

**UNIVERSAL PERIODIC REVIEW
PAKISTAN
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Joint stakeholder submission

Freemuse is an independent international membership organization advocating and defending the right to artistic freedom worldwide. Freemuse has held Special Consultative Status with the United Nations Economic and Social Council (ECOSOC) since 2012.

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Shirkat Gah is a leading women's rights organisation in Pakistan. Initiated as a small voluntary women's collective in 1975, Shirkat Gah (SG) has evolved into an organisation that operates out of offices in Lahore, Karachi and Peshawar, including its own facility in Lahore and four field stations across all four provinces. Shirkat Gah has held Special Consultative Status with the United Nations Economic and Social Council (ECOSOC) since 1998.

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Freemuse and Shirkat Gah welcome the opportunity to contribute to the third cycle of the Universal Periodic Review (UPR) process of Pakistan. Our organisations' focus is on Pakistan's compliance to its commitments under international human rights instruments relating to **cultural rights, freedom of expression, creativity and the arts**, as well as guarantees under its own constitution, and to recommendations accepted by Pakistan during the second cycle of the UPR in October 2012.

This submission is based on a legal study by Axis Law Chambers, a journalistic study conducted on behalf of Freemuse and qualified through a workshop held in Lahore in December 2016 with local artists, journalists and human rights advocates.

SUMMARY

1. Pakistan's Constitution along with the ICESCR and ICCPR guarantees the right to artistic creativity and expression. However, broad definitions and unclear procedures under the Penal Code, Anti-Terror Act and other laws regulating artistic expression enables the arbitrary, abusive and disproportionate interpretation and application of the law. Artists and audiences, including women and transgender artists, face serious threats from non-state actors that further limit the right to artistic freedom of expression. The report presents nine specific recommendations on how to improve the situation.

THE UNIVERSAL RIGHT TO ARTISTIC FREEDOM

2. Artistic creativity and expression and the freedom indispensable for this is increasingly recognised as an important human right under international law. In a 2013 report, "**The Right to Artistic Freedom and Creativity**", the UN Special Rapporteur in the field of cultural rights, Ms Farida Shaheed, observed that the "vitality of artistic creativity is necessary for the development of vibrant cultures and the functioning of democratic societies. Artistic expressions and creations are an integral part of cultural life, which entails contesting meanings and revisiting culturally inherited ideas and concepts."¹
3. The right to artistic freedom and creativity is explicitly guaranteed by international instruments: most importantly, Article 15(3) of the International Covenant on Economic, Social, and Cultural Rights (**ICESCR**), under which state parties to the treaty "undertake to respect the freedom indispensable for . . . creative activity" and in International Covenant on Civil and Political Rights (**ICCPR**) Article 19(2), which provides that the right to freedom of expression includes the freedom to seek, receive and impart information and ideas of all kinds "in the form of art".
4. Under **UNESCO's 2005 Convention on the Protection and Promotion of the Diversity of Cultural Expressions**, States shall endeavour to create "an environment which encourages individuals and social groups to create, produce, disseminate, distribute and have access to their own cultural expressions, paying due attention to the special circumstances and needs of women as well as various social groups, including persons belonging to minorities and indigenous peoples".
5. According to UNESCO's 1980 Recommendation concerning the **Status of the Artist**, "freedom of expression . . . is the essential prerequisite for all artistic activities, Member States should see that artists are unequivocally accorded the protection provided for in this respect by international and national legislation concerning human rights".
6. Furthermore, artistic freedom is **protected by other fundamental rights**: chiefly, liberty and security of persons; freedom of association, assembly, and movement; freedom of thought, conscience, and religion; and equal protection of the law. The exercise of artistic freedom supports these fundamental rights and freedoms by engendering cultures that affirm the inherent and equal dignity of the person as well as reflecting actual or potential violations.

¹ "The Right to Artistic Freedom and Creativity," <http://artsfreedom.org/?p=5311> (Farida Shaheed is the Executive Director of Shirkat Gah)

NATIONAL AND INTERNATIONAL LEGAL FRAMEWORK

7. The **Constitution of the Islamic Republic of Pakistan** 1973, in its preamble, states that it is the will of the people of Pakistan to establish an order that guarantees “fundamental rights, including equality of status, of opportunity and before law, social, economic and political justice, and freedom of thought, expression, belief, faith, worship and association”.² However, the preamble also provides that this guarantee is subject to law and public morality.³
8. These fundamental rights are specifically provided for in Chapter 1, Part II of the **Constitution**. **Article 19** relates to freedom of speech and encompasses the right to artistic expression. It states that, “Every citizen shall have the right to freedom of speech and expression, and there shall be freedom of the press...”⁴ However, in the same provision, it is stated that “*reasonable restrictions imposed by law*”⁵ can be placed on the right in order to protect seven enumerated interests. These interests are a) the glory of Islam, b) the integrity, security or defence of Pakistan, c) friendly relations with foreign states, d) public order, e) decency or morality, f) in relation to contempt of court, and g) commission of or incitement to an offence.⁶
9. The **Constitution** protects the freedom of association in **Article 17** and provides that “Every citizen shall have the right to form associations or unions...”⁷ However, in a similar manner to Article 19, this freedom is also subject to any reasonable restrictions imposed by law. The interests that can justify a restriction of the freedom of association under Article 17(1) are the sovereignty or integrity of Pakistan, public order, or morality.⁸
10. Pakistan ratified the International Covenant on Economic, Social and Cultural Rights (ICESCR) on 17 April 2008⁹ and the International Covenant on Civil and Political Rights (ICCPR) on 23 June 2010.¹⁰ Pakistan did not, however, accept the **Optional Protocol to the ICESCR**, and the similar **First Optional Protocol to ICCPR**, which allow parties to the ICESCR and ICCPR to recognise the competence of the Committee on Economic Social and Cultural Rights and the UN Human Rights Committee to consider complaints from individuals.¹¹
11. Pakistan has also ratified the following international covenants that relate to freedom of expression, including artistic freedom: the Universal Declaration of Human Rights (**UDHR**), the Convention on the Elimination of All Forms of Discrimination against Women (**CEDAW**), the Convention on the Rights of the Child (**CRC**) and the Convention on the Rights of Persons with Disabilities (**CRPD**).
12. Pakistan has not ratified the **UNESCO 2005 Convention** on the Protection and Promotion of the Diversity of Cultural Expression nor UNESCO’s 1980 Recommendation concerning the **Status of the Artist**.

² See Preamble of the Constitution <http://pakistancode.gov.pk/english/UY2FqaJw1-apaUY2Fqa-apaUY2Fvbpw%3D-sg-jjjjjjjjjjjj> (emphasis supplied).

³ *Ibid.*

⁴ See Article 19 of the Constitution <http://pakistancode.gov.pk/english/UY2FqaJw1-apaUY2Fqa-apaUY2Fvbpw%3D-sg-jjjjjjjjjjjj><http://pakistancode.gov.pk/english/UY2FqaJw1-apaUY2Fqa-apaUY2Fvbpw%3D-sg-jjjjjjjjjjjj>

⁵ *Ibid.*

⁶ *Ibid.*

⁷ See Article 17(1) of the Constitution <http://pakistancode.gov.pk/english/UY2FqaJw1-apaUY2Fqa-apaUY2Fvbpw%3D-sg-jjjjjjjjjjjj><http://pakistancode.gov.pk/english/UY2FqaJw1-apaUY2Fqa-apaUY2Fvbpw%3D-sg-jjjjjjjjjjjj>

⁸ *Ibid.*

⁹ Pakistan – Status of Ratifications http://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/Treaty.aspx?CountryID=131&Lang=EN

¹⁰ Pakistan – Status of Ratifications http://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/Treaty.aspx?CountryID=131&Lang=EN

¹¹ *Ibid.*

PREVIOUS UPR RECOMMENDATIONS

13. During Pakistan's second cycle Universal Periodic Review (UPR) that took place on 30 October 2012, no recommendations focused specifically on artistic freedom. However, multiple states made recommendations within the broader realm of freedom of expression and cultural diversity, including **Sweden's recommendation** 122.27 to "review and align the legislation with freedom of religion and belief and freedom of expression, as stipulated in the ICCPR"¹² and **Australia's recommendation** 122.101 to "implement measures to protect the right to life and freedom of expression of human rights defenders, and ensure that the perpetrators of violence are brought to justice."¹³ Pakistan supported both recommendations, along with other recommendations to secure and support freedom of expression. Pakistan noted several recommendations to modify and repeal **blasphemy laws** including **Switzerland's recommendation** 122.28 to "ensure that blasphemy laws and their implementation are in line with international law".

THE PENAL CODE

General statement

14. The Pakistan **Penal Code** 1860 (PPC)¹⁴ contains several provisions that either directly or indirectly criminalize certain expressions. Section 123-A of the PPC makes it a crime for any person to abuse the State, to condemn the creation of the State through the partitioning of India in 1947, or to advocate for the abolition of its sovereignty, knowing or intending that this expression would influence a person / segment of society in a manner that is prejudicial to the safety or ideology of Pakistan or endangers the sovereignty of Pakistan. The offence is framed in fairly broad terms. It can be committed by a person within or outside Pakistan, through words either spoken or written, signs, or any other form of visible representation. The maximum punishment is **imprisonment of up to 10 years** and a fine.
15. Section 124-A of the PPC creates the offence of **sedition**, whereby a person, who by words, either spoken or written, or by signs or visible representation, brings or attempts to bring hatred or contempt, or excites or attempts to excite disaffection towards the Federal or Provincial Government, is liable to be punished with **imprisonment for life**, in addition to a fine.
16. Section 153-A criminalises conduct that promotes **enmity between different groups**. Expression or speech promoting or inciting disharmony, feelings of enmity, hatred or ill-will between different religious, racial, linguistic, or regional groups, castes, and communities on grounds of religion, race, place of birth, residence, language, caste or community or any other ground whatsoever is liable to be punished with imprisonment for a maximum term of five years and a fine.¹⁵
17. The clearest provisions in Pakistani law with regard to the **censorship and banning of books** and music are found under section 292 of the PPC that criminalizes the production for sale, possession for sale, sale, hire, distribution, circulation, public exhibition, import, export, and advertisement of "obscene" books, pamphlets, papers, drawings, paintings, representations or figures or any other obscene object whatsoever. The offence is detailed and broad, and is punishable with imprisonment for a maximum term of three months, or with a fine, or both. However, the section exempts items

¹² Source of position: A/HRC/22/12/Add.1 - Para. 4

¹³ Source of position: A/HRC/22/12/Add.1 - Para. 4

¹⁴ Pakistan Penal Code 1860 <http://pakistancode.gov.pk/english/UY2FqaIw1-apaUY2Fqa-apk=-sg-jjjjjjjjjjjj>

¹⁵ Section 153-A PPC <http://pakistancode.gov.pk/english/UY2FqaIw2-apaUY2Fqa-apk=-sg-jjjjjjjjjjjj-con-207>. It is worth noting that the section contains an explanation clarifying that pointing out matters that are producing feelings of enmity or hatred between different groups, without malicious intent and with the aim of causing their removal does not constitute an offence.

with a religious purpose or of a religious nature.¹⁶ Similarly, section 294 makes it an offence for a person to sing, recite or utter any obscene songs, ballads or words, in or near any public place, to the annoyance of others. A person found guilty of such conduct may be punished with imprisonment of up to a maximum term of three months, or a fine, or both.¹⁷

18. Perhaps the most controversial, abused and feared PPC provisions that affect artistic expression are the so-called '**Blasphemy Laws**'. Sections 295-A, 295-B, 295-C, 298, 298-A, 298-B, and 298-C deal with insults to the religion or religious beliefs of a particular class of citizens; defiling of the Holy Quran; derogatory remarks in respect of the Holy Prophet; the deliberate and intentional wounding of any person's religious feelings; derogatory remarks in respect of holy personages; the use of Islamic religious terms by 'Ahmadis',¹⁸ and prohibiting them from calling or representing themselves as Muslims. The offences are punishable with imprisonment and fines. The maximum sentence is **imprisonment for life**.¹⁹

ANTI-TERROR ACT

General statement

19. The provisions of the Anti-Terrorism Act 1997 (ATA)²⁰ use very broad language, and have been used to target artistic expression. Section 8 of the ATA makes it an offence for a person to: (a) use threatening, abusive or insulting words or behaviour, or (b) display, publish or distribute any written material which is threatening, abusive, or insulting, or (c) distribute, show or play a recording of visual images or sounds which are threatening, abusive, or insulting, or (d) have in their possession written material, a recording, visual images or sounds which are threatening, abusive, or insulting with a view to their being displayed or published by themselves or another; if by doing so they intend to stir up sectarian hatred or sectarian hatred is likely to be stirred up.
20. A person convicted under this section is liable to be punished with rigorous imprisonment for a maximum term of seven years, or with a fine, or both.²¹
21. Section 11-W of the ATA makes it an offence for a person to print, publish, or disseminate any material, whether by audio or video-cassettes, or by written, photographic, electronic, radio, digital, wall-chalking, or any method which glorifies terrorists or terrorist activities, incites religious, sectarian or ethnic hatred, or gives projection to any person convicted for a terrorist act, or any person or organisation concerned in terrorism or any person / organisation placed under observation.
22. Any person guilty of an offence under this section is liable to be punished with imprisonment, with a maximum term of six months and a fine.²²

¹⁶ Section 292 PPC <http://pakistancode.gov.pk/english/UY2FqaIw2-apaUY2Fqa-apk=-sg-jjjjjjjjjjjj-con-339>

¹⁷ Section 294 PPC <http://pakistancode.gov.pk/english/UY2FqaIw2-apaUY2Fqa-apk=-sg-jjjjjjjjjjjj-con-15427>

¹⁸ The Ahmadis are a religious group with a sizeable population of adherents in Pakistan and India, and a diaspora spread across Europe and North America. In most countries, adherents are considered Muslims, but the Constitution of Pakistan 1973 recognises Ahmadis as a non-Muslim minority group under Art.260(3).

¹⁹ *Ibid.*

²⁰ Anti-Terrorism Act (ATA) 1997 (Act XXVII of 1997) <http://pakistancode.gov.pk/english/UY2FqaIw1-apaUY2Fqa-apaUY2FqaIw=-sg-jjjjjjjjjjjj>

²¹ Section 8 ATA <http://pakistancode.gov.pk/english/UY2FqaIw2-apaUY2Fqa-apaUY2FqaIw=-sg-jjjjjjjjjjjj-con-4031>

²² Section 11-W ATA <http://pakistancode.gov.pk/english/UY2FqaIw2-apaUY2Fqa-apaUY2FqaIw=-sg-jjjjjjjjjjjj-con-4045>

Illustrative example

23. In November 2015, an **Anti-Terrorism Court** (i.e. acting under the ATA) in Gilgit-Baltistan convicted television personality Veena Malik, her husband Asad Bashir Khattak, the owner of GEO TV (a private television channel) and owner Mir Shakil-ur-Rehman of **blasphemy** in absentia, handing down a 26-year jail sentence to each person in addition to a fine of 3 million Rupees (approximately 27,000 Euro). The case arose from a particular *qawwali* (a form of devotional music in South Asia) sung by noted singer Amjad Sabri on GEO TV during a re-enactment of Ms. Veena Malik's wedding. The alleged blasphemy arose from the fact that the *qawwali* in question was lyrically inspired and based on the marriage of the Holy Prophet's (PBUH) daughter, and that therefore, singing it during the actress' wedding re-enactment was blasphemous. The three were also ordered to surrender their passports to the court. The complaint had been filed by the local chapter of a religious organization by the name of Ahle Sunnat Wal Jamaat.²³ However, in December of the same year, the Supreme Court of Pakistan suspended the verdict of the court in Gilgit-Baltistan, pending a determination of the Supreme Court's jurisdiction over the courts in Gilgit-Baltistan.²⁴

FILM CENSORSHIP

General statement

24. The **Motion Pictures Ordinance 1979**²⁵ (MPO) was promulgated to provide for the censorship of films and the regulation of film screenings. It establishes the **Central Board of Film Censors** (CBFC) for the implementation of its provisions, requires certification for the public or private exhibition of films by means of cinematograph, and provides four outcomes of an application for certification: unrestricted public exhibition, restricted public exhibition as may be prescribed, direction to the applicant to carry out such excisions as the CBFC considers necessary before unrestricted or restricted public exhibition, and a refusal of any public exhibition.²⁶
25. According to the MPO, a film shall not be certified for public exhibition if: "the film or any part thereof is prejudicial to 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 amounts to the commission of, or incitement to, an offence".
26. An order of the Board refusing to grant a certificate, suspending a certificate, or decertifying a certified film is to be published in the official gazette.²⁷ An aggrieved person can appeal to the Federal Government under section 7 of the MPO.
27. Any person who exhibits an uncertified film or fails to comply with the provisions of the MPO is liable to be punished with imprisonment of a maximum term of three years, or a **maximum fine of 100,000 Rupees** (approximately 900 Euros).²⁸
28. In addition to a Central Board, the provinces of **Punjab** and **Sindh** have instituted their own individual censor boards following the 18th Amendment to the Constitution that devolved the subject

²³ See, 'Bollywood star Veena Malik handed 26 year sentence for 'blasphemous' wedding scene', The Guardian <https://www.theguardian.com/film/2014/nov/27/bollywood-veena-malik-sentenced-26-years-jail-religious-blasphemy-wedding>

²⁴ See, 'SC suspends conviction of GEO TV owner by GB Court', Pakistan Press Foundation

<http://www.pakistanpressfoundation.org/2014/12/sc-suspends-conviction-geo-tv-owner-gb-court/>

²⁵ Motion Pictures Ordinance, 1979 (Ordinance XLII of 1979) <http://pakistancode.gov.pk/english/UY2FqaJw2-apaUY2Fqa-cpaa-con-12908-sg-jjjjjjjjjjjj>

²⁶ Section 4, *ibid.*

²⁷ Section 5(2), *ibid.*

²⁸ Section 18, *ibid.*

of censorship and exhibition of cinematograph films to the provinces. The CBFC remains extant; however, its jurisdiction is restricted to the capital territory of Islamabad, and all cantonments in the country.²⁹ Despite this new paradigm, news reports indicate that the provincial boards continue to take their cue from the CBFC – an assertion specifically denied by the chairman of the CBFC, Mobashir Hasan.³⁰

Illustrative example

29. Filmed in Quetta in 30 days and lauded at the 2015 Cannes Film Festival, ***Abdullah: The Final Witness*** is about a 2011 incident when personnel of the Frontier Constabulary (a paramilitary police force in Pakistan)³¹ claimed that foreigners traveling in the Kharotabad neighbourhood were suicide bombers and gunned them down.³² When the film was first submitted to the CBFC for certification, the Board, in a notification dated 7 August 2015, declared the film unsuitable for public exhibition because the topic was controversial in the context of the country's security situation. In a second review, the Board upheld the initial decision. Director Hashim Nadeem convinced the Chairman of the Board to hold a third review. At this point, the Board cleared the film for public exhibition on the condition that the climax of the film would be blurred, and two major scenes that could "form public opinion" be cut entirely.³³

THEATRE & VISUAL ARTS

General statement

30. The **Dramatic Performances Act 1876**³⁴ (DPA), a colonial relic in Pakistan's legal structure, empowers various provincial governments to prohibit public dramatic performances, which are "scandalous, defamatory, seditious or obscene".³⁵ Originally promulgated by the British Raj to suppress the use of theatre as a tool of political protest by the Indian citizenry,³⁶ it continues to be in force in Pakistan, despite repudiation in India³⁷ and Bangladesh³⁸ (the other two jurisdictions to spring from British India).
31. The DPA provides that whenever the Provincial Government is of the opinion that a play, pantomime, or other drama performed or about to be performed in a public place is: a) **of a scandalous or defamatory nature**, b) likely to excite feelings of disaffection to the Government, or c) likely to deprave and corrupt persons present at the performance, it may prohibit such a performance.³⁹

²⁹ See 'Meet the censor board chairman everyone loves to hate', The Express Tribune <http://tribune.com.pk/story/1173606/meet-censor-board-chairman-everyone-loves-hate/>

³⁰ *Ibid.*

³¹ See, 'About Frontier Constabulary' <http://www.fc.gov.pk/internal.php?page=aboutfc>

³² See 'I have not degraded the state in Abdullah, says director Hashim Nadeem', Dawn News <https://images.dawn.com/news/1173917/i-have-not-degraded-the-state-in-abdullah-says-director-hashim-nadeem/print>

³³ *Ibid.*

³⁴ The Dramatic Performances Act 1876 (Act XIX of 1876) <http://pakistancode.gov.pk/english/UY2FqaIw2-apaUY2Fqa-bI0=-con-456-sg-jjjjjjjjjjjj>

³⁵ See Preamble of DPA <http://pakistancode.gov.pk/english/UY2FqaIw2-apaUY2Fqa-bI0=-con-456-sg-jjjjjjjjjjjj>

³⁶ See Bhatia, Nandi. "Censorship and the Politics of Nationalist Drama." Acts of Authority/Acts of Resistance: Theater and Politics in Colonial and Postcolonial India, University of Michigan Press, Ann Arbor, 2004, pp. 19–50, www.jstor.org/stable/10.3998/mpub.17085.5

³⁷ See 'Obsolete Laws: Warranting Immediate Repeal', Report No. 248, Law Commission of India <http://lawcommissionofindia.nic.in/reports/Report248.pdf>

³⁸ The Dramatic Performances (Repeal) Act 2001

³⁹ Section 3, The Dramatic Performances Act 1876 (Act XIX of 1876).

32. The DPA also provides for **pre-censorship** by vesting the Provincial Government with the power to call for information, including scripts prior to a performance.
33. Any person found in contravention of this provision is deemed to have committed an offence under section 176 of the PPC, whereby the offending person may be punished **by imprisonment of a maximum term of one month**, or a fine, or both.⁴⁰
34. A performance license (**No Objection Certificate or NOC**) has to be obtained from either the provincial government authorities or magistrates empowered by the government prior to staging performances in public places.
35. In 1983, Gen Zia ul Haq banned dance and laid down pre-conditions for a No Objection Certificate (NOC) including availability of premise; clearance from the excise and taxation department; exhibition of any part of the body, such as legs, arms, hips etc., are not allowed; only proper dresses of Pakistani origin will be displayed; **dresses are not so tight or reveal the vital curves of the body**; dances, obscenity and nudity are not allowed; Islamic values are not violated and furthermore any NOC obtained is liable to be cancelled at any stage without showing any reason.⁴¹
36. Such provisions not only allow for the **widespread exercise of discretionary powers**, but result in the rigmarole of standing in queues in relevant Government Ministries (Information & Culture), excise and taxation departments, and local government offices for police clearances, papers and censorship of all cultural activities. Additionally, artists are required to mask the art of dancing in different words and cannot apply for an NOC to stage a dance performance or host dance classes.⁴²

BROADCAST MEDIA (TELEVISION AND RADIO)

General statement

37. The Federal Government established the **Pakistan Electronic Media Regulatory Authority**⁴³ (PEMRA) under the Pakistan Electronic Media Regulatory Authority Ordinance 2002.⁴⁴ PEMRA is charged with regulating the establishment and operation of all broadcast media and distribution services in Pakistan that cater to international, national, provincial, district, local or special target audiences.⁴⁵
38. **PEMRA has the exclusive right to issue licenses** for the establishment and operation of all broadcast media and distribution services.⁴⁶ The PEMRA Ordinance further enumerates various terms and conditions of license, requiring (amongst other provisions) that the person issued a license shall ensure: the preservation of the sovereignty, security and integrity of the Islamic Republic of Pakistan; the preservation of the national, cultural, social and religious values and the principles of public policy as enshrined in the Constitution; that all programmes and advertisements do not contain or encourage violence, terrorism, racial, ethnic or religious discrimination, sectarianism, extremism, militancy, hatred, pornography, obscenity, vulgarity or other material offensive to commonly accepted standards of decency; and comply with the codes of programmes and

⁴⁰ Section 7, *ibid.*

⁴¹ 'Gender, Politics and Performance in South Asia' Sheema Kermani, Asif Farrukhi, and Kamran Asdar Ali. 2015.

⁴² 'The unofficial dancer' Sunil Kothari. The Hindu. June 19, 2014. Available at <http://www.thehindu.com/features/friday-review/dance/the-unofficial-dancer/article6129963.ece>

⁴³ PEMRA Website <http://www.pemra.gov.pk/>

⁴⁴ Pakistan Electronic Media Regulatory Authority Ordinance 2002 (Ordinance XIII of 2002) <http://pakistancode.gov.pk/english/UY2FqaIw2-apaUY2Fqa-apaUY2FrbZ8=-sg-ijjjjjjjjjj-con-9741>

⁴⁵ Section 4, PEMRA Ordinance.

⁴⁶ Section 19, *ibid.*

advertisements approved by the Authority, and appoint an in-house monitoring committee, under intimation to the Authority, to ensure compliance of the Code.⁴⁷

39. In addition, the PEMRA Ordinance allows PEMRA to prohibit a broadcast media or distribution service operation from broadcasting or re-broadcasting or distributing programmes.⁴⁸
40. Violations of provisions of the PEMRA Ordinance are punishable with a **maximum fine of ten million Rupees** (approximately 88,000 Euros). However, a person who repeats the violation or abetment shall be punished with **imprisonment for a maximum term of three years**, or with a fine, or both.⁴⁹
41. In 2015, following the directives of the Supreme Court, the Ministry of Information, Broadcasting and Heritage issued the **Electronic Media (Programmes and Advertisements) Code of Conduct**.⁵⁰ The Code enshrines certain fundamental principles that are to inform PEMRA's regulation of media content, of which some of the relevant provisions are that no content is aired which: is against Islamic values, the ideology of Pakistan; passes derogatory remarks about any religion, sect, community; contains anything indecent, obscene or pornographic; contains abusive comment that incites hatred; is likely to incite, aid, abet, glamorize or justify violence, commission of any crime, terror or lead to serious public disorder; depicts behaviour such as smoking, alcohol consumption, narcotics and drug abuse as glamorous or desirable.

Illustrative example

42. Ostensibly, as a result of the recent escalation of cross-border tensions between Pakistan and India, PEMRA decided, in its 120th meeting of the Board on 19 October 2016, to impose a **complete ban on airing Indian content** on local television and FM Radio channels. According to the decision, violators of the ban will be punished with a suspension of their license without show-cause notice.⁵¹ Similar moves were made in India by some channels and the entertainment industry against Pakistani artists and content with such bans damaging the cultural economy in both countries.

INTERNET

General statement

43. The most recent and extensive legislation enacted in Pakistan with potential to impact artistic expression is the **Prevention of Electronic Crimes Act 2016 (PECA)**.⁵² A controversial law, PECA seeks to restrict and censor content available on the Internet, often under the guise of crime prevention, with punishments often disproportionate to the crimes.⁵³
44. Since the law is fairly new it remains to be seen how broadly or strictly it will be implemented. There are, however, some important aspects of the law that can impact artistic expression adversely. These include, in particular, Section 20 that makes it an offence for a person to display or transmit

⁴⁷ Section 20, *ibid.*

⁴⁸ Section 27, *ibid.*

⁴⁹ Section 33, *ibid.*

⁵⁰ Electronic Media (Programmes and Advertisements) Code of Conduct 2015 http://58.65.182.183/pemra/pemgov/wp-content/uploads/2015/08/Code_of_Conduct.pdf

⁵¹ See 'PEMRA bans Indian Content on Radio, TV', Dawn News <https://www.dawn.com/news/1291120/pemra-bans-indian-content-on-tv-radio>

⁵² Pakistan Electronic Crimes Prevention Act 2016 <http://pakistancode.gov.pk/english/UY2FqaJw2-apaUY2Fqa-apaUY2Jvbp8%3D-sg-jjjjjjjjjjjj-con-15817>

⁵³ See 'Cyber crime bill passed by NA: 13 reasons why Pakistanis should be worried', Dawn News <http://www.dawn.com/news/1276662>

information through an information system that can (among other things) **harm the reputation of a person**.

45. Furthermore, Section 37 of the Act empowers the Pakistan Telecommunication Authority (PTA) to remove and block any information through an information system if the Authority considers it necessary in the interest of the glory of Islam, the integrity, security or defence of Pakistan, public order, decency or morality, in relation to contempt of court proceedings, or commission of or incitement to an offence under the Act.

Illustrative examples

46. In April 2013, the Enforcement Division of the Pakistan Telecommunication Authority directed some Internet Service Providers (ISPs) to ban a song called '*Dhinak Dhinak*' and its accompanying music video, which had been available on Facebook and the video sharing website Vimeo, by the band Beygairat Brigade.⁵⁴ The band has developed a reputation for satirizing Pakistan's military and its frequent forays into politics. '*Dhinak Dhinak*' was direct and explicit in its criticism and parody. The ban was subsequently revoked, with the video becoming available only a few hours after it was first banned.⁵⁵
47. Pakistan has **banned YouTube** on a quasi-regular basis since 2008, in response to the availability of Danish cartoons of the Prophet Muhammad and various controversial films, like '*Fitna*' by Dutch politician Geert Wilders, on the video sharing website.⁵⁶ While previous bans had been of a temporary nature, the Government conclusively blocked access to YouTube in September 2012, citing the controversial film '*Innocence of Muslims*' as the primary reason for doing so, and that the ban would remain in place until such time as the film was completely removed from the website.⁵⁷ In April 2014, the Senate Standing Committee on Human Rights requested the Federal Government to revoke the ban on YouTube,⁵⁸ but the ban persisted, with government officials saying in February 2015 that YouTube would remain blocked indefinitely, as no solution had been found to remove all offensive content.⁵⁹
48. With the launch of a Pakistan version of YouTube, the Ministry of Information Technology and the PTA officially revoked the ban in September 2016.⁶⁰ According to news reports, Pakistan's Ministry of Information Technology and Telecom said in a statement: "Google has provided an online web process through which requests to blocking access of offending material can be made by the PTA to Google directly. **Google/YouTube will accordingly restrict access** to the alleged offending material for users within Pakistan."⁶¹

⁵⁴ See 'Targeting the army? Beygairat Brigade's new song partially banned in Pakistan', The Express Tribune <http://tribune.com.pk/story/541274/targeting-the-army-beygairat-brigades-new-song-partially-banned-in-pakistan/>

⁵⁵ *Ibid*

⁵⁶ See 'Pakistan blocks YouTube website', BBC News http://news.bbc.co.uk/2/hi/south_asia/7261727.stm

⁵⁷ See 'YouTube blocked in Pakistan', The Washington Post https://www.washingtonpost.com/business/economy/youtube-blocked-in-pakistan/2012/09/17/30081fa2-00ea-11e2-b257-e1c2b3548a4a_story.html

⁵⁸ See 'Senate committee asks govt to unblock YouTube', Dawn News <http://www.dawn.com/news/1101460>

⁵⁹ See 'YouTube to remain blocked 'indefinitely' in Pakistan: officials', Dawn News <http://www.dawn.com/news/1162139>

⁶⁰ See 'YouTube Pakistan officially launched', Dawn News <http://www.dawn.com/news/1286842>

⁶¹ See, 'Pakistan lifts three-year YouTube ban with censor-friendly version', Newsweek <http://www.newsweek.com/pakistan-lifts-three-year-youtube-ban-censor-friendly-version-417255>

PRINT MEDIA

General statement

49. The **Code of Criminal Procedure** 1898 (CrPC), in section 99A, has a specific stipulation in relation to the forfeiture, seizure, and issuance of warrants for the search of certain publications. The CrPC provides that any “newspaper, book or any document (including painting, drawing, photograph, or other visual representation) that appears to the Provincial Government to contain any treasonable or seditious matter, or any matter which is prejudicial to national integration, or any matter which promotes or is intended to promote feelings of enmity or hatred between different classes of the citizens of Pakistan, or which is deliberately and maliciously intended to outrage the religious feelings of such class by insulting the religion or the religious beliefs of that class..., the Provincial Government may... declare every copy of the issue of the newspaper containing such matter, and every copy of such book or other document to be forfeited to the Government and thereupon any police-officer may seize the same wherever found in Pakistan, and any Magistrate may by warrant authorise any police-officer not below the rank of sub-inspector to enter upon and search for the same in any premises where any copy of such issue or any such book or other document may be reasonably suspected to be”.⁶²
50. The general law governing regulation, registration and publication of print material in Pakistan is the **Press, Newspapers, News Agencies and Books Regulation Ordinance** 2002 and the Press, Newspapers, News Agencies and Books Registration Rules 2009 framed thereunder. In addition to the provision in the Pakistan Penal Code prohibiting the sale of obscene books, the primary content-based regulation of print media is under the Press Council of Pakistan Ordinance 2002 (PCPO).⁶³

ATTACKS BY NON-STATE ACTORS

General statement

51. Currently, there is greater freedom to perform in **private spaces** with assistance from sponsors prepared to organize performances without bureaucratic hassle. That said, creative producers must remain cognizant of the risks involved, especially with respect to potential attacks by non-state actors, including militant Islamic groups targeting musicians. It is the responsibility of the state, while exercising due diligence, to **secure the safety of artists and audiences** from such attacks.

Illustrative examples

52. In June 2016, **Amjad Sabri** was shot dead in Karachi, Pakistan while driving his car. At the time, the Tehrik-e-Taliban Pakistan (a faction of the Pakistan-based Taliban) accepted responsibility for the attack. Two individuals affiliated with the group were subsequently arrested and confessed to the murder, stating they wanted to punish Sabri for his support of “questionable words” uttered by noted Shia activist Khurram Zaki, himself gunned down in May 2016⁶⁴, and Sabri’s attendance of Shia *majalis* (religious gatherings).⁶⁵

⁶² Section 99A, Code of Criminal Procedure, 1898: <http://pakistancode.gov.pk/english/UY2FqaJw1-apaUY2Fqa-apea-sg-jjjjjjjjjjjj>

⁶³ Press Council of Pakistan Ordinance 2002 (Ordinance XCVII of 2002) <http://pakistancode.gov.pk/english/UY2FqaJw2-apaUY2Fqa-apaUY2FtbZw--sg-jjjjjjjjjjjj-con-10709>

⁶⁴ See, ‘Rights activist Khurram Zaki killed in Karachi gun attack,’ Dawn News <http://www.dawn.com/news/1256995>

⁶⁵ See, ‘Sabri murderers making startling disclosures during initial interrogation, CTD reveals,’ Dawn News <http://www.dawn.com/news/1295688>

53. Shortly before the fourth edition of the annual **Lahore Literary Festival** (LLF), a bomb blast ripped through Lahore, prompting local authorities to revoke the NOC granted to the LLF only 24 hours before the festival was scheduled to start on the grounds that it would be unable to guarantee security. However, contrary to the official narrative, it was widely speculated that the NOC was in fact revoked by the Government of Punjab in response to one of the event's main organiser's association with the leadership of activists opposing a marquee flagship development project of an intra-city metro train in Lahore, and thus was a misuse of the Government's powers. Faced with this official government line of a security crisis, festival organizers were forced to change venue and shorten the programme by one day.
54. At least 88 people were killed, and hundreds more injured, on 16 February 2017 after a suicide bomber detonated a bomb at a crowded **Sufi shrine in Sehwan**, a town in the southern province of Sindh. A large number of people go to the shrine every Thursday to take part in ritual dances and prayers.

MUSIC AND DANCE – WOMEN AND TRANSGENDER ARTISTS AT RISK

General statement

55. Historically, **women** in the subcontinent have been perceived as cultural practitioners and preservationists, whether as professional artists performing at the courts of Mughal rulers or as traditional keepers of heritage as writers, poets and dancers. The **Taliban's war on music and dance**, amongst other cultural traditions, especially in the Swat Valley, has left a lasting mark on the lives of not least female performers who are ostracised, struggle to make a living as artists, and whose profession is perceived as immoral. Under such conditions, especially with poverty and the lack of quality education, some have reportedly turned to sex work, adding to the stigma attached to all dancers.
56. **Transgender people**, cross-dressers and eunuchs have an ancient history in South Asia. In Pakistan, such people live precarious lives as wedding dancers and providers of blessings for cash. Radical Islamists have attacked transgender artists in public and they are often humiliated and shunned for their physical appearance, especially when made up as dancers at weddings, private parties and festivities. In general, attacks on transgender people seem to be on the rise.

Illustrative examples

57. In April 2015, armed gunmen abducted and raped a **transgender dancer** after killing two others from a troupe of dancers and musicians in Swabi in Khyber Pakhtunkhwa while the group was returning home after performing at a wedding. The attack happened because the group resisted attempts by armed men wanting to abduct and rape them.
58. Pakistani singer and actor Atif Aslam briefly stopped his concert in Karachi on 14 January 2017 to rescue a **female audience member who was being harassed**. Aslam had security staff pull her up on stage and find her a safer place to enjoy the show. Many other women complained of being harassed and molested at the show, and many complained concert organisers mismanaged the crowd and event.
59. In March 2017 it was reported that police in the village of Mattani, a suburb of Khyber Pakhtunkhwa province capital Peshawar, **banned all music from wedding ceremonies**. In May 2016, local government officials in the village of Sheikhan, in the eastern province of Punjab, also banned music

and dancing at weddings. A district government official deemed the celebrations and musical evenings for weddings to be “not healthy” social activities.

RECOMMENDATIONS

60. Take steps necessary for the conservation, development and diffusion of culture, which includes artistic creations and expressions, in accordance with the **positive obligations** that devolve on States under article 15 (2) of ICESCR and article 14 of the San Salvador Protocol.
61. Take concrete measures and allocate the necessary resources to provide **safety and security for artists** and audiences including women and transgender people.
62. Amend Article 19 of the Constitution to make it consistent with Article 19 of the ICCPR.
63. Repeal all amendments in Pakistan **law imposed by non-democratic governments** that regulate artistic freedom, including the **Dramatic Performances Act 1876** in its entirety.
64. Review the provisions of the **Pakistan Penal Code** (including blasphemy provisions), the **Anti-Terrorism Act, Prevention of Electronic Crimes Act** and the **Code of Criminal Procedure**, as well as the implementation of these laws, to ensure that the *actus reus* and *mens rea* requirements of the offences they create are narrowly circumscribed to ensure that these cannot be abused to affect artistic expression and meet the tests of necessity and proportionality.
65. Amend Section 6 of the **Motion Pictures Ordinance 1979** to remove the Censor Board’s power to implement the broad criteria provided therein.
66. Amend the Pakistan **Electronic Media Regulatory Authority Ordinance 2002** to remove PEMRA’s power to implement the broad criteria provided therein as it leads to arbitrary decisions. Instead, detailed and specific standards should be provided in the legislation itself, the application of which should be subject to judicial review.
67. Sign and ratify the **UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions 2005** as well as UNESCO’s Recommendations concerning the **Status of the Artist 1980**
68. Accept the **First Optional Protocol to the ICCPR** and the **Optional Protocol to the ICESCR**.