v. Federation of Pakistan, Writ Petition No. 666/2022, Order Sheet dated April 8, 2022, Islamabad High Court. Note that other than the expression "harms the reputation" the remaining elements of Section 20 continue in force.
[30] *See* The Express Tribune, SC Stays Criminal Proceedings Against Meesha Shafi, June 8, 2022, *available at* https://tribune.com.pk/story/2360614/sc-stays-criminal-proceedings-against-meesha-shafi.
[31] Prevention of Electronic Crimes (Amendment) Ordinance, 2022, ¶ 2-3.
[32] *Id.* ¶ 3(b) (i).
[33] *Id.* ¶ 3(c) and (d).
[34] *Id.* ¶ 4.
[35] Rehan Piracha, Explainer: PECA Amendment Ordinance an Attempt to Curb Dissent or Fake News, VoicePK, Feb. 21, 2022, *available at* https://voicepk.net/2022/02/explainer-peca-amendment-ordinance-an-attempt-to-curb-dissent-or-fake-news/.
[36] *Id.*

the government to report on abuses under PECA within thirty days. Despite the lapse of a year, no such report has been produced.

While the new government made no effort to revive these amendments, the FIA has continued to use PECA against the press: Not only in the case against Mr. Shah, but also in a case against journalist Imran Riaz Khan, who faced charges under Section 20 among other provisions[37] for allegedly "creat[ing] rift between the general public and state institutions" based on a speech in which he asked whether statements by an Army General that his institution had 'nothing to do with politics' were correct, in the public's opinion.[38] His case was almost immediately dismissed by the court.[39]

[37] Section 20 is often charged alongside criminal defamation and other provisions of PECA and the Pakistan Penal Code.As discussed *supra* the authorities may prefer Section 20 charges (or see them as adding value to what they would be permitted to charge under the PPC), because Section 20 of PECA allows for fewer defenses that the criminal defamation provisions of the PPC.Further, PECA cases are heard by special courts, which may provide forum advantages to the authorities.

[38] Unofficial translation of FIR No. 253/2022 dated Nov. 29, 2022 registered under sections 109, 131, 500, 505 of the Pakistan Penal Code, 1806 and sections 11, 20, 24 of Prevention of Electronic Crimes Act, 2016.

[39] *See* Rana Bilal, Lahore Court Orders Release of TV Anchor Imran Riaz Khan, Dawn, Feb. 3, 2023, *available at* https://www.dawn.com/news/1735110.

CASE STUDIES: PECA IN ACTION

This report supplements prior reporting on PECA[40] by analyzing a number of cases to show the ways in which the law has been abused in practice. Based on examination of these cases, this report makes two core findings: (i) Section 20 seems to have been used to try to insulate state institutions from criticism (thus exceeding its ostensible scope of application to "natural persons"); and (ii) the pre-trial procedure in the cases analyzed has been irregular, in a manner consistent with prior criticisms by the courts of the pre-trial process in cases under Section 20 of PECA.

First, Section 20 has been used against critics of state institutions or public officials. In the cases examined, private persons have filed First Information Reports (**"FIRs"**) against such critics without there existing any nexus between the critic and the person who filed the complaint in the first place, suggesting, as one defendant put it, that these complainants have been deputized as proxies for the state in sparking Section 20 cases.

For instance, journalist Asad Ali Toor tweeted about alleged corruption by a former army officer and then-government official, saying "I read whatever I see with an open mind and would also request you in this country nobody is holy cow & must not be above the law, I'm journalist with bias for democracy/constitution/rule of law. If our all other segments of society are answerable/accountable why not Asim Bajwa?".[41] Soon thereafter, a private person filed an FIR alleging that "[i]n the last few days, Mr. Toor has used derogatory language and negative propaganda for high-level government institutions, including the Pakistan Army through his social media posts which is a grave crime according to the law."[42] (Asim Bajwa is a former Lieutenant General of Pakistan's Army and at the time served as a Special Assistant to the Prime Minister on Information.).

---

[40] This includes the recent three-part exposé on PECA entitled *Project PECA*. *See* Farieha Aziz, Project PECA, Dawn, *available at* https://www.dawn.com/news/1725805/project-peca-i-how-to-silence-a-nation; https://www.dawn.com/news/1725979/project-peca-ii-a-weapon-of-mass-intimidation; https://www.dawn.com/news/1726162. This report's findings are consistent with some of the arguments advanced in that exposé. *See also* Helen Jasper et al., He Who Dares Not Offend Cannot Be Honest: United Nations Human Rights Committee Jurisprudence and Defamation Laws Under the ICCPR, *available at* https://scholarship.law.gwu.edu/cgi/viewcontent.cgi?article=2932&context=faculty_publications; Laura Holt et al., Decriminalizing Defamation: A Comparative Study, George Washington Law International Law & Policy Brief, *available at* https://studentbriefs.law.gwu.edu/ilpb/2022/03/19/decriminalizing-defamation-a-comparative-law-study/.

[41] *See* https://twitter.com/AsadAToor/status/1299617893324402688.

[42] Unofficial translation of FIR No. 338/2020 dated Sept. 12, 2020 registered under sections 499, 500, 505 of the Pakistan Penal Code, 1806 and sections 11, 20, 37 of Prevention of Electronic Crimes Act, 2016.

After summoning him, the authorities refused to explain the substantive basis for the FIR.[43] Then when Mr. Toor initially appeared in court, despite acknowledged deficiencies in the complaint, the court directed the police to seize his phone in anticipation of filing a further FIR.[44]

Ultimately, Mr. Toor moved to quash the FIR before the Lahore High Court. He explained that the FIR did not "disclose[] any particulars of the Twitter account or internet device through which the complainant accessed the allegedly defamatory tweets. He has not, for instance, mentioned whether he saw the allegedly defamatory tweets on his laptop or on his android? . . . The absence of such information which would establish the link between the Complainant and allegedly defamatory tweets strongly suggests that the Complainant is not the aggrieved person, he is only acting as a proxy."[45]

The case was ultimately closed by investigators (the investigators told the Lahore High Court that "no evidence has been collected against the petitioner revealing the commission of any offense"[46]). Further, a few months after the case was closed, Mr. Toor was attacked.[47] Then, after he publicly asserted that the authorities may have been behind the attack, a second private person lodged a fresh complaint against him.[48] As Mr. Toor explained, "a private citizen got up and went for the report to the FIA. He claimed that I had conspired against the organizations, the Army, and the ISI and had accused them."[49]

In this case, the FIA's notice to appear specifically alleged "defamation of institution of Government of Pakistan through social media."[50] This notice too, did not specify the allegedly offending speech, with the notice simply saying that "you are well aware of the facts/circumstances of the said inquiry."[51]

> I started getting calls from random numbers from all over the world . . . I started receiving messages and people began threatening me with murder, calling me a traitor. . . And then I received a WhatsApp message from a

---

[43] Interview with Asad Ali Toor ("They said we can't share evidence, for this (evidence), you require court orders.").
[44] *Id.*
[45] *See* Writ Petition, Asad Ali Toor v. Federation of Pakistan, Lahore High Court.
[46] *See* Asad Ali Toor v. Federation of Pakistan, W.P. No. 2103 of 2020, Order sheet dated Nov. 17, 2020, Lahore High Court
[47] *See* Asad Hashim, Pakistani Journalist Assaulted in Latest Press Freedom Attack, Al Jazeera, May 26, 2021, *available at* https://www.aljazeera.com/news/2021/5/26/pakistani-journalist-assaulted-in-latest-press-freedom-attack.
[48] *Cf.* Federal Investigation Agency, Cyber Crime Reporting Center, Rawalpindi, Order for Attendance U/S 160 Cr.P.C, for Recording of Statement, 1st Notice to Assad Ali Toor (referring to a complaint alleging defamation of the Government of Pakistan).
[49] Interview with Asad Ali Toor.
[50] *See* Federal Investigation Agency, Cyber Crime Reporting Center, Rawalpindi, Order for Attendance U/S 160 Cr.P.C, for Recording of Statement, 1st Notice to Assad Ali Toor.
[51] *Id.*

> random number. The sender identified himself as an FIA member, and asked me if I have received the summons order.

The proceedings initiated by these notices were not pursued by the FIA after the notices were challenged in court – further suggesting that the case had not been an effort to vindicate the rights of a 'natural person' but rather in response to his criticism of the government.

In another case, journalist Absar Alam was also targeted for raising questions about Asim Bajwa and his apparent wealth.[52] An FIR alleging not only a violation of Section 20 but also sedition and other offenses was initially lodged against him. Specifically, that FIR stated that a private person had complained that Mr. Alam "gave inappropriate statements against Pakistan Army and Prime Minister on twitter and other social media platforms," explaining that Mr. Alam allegedly "used very inappropriate language which is not flattering" and that this "is undermining the roots of this country to fulfill the nefarious intentions of the enemies."[53] Prosecutors ultimately admitted that such an FIR could not be filed by a private person (in particular, because sedition charges require approval by the government). As Mr. Alam explained, "this issue went to cold storage."

Mr. Alam was, however, again summoned about four months later by the FIA based on a complaint by a private party based on Mr. Alam's tweets for "uploading defamatory tweets against the state individuals and state departments."[54] The complaint was lodged under Section 20 and alleged that Mr. Alam had been "making abusive, anti-state statements and many other kinds of publications over his twitter account."[55]

As Mr. Alam explained, however:

> I was just using my right to free speech, right to ask questions, and right to an opinion. Based on this they charged me with section 20 under the cybercrime act.

When litigation began, that case too was closed by investigators.[56] However, on its face the case should not have even progressed to that stage, given that Section 20 is limited to protecting "natural persons."[57]

---

[52] Interview with Absar Alam.
[53] Unofficial translation of FIR No. 492/2020 dated Sept. 12, 2020 registered under sections 124A, 131, 499, 505 of the Pakistan Penal Code, 1806 and section 20 of Prevention of Electronic Crimes Act, 2016.
[54] FIA notice No. 1 for 18 March 2021 (signed on March 15 2021) and FIA notice No. 2 for 22 March 2021 to Absar Alam (signed on March 18 2021).
[55] Copy of complaint on file with the authors.
[56] *See* Absar Alam v. Federation of Pakistan, W.P. No. 1112 of 2021, Order Sheet dated Sept. 20, 2021, Islamabad High Court ("The learned Additional Attorney General has informed that the case has been closed by the Federation Investigation Agency.").
[57] *See* PECA, Section 20(1).

In short, it seems likely that these complaints registered against those voicing their opinions about the state or state institutions may have been veiled efforts to insulate those in power from critique.

Second, some of the FIA notices reviewed by TrialWatch did not specify the particulars of the alleged offense and were sometimes even served over WhatsApp—clear abuses of the accused's rights.[58] Such practices can have a chilling effect, without a case ever going to trial.

Journalist Bilal Ghauri, for instance, received a WhatsApp message from an unknown number indicating that "FIA, Cyber Crime Reporting Center in Islamabad is conducting proceedings regarding defamation and harassment on the above cited enquiry. Reportedly you are well aware of the facts/circumstances of the subject matter."[59] When he responded requesting details, he was simply told the identity of the complainant and that it apparently related to YouTube. Indeed, he received a second notice that reiterated, "you must be well acquainted with the facts of the inquiry."[60] As he explained to TrialWatch, "If they continue to be able to arrest any journalist and put him behind bars, who will bother to do journalism in Pakistan in the future?"[61]

Mr. Ghauri took the notices to the Islamabad High Court, arguing that the first notice "did not disclose the offense" and arguing that the fact that the notice had been "sent through WhatsApp" "illustrates the *mala fide* within which the notice was issued."[62] Mr. Ghauri's counsel argued that the notices were "part of a campaign of silencing journalists."[63] Ultimately, the Islamabad High Court declared the case a nullity in the order finding Section 20 unconstitutional, and the notices were thus quashed.

In the case against Mr. Toor alleging "defamation of institution of Government of Pakistan through social media," the summons initially appeared on social media (with his address listed),[64] rather than being delivered to him at all. Later, he "received a WhatsApp message . . . containing an undated and vague notice . . . requiring him to appear at the FIA Cybercrime Reporting Centre."[65] He asserted in court that the fact that "the notice

---

[58] The Islamabad High Court in *Rana Muhammad Arshad* explained that "[t]here is no cavil to the proposition that the Federal Investigation Agency, or any other entity empowered to investigate criminal offenses, is obligated to disclose sufficient information in the notice so the person knows the purpose for being summoned." Arshad Writ Judgment at ¶ 3.

[59] FIA Notice for attendance u/s 160 Cr.PC in connection to Inquiry No. 499/2021 to Muhammad Bilal Ghauri (signed on June 16, 2021).

[60] FIA Notice for attendance u/s 160 Cr.PC in connection to Inquiry No. 499/2021 to Muhammad Bilal Ghauri, dated June 22, 2021.

[61] Interview with Bilal Ghauri.

[62] Writ Petition, Islamabad High Court, Muhammad Bilal Ghauri v. Federation of Pakistan, at ¶ 3.

[63] *Id.* ¶ 6.

[64] Interview with Asad Ali Toor.

[65] Writ Petition, Islamabad High Court, Asad Ali Toor v. Federation of Pakistan, at ¶ 3, *Cf.* Federal Investigation Agency, Cyber Crime Reporting Center, Rawalpindi, Order for Attendance U/S 160 Cr.P.C, for Recording of Statement, 1st Notice to Assad Ali Toor.

did not disclose the offense . . .[and the fact that the notice lacked] a date on which the notice was issued . . . . illustrates the mala fide with which the notice was issued."[66] (And indeed the notice suggests Mr. Toor should be "well aware of the facts/circumstances of the said enquiry"[67]).

Courts have also expressed concern at such behavior. During a hearing in one of Mr. Toor's cases,[68] the Court went so far as to admonish the Director-General of the FIA, stating "The way to send notices on WhatsApp and other practicable ways without communicating the allegations is actually harassment."[69] This followed an earlier order in the same case in which the Court stated that it was not "satisfied . . . that section 20 . . . gives unbridle [sic] powers to the investigation powers to initiate criminal proceedings," and that the "court has constantly observed that the offense under section 20 of the Act of 2016 has been abused . . . [due to the] manner in which Federal Investigation Agency has been dealing the complaints."[70]

In *Rana Muhammad Arshad v. Federation of Pakistan*, the Islamabad High Court also noted that the petitioner, a journalist, had been served with an "undated notice,"[71] which "did not disclose the purpose for which he had been summoned."[72] When questioned by the court, the investigating officer "could not give a plausible explanation for sending the undated notice or failure to disclose the purpose for summoning the [accused]."[73] The High Court in *Rana Muhammad Arshad* went on to confirm that the case was part of "a surge in the filing of petitions wherein similar grievances have been raised."[74] The High Court's finding in *Rana Muhammad Arshad* is consistent with those of this report.[75]

---

[66] Writ Petition, Islamabad High Court, Asad Ali Toor v. Federation of Pakistan, at ¶ 3; *see also id.* at ¶ 5 ("[P]etitioner received another WhatsApp message from the same number containing a second undated and ambiguous notice.")

[67] Federal Investigation Agency, Cyber Crime Reporting Center, Rawalpindi, Order for Attendance U/S 160 Cr.P.C, for Recording of Statement, 1st Notice to Assad Ali Toor.

[68] This was yet another enquiry initiated against Mr. Toor on the complaint of a journalist, Ms. Shiffa Yousafzai. Mr. Toor challenged the FIA notices issued under this enquiry, and the court stayed the notices while stating "It, prima-facie, appears that it has been issued on a complaint regarding defamation. The questions raised in the petition essentially relate to the jurisdiction of the Agency." Asad Ali Toor v. Federation of Pakistan, Writ Petition No. 1645/2021, Order sheet dated May 4, 2021, Islamabad High Court,

[69] Trial Monitor Notes, Hearing, June 30, 2021.

[70] Asad Ali Toor v. Federation of Pakistan, Writ Petition No. 1645/2021, Order sheet dated May 7, 2021, Islamabad High Court,

[71] Arshad Writ Judgment at ¶ 1.

[72] *Id.*

[73] *Id.* at ¶ 2.

[74] *Id.* at ¶ 10.

[75] *See supra*. There are also indications in public reporting that the FIA may sometimes try to circumvent limits on investigating alleged breaches of Section 20. Section 20 is a 'non-cognizable' offense—meaning that the permission of court should be sought before any arrest is made. *See* Code of Criminal Procedure 1898 at Section 2(n) ("'Non-cognizable offence' means an offence for, and 'non-cognizable case' means a case in which a police officer, may not arrest without warrant"). There are concerns that the FIA has sought to get around this requirement by adding cognizable charges from PECA or the PPC, other than Section 20, so that they can conduct arrests without warrants. For instance, in 2019, journalist Shahzeb

This kind of behavior by the FIA has significant consequences, even if the cases never go to trial. As Absar Alam explained, "Career-wise I have suffered a lot. I have not been able to get any job during the past 5 years. No media house is willing to hire me because of the pressure they face as soon as they utter my name."[76] Like Mr. Toor, Absar Alam was attacked: He was shot near his home after having tweeted critically about a senior intelligence officer just two days before the incident.[77]

Jillani faced arrest under Sections 10 and 20 of PECA based on allegations that comments of his had stirred distress among the public. *Cf.* Farieha Aziz, Project Peca II: A Weapon of Mass Intimidation, Dawn, Dec. 14, 2022 ("At first Jillani found it laughable, to be accused of cyber terrorism. But then he was told a case had been filed and he must obtain bail or he would be arrested."), *available at* https://www.dawn.com/news/1725979/project-peca-ii-a-weapon-of-mass-intimidation.Further, concerns have been expressed that the FIA may use the excuse of a PECA summons to seize and search journalists' devices. For instance, in a petition to the Sindh High Court, lawyers for an activist arrested for his alleged "anti-military tweets" asserted that the FIA had seized his devices such as his mobile phones, laptops and other information systems without any legal authority to do so. Farieha Aziz and others versus Federation of Pakistan, CP No. 3927/2017, at ¶ 6, *available at* http://bolobhi.org/wp-content/uploads/2019/04/Petition.pdf.In particular, they alleged that the officers were "unreasonably targeting and detaining individuals for purposes of investigating their online activity and seizing their electronic devices without even registration of an FIR or specification of grounds or obtaining a warrant." *Id.* Likewise, in a third Section 20 case against Asad Toor, arising from his criticism of another journalist, he recounts that he was questioned "in an exceedingly threatening and insulting manner," Interview with Asad Toor, and that although he did not dispute that he had posted the video they were interested in, they still sought to seize his mobile phone, *id.*

[76] Interview with Absar Alam.

[77] *See* Salman Masood, Pakistani Journalist Is Shot After Criticizing the Military, N.Y. Times, Apr. 20, 2021, *available at* https://www.nytimes.com/2021/04/20/world/asia/pakistan-journalist-military.html.

INTERNATIONAL STANDARDS

Pakistan is party to the International Covenant on Civil and Political Rights (ICCPR), which protects the right to freedom of expression, including online. Any restrictions imposed by a State on the exercise of the right to freedom of expression must (a) be provided by law (the "principle of legality"), (b) serve a legitimate purpose, and (c) be necessary and proportional to this purpose.[78]

In order to comply with the principle of legality, legislation must be "formulated with sufficient precision to enable an individual to regulate his or her conduct accordingly . . . [and] may not confer unfettered discretion for the restriction of freedom of expression on those charged with its execution."[79] The UN Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression ("Special Rapporteur on Freedom of Expression") has noted that any restriction on speech "must be provided by laws that are precise, public and transparent; it must avoid providing authorities with unbounded discretion."[80] If legislation "employs broad terms that grant authorities significant discretion to restrict expression and provide individuals with limited guidance about the lines dividing lawful from unlawful behaviour," then the law likely does not conform to the principle of legality.[81]

In terms of legitimacy, the ICCPR identifies a limited list of permissible objectives, including the protection of public morals, public health, public order, national security, and the rights and reputation of individuals.[82] As stated by the Committee, "[w]hen a State party invokes a legitimate ground for restriction of freedom of expression, it must demonstrate in specific and individualized fashion the precise nature of the threat . . . in particular by establishing a direct and immediate connection between the expression and the threat."[83]

Finally, according to the UN Human Rights Committee, a restriction "violates the test of necessity if the protection could be achieved in other ways that do not restrict freedom of expression."[84] The necessity requirement overlaps with the proportionality requirement,

---

[78] UN Human Rights Committee, General Comment No. 34, U.N. Doc. CCPR/C/GC/34, Sept. 12, 2011, ¶ 22.
[79] *Id.* at ¶ 25.
[80] UN General Assembly, Report of the Special Rapporteur on the Promotion and Protection of Freedom of Expression, U.N. Doc. A/74/486, Oct. 9, 2019, ¶ 6(a).
[81] UN General Assembly, Report of the Special Rapporteur on the Promotion and Protection of Freedom of Expression, U.N. Doc. A/71/373, Sept. 6, 2016, ¶ 12.
[82] UN Human Rights Committee, General Comment No. 34, U.N. Doc. CCPR/C/GC/34, Sept. 12, 2011, ¶ 22 ("Restrictions are not allowed on grounds not specified in paragraph 3 [of the ICCPR].").
[83] *Id.* ¶ 35.
[84] *Id.* ¶ 33.

as the latter means that a restriction must be the "least intrusive instrument amongst those which might achieve their protective function."[85]

In applying the necessity and proportionality test, the UN Human Rights Committee has stressed in particular that "the mere fact that forms of expression are considered to be insulting to a public figure is not sufficient to justify the imposition of penalties."[86] It has gone on to explain that "States parties should not prohibit criticism of institutions, such as the army or the administration"[87] and that "[t]he penalization of a media outlet, publishers or journalist solely for being critical of the government or the political social system espoused by the government can never be considered to be a necessary restriction of freedom of expression."[88]

With respect specifically to criminal defamation laws, the Committee has urged "States parties [to] consider [] decriminalization."[89] According to the Committee, "the application of the criminal law should only be countenanced in the most serious of [defamation] cases and imprisonment is never an appropriate penalty."[90] The Committee has also stressed that "[a]ll [defamation] laws, in particular penal defamation laws, should include such defences as the defence of truth . . . . [and] a public interest in the subject matter of the criticism should be recognized as a defence."[91]

Nor is the UN Human Rights Committee alone in this regard. The African Court on Human and Peoples' Rights has likewise confirmed in a criminal defamation case that a custodial sentence would be a "disproportionate interference in the exercise of the freedom of expression by journalists in general and especially in the Applicant's capacity as a journalist."[92] In *Federation of African Journalists v. The Gambia*, the ECOWAS Court held that "[t]he existence of criminal defamation and insult or sedition laws are indeed inacceptable instance of gross violation of free speech and freedom of expression."[93] And in *Media Council of Tanzania v. Attorney General of Tanzania*, the East African Court of

---

[85] *Id.* ¶ 34.
[86] *Id.* ¶ 38.
[87] *Id.*
[88] *Id.* ¶ 42.
[89] *Id.* ¶ 47.
[90] *Id.*
[91] *Id.*
[92] African Court on Human and Peoples' Rights, Lohé Issa Konaté v. Burkina Faso, Application No. 004/2013, Judgment, Dec. 5, 2014, ¶ 164. *Id.* at ¶ 165 ("Apart from serious and very exceptional circumstances for example, incitement to international crimes, public incitement to hatred, discrimination or violence or threats against a person or a group of people, because of specific criteria such as race, colour, religion or nationality, the Court is of the view that the violations of laws on freedom of speech and the press cannot be sanctioned by custodial sentences.").
[93] Community Court of Justice of the Economic Community of West African States, Suit No. ECW/CCJ/APP/36/15, Judgment, Mar. 13, 2018.

Justice held that the criminal defamation law at issue in that case was insufficiently clear, and that it was neither necessary nor proportionate.[94]

Article 14 of the ICCPR also enshrines a number of key procedural rights, including that of a defendant to be informed of the charges against them.[95] The European Court has explained that a defendant is entitled to this explanation when they have been 'substantially affected.'[96] According to the Inter-American Court, this would include being summoned for questioning.[97] The EU Information Directive applies a similar rule: "The information provided to suspects or accused persons about the criminal act they are suspected or accused of having committed should be given promptly, and at the latest before their first official interview by the police or another competent authority, and without prejudicing the course of ongoing investigations."[98] Further, information about the charges must be sufficiently detailed to allow an accused person to prepare their defense.[99]

---

[94] East African Court of Justice, Reference No. 2 of 2017, Mar. 28, 2019.
[95] ICCPR art. 14(3)(a) (right "[t]o be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him").
[96] *Cf.* European Court of Human Rights, Padin Gestoso v. Spain, App. No. 39519/98, Dec. 8, 1998 (finding that the applicant in that case had not been "directly affected by the investigations conducted by the investigating judge").
[97] Inter-American Court of Human Rights, Barreto Leiva v. Venezuela, Judgment, Nov. 17, 2009, 29-30 ("[I]t is necessary for said notification to take place before the accused renders his first statement before any public authority.").
[98] Directive 2012/13/EU of the European Parliament and of the Council of 22 May 2012 on the Right to Information in Criminal Proceedings, recital 28.
[99] European Court of Human Rights, Mattoccia v. Italy, App. No. 23969/94, July 25, 2000, 60 ("[T]he accused must at any rate be provided with sufficient information as is necessary to understand fully the extent of the charges against him with a view to preparing an adequate defence.").

LEGAL ANALYSIS: PECA AND ITS APPLICATION

On its face, Section of 20 is inconsistent with international human rights standards.

First, it does not adequately distinguish statements of fact from opinions, which cannot be verified. The law speaks of 'information.' But the European Court of Human Rights, for instance, has made clear that where national legislation or courts make no distinction between statements of fact and value judgments—including by referring broadly to 'information'—this is an "indiscriminate approach to the assessment of speech" and a per se violation of the right to freedom of expression.[100]

Further, the Islamabad High Court has already held that the term "harms the reputation" is unconstitutional. In addition, the terms "intimidates" and "harms the privacy" are under-defined. The Indian Supreme Court, for instance, struck down Section 66A of India's Information Technology Act, which criminalized the use of communication devices to transmit "any information that is grossly offensive or menacing in character … or any [electronic communication] for the purpose of causing annoyance," reasoning that "expressions such as 'grossly offensive' or 'menacing' are so vague that there is no manageable standard by which a person can be said to have committed an offence or not to have committed an offence."[101] Likewise, the Ugandan Constitutional Court recently struck down a provision in Uganda's Computer Misuse Act criminalizing "willfully and repeatedly us[ing] electronic communication to disturb or attempt to disturb the peace, quiet or right of privacy of any person with no purpose of legitimate communication," finding that the law did "not specify what conduct constitutes offensive communication … it is vague, overly broad and ambiguous."[102]

By the same token, the concept of "intimidation" in Section 20 of PECA is unclear. Among the questions that the language of the statute does not clarify is whether "intimidation" is to be assessed from the perspective of the complainant or a 'reasonable person.' Likewise, the term "harms the privacy" is unclear. Indeed, the language of Section 20 is similar to that of the legislation considered by the East African Court of Justice, which

---

[100] European Court of Human Rights, Gorelishvili v. Georgia, App. No. 12979/04, June 5, 2007, ¶ 38 ("Notably, Article 18 of the Civil Code made no distinction between value-judgments and statements of fact, referring uniformly to 'information' (cnobebi), and required that the truth of any such 'information' be proved by the respondent party. Such an indiscriminate approach to the assessment of speech is, in the eyes of the Court, per se incompatible with freedom of opinion, a fundamental element of Article 10 of the Convention.")

[101] *See* Indian Supreme Court, Shreya Singal v. Union of India, Writ Petition (Criminal) No. 167 of 2012 (2015).

[102] *See* Constitutional Court of Uganda, Andrew Karamagi v. Attorney General, Constitutional Petition No. 5 of 2016.

found that the phrase “unwarranted invasion of privacy” “fails the test of clarity and precision.”[103]

Finally, the potential imposition of custodial sentences on those who violate Section 20, as well as the lack of clarity regarding defenses and exceptions, is inconsistent with international standards, as discussed above.

The cases described in this report show additional flaws in Section 20 and its application.

First, it appears that under the previous government—and since then as well—cases under Section 20 have been lodged on the basis of speech critical of government officials and institutions, and to investigate journalists. This violates the principles of necessity and proportionality.

The European Court has in its jurisprudence stressed the distinction between individuals who have put themselves under public scrutiny (such as elected officials) and those who have not. In *Novaya Gazeta V Voronezhe v. Russia*, for example, the European Court explained that those “exposed to public scrutiny as regards their professional activities ought to have . . . a greater degree of tolerance to criticism in a public debate on a matter of general interest than a private individual.”[104] Likewise, individuals may ‘open themselves up’ to scrutiny. For instance, in one case, the plaintiff in a defamation case had “organised a public gathering and spoke about his views to the audience.” In the European Court’s view, this meant that “he should have had a higher degree of tolerance to criticism.”[105]

The Inter-American Court of Human Rights has recently come to a similar conclusion in *Emilio Palacio Urrutia and Others v. Republic of Ecuador*. In that case, a journalist had published an opinion piece criticizing the then-President of Ecuador. The journalist and three directors of the newspaper were prosecuted, convicted, and sentenced to three years in jail. The Court found this unlawful and ordered Ecuador to “prevent public officials from bringing suits for defamation and libel with the aim to silence criticism of their actions in the public sphere.” As commentators have explained, “[t]his finding suggests that the IACtHR will not permit the criminal law to be used in defamation cases concerning matters of public interest.”[106] At the same time, the UN Human Rights Committee has made clear

---

[103] Media Council of Tanzania v. Attorney General of Tanzania, East African Court of Justice, Reference No. 2 of 2017, Mar. 28, 2019.
[104] European Court of Human Rights, Novaya Gazeta V Voronezhe v. Russia, App. No. 27570/03, Dec. 21, 2010, ¶ 47.
[105] European Court of Human Rights, Karman v. Russia, App. No. 29372/02, Dec. 14, 2006, ¶ 35.
[106] Justice Manuel José Cepeda Espinosa and Dario Milo, The Beginning of the End for Criminal Defamation in the Americas? The El Universo Case, Just Security, May 3, 2022, *available at* https://www.justsecurity.org/81339/the-beginning-of-the-end-for-criminal-defamation-in-the-americas-the-el-universo-case/.

that “States parties should not prohibit criticism of institutions, such as the army or the administration.”[107]

Yet in the cases analyzed in this report these seem to be the individuals and institutions on whose behalf the FIA has been invoking Section 20. For instance, in one complaint against Asad Toor, the allegation was that “Mr. Asad Ali . . . is spreading negative propaganda against Pakistan and its institutions and Pakistan Army.”[108] Likewise, some of the summonses issued Absar Alam concern alleged defamation of “state individuals and state departments.”[109]

Further, the FIA’s behavior in sending summonses via WhatsApp, with little to no information on the reasons for the investigation, violates the rights of accused persons to be informed of the charges against them. The courts in Pakistan have already characterized FIA’s behavior as “reckless and unprofessional.”[110] Where an accused person is told to appear on the assumption that they “reportedly” “are well aware of the facts/circumstances of the subject matter” (Bilal Ghauri), for instance, they would have no way to know how to prepare—and the odds of a fishing expedition are increased significantly.

---

[107] UN Human Rights Committee, General Comment No. 34, U.N. Doc. CCPR/C/GC/34, Sept. 12, 2011, ¶ 38.
[108] *See* FIR No. 338/2020 dated Sept. 12, 2020 registered under sections 499, 500, 505 of the Pakistan Penal Code, 1806 and sections 11, 20, 37 of Prevention of Electronic Crimes Act, 2016.
[109] FIA notice No. 1 for 18 March 2021 (signed on March 15 2021) and FIA notice No. 2 for 22 March 2021 to Absar Alam (signed on March 18 2021).
[110] *See* Rana Muhammad Arshad Writ Judgment at ¶ 10.

RECOMMENDATIONS

Section 20 should be reformed. In the event Section 20 is not reformed or repealed, the government should concede it is unconstitutional. Further, the FIA should implement the Islamabad High Court's order in the *Pakistan Federal Union of Journalists* case to report on FIA abuses, which would also provide a basis for further action by bodies in Pakistan considering PECA's Section 20.